

Recommendation Report
of the Integrity Commissioner
Code Complaint Against
Wasaga Beach Councillor Joe Belanger
July 21, 2022

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Town of Wasaga Beach on February 1, 2018 by the adoption of By-law Number 2018-14. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities.
- [2] The Town of Wasaga Beach has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent named in this Report to respond the allegations, and where findings were made, to review and provide comment on the preliminary findings

The Complaint

- [4] On May 27, 2022 we received a complaint filed by Mayor Bifulchi (and in the subsequent days several inquiries from others) relating to public comments made by Councillor Belanger, at Council and in social media, regarding the development of the Town lands known as Beach 1.
- [5] Two posts in particular were identified as potentially breaching the Code of Conduct:

One post, made May 27th, in which the Councillor provided information regarding purchase prices of beach area properties and suggested that the purchase price being negotiated with Bayloc should be closely scrutinized, suggesting that no less than \$42M would be acceptable:

IMPORTANT!
Dear Wasaga Beach Residents;

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If you want to know more about the pending Beach 1 development and if you want to be assured that the negotiated purchase of sale agreement is in the best interest of you the Wasaga Beach taxpayer and owners of Beach 1 lands, you need to read this post in it's entirety!

Between 2008 and 2020 nine real estate transactions occurred involving beach one properties. The total dollar value of these transactions was...

[the post then recites various real estate transactions over the past years]

Like you, the taxpayer, the owner of Beach 1 lands, I will be very interested to see the cost per square foot that Bayloc will be paying for the 8.4 acres of Beach 1 lands that they are buying from our municipality!

*8.4 acres = 365,904 sq. ft. X \$116.00 =
\$42,444,864.00*

...

A subsequent post made May 29th in which the Councillor purported to solicit public input for types of 'entertainment uses' for the Beach 1 redevelopment, and implied that the process had allowed for insufficient public input:

Has anyone asked you for your input as to what family entertainment venues should be included in our Beach 1 world class tourist destination. To date I have been given no opportunity to input and I feel strongly that this needs to be negotiated prior to a purchase of sale agreement being signed. I also recommend that specific spaces need to be zoned for Waterview restaurants & cafes.

Google family entertainment venue images to get some great ideas as to what could or should be included in our beach 1 redevelopment.

[6] The concern articulated was that the negotiations proceeding with the developer could be negatively impacted by the Councillor's posts.

[7] The complaint alleged that Councillor Belanger, through his comments, undermined Council's decisions as it was proceeding with the beachfront redevelopment, and that this conduct by the Councillor is contrary to Rule 15 of the Code of Conduct.

Process Followed

[8] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

[9] This fair and balanced process includes the following elements:

- Reviewing the complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration

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to whether the complaint should be restated or narrowed, where this better reflects the public interest

- Notifying the Respondent Councillor of the complaint against him and providing adequate disclosure of the information we possessed so that he could respond
- Giving full consideration to the Respondent's submissions on the complaint
- Reviewing the Code of Conduct and other documentation, emails and publications
- Conducting interviews of persons with information relevant to the complaint
- Making findings on the balance of probabilities while exercising the judgment of a reasonable person fully informed of relevant facts and circumstances.
- Providing the Respondent with the opportunity to review and provide comments on the Integrity Commissioner's Preliminary Findings Report, and taking his submission into consideration prior to finalizing this Recommendation Report

Background and Context

[10] The Town of Wasaga Beach is in the process of negotiating with a developer to redevelop the Town-owned beachfront lands known as Beach 1.

[11] The redevelopment of Beach 1 is a significant and important project by the Town of Wasaga Beach.

[12] It is evident from the documentation, most of it publicly available on the Town's website, that the process followed to redevelop the Town-owned beachfront lands has been a rigorous one.

[13] Council decisions to enact zoning by-laws permitting tourist commercial land uses accommodating multiple-unit development, hotel, recreation and entertainment uses passed in 2014, 2018 and 2021 paved the way for the redevelopment.

[14] Council has made other key decisions throughout the process, and key milestones have been publicly presented, well-documented in detail on the Town's website, including:

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- June 2019 – Decision to proceed with issuance of the Request for Expressions of Interest (RFEOI) for the Purchase and Development of Beach Area 1 Lands
- October 15, 2019 – Approval of recommended short-listed participants for the Request for Proposal (RFP) process
- June 30, 2020 – Direction to engage Deloitte to assist on RFP preparation
- September 10, 2020 – Receipt of Update Report on Preparation of RFP
- September 17, 2020 – Approval of Developer Selection Criteria
- November 12, 2020 – Approval of final RFP, Direction to engage Fairness Monitor, creation of an Evaluation Team, and Approval of proposed evaluation process
- April 6, 2021 – Receipt of Update Report on RFP process
- May 20, 2021 – Approval of preferred proponent following conclusion of RFP process and direction to negotiate Agreement of Purchase and Sale
- January 2022 - Direction in January 2022 to proceed to negotiate Agreement of Purchase and Sale with the second proponent, following unsuccessful conclusion of negotiations with the preferred proponent
- May 2022 – Declaration of the Town-owned beachfront properties as Surplus in order to facilitate the sale to the purchaser/developer

[15] Each of these decision-points listed above were the subject of public reports to Council, most reports providing a 'Next Steps' outline, and some accompanied by presentations.

[16] In addition to presentations and updates, members of Council participated in the RFP evaluation process, as outlined in the April 6, 2021 Report:

After identifying the preferred proponents(s), detailed design and negotiation of business items would take place. These matters and the particulars of the Development Agreement and Purchase and Sale Agreement would. Be discussed in Closed Session(s) of Council prior to coming to Open Session.

Questions have arisen with respect to the monetary component of the RFP and when it is considered. As indicated, it is scored as a separate component and this score added to the qualitative score to arrive at a total score. It will be discussed with Council in Closed Session at the appropriate time.

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Council is engaged in a a process that will lead to commercial transactions with private companies. It is imperative that all involved maintain strict confidentiality and not discuss any matters.

Additional Questions for Proponents

Members of Council were asked to submit three questions each that they would like the proponents to respond to after their presentations. Excellent questions were received. The Evaluation Team also developed some questions from the technical review of the proposal. The goal was to create seven questions from those submitted by members of Council and three from the Evaluation Team for a total of 10 that would be asked as part of the presentation.

The Evaluation Team reviewed the submitted questions and has created 17 questions instead of the 10 that was originally discussed. Additional questions from members of Council have been included on the list. These have been provided to the proponent.

- [17] Council established an Evaluation Team consisting of the CAO, Mayor, Director of Planning and Economic Initiatives, and Director of Public Works. The Town engaged expertise including real estate (Deloitte) and legal advisors (Dentons), and a Fairness Monitor.
- [18] On July 27, 2021 Council received a comprehensive Valuation Report presented by the independent appraisal firm. Lead counsel for Dentons and an advisor from Deloitte participated that day, and provided additional information regarding next steps in negotiations.
- [19] The appraised value was clearly stated in the report to Council and the considerations in arriving at the valuation were explained in detail.
- [20] Over the past 36 months there have been no less than a dozen reports before Council detailing the process and updating the progress on redevelopment of the beachfront lands.
- [21] As confirmed by the professional real estate and legal advisors retained by the Town to shepherd the project, from RFEOI through to a signed Agreement of Purchase and Sale and Development Agreement, this entire project has been the subject of an extremely rigorous process.
- [22] On May 19, 2022 at a closed session of Council, an update was provided regarding the status of negotiations of the Agreement of Purchase and Sale. As part of that closed session update, the negotiated purchase price – as established in the appraisal – was noted, and the few outstanding details were outlined.
- [23] On May 27th Councillor Belanger made a post on social media which suggested the minimum purchase price that ought to be achieved. This was done in the face of full

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information as to the appraised valuation, and having raised no concern whatsoever at the May 19, 2022 closed session to challenge that appraised valuation.

- [24] It is clear that the Councillor, having attended and participated in the May 19 closed meeting, knew with certainty the final negotiated purchase price.
- [25] His social media post intentionally raised expectations based on an imagined method of extrapolating values, and implied that any lesser amount should be rejected.
- [26] However, it is evident, listening to the audio recording of the meeting, that he took no issue with the purchase price. Although he participated in the closed meeting deliberations, he raised no concern whatsoever about the final negotiated price.
- [27] Without disclosing the content of closed deliberations, suffice it to note that his issues were with regard to the location of specific entertainment uses and on-site parking, matters normally dealt with under Site Plan approval, not in an Agreement of Purchase and Sale.
- [28] We are left, then, to make determinations as to whether the Councillor's social media posts of May 27th and 29th were merely the expression of skepticism and dissent which happen to fuel controversy, or if they worked against and undermined Council decisions taken to move the project towards fruition.

Applicable Code of Conduct Provisions

- [29] The Code of Conduct sets out, in the General Introduction:

Members of Wasaga Beach Council recognize their obligation to serve the constituents and the public in a conscientious and diligent manner understanding that as leaders in the community, they are held to a higher standard of behaviour and conduct.

Members recognize that ethics and integrity are at the core of public confidence in government...They recognize the need to uphold both the letter and the spirit of the law...

- [30] The Rules of the Code set out specific guidance to be adhered to, along with Commentary to explain and illustrate how the Rules apply.
- [31] Rule 15, provides as follows:

Rule 15: Not Undermine, Work Against Council's Decisions

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1. Members of Council shall not actively undermine the implementation of Council's decisions.

Commentary

The role of elected officials, once a council decision is made, is to support the implementation of that decision, not to work against its implementation, publicly or behind the scenes. Council decisions are arrived at following discussion and debate, reflecting the democratic process. Members are expected to engage in debate with their fellow council members through the democratic process of government. However, once Council has made its decision, Members must recognize that decision as the duly-considered decision of the body of Council. As members of that body of Council, individual members - those who did not agree with the decision - are not to engage in activities that seek to challenge or undermine that decision.

Members can express disagreement with Council's decisions, but it is contrary to the ethical behaviour of members of Council to actively seek to undermine, challenge or work against Council's decisions.

Analysis

- [32] There can be no doubt that the work to bring about redevelopment of the Town-owned beachfront lands began under the previous term of Council, and the project was diligently and earnestly pursued by the Town throughout the past 4 years, culminating in an imminent Agreement of Purchase and Sale with the purchase/developer.
- [33] It must be acknowledged that Council has made decisions regarding zoning permissions, through enactment of zoning by-law amendments in 2014, 2018 and 2021, which contemplate and allow for the development of a broad array of commercial uses including hotel, amusement park, art gallery, theatre, arcade, restaurants, gaming facility, and take out food.
- [34] It must be acknowledged that Council has made decisions in regard to the process for selection of a developer.
- [35] Council made decisions establishing an evaluation team, engaging a professional real estate advisor, an expert legal team, and a fairness monitor to ensure the integrity of the process.
- [36] Council made decisions, articulated as direction to staff and the negotiation team, to negotiate the Purchase and Sale Agreement and the Development Agreement, for Council's ultimate consideration.
- [37] While Council had not yet concluded the negotiations with the developer when the Councillor posted his social media comments, it must be acknowledged that Council

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had made a series of decisions to bring the Town to the brink of an Agreement of Purchase and Sale, including direction to negotiate that conclusion.

- [38] Council has been involved and kept apprised at every step along the way, and has made numerous decisions paving the way for this development.
- [39] It is difficult to imagine how anyone on Council could be unaware that Council decisions were methodically being taken to move forward the redevelopment of the beachfront lands, or that confidential and highly sensitive purchase and sale negotiations were in full swing.
- [40] At the May 19, 2022 closed session update report from the negotiating team, the negotiated purchase price was clearly stated, along with an outline of other terms and conditions already negotiated between the parties. The purchase price was not questioned or challenged by any member of Council.
- [41] Yet the social media post made by Councillor Belanger on May 27th purports to provide comparative real estate data information, in what must be understood as an effort to stir public concern regarding those negotiations; and the post made May 29th suggests there has been a lack of public input regarding ultimate land uses, matters which have been the subject of zoning by-law amendments.
- [42] It is disingenuous for Councillor Belanger to suggest that there has been a lack of public input regarding the land uses to be developed.
- [43] It is improper for the Councillor to extrapolate and construct his own valuation of the lands while negotiations encompassing price were being undertaken contemporaneously pursuant to a Council direction.
- [44] It is inappropriate for the Councillor to imply that the public needs to question or challenge the negotiated purchase price. It is disingenuous of the Councillor to suggest that he will oppose the purchase price, when he clearly expressed no concerns to it during the closed session update.
- [45] Councillor Belanger has defended his posts, on the basis that Council had not yet *concluded* negotiations and *finalized* the Agreement of Purchase and Sale and Development Agreement.
- [46] While Council had not yet concluded the transaction, it had directed that negotiations be undertaken on its behalf. Such direction is a decision of Council.
- [47] In a closed session on May 19, 2022, Council was provided with a detailed update regarding the negotiations from the negotiating team from Dentons, the legal experts undertaking the negotiations of both the Agreement of Purchase and Sale, and the Development Agreement, on behalf of Wasaga Beach.

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- [48] The negotiated purchase price was clearly articulated to Council, as well as the most significant terms and conditions negotiated to date.
- [49] It is noteworthy that the draft Agreement of Purchase and Sale was included in the RFP documents, as was the draft Development Agreement, taking much of the mystery out of what the expectations would be.
- [50] Further, any concerns the Councillor might have had regarding factors to be considered in the negotiations could have been brought to the attention of those tasked with negotiating.
- [51] We find that it was improper for the Councillor, in the midst of those negotiations, to post public comments which risked interfering with the negotiations.
- [52] An analogy might be made to a situation in which Council provided direction to its administration to negotiate with its employees' union. In the midst of those negotiations, one member of Council publicly comments about their views of what an unacceptable cost of living increase would be, even though Council had previously received an update on, and endorsed, the cost of living increase component of its offer to the union, which by that point its negotiating team had already bargained.
- [53] That behaviour would result in a complete undermining of the negotiating team, acting under Council direction in its endeavours. In this analogy, regardless of the fact the whole collective agreement has yet to be ratified by Council, a member of Council undermining Council's direction in this manner should not be condoned.
- [54] Particularly where Council is advised of the negotiated purchase price, and no objection is raised to the negotiating team, it is inconceivable that Council would balk at concluding the transaction on the basis of the purchase price. Why then would the Councillor make a social media post aimed at fomenting opposition to the project based on the purchase price?
- [55] We are left to conclude that the Councillor's conduct was aimed at undermining and derailing the entire project at what can only be described as the "eleventh hour".

Findings

- [56] We find that the Councillor's posts of May 27th and May 29th sought to undermine efforts to move forward with negotiations for the sale of the lands with the developer. These negotiations were proceeding under direction from Council.
- [57] There is no doubt that the Councillor's posts constituted an attempt to foment public concern and opposition to issues already the subject of Council decisions:

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enactment of the zoning by-laws permitting land uses; direction to negotiate an Agreement of purchase and Sale with the purchaser/developer.

- [58] All of the decisions of Council which brought Council to this point must be recognized as implementation of the decision to redevelop the lands. That said, Council had not entered into the Agreement of Purchase and Sale.
- [59] It was open to the Councillor to publicly oppose the transaction. It was similarly open to the Councillor to express concern about leaving some of the development details to the Site Plan stage.
- [60] It was not open to the Councillor to publicly stir opposition and controversy around the negotiated purchase price, knowing full-well the negotiating team was acting under Council Direction, and particularly being fully aware of the negotiated purchase price.
- [61] The question remains, whether fomenting concerns and arguably attempting to throw up road blocks constitutes a contravention of Rule 15 of the Code of Conduct.
- [62] Rule 15 of the Code seeks to address those situations in which, following public deliberations and debate, where Council has made a decision, no member can actively seek to undermine that decision.
- [63] The provision is intended to preclude a single 'rogue' member from attempting an 'end run' around a decision already taken by Council, by challenging it in the courts or otherwise publicly attacking it in an effort to undermine it.
- [64] While the provision must be judiciously interpreted so as not to prohibit individual members from disagreeing with the prevailing sentiment or perspective of Council, or challenging a consensus on a specific matter if the formal decision has yet to be taken by Council, we find that in the circumstances of this matter, the Councillor's social media posts seek to undermine Council's decisions.
- [65] The actions of a single member can, at times, appear counter-productive and disruptive to the process. However, the Code is not intended to stifle open debate or a decision by a member to 'swim against the current' if they choose.
- [66] However, once a matter is decided by Council, no single member can work against or work to undermine the Council decision. They may disagree with it respectfully, but not seek to undermine it.
- [67] We find that the Councillor's conduct, in posting about a lack of public input into the uses to be accommodated in the development, undermined Council's decisions regarding the permitted uses through the zoning by-laws enacted for the lands.

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[68] We find that the Councillor's conduct, in posting his detailed financial extrapolation from which he speculated an appropriate land valuation calculation, undermined the Council direction to the negotiating team to undertake good faith negotiations with the developer on behalf of the Town; this is particularly so, given his personal knowledge of the specific purchase price negotiated.

Observations

[69] We have frequently observed that Councillor Belanger has set himself apart from others on Council as a lone voice of opposition and dissent.

[70] Members of Council have the advantage of participating in the democratic process by seeking to persuade their colleagues around the Council table, through open debate, to agree and align on a common outcome.

[71] To do so Members of Council have an array of tools available to bring issues forward for attention where they believe a change in Council direction is necessary, not the least of which is introducing a notice of motion at Council to reconsider a matter.

[72] Councillor Belanger has suggested to us that having no Councillors support him when attempting to place notices of motion on Council agendas to address what he perceives as deficiencies in the Town's approach to matters leaves him unable to change Council's direction. That may well be the case.

[73] Such is the nature of our democratic form of government where there must be at least some minimal support before the elected body will allocate time to discuss an issue. Members have the privileged position of being able to introduce motions and seek to have their colleagues agree to a proposition. However, once an issue has been deliberated, and Council has made a decision, it is not open to a single member who finds themselves alone on an issue to actively undermine or work against the Council decision. There is a point at which, in a democratic system of government, participants must accept an outcome.

Concluding Remarks and Recommendations

[74] We are mindful that the legislative framework precludes an Integrity Commissioner from publicly reporting to Council after Nomination Day (August 19, 2022), recognizing that such reports might influence public opinion in the October election. A decision to report even prior to the August 19th cutoff requires prudence, for the same reason.

[75] We are, nevertheless, obligated to provide a public recommendation report where we find a complaint is substantiated, and we are unable to satisfactorily resolve the matter otherwise.

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- [76] In the circumstances of this complaint, we heard from numerous individuals concerned about the conduct, and we found the complaint to be substantiated. However, even following receipt of our preliminary Findings Report, we have been met the Councillor's refusal to recognize any concern.
- [77] The Councillor does not feel his posts 'undermine or work against the implementation of Council decisions'. His view is that the decisions of Council moving towards redevelopment of the Beachfront lands are not a 'decision', and that it is only the upcoming decision to approve a purchase and sale agreement that he is opposing.
- [78] For all of the reasons outlined above, we disagree. All of the decisions of Council which brought Council to this point must be recognized as implementation of the decision to redevelop the lands. That said, Council had not entered into the Agreement of Purchase and Sale.
- [79] It was open to the Councillor to publicly oppose the transaction. It was similarly open to the Councillor to express concern about leaving some of the development details to the Site Plan stage.
- [80] It was not open to the Councillor to publicly stir opposition and controversy around the negotiated purchase price, knowing full-well the negotiating team was acting under Council direction, and particularly being fully aware of the negotiated purchase price.
- [81] An Integrity Commissioner may recommend that certain sanctions be imposed when a complaint has been sustained. The purpose of a sanction is to reinforce Council's ethical framework.
- [82] A monetary penalty, although not remedial, can serve as a deterrent.
- [83] This is not the first complaint against Councillor Belanger that has been found to be substantiated.
- [84] For these reasons, we believe that a sanction is warranted.
- [85] We therefore recommend that Council pass the following resolution:
- [86] That having been found to have breached the Code of Conduct for Members of the Council of the Town of Wasaga Beach, the remuneration paid by the Town to Councillor Belanger be suspended for a period of thirty (30) days commencing with his next pay period.
- [87] We wish to conclude by publicly thanking those who participated in our investigation. We will be pleased to be in attendance virtually when this report is considered to answer any questions you may have relating to its contents.