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**Code of Conduct/Municipal Conflict of Interest  
Inquiry/Investigation for the Corporation of**

**Sioux Narrows-Nestor Falls**

**Report prepared for Township Council**

**March 17, 2024**

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Code of Conduct/Municipal Conflict of Interest Act complaint against:

Mayor Black - Respondent

Councillor Rydberg - Respondent

Complaint filed by – Mr. Brad Billings – Complainant - A member of the public and/or a person demonstrably acting in the public interest

Inquiry conducted by:

Darrell Matson

6356 Townline Road

Thunder Bay, Ontario

P7G- 2G8

Appointed Integrity Commissioner for the Township of Sioux Narrows – Nestor Falls

File 2-2023 – Final – March 17, 2024

## BACKGROUND TO LEGISLATION

In 2016 the Ontario government introduced Bill 68 - Modernizing Ontario's Municipal Legislation Act. Bill 68 contained a number of amendments to the *Municipal Act, 2001*, S.O. 2001, c. 25 (MA), the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (MCIA) the *Municipal Elections Act, 1996*, and various other Acts. These changes imposed new and important obligations on municipalities. The Bill received Royal Assent on May 30<sup>th</sup>, 2017. It is important to note that the changes to the Acts came into force over a period of time. Some of the changes included:

- Requiring municipalities to establish codes of conduct for members of municipal council and certain local boards, which could include rules that guide the ethical conduct of those members;
- Requiring municipalities to give the public and municipal councillors access to an integrity commissioner, with broadened powers to investigate conflict of interest complaints and provide advice to councillors;
- Providing for a wider range of penalties for contraventions of the MCIA;
- Updating the definition of "meeting" in the MA;
- Requiring municipalities to maintain a register recording all declarations of interest submitted by members of their councils; and
- Setting out how municipalities may allow for electronic participation by council, local board and committee members at meetings that are open to the public. Participants would not be counted towards quorum and members would not be able to participate electronically in meetings that are closed to the public. (Note this was later amended to first allow full participation during the COVID 19 provincial emergency, and again, later, to allow municipalities to choose whether or not to continue to allow full electronic participation.)

The code of conduct for members of council, and its local boards, sets out behaviors that members of council are expected to abide by and follow in support of the good governance of the municipality, and more particularly the confidence of the public in their local government.

The Municipal Conflict of Interest Act (“MCIA”) as referenced in the code of conduct sets out a framework for when participation in local government decision-making is appropriate. The overall goal is to protect the public interest by prohibiting any member from having any involvement in any matter being considered by Council or local board if the member has a pecuniary (financial) interest in the matter.

## **MANDATE**

As the result of an Integrity Commissioner Request for Inquiry (“Application”) filed on October 19, 2023 by a person who owns property/home and resides in the Township of Sioux Narrows-Nestor Falls (“SNNF”) on a seasonal basis, I was retained to conduct an inquiry into the alleged contravention of the SNNF Code of Conduct (“CODE”) and the Municipal Conflict of Interest Act (“MCIA”).

SNNF By-Law 507- Policy number B-20 established a Code of Conduct for Members of Council, Policy number B-32 established an Integrity Commissioner Inquiry Procedure and By-law 507 appointed persons as Integrity Commissioners for SNNF.

I have been appointed as one of the Integrity Commissioners (“IC”) pursuant to 223.3 (1) of the Municipal Act (“MA”), and confirmed via by-law 507.

The inquiry was conducted in accordance with Policy B- 32 – Integrity Commissioner Investigation Procedure.

Prior to commencing the inquiry, a content review of the application was conducted in accordance with the SNNF Policy B-32 - Section 5. It was concluded that the application (complaint document) was within the jurisdiction of the Integrity Commissioner, however clarification was required with respect to the following:

- 1) The date the Complainant became aware of the alleged violation of the MCIA;
- 2) Did the Complainant have “standing” to bring forward the complaint.

These issues will be discussed further in the report under the heading “Procedural Issues”.

## **ALLEGED VIOLATIONS OF THE CODE**

The Application alleges Mayor Black and Councillor Rydberg contravened the CODE by their participation in the vote at Council meetings held on August 1, 2023 and September 5, 2023 when Council was considering amendments to the Official Plan (“OP”) and the Zoning By-Law (“ZBL”) relating to Short Term Rentals (“STRs”).

The allegations relate to the passage of By-law 554 (an amendment to the Official Plan) and By-law 553 (an amendment to the Zoning bylaw).

The sections of the CODE alleged to be in violation are:

A. Integrity section

- a. perform their duties with accountability, dedication and honesty;
  - b. comply with all applicable legislation, Township by-laws and policies;
    - i avoid conflicts of interest both real or perceived;
- and

B. Conflict of Interest section

Place themselves in a position of a direct or indirect pecuniary interest to any person or organization which might reasonably benefit from special consideration of preferential treatment. (This section of the CODE is in direct relation to Section 5 of the MCIA.)

The Complainant alleges that the Respondents breached these provisions in the CODE for the reasons outlined in the following paragraphs:

1. The Respondents did not perform their duties with accountability and honesty. They willfully voted in favour of the ZBL and OP amendments while not being honest regarding their perceived conflict of interest;
2. The Respondents failed to comply with the MCIA and CODE by breaching the respective provisions on conflicts of interest.

3. The Respondents failed to avoid a conflict of interest by voting on the amendments. This placed the members in direct contradiction of the CODE by not avoiding conflict.
4. The Respondents put themselves in a position of direct, indirect, and perceived conflict of interest regarding voting on the STR by-law amendments as it would benefit business they either work for or own.

The Application further states that Councillor Rydberg and Mayor Black breached these sections of the CODE as neither declared a conflict of interest. The Complainant alleges that commercial operations known as “Crawford’s Camp” and “Crystal Harbour Resort” might reasonably benefit from passage of the by-laws. The STR By-law is limiting other accommodations in the Township. Therefore, it would be reasonable to assume that other existing and well-established accommodations in the Township would reasonably benefit from this by-law.

### **ALLEGED VIOLATION OF THE MCIA**

The Application alleges Mayor Black and Councillor Rydberg contravened the MCIA by their participation in the vote at the Council meetings held on August 1, 2023 and September 5, 2023 relating to the readings of by-laws that impact the operations of STRs.

On August 1, 2023, two by-laws were read a first and second time. One was a by-law to amend the Township’s Zoning By-Law No. 279 (“ZBL”), and the other was a by-law to adopt an amendment to the Township’s Official Plan (“OP”). On September 5, 2023, the Township read both of these by-laws a third and final time, ultimately passing them.

Neither Councillor Rydberg nor Mayor Black declared pecuniary interests during the process of passing the by-laws to amend the Township’s zoning by law and its Official Plan.

The Complainant alleges that Councillor Rydberg and Mayor Black ought to have declared pecuniary interests based on the MCIA and the CODE.

Councillor Rydberg is the owner-operator of a business called "Crawfords Camp", located in Sioux Narrows. Mayor Black is an employee of a business called "Crystal Harbour Resort", located in Sioux Narrows.

The ZBL and OP amendments both address the regulation of STRs. The result is onerous provisions that will limit the use of the STRs in the Township. Fewer STRs available in the community because of these by-laws will lead tourists and people seeking accommodation to book with other accommodations such as the resorts associated with Councillor Rydberg and Mayor Black. It is alleged that this could lead to profit for these members of council.

The Complainant specifically alleges that Mayor Black and Councillor Rydberg breached section 5 of the MCIA which states the following:

Section 5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

The allegation is that Councillor Rydberg and Mayor Black breached section 5 of the MCIA as neither declared a pecuniary interest based on a perceived conflict of interest. The perceived conflict of interest is based upon the fact that Councillor Rydberg and Mayor Black potentially could benefit from these by-laws taking effect.

## **RELEVANT LEGISLATION & PURPOSE OF THE INQUIRY**

The CODE sets out behaviors that members of council are expected to abide by and follow in support of the good governance of the municipality, and more particularly the confidence of the public in their local government. The Municipal Act (“MA”) states at Subsection 223.2 (1):

A municipality shall establish codes of conduct for members of the council of the municipality and of its local boards.

The MCIA sets out a framework for when participation in local government decision-making by elected officials is appropriate. The overall goal is to protect the public interest by prohibiting any member of a Municipal Council from having any involvement in any matter being considered by that Council or Local Board if the member has a *pecuniary interest* (commonly referred to as a “financial interest”). The obligation is on the member to comply with MCIA.

Subsection 5(1) is quoted above.

Section 5.1 of the MCIA reads:

5.1 At a meeting at which a member discloses an interest under section 5, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board, as the case may be.

Subsection 5.2(1) of the MCIA reads:

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has

delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

Section 2 of the MCIA reads:

**2** For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

Section 4 of the MCIA sets out a list of exceptions where Section 5 does not apply to a pecuniary interest in any matter that a member may have.

The purpose of this inquiry is to determine if the Respondents contravened the CODE and Section 5 of the MCIA when they participated in the discussions and vote at the August 1, 2023 and the September 5, 2023 Council meetings in regard to the amendments to the OP and ZBL relating to STRs.

## **INVESTIGATION APPROACH**

The Investigation was conducted in accordance with Township of Sioux Narrows-Nestor Falls Integrity Commissioner Inquiry Procedure. (Policy number B-32).



In conducting the Investigation, the principles of procedural fairness were applied.

These include the following elements:

1. The complaint was provided to each Member whose conduct was questioned, with a request that a written response to the allegation(s) be provided. The IC may review and discuss with the Respondent any information provided in the response to determine the relevance to the matter. A time period for responding was specified with the request.
2. The responses, and any accompanying documents and materials provided by the Respondents, were provided to the Complainant with a request for a written reply. The IC may review and discuss any information provided in the response to determine the relevance to the matter. A time period for responding was specified with the request.
3. The IC reviewed the information provided by the Respondents and the Complainant and undertook interviews with witnesses to clarify the information received. The IC is entitled to request access to all books, accounts, financial records, electronic data, records, reports files and all other papers, things or property belonging to or used by the municipality that the IC believes to be necessary for an Investigation.
4. Follow up interviews with the Respondents, Complainant and witnesses took place where the IC considered them to be required.
5. Once the report of the IC was drafted, had the findings been in support of the allegations of the Code of Conduct, the Respondents would have received notice of the findings, the basis of the findings, the recommended sanctions/remedial actions, and would have been provided an opportunity to comment. As the conclusion was otherwise, this step did not occur.

6. When the report was finalized, the Respondents and the Complainant were each advised of the outcome.
7. The report was then submitted in accordance with the Protocol.

It is noted that, at any time during the Investigation process, had the IC believed that there was an opportunity to resolve the matter, and all of the parties had agreed, efforts to achieve an informal resolution may have been pursued. That did not occur in this case.

In completing this Report, the IC interviewed the Complainant, the Respondents, and 3 other witnesses. The IC also reviewed paper/electronic documents, including: council minutes, correspondence provided by the Complainant/Respondents, planning reports and relevant case law.

## **PROCEDURAL ISSUES**

Prior to commencing the inquiry, a content review of the Application was conducted in accordance with the SNNF Policy B-32 - Section 5. It was concluded that the Application was within the jurisdiction of the IC, however clarification was required with respect to the following:

1. the date the Complainant became aware of the alleged violation of the MCI Act; and
2. whether the Complainant had standing to bring forward the complaint.

Issue 1 - The MA states the following:

Inquiry by Commissioner re s. 5, 5.1, 5.2 or 5.3 of Municipal Conflict of Interest Act

**223.4.1** (1) This section applies if the Commissioner conducts an inquiry under this Part in respect of an application under subsection (2).

## Timing

223.4.1 (4) An application **may only be made within six weeks** after the applicant became aware of the alleged contravention.

The Complainant clarified that the date they became aware of the alleged violation was September 19, 2023. This date is within the six-week time period and therefore complies with Section 223.4.1 (4) of the MA.

Issue 2- The Complainant is an American Citizen who resides in the United States, owns a home in SNNF and relocates to the SNNF home on a seasonal basis. The complainant pays taxes to the Township of SNNF.

In accordance with Section 223.4 of the MA, to have standing to file a CODE complaint, a person must be a “member of council” or a “member of the public”.

In accordance with Subsection 223.4.1(2) of the MA, to have standing to file an MCIA complaint, a person must be an “elector” as defined in the MCIA or be a “person demonstrably acting in the public interest”. The Complainant is not an “elector” as he is not entitled to vote at a municipal election in the municipality as defined in the MCIA.

Neither “member of the public” nor “a person demonstrably acting the public interest” are defined in the MA or the MCIA. A search of the CanLii database and other IC reports was undertaken to assist with the definition of these terms. The search was unsuccessful.

In order to determine if the Complainant had “standing”, a statutory interpretation of the terms “member of the public” and a person “demonstrably acting in the public interest” was requested from the law firm of Aird Berlis.

Based upon the opinion received, it was concluded that the complainant meets the statutory intent of the definitions of both terms, and therefore has standing to pursue the CODE and MCIA complaint mechanisms.

## **BACKGROUND AND THE BASIS FOR THE AMENDMENTS TO THE OFFICIAL PLAN AND THE ZONING BY-LAW**

Over the past 5 years, there has been a growing trend in the use of online booking services such as Airbnb and Vacation Rental by Owner (“VRBO”) for residential homeowners to rent out their home on a short-term basis for the purpose of generating income. These are commonly known as STRs. The emergence of STRs as income properties is wide spread, both internationally and in Canada and the United States.

While generating income for the owner, the manner in which some STR properties are used may have a negative impact on neighbourhoods and communities. STR users tend to generate land use conflicts in residential areas, and a proliferation of STRs can create shortages in affordable housing as investors purchase modestly priced homes as commercial rental properties. STRs generate more income for their owners than a longer-term rental would.

SNNF has not been immune to this trend, as many seasonal property owners have seen this as an opportunity to generate some additional income from their cottage when not in use. Further, many potential purchasers are now using this as a business model to assist in the financing of a new cottage purchase.

SNNF has been attempting to manage STRs through the zoning by-law over the past several years. As a result, it became clear that a more precise land use policy would be helpful to Council in making land use decisions with respect to STRs.

As a result, Planning staff were directed to prepare a new policy in the OP that would assist Council in making decisions on the approval of future STRs, taking into consideration potential disruptions in residential neighbourhoods, the health and safety of the public and the impact on the affordable housing in the community.

It had been the practice of SNNF to require STR properties to be rezoned to the Tourist Commercial Zone (“TC”), as the marketing of cottages for STRs using Airbnb and VRBO by their owners generates commercial income and was considered to be a commercial land use.

In considering applications to rezone properties for STRs as a commercial use, there was a lack of policy guidance in the SNNF Official Plan. The OP amendments add a land use policy for evaluating future applications for rezoning residential property for commercial use as a STR.

## **THE OFFICIAL PLAN AMENDMENT**

SNNF passed an amendment to the OP to add the following policy:

### Section 4.28 – Short Term Rentals

Short Term Rentals are defined as the use of a dwelling unit, or any part thereof, that is operating or offering a place of temporary residence, lodging or occupancy by way of concession, permit, lease, licence, rental agreement or similar commercial arrangement for any period of 30 consecutive calendar days or less throughout all or any part of a calendar year.

The council of the township of Sioux Narrows- Nestor Falls generally discourages the use of residential dwelling as Short-Term Rentals in the Rural and Residential areas within the municipality. Applications to rezone property from residential use to commercial use for Short Terms Rentals may be considered, on a limited basis providing the following conditions are met:

- A) The property be rezoned to the Tourist Commercial land use designation in the zoning by-law;
- B) The property was not purchased with in the past two years;
- C) There are no other residential properties located within 120 meters of the subject property;
- D) The property is not a lot in a plan of subdivision;
- E) The residential dwelling does not have more than 3 bedrooms;

- F) The property is accessible by a publicly owned and maintained road, or is water access only;
- G) The private water and sewer system has been approved by the relevant agencies;
- H) The residential dwelling meeting all requirements of the Ontario Fire Code;
- I) The residential dwelling meeting all requirements of the Ontario Building Code;
- J) There is adequate parking on site, or adequate mainland parking if the subject property is water access.

### **THE ZONING BY-LAW AMENDMENT**

SNNF passed an amendment to the ZBL to add a definition for “Short Term Rental” and to add “Short Term Rental” as a permitted use in the TC Zone. The new definition of “Short Term Rental” is:

Short Term Rental is all or part of a dwelling unit rented out for less than 28 consecutive days in exchange for payment.

### **DOCUMENTS RELIED ON**

- Application as filed by the Complainant
- Mayor Black and Councillor Rydberg responses to the Application
- Reply submission of the Complainant
- Relevant SNNF documents including: by-laws, minutes and staff reports
- Interviews with witnesses with knowledge relating to the matter
- Relevant case law
- Legal opinions

## **INFORMATION OBTAINED FROM DOCUMENTS AND WITNESSES**

SNNF Planning staff were directed to prepare a new policy in the OP that would assist Council in making decisions on the approval of future STRs.

Administration conducted the required research and developed a land use plan that provided guidance to Council, Staff and Property Owners for rezoning residential properties used as STR's to the TC Zone. The plan included the proposed amendments required to the OP and the ZBL.

SNNF engaged in a public consultation process which included a Community Survey and two public meetings held In May and June of 2023 to review and receive community comments on the proposed amendments.

The proposed OP amendment was circulated to the Ministry of Municipal Affairs and Housing ("MMAH") for review and comment. The MMAH had no objections and indicated that the proposed amendment was in conformity with the Provincial Policy Statement 2020.

A Statutory Public Meeting was convened and held pursuant to Section 17 and Section 34 of the Planning Act, R.S.O 1990, Chapter P.13. The Planning Report was read into record and concluded:

"The proposed Official Plan and Zoning By-Law Amendment have been the subject of an extensive public consultation process, are in conformity with the Official Plan, and are in conformity with the PPS 2020".

"The Official Plan Amendment and Zoning By-Law Amendment will provide staff and Council with very specific land use policies and by-laws for the regulations of STRs in the community".

"It is recommended that the Official Plan Amendment #1 and the accompanying Zoning By-Law Amendment be approved".

One person in attendance spoke in favour of the proposed amendments. Mr. Billings, the Complainant in this inquiry, spoke against the proposed amendments and articulated his concerns verbally and with a written submission. Mayor Black and Councillor Rydberg were in attendance at the July 4, 2023 Statutory meeting of council. No conflicts of interest on this issue were declared.

On August 1, 2023 a regular open meeting of SNNF Council was convened. Councillor Rydberg declared a conflict of interest relating to a matter not relevant to this investigation (being disbursements to Viking Landscaping). No other conflicts of interest were declared. Resolutions No. 84-23 (Zoning By-Law amendment) and 85-23 (Official Plan amendment) relating to STRs were passed, resulting in the by-laws being read a first and second time. Mayor Black and Councillor Rydberg were in attendance.

On August 1, 2023, at this same regular open meeting of SNNF Council, Resolution No. 89-23 was considered. This Resolution requested that the Province of Ontario establish a regulatory framework for digital platforms such as Airbnb and VRBO due to their negative impact on municipalities. SNNF had received a great number of copies of resolutions from other Ontario municipalities looking for peer municipality support for the establishment of a regulatory framework. SNNF Council considered the request for support and approved resolution 89-23 for submission to the Province of Ontario. Councillor Rydberg “moved” the resolution but did so in support of other municipalities and townships as requested.

On September 5, 2023 a regular open meeting of SNNF Council was convened. Councillor Rydberg again declared a conflict of interest relating to disbursements to Viking Landscaping. No other conflicts of interest were declared. Resolutions No. 96-23 (Zoning By-Law amendment) and 97-23 (Official Plan amendment) relating to STRs were passed, resulting in the third and final readings of the by-laws to amend the OP and the ZBL. Subject to the appeal provisions in the Planning Act, the amendments to the OP and the ZBL were now considered to be in force. Mayor Black and Councillor Rydberg were in attendance.



On September 27, 2023, the Complainant appealed the passage of the SNNF by-laws amending the OP and ZBL (By-laws 553 and 554) to the Ontario Land Tribunal (“OLT”). In accordance with Subsection 34(21) of the Planning Act, by-laws are under appeal do not take effect pending the outcome of the appeal. On or around February 8, 2024 SNNF received notification that the appeal had been withdrawn. Accordingly, the amendments to the OP and ZBL would now be in force.

The OP amendment provided council and staff with guidelines for evaluating requests for the commercial use of residential or rural residential property. The new land use policy for STRs is quite rigorous, and it is likely that very few properties currently zoned Residential or Rural residential would be able to comply with the new guideline.

It is recognized by the OP that there will be homes currently being utilized as STRs that are in the Rural Residential or Residential Zones. The OP does not prohibit, or declare a moratorium on STRs but provides Council, Staff and Property Owners with guidelines for evaluating requests to rezone residential properties to Tourist Commercial. These properties will require the owners to submit an application. Applications may be considered, on a limited basis providing the rezoning guidelines are met. The final decision is made by Council.

It is also recognized by SNNF that homes that continue to operate as STRs in the Rural Residential and Residential Zones will be considered to be in violation of the ZBL. These properties can be reported to SNNF for investigation and follow up by Administration.

The provision in the OP that properties purchased within 2 years are not eligible for a Tourist Commercial Re-Zoning was intended to impose a “cooling off” period that would prevent speculative purchases of residential properties for commercial purposes. This provision would aid in preventing long term rental housing shortages.

Mayor Black is a paid employee of a Crystal Harbour Resort Ltd. This resort is located in Sioux Narrows. Accommodations are offered on a year-round basis.

Crystal Harbour Resort Ltd. does not advertise on any VRBO or Airbnb related website platforms or applications. Mayor Black performs various duties on a seasonal basis, is not related to the owners, and has no involvement in the financial or operating decisions of the resort.

Councillor Rydberg is an owner of Crawford's Camp. Crawford's Camp has an address in Sioux Narrows. This resort provides vacation cottage rentals on a daily or weekly basis. Vacation rentals are offered on a year-round basis. Crawford's Camp does not advertise on VRBO or Airbnb related platforms or applications.

Councillor Rydberg is also an owner of a construction and property maintenance business that provides property management for local STRs. Services include: maintenance, cleaning and construction. Income is derived from both the Resort and the construction and property maintenance services.

Mr. Billings, the Complainant, owns a home with an address in Sioux Narrows. Mr. Billings resides at the Sioux Narrows address on a seasonal basis. There are times when his home is rented out to family members and friends.

Mr. Billings in 2021 made an application to SNNF to have his property rezoned to Tourist Commercial. The application was considered and denied by SNNF Council. The decision of Council was appealed to the OLT. The application was dismissed without a hearing by the OLT in May of 2023.

## **THE POSITION OF MAYOR BLACK**

Mayor Black states the following:

“I disagree with all aspects of the Integrity Commissioner Request to Inquiry application. I value my position as a Municipal Representative and have always

treated it with the utmost respect. I am an employee and have no involvement in financial or operating decision in place of employment.”

## **THE POSITION OF COUNCILLOR RYDBERG**

Councillor Rydberg states the following:

“As a councillor I am asked to do my duties in the best interest of our residents and constituents. The proposal of this By-law was overwhelmingly supported by a large majority of the residents in the Township. Over the last six years that I have been on council, there has been a high volume of complaints of STRs being utilized improperly and a burden to neighbours and residents. Also, we have had a big number of residents who have been trying to rent their properties without having proper zoning or being truthful in their actions. Proper regulation and procedure must be consistent for all applicants and owners.

With this By-law amendment, the changes are chosen specifically to lower the issues seen by neighbors and residents and to help achieve a greater success for the property owners who can successfully achieve the proper zoning.

The applicant states that I am an owner of a fishing and hunting lodge in Sioux Narrows. This is true, as my family and I, own and operate Crawford’s Camp in Sioux Narrows which markets to Fishermen, Hunters, and vacationers. For this year, the resort stayed at a very high capacity, and we turned many people away, who then looked for other locations. But there is a second side to the business as well which is a construction and property maintenance side. Within that portion of our business, we do a large property management for local STR properties. Our business is hired to maintain the rental properties, clean, do construction jobs and any other needed matters.

With this By-law amendment our business (by principle) may see bookings on the lodging portion down the long run but with our large percentage of returning

customers and typically STR renters being a different clientele for booking, any increase in revenue would be minimal.

But in respects to the construction and property maintenance portion, STR properties would be a larger portion of revenue, business wise. In theory our business will probably lose more with any decrease in STR properties.

The purpose of this By-law amendment is to do what's right for the constituents as a whole.....

Mr. Billings did appear at the meeting with our final vote for the STR by-law and after the vote during the delegation portion he presented a letter where he made ridiculously false accusations.....and then at the end of his letter suggests that I should not vote based on my bias. At this time, it would have most likely best to consult an integrity commissioner but at that same moment as a member of council who has not had any issues or been involved in any instances involving an IC, it was not something that came aware to myself.

I apologize if my vote seems as a conflict as that was not any intention of mine. I do take full responsibility for every action I have taken. But at no time did I have ulterior motives in voting yes on this By-law amendment other than to do what I saw best for our constituents and residents based on complaints and information from members of our township”.

## **THE ANALYSIS**

### **Municipal Conflict of Interest Act**

In order to determine if there was a contravention of Subsection 5(1), and Sections 5.1 and 5.2 of the MCI, the following questions were reviewed.

1. Did the Respondents have a pecuniary interest in the matter being considered? (If there is no pecuniary interest, the matter can be considered closed).
2. If there is a pecuniary interest, do any of the exemptions in Section 4 of the MCI A apply? (If one or more exemptions apply, the matter can be considered closed).
3. If there is no exemption, did the Respondents disclose their interests (and the general nature of their interests) at the meeting and prior to the vote?
4. If there is no exemption, then, either before or after the meeting, was there any attempt in any way to influence the vote?
5. If there is no exemption, then, after the meeting, was the necessary written declaration completed and submitted to the Clerk?

### **The Legal Principles**

The purpose of the MCI A is often set out in decisions by judges and integrity commissioners who have to consider allegations of its breach. As stated in the case of *Adamiak v. Callaghan* (2014 ONSC 6656) at paragraph 31:

The *Municipal Conflict of Interest Act* is legislation enacted by the Province of Ontario to maintain transparency in municipal decision making. The purpose and objective behind the *MCI A* is to ensure that elected municipal officials do not profit or seek an unfair benefit because of the office they hold when called upon to vote on matters in which they may have a direct or indirect interest.

In the decision in *Lorello v. Meffe* [(2010), 99 M.P.L.R. (4th) 107 (Ont. S.C.J.)], the Court held that the question of a potential pecuniary interest was not to be determined based on a threshold of “possibility” but rather on a standard of “probability”. The Court concluded:

Having in regard to these considerations, in my view, the appropriate test to determine whether a contingent interest constitutes a pecuniary interest for the purposes of the *MCI A* is whether it is probable that the matter before council will affect the financial or monetary interests of the member.

In the decision in *Bowers v Delegarde* [2005 Can Lii 4439 (Ont. S.C.)], in paragraphs 76-78, the court determined that possible future plans do not qualify as a pecuniary interest under the M CIA. There must be a real issue of actual conflict or, at least, there must be a reasonable assumption the conflict will occur.

In the decision in *Rivett v. Braid et al* , [(2018) ONSC 352] in paragraphs 64-67, the court determined where the outcome of a vote on a matter before council does not entail or cannot be linked to an immediate financial outcome, other than hypothetically, there is no pecuniary interest.

Case law is clear that the interest addressed by the legislation must be "probable" and not "hypothetical".

The term "Pecuniary Interest" is not defined in the M CIA. The courts have interpreted it to mean a financial interest, or an interest related to, or involving, money. The dollar amount of the interest, or whether the interest is positive or negative is not a consideration in determining if a pecuniary interest exists.

### **M CIA Analysis and Findings - Mayor Black**

In relation to this Inquiry, Mayor Black may, at first glance, have an indirect pecuniary interest under Subsection 2(b) of the M CIA due to her employment. This subsection states:

For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council ... is concerned, if, ... the member is ... in the employment of a person or body that has a pecuniary interest in the matter.

Mayor Black has confirmed that she is an employee of Crystal Harbour Resort ("CHR") and as such her circumstances will fall within the scope of paragraph 2(b) of the M CIA if CHR has a pecuniary interest in the matters. Therefore, the complaint must be evaluated through this lens.

Does CHR have a pecuniary interest in the passage of the STR by-laws? It does not advertise on any VRBO or Airbnb related website platforms or applications. CHR operates as a resort as defined in the ZBL. A resort is a permitted use in the Commercial Zone. CRH is zoned "Commercial".

The owners of CHR did not insert themselves into the process. They did not participate in or attend the public information sessions and did not produce any written materials for submission to the information sessions or the statutory meeting held on July 4, 2023.

The allegation in the Complaint is that having fewer STRs in SNNF will result in increased business for CHR. This is alleged to be a "pecuniary interest" which is deemed to be that of Mayor Black as well due to paragraph 2(b) of the MCIA.

Based on the case law cited, an interest is only a "pecuniary interest" requiring a declaration if it is "probable" that it will occur and not merely "hypothetical.

The Application also did not provide any real evidence on any financial impacts for CHR. The general premise is that any decrease in the number of available STRs will move the STR clientele to other businesses that can provide accommodations, such as CHR. Without evidence, these allegations are, in my opinion, hypothetical in nature.

The STR by-laws do not prohibit, or declare a moratorium of STRs. The OPA provides Council, Staff and Property Owners with guidelines for evaluating requests to rezone Residential properties to Tourist Commercial. The planning documents and meeting minutes do not indicate that the guidelines would definitely bring about a financial impact (positive or negative) to any of the Resorts in SNNF.

There is no evidence or information that demonstrates that, at the times of the votes in question, there was any pecuniary interest that was "probable".

As I have concluded that CHR did not have a pecuniary interest in the STR by-laws, Mayor Black does not have a pecuniary interest in them.

The remaining questions in the analysis chain are moot, since the answer to the first question is that the Mayor did not have a pecuniary interest in the matter before Township Council.

### **MCIA Analysis and Findings – Councillor Rydberg**

In relation to this Inquiry, Councillor Rydberg may, at first glance, have an indirect pecuniary interest under paragraph 2(a)(i) of the MCIA due to his ownership interest in “Crawford’s Camp” employment. This paragraph states:

For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council ... is concerned, if, ... the member ... is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public...

Councillor Rydberg has confirmed that he and his wife are the owners of Crawford’s Camp and as such his circumstances fall within the scope of paragraph 2(a)(i) of the MCIA. If there is any pecuniary interest on the part of Crawford’s Camp, it will be attributed to Councillor Rydberg also. Therefore, the Application must be evaluated through this lens.

Does Crawford’s Camp have a pecuniary interest in the passage of the STR by-laws? It does not advertise on any VRBO or Airbnb related website platforms or applications. It operates as a resort as defined in the ZBL. A resort is a permitted use in the Tourist Commercial Zone. Crawford’s Camp is zoned Tourist Commercial.

The same principles and analysis applied above with respect to CHR applies to Crawford’s Camp, with one additional issue worthy of note.

In response to the allegations, Councillor Rydberg stated the following:

“With this By-law amendment our business (by principle) may see bookings on the lodging portion down the long run but with our large percentage of returning



customers and typically STR renters being a different clientele for booking, any increase in revenue would be minimal”

“But in respect to the construction and property maintenance portion, STR properties would be a larger portion of revenue, business wise. In theory our business will probably lose more with any decrease in STR properties.”

These statements are not based upon or supported by any real fact or evidence. They are the opinion of the Respondent. Using the terms “principle” (a comprehensive and fundamental law, doctrine, or assumption) and “in theory” (an ideal or hypothetical set of facts, principles, or circumstances) are indicative of the hypothetical nature of the comments.

As I have concluded that Crawford’s Camp did not have a pecuniary interest in the STR by-laws, Councillor Rydberg does not have a pecuniary interest in them.

The remaining questions in the analysis chain are moot, since the answer to the first question is that the Councillor did not have a pecuniary interest in the matter before Township Council.

## **CODE OF CONDUCT – MAYOR BLACK & COUNCILLOR RYDBERG**

### **The alleged CODE violations**

The first alleged CODE violation was that the Respondents did not perform their duties with accountability, dedication and honesty.

The issues associated with STRs were brought to SNNF Council’s attention through its constituents. Council and Administration had been attempting to manage STRs through the zoning by-law over the past several years. As a result, it had become clear that a more precise land use policy would be helpful to Council in making land use decisions on STRs. There is no evidence or information in support of the Respondents influencing or crafting the process undertaken by Administration in a manner that was not

accountable to the public, without dedication or dishonestly. The fact that Council also supported a request to the Province for better regulations for STRs is further evidence that Council was acting in a manner accountable to its constituents.

The second alleged CODE violation was that the Respondents did not comply with applicable legislation, by-laws or policies. The only alleged legislative violation involved the MCIA. As I have concluded that the MCIA was not violated, this allegation is unsubstantiated. No evidence was submitted that any by-laws or policies of the Township were not complied with. Planning staff were directed to prepare a policy that would assist Council in making decisions on the approval of future STRs, taking into consideration potential disruptions in residential neighbourhoods, the health and safety of the public and the impact on affordable housing in the community. SNNF staff researched other Short Term Rental by-laws, developed a plan that included, as part of the process, public consultation, public meetings, submission of the OP amendment to the MMAH (for review and approval) and the mandatory statutory meeting. The Official Plan and Zoning By-law amendments were presented and approved by Council in accordance with the SNNF procedural by-law. Council as a whole provided direction to administration and did so within the legislative framework available to them. There is no evidence or information in support of a violation of this section of the CODE.

The third alleged CODE violation was that the Respondents did not avoid conflicts of interest, both real or perceived. As detailed in this report, neither Respondent had a pecuniary interest in the OP and ZBL amendments.

The final alleged CODE violation was that the Respondents placed themselves in a position of a direct or indirect pecuniary interest to any person or organization which might reasonably benefit from special consideration or preferential treatment. This section of the CODE is a re-iteration of Section 5 of the MCIA. As detailed in this report, neither Respondent had a pecuniary interest in the OP and ZBL amendments

## **SUMMARY OF FINDINGS**

Based on the foregoing, I conclude that Mayor Black and Councillor Rydberg did not have pecuniary interests in the Official Plan and Zoning by-law amendments associated with Short Term Rentals that were considered at the August 1, 2023 and September 5, 2023 meetings of Council. I have found no violations of either the MCIA or the CODE.

For the reasons stated in this Report, I will not be applying to a Judge under Section 8 of the MCIA for a determination as to whether Mayor Black and Councillor Rydberg contravened 5(1) of the MCIA.

The Complainant has been advised that I will not be making an application to a judge.

## **RECOMMENDATIONS**

Having concluded that there are no violations of the CODE and the MCIA, no recommendations flow as a result of this Inquiry.

Respectfully Submitted



Darrell Matson

Appointed Integrity Commissioner for the Corporation of the Township of Sioux  
Narrows- Nestor Falls

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