

SUMMARY OF INVESTIGATION

RURAL MUNICIPALITY OF GRAYSON NO. 184

COMPLAINT

We received a complaint that a council member of the RM of Grayson violated the conflict of interest provisions of *The Municipalities Act* by participating in the council's discussions and approval of amendments to its zoning bylaw in which he had a private interest.

FACTS

The council member is the manager of a family construction company. In early 2016, the company did some work for a landowner based on arrangements made by the council member. At the time, the landowner talked to the council member about developing a campground on land that was zoned agricultural. The council member discussed the business of running a campground and told the landowner to contact Grayson's administrator about how to get the land rezoned to commercial, so the campground could be developed. They arranged for the family construction company to construct an approach to the land and discussed the company doing more work for the campground project during the summer of 2016. Sometime in late winter or early spring 2016, the council member provided the landowner with a detailed quote for the family construction company to level and set the grade of the campground, and to prepare each of the proposed campsites.

Sometime in the spring of 2016, the family construction company 'scrubbed' the campground land for the landowner, removing grass and small brush.

On April 10, 2016, the landowner submitted a development permit application to Grayson for the proposed campground. The Grayson council discussed the development permit application at its April 13, 2016 regular meeting. It passed a resolution stating that it had no objections to the landowner's proposal as long as zoning and other requirements were met. The council member took part in this discussion and the vote.

At the June 8, 2016 council meeting, the council member made two motions. One was to give first reading to a bylaw that would amend Grayson's zoning bylaw to reduce the minimum campsite size. The other was to give first reading to a bylaw to amend the zoning bylaw to rezone the land from agricultural to commercial to accommodate the campground. Both motions were carried.

Public hearings about the proposed zoning bylaw changes were held on July 13, 2016. The council member attended and took part in the hearings. There were concerns raised that the minimum campsite size proposed was too small. The landowner and the council member each confirmed that the proposed campsites in his campground would be larger than the minimum size proposed in the bylaw. Concerns were also raised about the campground itself. The complainant told us that, in his opinion, the council member downplayed these concerns and

that the council member seemed to be acting on behalf of the landowner, rather than in the public interest.

Immediately after the public hearing, Grayson's council met and adopted both bylaws. The council member was present for the entire meeting. The minutes do not record any objections or abstentions on the votes for either bylaw.

On July 18, 2016, the family construction company began construction on the campground as detailed in the quote the council member had provided to the landowner.

ISSUES AND FINDINGS

DID THE COUNCIL MEMBER HAVE A CONFLICT OF INTEREST?

Under *The Municipalities Act*, a council member has a conflict of interest if he or she makes a decision or participates in making a decision in the execution of his or her office and at the same time knows or ought reasonably to know that in the making of the decision there is the opportunity to further his or her private interests or the private interests of a closely connected person. A financial interest always constitutes a conflict of interest. A council member has a financial interest in a matter, if the member or someone in the member's family has a controlling interest in, or is a director or senior officer of, a corporation that could make a financial profit from a decision of council.

The council member told us he did not think he had a conflict of interest in the matters before council at the July 13, 2016 hearings and council meeting – the changing of the minimum size of campsites and the rezoning of the land to accommodate the campground project - because there was not yet a firm contract for the work; he had only given the landowner a quote. He told us he did not think that the possibility that his family's construction company might be awarded the contract was enough reason to recuse himself from the council's discussions and decisions about the zoning bylaw amendments which would allow the campground project to proceed. He also told us that he did not think he had to recuse himself because the money his family's construction company stood to earn was from the landowner, and was not taxpayer dollars.

Given the work that his family's construction company had already done for the landowner before the land was rezoned, including building an approach and scrubbing the land, and that he gave the landowner a quote for the rest of the construction work, there was a good chance his family's construction company would get the contract and make money if the amendments to the zoning bylaw were approved. If the zoning bylaw amendments did not get approved, however, his family construction company stood no chance of getting the contract.

We find that the council member knew, or he reasonably ought to have known, that if these amendments to the zoning bylaw were approved, it would secure his family's construction company's opportunity to win the contract to construct the campground – a contract potentially worth upwards of \$500,000. Therefore, we found that the council member knew (or ought to have known) that he had a conflict of interest in these matters which were before council at the July 13, 2016 council meeting.

DID THE COUNCIL MEMBER TAKE THE STEPS REQUIRED OF HIM TO DEAL WITH HIS CONFLICT OF INTEREST?

Under *The Municipalities Act*, if a council member has a conflict of interest in a matter before the council, the member, must, if present, before any consideration or discussion of the matter, **declare** that he or she has a conflict of interest, **disclose** the general nature of the conflict of interest and any material details that could reasonably be seen to affect the member's impartiality in the exercise of his or her office, **abstain** from voting on any question, decision, recommendation or other action to be taken relating to the matter; **refrain** from participating in any discussion relating to the matter; and **leave** the room in which the meeting is being held until discussion and voting on the matter are concluded.

The Act also states that "No member of a council shall attempt in any way, whether before, during or after the meeting, to influence the discussion or voting on any question, decision, recommendation or other action to be taken involving a matter in which the member of council has a conflict of interest."

We find that the council member did not deal with his conflict of interest as required under the Act. He should have declared his conflict, disclosed the general nature and material details of the conflict, abstained from voting on any question, decision, recommendation or other action to be taken relating to the matter, refrained from participating in any discussions relating to the matter and left the room until the rest of council finished considering and voting on the matter. Instead, he actively participated in the discussions and eventual decisions of the council concerning the zoning bylaw amendments which allowed the campground project to proceed.

CONCLUSION

We find that the council member violated the conflict of interest provisions of *The Municipalities Act* by participating in the council's discussions and approval of amendments to its Zoning Bylaw in which he had a private interest, and he did not take the steps to deal with his conflict of interest as required under *The Municipalities Act*.

The consequences of not following the conflict of interest rules in *The Municipalities Act* are serious. A council member who contravenes them is disqualified from council, must resign immediately, and is not eligible to be nominated or elected in any municipality for 12 years. If a council member does not resign as required, either the council or a voter may apply to the Court of Queen's Bench for an order declaring the council member to be disqualified. The judge is to dismiss the application if he or she is of the opinion that the disqualification arose through inadvertence or because of an honest mistake.

In this case, the council member told us during our investigation that he thought he did not have to declare a conflict of interest, because the money his family construction company stood to earn was from the landowner and was not taxpayers' money. In our view, this is not a reasonable interpretation of the conflict of interest rules. The rules are in place to ensure council members carry out their duties in the public interest (that is, in the best interests of their communities) and that they do not use their role on council to further their own private interests. As trustees for their local communities, council members cannot vote on or take part in discussions about matters before council in which they could gain or appear to gain private advantage. Given this council member's private interest in seeing the campground project go

ahead, a reasonably informed person could conclude that voting on the matter or taking part in the discussion would put him in a position where he could favour his private interest over his duties as a council member.

While we believe that the council member should have known that he had the potential to further his private interests if the council approved the amendments to the zoning bylaw, a judge might have concluded that he acted through inadvertence or an honest mistake. Therefore, based on the information we gathered during our investigation, we decided it was appropriate to make a recommendation to the Grayson council that it consider whether to apply to the court to have the council member declared to be disqualified from council.

Under *The Ombudsman Act, 2012*, if there are sufficient grounds for making a report that may adversely affect any entity or person, we must give the entity or person an opportunity to respond before we finalize the report. On April 4, 2017, we provided the council member with a copy of our draft report and advised him that he could make representations to us through legal counsel about our findings and conclusions and our tentative recommendation. We also provided the draft report to the Reeve of Grayson, as our findings involved the activities and decisions of Grayson's council and administration.

After receiving a copy of our draft report, the council member resigned from council. His resignation was accepted by the council at its May 10, 2017 meeting. Since the council member has now resigned, it is unnecessary for us to recommend that the Grayson council consider whether to apply to the court to have him declared to be disqualified from council.

Our investigation is now concluded.