

TOWNSHIP OF SEGUIN

IN THE MATTER OF THREE COMPLAINTS against Councillor Mario Buszynski, dated October 5, 2018, under section 223 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, Resolution Number 2007-151 of the Corporation of the Township of Seguin, being a Resolution to establish a Code of Conduct for Members of Council, and By-law Number 2018-076, being a by-law to adopt a Council-Staff Relations Policy for the Corporation of the Township of Seguin.

REPORT OF THE INTEGRITY COMMISSIONER

January 14, 2019

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TOWNSHIP OF SEGUIN

IN THE MATTER OF THREE COMPLAINTS against (former) Councillor Mario Buszynski, dated October 5, 2018, under section 223 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Act”), Resolution Number 2007-151 of the Corporation of the Township of Seguin, being a Resolution to establish a Code of Conduct for Members of Council (the “**Code of Conduct**”), and By-law Number 2018-076, being a by-law to adopt a Council-Staff Relations Policy for the Corporation of the Township of Seguin (the “**Council-Staff Relations Policy**”).

OVERVIEW

1. Mario Buszynski (“**M.B.**”) was a member of Seguin Council as the representative of Ward 2, during the 2014 to 2018 term. He is also a Registered Professional Planner in Ontario, and the principal of EPA Consulting Inc., a private consulting firm. His LinkedIn profile states that his responsibilities include providing strategic advice to companies in the power generation and transmission business, as well as in mining and land use planning. He has an Honours B.A., in Geography and a M.Sc., in Forestry & Planning, from the University of Toronto.
2. I have received three complaints about M.B., each alleging that he improperly used the fact of his expertise as a professional planner to attempt to unduly influence, undermine the duties of, and/or to disrespect the professional capacities of the Township’s planning staff, in a way that contravened the Township’s Code of Conduct and the Council-Staff Relations Policy.
3. The questions at the heart of this inquiry are, then: 1) What are the issues that arise when a member of Council is possessed of technical expertise commonly applied to matters of municipal planning? and 2) Has M.B. conducted himself in accordance with the Code of Conduct and the Council-Staff Relations Policy and applied his expertise as a professional planner in a manner that respects the abilities, independence and reputation of the staff and others?
4. This inquiry was complicated by the fact that it was initiated during the last days of the 2018 election period. In that election, M.B. ran, unsuccessfully as it turns out, for the position of Mayor of Seguin Township, and is no longer a member of Seguin Council. Nevertheless, the Complainants have asked that I complete my inquiry and report to the new Council. I have agreed

to do this, as I believe some clarification regarding the parameters governing the conduct of a member of Council who possesses expertise in a field that is regularly applied to matters under consideration by a municipal council, may be of assistance to Council.

5. For the reasons set out below, I have concluded that there will always be a worrisome potential for real or apparent conflicts for the planner/politician, arising from the clash between the duty to represent his or her constituents, and the duty of a planner to provide independent professional judgment or opinion. When the planner/politician fails to effectively separate these duties and, instead, conflates the two, there is a risk to all persons and processes involved in the planning process: staff, applicants and their agents, members of Council and the public.

6. Regrettably, it is my finding that M.B. did not properly navigate this divide, and I have found him to have been in breach of the Code of Conduct and the Council-Staff Relations Policy.

THE COMPLAINTS

7. The three complaints arise from specific incidents at the Seguin Council meetings of June 18th, September 17th and October 1st, 2018. In the course of this inquiry, however, I heard evidence that suggests that the events at these three meetings were symptoms of a broader concern that affected the work of staff and Council, on more than these occasions.

8. The June Council meeting involved Council's consideration of a rezoning application for a proposed boathouse. As there were some environmental issues with the application, environmental studies and reports were prepared. During the public discussion of the application, M.B. stated that, in his planning opinion, a report prepared by an environmental consultant retained by the Township to peer review the environmental work done by the applicant was "negligent", because it incorrectly determined that a spawning area was not being used by Lake Trout.

9. The September meeting of Council saw M.B. ask to have a matter included as an item on the agenda, and provided a package to Council and staff, upon his arrival at the meeting. The document provided by M.B. was entitled: *Township of Seguin – Official Plan – Section B.12.2.5 Discussion Prepared by Mario Buszynski*. I have attached what I will refer to as the *Discussion Paper*, as Appendix "A" to this report.

10. At the beginning of the September meeting, the Mayor stated that he believed that the *Discussion Paper* should be removed from the agenda, on the basis that it was specific to a particular rural consent application, which was still under review by staff and had not been considered by Council. After some discussion, the *Discussion Paper* was removed from the agenda.

11. Continuing with the September meeting, regarding the boathouse rezoning application, M.B. was adamant that boat houses should not be placed in “EP” (environmental protection) zones and that Council had been over this issue many times, in the past. He was quite forceful in his opinion that the proposed boathouse was not good planning and was in contravention of the Township’s Official Plan.

12. Councillor Buszynski, as he then was, requested that the *Discussion Paper* be added to the agenda for the October meeting of Council. The public meetings for a number of matters, including the aforementioned rural consent application, were part of that meeting. As revealed by the audio recording of the meeting, M.B. spoke at length about the Township’s rural severance policies, referencing the points in the *Discussion Paper*, suggesting that Council direct staff to look at the issue. After hearing public input, Council directed staff to provide a recommendation report on the rural consent application and direction given that the rural development policy be reviewed as part of the scheduled 2019 Official Plan Review.

13. The problem with the *Discussion Paper* was explained by one of the Complainants, as follows:

I believe the actions described above constitute a clear attempt on the part of CMB [Councillor Mario Buszynski] to direct and/or improperly influence an upcoming staff report under the established Planning process. Further, the documents provided by CMB were in my opinion significantly biased by the selective presentation of data, were based on numerous unsubstantiated opinions and conjecture, and contained errors that staff will now have to refute and/or correct.

THE EVIDENCE

14. In the course of preparing this report, I reviewed the three complaints, spoke with a number of witnesses, reviewed the written response from M.B., spoke at some length with M.B., and reviewed the Code of Conduct and the Council-Staff Relations Policy.

15. The evidence I heard from the Complainants and witnesses confirmed to me that there was a real concern that the planning opinions expressed by M.B., in and outside of meetings of Council, had served to undermine the confidence and trust that the public and some members of Council placed in the Township's planning staff. I was satisfied that this was a very real, serious and recurring problem for staff and some members of Council.

16. Indeed, the advice from M.B. became elevated to the point that, in a few instances, other Councillors would request deferral of a matter before Council in M.B.'s absence, specifically so that he could be present to give his opinion and advice.

17. I find as an aggravating factor that M.B.'s public statements and positions were often prefaced by a reminder that he was a professional planner and that he was relying on that training and expertise to support his views. It is this attempt to enhance the weight to be given to his positions, which I find problematic.

18. Not only did the councillor's interventions cause tension in the municipal office and Council Chambers, but M.B.'s involvement in planning matters began to affect the processing of applications. For example, when M.B. would require further work and/or studies related to concerns that he would raise. This often unnecessary work added time and expense to the processing of applications. His interference was often seen as a delaying tactic and planted seeds of doubt about staff's work in the mind of the public and even some members of Council. His approach was unfair and unwelcome to staff.

19. I challenged the witnesses with the suggestion that perhaps they were being a bit too thin-skinned. While the witnesses acknowledged that it was perfectly appropriate for M.B. to ask informed questions about their work, in their view, he would go well beyond asking questions, but would impose his opinion on how things should be done. M.B. projected the attitude that he knew

better, which affected staff morale, and made planning staff begin to second-guess the advice they presented to Council.

20. It seems that, because M.B.'s planning opinions would often align with positions taken by his constituents, it was difficult to accept that they were, at the same time, his independent professional judgment.

21. It is also alleged that M.B. raised his voice and delivered accusatory, disrespectful, and angry comments directed to planning staff.

22. Former Councillor Buszynski provided me with a written response to the complaints, and I spoke to him by telephone, at some length. I found him to be forthright and sincere in his beliefs, and I do not believe that he intentionally set out to injure staff or impair the course of planning in the Township.

23. From his written and oral submissions, the first thing that became clear to me was that M.B. was convinced that the purpose and timing of the complaints was undoubtedly political, designed to take his focus away from his campaign. He felt strongly that the Complainants were likely members of the "Campaign Cabinet" of his opponent for the position of Mayor.

24. It was also obvious that M.B. takes great pride in his professional qualifications.

One of the main complaints is that I have interjected my opinions on the validity of Planning issues and Environmental reports. My education and experience far outstrip the credentials of any member of Council or Staff in these areas. I have the knowledge base to pose incisive questions and challenge findings in this area and am expected to do so by my constituents. By extension of this argument, doesn't a Councillor who is a Chartered Accountant, not have the right to challenge the Township's Finance Department on financial budgeting and reporting? Doesn't a Councillor who is a Lawyer not have both the right and the obligation to question legal opinions that might be presented by Township Solicitors? If it's within my professional credentials, I have the right to comment.

25. The former councillor also has strong views on his role as a member of Council: It is his responsibility to his constituents to listen and represent their interests. As Councillor for Ward 2, he wears two hats: one specifically for Ward 2, and one for all the residents of Seguin. The persons making the complaint have clearly misunderstood the role of Council and the issue involved. It is Council's role to develop policy and direct the implementation of policy. He believes that: "My convictions regarding policy are not only my right, but my responsibility as an elected official ...".

26. On his conduct in Council, he states: "In four years on Council I have only raised my voice in frustration occasionally and not specified individual members of staff as to where to lay the blame. In the instance cited, members of the public, lake associations and other Councillors all spoke negatively with respect to what was presented to us at the Council meeting. This untruthful accusation is self-serving and politically motivated. An apology to me is due."

27. M.B. categorically denies breaching the Code of Conduct or any provisions of the Council-Staff Relations Policy.

THE CODE OF CONDUCT

28. In this section, I will reproduce the parts of the Code of Conduct, which I feel ought to be brought to bear in the consideration of these complaints. It is my understanding that a full copy of both the Code of Conduct and the Council-Staff Relations Policy are available on the Township's website.

1. Principles Upon Which This Code is Based

1.2 Key statements of principle that underline this Code of Conduct are as follows:

- h) Members shall be respectful of the role of staff to provide advice with political neutrality and objectivity and without undue influence from a Member or Members.

8. Conduct Respecting Staff and Officers
- 8.1 Under the direction of the senior administrative staff, and in accordance with the decisions of Council, staff and Officers are required to serve the municipal corporation as a whole. Every Member shall be respectful of the role of staff and Officers to provide advice based on political neutrality and objectivity and without undue influence from any Member or group of Members. Accordingly, no Member shall maliciously or falsely injure or impugn the professional or ethical reputation of any staff person or Officer.
- 8.2 Members shall acknowledge and respect the fact that staff carry out directions of Council, through senior staff, including but not limited to the Chief Administrative Officer, Chief Financial Officer/Treasurer, Clerk, Director of Planning & Development Services, Director of Public Works, Fire Chief and, Manager of Community Services, and administer the policies of the Municipality. No Member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality's procedural by-law.
- 8.3 Every Member shall show respect for staff and Officers, and for their professional capacities and responsibilities.
- 8.5 No Member shall use or attempt to further his or her authority or influence by intimidating, threatening, coercing, commanding or improperly influencing any staff person or Officer or interfering with that person's duties, including the duty to disclose improper activity.

THE COUNCIL-STAFF RELATIONS POLICY

29. The relevant policies of the Council-Staff Relations Policy are set out below.

4. Clarifying Roles

Role of Council

- Policy Focus:
 - Represent the Municipality, provide direction and create policy.

Role of Senior Management:

- Direction Focus:
 - Liaison between Council and Staff, direct implementation of Council's policies, hire and develop a team of competent Staff.

Role of Staff and other Officers:

- Implementation Focus:
 - Research policy and programs, give best professional advice, implement decisions of Council, fulfill statutory duties, follow direction of Chief Administrative Officer, generally see to the operation of the municipal organization.

5. Guiding Principles

5.8 Politics or Management – Not Both

Council provides direction, Staff and Officers give professional advice and implement Council's directives. Members of Council are not elected to be technical experts nor to act in their professional capacities. Likewise, Staff and Officers are not politicians. Advice comes from Staff, policy and service delivery decisions are made by Council.

5.10 Professionalism

Members of Council, Staff and Officers must treat each other with professionalism. When Council requests that Staff and Officers appear before Council, they must comply and be prepared for any questions Council has. Advance notice of questions to Staff provides an opportunity for Staff to provide quality reports and advice.

5.11 Respect

Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others' intelligence and professional duties. Members, Staff and Officers must understand that they all face different, often unique, challenges and recognize their overarching goal is to serve the best interests of the Municipality.

FINDINGS AND ANALYSIS

30. To begin, I have considered M.B.'s concern that these complaints were politically motivated, advanced in the context of his bid for Mayor. This is not an uncommon defence to allegations against members of Council, but my approach has generally been to look beyond the suggested motivation to see if there has, in fact, been a breach. When I find, as I have here, that a breach has occurred, I am less interested in the motivation behind a complaint.

31. Next, I fully accept M.B.'s argument that he is a well-qualified and experienced professional planner. With respect, however, the extent and veracity of his expertise is not the issue. In fact, the greater the apparent authority and reputation, the more the need to exercise it with caution and in a respectful manner; mindful of the weight it carries with his fellow councillors and the public.

32. As for M.B.'s understanding of the role of a councillor, while I agree that it is his duty to represent his constituents, there is an obvious conflict between that duty and his duty as a professional planner.

33. Certainly, there will be times when the demands of his constituents will square up with his professional planning opinion, or instances when he will refuse to advance a position on their behalf, because it does not. Without in any way impugning Mr. Buszynski's professionalism or reputation, however, the problem is one of public perception. By conflating the two roles, he diminishes his authority in each.

34. The issue is addressed in the publication, *Ontario Professional Planners Institute - Independent Profession Judgment - Standards of Practice* in the following way:

The Professional Planner in applying independent professional judgment cannot be an advocate of any position other than his or her professional opinion. The role of an advocate is to "plead the cause of another". The role of the planner is to provide independent professional judgment or opinion

35. The Code of Conduct devotes considerable content to conduct respecting staff. The Code is clear on the need for members of Council to be respectful of the role of staff to provide advice with political neutrality and objectivity and without undue influence from a member or members. Members have a duty and responsibility to treat members of staff appropriately. Staff are required to serve the municipal corporation as a whole. Members are not to maliciously or falsely injure or impugn the professional or ethical reputation of any staff person.

36. Moreover, no member of Council shall perform, direct or attempt to undermine the duties of any staff person, they must show respect for staff and their professional capacities and responsibilities, and must not interfere with a staff person's duties.

37. The importance of the relationship between Council and staff is underscored by the upcoming requirement for municipalities to have policies in that regard. On March 1, 2019, subsection 270 (1) of the Act is to be amended by requiring municipalities to adopt and maintain a policy with respect to the relationship between members of Council and the officers and employees of the municipality.

38. Seguin's Council-Staff Relations Policy has been adopted in anticipation of the upcoming statutory imperative and is directly applicable to the matter before me. In particular, I note the following:

Politics or Management – Not Both: Staff give professional advice and implement Council’s directives. Members of Council are not elected to be technical experts nor to act in their professional capacities.

Members, Staff and Officers shall work hard at fostering a climate of mutual respect. Each must be respectful of others’ intelligence and professional duties.

39. I have considered the evidence with respect to M.B.’s conduct in light of the various policies and requirements of the Code of Conduct and the Council-Staff Relations Policy and find him to be in breach of parts of those two regulations.

40. Specifically, with respect to the Code of Conduct I find that, by regularly and forcefully advancing his own professional planning opinion on matters before Council, and castigating the work of other experts attending before Council, he has not been respectful of the role of staff, or other professionals, he has unfairly impugned the professional reputation of staff and others in the eyes of the public and some members of Council, and he has attempted to perform and/or undermine the duties of staff.

41. The *Discussion Paper* is an example of an attempt by M.B. to provide technical land use planning advice to Council, including a review of what M.B. considered to be the applicable policies and a conclusion, on a matter that had not been subject to review by staff. This puts staff in the difficult position of perhaps having to take issue with the planning analysis or the conclusions, and contradict M.B.’s opinion; an opinion already embraced by some members of the public.

42. While there is no question that a member of Council with special expertise can use that expertise to elevate the public discourse, provide healthy challenges to staff, and inspire fellow councillors, it is entirely inappropriate and damaging if the expertise is used to undermine staff or usurp their role and authority, unduly influence fellow councillors, or placate residents.

43. No longer a member of Council, the penalties allowed under the Act are of no application, here. Council may, however, wish to consider an amendment to the Council-Staff Relations Policy to clarify what is expected of Members of Council with technical expertise, such as:

Where a Member of Council is a technical expert, it is expected that the Member will work in a productive, cooperative and courteous fashion with all members of staff, including those who share the Member's expertise or profession. The Member should provide staff with an opportunity to consider any information or opinions of a technical nature he or she may want to present, in advance of any public meeting or discussion of the issue.

Where a Member of Council is a technical expert, it is expected that the Member will avoid all real and apparent conflicts between his or her representation of constituents and his or her professional opinions.

All of which is respectfully submitted, this 14th day of January 2019.

A handwritten signature in black ink, appearing to read "Harold G. Elston", with a long horizontal line extending to the right.

Harold G. Elston