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**INTEGRITY COMMISSIONER REPORT ON
CODE OF CONDUCT COMPLAINT AND MUNICIPAL
CONFLICT OF INTEREST APPLICATION –
FRANCES SEWARD,
COMMITTEE CHAIR, COMMITTEE OF ADJUSTMENT

THE CORPORATION OF THE CITY OF CAMBRIDGE**

Aird & Berlis LLP

Paula Boutis

May 8, 2023

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I. INTRODUCTION

1. In December, 2022, our office received a formal complaint (the “**Complaint**”), dated December 21, 2022, regarding the conduct of Frances Seward, Member and Chair of the Committee of Adjustment (the “**Respondent**”), pursuant to the *Code of Conduct for Citizen Appointments to Local Boards and Advisory Committees* (the “**Code**”).

2. Pursuant to section 223.4.1 of the *Municipal Act, 2001*,¹ our office received a related formal application, also dated December 21, 2022, alleging breaches of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act*² (the “**Application**”).

3. The Complaint and Application, brought by the Complainant/Applicant (the “**Complainant**”), relates to the Respondent, sitting as Chair during a hearing of the Committee of Adjustment (the “**COA**”). The hearing related to an application for a consent to sever and minor variance applications (the “**Proposal**”) for a property on Oak Street (the “**Property**”).

4. The Proposal was initially intended to be addressed on November 9, 2022 (the “**November Meeting**”), but owing to the staff report missing variances and the resulting notice concerns, the matter was deferred to the next hearing day in December 2022. This allowed for the recirculation of the notice with all variances. The Proposal was heard and decided by the COA at the December 14, 2022 meeting (the “**December Meeting**”). The Proposal was refused by the COA.

5. The development concept presented at the COA was for the construction of two homes, anticipated to be three-storeys and a modern style (the “**Development Concept**”).

6. The Respondent lives directly across the street from the Property. By the time of the December Meeting, the Respondent’s partner who resides at the same location, along with other residents, submitted comments in opposition to the Proposal.

7. The Respondent did not recuse herself nor declare pecuniary interests at either meeting. The Respondent presided over both the November and December Meetings as Chair. The Respondent did not vote on the Proposal at the December Meeting, but did speak in opposition to it.

8. Following our initial review of Complaint and Application, we concluded an inquiry was appropriate. Following a full inquiry, we have concluded that the Respondent breached the Code as outlined in this Report, but did not breach the MCIA.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

² *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (the “**MCIA**”).

II. AUTHORITY

9. Pursuant to subsection 223.3(1) of the *Municipal Act, 2011*, Aird & Berlis LLP was appointed the Integrity Commissioner for The Corporation of the City of Cambridge (the “City”). The appointment occurred on June 18, 2019, effective July 1, 2019.

10. The Code was adopted by the City on September 27, 2016.

11. As Integrity Commissioner, we are appointed to act independently on the application and enforcement of the Code as well as sections 5, 5.1 and 5.2 of the MCIA.

12. We are required to preserve secrecy in all matters that come to our knowledge as Integrity Commissioner during the course of our duties. At the same time, the City is required to ensure that reports received from the Integrity Commissioner are made available to the public.

13. The Complaint and the Application were properly filed pursuant to the Code and subsections 223.4(1) and 223.4.1 of the *Municipal Act, 2001*.

14. The allegations raised in the Complaint and the Application arise from the same set of circumstances and are set out in greater detail below.

III. REVIEW OF MATERIALS & INQUIRY

15. In order to undertake our inquiry and make a determination on the alleged contraventions of the Code and the MCIA, we took the following steps:

- Review of the Code;
- Review of the filed Complaint and Application;
- Interview of the Complainant to confirm our understanding of the allegations and any documents relied upon;
- Correspondence with the Respondent;
- Correspondence with the Complainant;
- Interviews and correspondence with the Secretary-Treasurer of the COA and with the City Clerk; and
- Review of the following documents provided to us by the current Secretary-Treasurer and Clerk:
 - Training and orientation presentations for the COA, dated April 16, 2021, June 15, 2022, February 27, 2023 [sic], prepared by the Secretary-Treasurers, and
 - Training materials prepared by the Clerk dated March 8, 2023 and the Advisory Committee Appointment Policy, effective November 29, 2022.

16. A draft of this Report, without recommendations, was provided to the Respondent on May 2, 2023 to allow her to review and provide any additional comments prior finalization. No comments or submissions were filed. The Respondent was advised on May 8, 2023 that the Report was finalized and submitted to the City.

IV. CODE PROVISIONS

17. The Complainant alleges that the Respondent's conduct contravened the following provisions of the Code:

Section 4: Duties and Obligations of Public Members

...

Members of the public appointed to committees are appointed at the pleasure of Council. They do not hold office as elected officials nor do they represent either Council or the committee unless mandated to do so. Members of the public appointed to committees must respect both the word and spirit of this Code as it applies to them and also as it applies to Members of Council.

...

A member who is aware of a known conflict of interest shall immediately disclose to the staff administrator and shall refrain and abide by any decision made with respect to such conflict of interest without recourse.

...

Section 5: Abuse of Role

No member of the public shall use the influence of their role as it relates to participating on a ... board for any purpose other than for the exercise of their official duties.

18. We also note the following sections and provisions of the Code:

Section 8: Compliance and Interpretation

Members will do their utmost to uphold the virtues contained in the Code of Conduct. If a member observes or is credibly informed of a possible contravention of this Code, that member has an obligation to proactively address the contravention.

Schedule "A" Corporate Core Values and Behaviours established in 2014

...

INTEGRITY

We will conduct ourselves in a professional manner with emphasis on effective communication, accountability for actions, and a strong moral compass; Be committed to maintaining a safe, trusting, and supporting environment; Demonstrate professionalism, good judgment and personal leadership.

...

V. MCIA PROVISIONS

19. The MCIA concerns itself with pecuniary interests, both direct and indirect. The term “pecuniary” is not defined within the legislation. It is understood to relate to a monetary, economic or other benefit that can be valued in monetary terms.

20. The Complainant alleges a contravention of the following provisions of the MCIA:

Duty of the Member**When present at meeting at which matter considered**

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.

...

Written statement re disclosure

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.

Influence

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.

21. We also note the following relevant provisions of the MCIA:

Where ss. 5, 5.2 and 5.3 do not apply

4 Sections 5, 5.2 and 5.3 do not apply to a pecuniary interest in any matter that a member may have,

...

- (j) by reason of the member having a pecuniary interest which is an interest in common with electors generally; ...

22. Furthermore, “interest in common with electors generally” is defined as follows in section 1 of the MCIA:

A pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part.

VI. BACKGROUND FACTS

(a) Appointment of the Respondent

23. The Respondent was first appointed to the COA in 2021 and was reappointed following the most recent municipal election in 2022. She served as its Chair at the relevant time period and was re-elected by the COA to serve as its Chair following her reappointment by Council in early 2023.

(b) Training

24. We confirmed with both the Respondent and Secretary-Treasurer that the Respondent did receive training during the last term of the COA.

25. The Respondent received training when she on-boarded in 2021. This training generally spoke to declaring, at the start of a hearing, conflicts of interest if members have a conflict or what might be perceived to be a conflict. Following the declaration, the training materials indicated the member should leave the council chamber during the discussion and decision of the particular application.

26. The Respondent received further training from the current Secretary-Treasurer in 2022. That training included instruction related to conflicts of interest, primarily in the context of the MCIA. The MCIA addresses pecuniary (i.e. financial) interests, as those are defined under the statute, and are more particularly described later in this Report.

27. Through our investigation, we were able to confirm from current staff that the Respondent did not, during the last term of the COA, receive any specific training as it relates to recusal as a member of a quasi-judicial decision-making body, specifically as that relates to bias or the concept of a reasonable apprehension of bias.

28. The concept of bias or a reasonable apprehension of bias is a type of conflict of interest which is more broadly defined than conflicts of interest under the MCIA. As generally understood, a conflict of interest occurs when an individual’s personal or private interests – whether family, friends, financial or other interests and preferences – may compromise his or her judgment, decisions or actions or may be perceived to influence same. Bias or a reasonable apprehension of bias in adjudicating a matter may flow from facts which impact a decision-maker’s interests.

29. As a follow-up question to the Respondent, we inquired of her whether she had heard of the concept of bias or an apprehension of bias, and if so, when, and what she thought it meant. The Respondent provided no substantive reply to this question, and instead responded, “The question is supercilious and condescending.”

30. The Secretary-Treasurer provided us with his most recent training materials for 2023 which he used for training the COA, as recently it was reconstituted. It clearly addresses the concept of bias and an apprehension of bias, and the need to recuse oneself where circumstances arise that give rise to a bias or an apprehension of bias. The Respondent received this training.

31. The 2023 training materials provided by the Clerk indicate that the Clerk is the first point of contact for a real or potential conflict of interest. However, we note that a member of a local board is entitled to seek guidance from the City's Integrity Commissioner both in relation to the Code or whether a pecuniary interest may exist in the context of the MCIA. Ultimately, the obligation to determine if a pecuniary interest exists and if a declaration is required rests with the individual subject to the MCIA.

(c) Staff Reports regarding the Proposal and Decision

32. Planning staff provided two reports for the COA's information: one for the November Meeting, which omitted some required variances; and one for the December Meeting, which contained all required variances.

33. Both reports indicated that staff were satisfied that the Proposal met the statutory tests for the severance and minor variances. Staff recommended approval, with certain conditions.

34. The COA voted to refuse the Proposal. The Respondent, as Chair, did not vote.

(d) Position of the Parties

35. The Complainant made several allegations related to the Respondent's conduct in the lead up to the COA hearings and regarding her conduct at the COA hearings.

36. In the lead-up to the COA hearings, the Complainant alleged that the Respondent was actively engaged in this matter, discussing the Proposal with local area residents and with the applicant for the Proposal. Regarding the former, we were provided with an email where the Respondent stated to members of the community the following:

[When the tenant is gone], [the applicant] tells me the current structure will be demolished and 2 new homes **(that will fit in with the style of our neighbourhood)** will be built. [emphasis added]

37. We provided the foregoing email to the Respondent for her comment. The Respondent stated the following in response:

This email was written and sent 3 months prior to the applicant's application for relief of the minor variances and the complainant freely discussed his plans with me along with other residents.

The [applicant] occasionally contacted me and other residents, after purchasing the property, with details of his ongoing problems with the squatters and requested that the residents know what was going on regarding evicting the squatters; asking me to include him in any emails.

I believed I was offering a hand to a new neighbour who seemed to be going through a lot of nastiness with squatters, their drug use and the constant police presence.

Note, further down in the thread I requested his input.

38. In addition, the Complainant alleged that the Respondent advised the applicant that “as long as you don’t build a 3 storey home”, people will be happy. It is further alleged that the Respondent told the applicant he “should keep in touch with the community throughout the design process if [the applicant] would like it to go smoothly.”

39. In response to the foregoing allegations, the Respondent stated the following:

I deny ever making these statements. I am not that kind of person! I certainly did speak with the applicant regarding the “tenants” of the property and the number of police calls to the property; if there was a discussion about what plans the applicant had for buildings it was as a discussion as a private citizen, not as a COA member.

40. Regarding the allegations of pecuniary interest, the Respondent indicated the following:

I spoke to Staff regarding possible pecuniary interests for this and another Committee of Adjustment application for [another property] ... [in the] same neighbourhood a few meters distant from [the Property]. I asked the Secretary-Treasurer whether I should excuse myself as I was a resident of the neighbourhood. Staff told me that “my local knowledge is important to the position on the COA” and I did not need to recuse myself as there was no pecuniary interest. The same as there was (and is not) a pecuniary interest in [the Property].

41. Following her responses, we queried of the Respondent which staff members she spoke with. The Respondent directed us to the Secretary-Treasurer, whom we interviewed. The Secretary-Treasurer has an undergraduate degree in planning, but in addition, is a trained paralegal and a former member of the City of Toronto’s Committee of Adjustment.

42. The Secretary-Treasurer indicated the following:

- (i) He and the Respondent had two phone calls about this matter.
- (ii) The first call was before the November Meeting in which the Respondent indicated she was considering declaring an interest. The Secretary-Treasurer advised that it was best to withdraw from the hearing if the member lives within the notice area and that it may be a higher standard than what applies under the MCIA.
- (iii) The second call was between the November and December Meetings. The Respondent asked what conversations she was allowed to have with an applicant as a member of the committee. By then, the conversations had occurred. The Secretary-Treasurer advised that it was his advice that no conversations should happen because the members sit in a quasi-judicial capacity and members should not speak to applicants about their matter.

- (iv) We put the Respondent's response to the evidence of the Secretary-Treasurer to him for his comment. The Secretary-Treasurer confirmed he would have advised the Respondent that local knowledge of an area is important and that there is no need to recuse oneself in the absence of a pecuniary interest; but, the Secretary-Treasurer also advised he was confident that he further advised that if members are within the notice area, they should recuse themselves.

43. The Clerk and Respondent did not have any communications prior to the November or December Meetings regarding the Proposal.

44. At the December Meeting, the record shows that the Respondent, in her capacity as Chair, spoke to the Proposal. While she did not vote on the Proposal, the Respondent indicated that she was speaking as a resident of the street where the Property was located and she spoke in opposition to the variances and consent. Among other comments, the Respondent stated that she preferred "something a little more in favour of the influences of the area."

VII. FINDINGS

(a) Code of Conduct

45. The Code places upon members a duty to avoid a conflict of interest (Section 4). The Respondent abused her role (Section 5) by furthering her personal interests related to the Proposal that was before her, which required an impartial adjudication she clearly could not provide. The Respondent acted in clear violation of these Code provisions.

46. The Respondent's evidence is contradictory and raises credibility concerns.

47. The Respondent indicates she did not make the statements she was alleged to have made to the applicant, and then states, "if there was a discussion about what plans the applicant had for buildings it was as a discussion as a private citizen, not as a COA member".

48. The Respondent was alive to the concern that she lived within the notice area related to the matter that would come before her: she approached the Secretary-Treasurer regarding whether she ought to recuse herself from consideration of the matter.

49. The Secretary-Treasurer was firm in our interviews with him that he advised the Respondent that if a member was living in the notice area, the member should withdraw and recuse themselves from the hearing.

50. The Respondent was asked to comment on the Secretary-Treasurer's evidence and reiterated that she had already responded to the question, and her response "then (and is now) a 'NO'. If the Secretary-Treasurer had advised me to recuse myself, I most certainly would have, it is why I asked the question, for his direction."

51. We recognize that there is contradictory evidence and that we must make a decision as to whom we believe. Given the overall evidence provided by each of the Respondent and the Secretary-Treasurer, we conclude the Secretary-Treasurer is the more credible witness in this regard, particularly given the Secretary-Treasurer's objectivity, experience and qualifications, and experience as a former Committee of Adjustment member himself. In view of those particular factors, it is implausible, in our view, that the Secretary-Treasurer did not clearly advise the Respondent that members within the notice area should recuse themselves.

52. Furthermore, the Respondent's evidence is that she sought out this guidance and was clearly considering the propriety of continuing to appear on this matter. The decision to recuse or not recuse herself was ultimately her own. Her decision not to answer our question regarding her understanding of the concepts of bias or apprehension of bias, and rather to attack the Integrity Commissioner's question as "supercilious and condescending", while failing to provide any substantive reply, also leads us to doubt her credibility.

53. Ultimately, the Respondent failed to exercise good judgment, as the Code would require. It was improper for the Respondent to both be a sitting member of the COA who would decide the matter while she was a resident living across the road from the Property that was the subject of the application. She had clearly formed opinions on the Proposal, communicated to the community about what the ultimately constructed new building would be like – incorrectly – and had communicated her views during the December Meeting. She had an actual bias against the Proposal. It is immaterial that the Respondent did not vote on the application before her. She was the Chair and spoke to the matter directly. She cannot choose to speak as "a resident" when she presides as Chair or when she is a sitting member of the Committee. As a resident in the notice area, it was her duty to remove herself from the hearing entirely to ensure the decision-making process was free from any bias or any perception of bias or an apprehension of bias.

54. We find that the Respondent was fully alive to the impropriety of appearing on this matter and yet she chose to do so. She has therefore breached the conflict of interest provisions of the Code and abused her role.

(b) *Municipal Conflict of Interest Act Application*

55. The MCIA concerns itself with the narrow question of conflicts of interest that are pecuniary in nature, i.e. that involve a direct or indirect (as defined in the MCIA) financial or economic interest.

56. While property values are not properly considered in the context of planning decisions, members of a community will frequently comment that a particular development will affect their property values; typically, they are concerned a particular development will negatively impact their property values. Indeed, in some cases, it may.

57. The Respondent clearly had no pecuniary interest, direct or indirect, in the Property or its redevelopment. However, as noted, developments can have an impact on the value of nearby properties. We nonetheless find there is no pecuniary interest requiring recusal under the terms of the MCIA, because the interest of the Respondent was an interest in common with electors within the area in question pursuant to clause 4(j) of the statute. Such pecuniary interests are not subject to the MCIA's recusal provisions.

VIII. CONCLUSIONS

58. The Respondent's participation in both the November Meeting and the December Meeting constituted a breach of Sections 4 and 5 of the Code.

59. The Respondent did not breach the MCIA's provisions regarding pecuniary conflicts of interest. We will accordingly not be making an application to a judge pursuant to section 8 of the MCIA and we provided notice of our decision to the Complainant on May 8, 2023.

IX. RECOMMENDATIONS

(a) Penalties

60. Pursuant to subsection 223.4(5) of the *Municipal Act, 2001*, there are two options regarding penalty when the Integrity Commissioner concludes there is a breach of the Code:

- a reprimand; and
- a suspension of remuneration in respect of their services as a member of the COA, for a period of up to 90 days.

61. Although the Respondent did not confirm this, we have considered the fact that the Respondent may not have received training on the concept of bias/apprehension of bias at the relevant time. While this may have been the case, the Respondent did receive clear direction from the Secretary-Treasurer that members of the COA who live within the notice area of an application that is to come before them ought to recuse themselves. Yet, the Respondent did not do. As a result, it cannot be said that a legitimate lack of training or understanding was at fault: the Respondent made a deliberate decision not to follow the guidance of the Secretary-Treasurer.

62. It is our determination, in consideration of all of the facts, that the Respondent's breach of her obligations is significant.

63. In the context of the COA, the remuneration is nominal. As a result, a financial penalty is nearly meaningless.

64. Council should issue a reprimand denouncing the Respondent's actions to deliberately breach the Code.

(b) Remedial Measures/Corrective Actions

65. The established jurisprudence has been clear that remedial measures or corrective actions that are not punitive in nature may be recommended by an Integrity Commissioner and imposed by a council.

66. Notwithstanding that training, or potentially lack thereof, was not the cause of the failure, another option to consider is requiring further training. However, the Respondent, along with the entire COA, has since received suitable training by virtue of the Secretary-Treasurer taking it upon himself to update the materials to address bias and apprehension of bias more directly. Recommending additional training therefore serves no purpose.

67. Council could request an apology but would be unhelpful in this case. The Respondent could have simply apologized from the outset, but she chose not to. Moreover, her evidence was self-serving and not credible. In all the circumstances, we consider that an apology should, at this juncture, to be sincere, be freely given without direction from Council.

68. Council appoints individuals to its local boards and committees. As noted in the Code, members of the COA sit at the pleasure of Council. Given the clear breach of the Code by the Respondent, it is our recommendation that Council revoke Respondent's appointment to the COA.

69. Revocation of appointment in this instance is a corrective action and not a penalty – it is recommended as remedial in nature to prevent any future contraventions of the Code by the Respondent.

70. The COA is a fundamentally important decision-making body at the City which is responsible for issuing a large number of decisions each year. Its decisions must be viewed as being just, fair and equitable, made by members who are not conflicted or biased. A revocation of the Respondent's appointment to the COA is a proper remedial measure/corrective action to impose in this case.

71. Our recommendation is that Council order as follows:

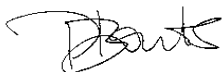
- (i) That Council denounces the Respondent's actions in deliberately breaching the Code of Conduct; and
- (ii) That the Respondent's appointment to the Committee of Adjustment be revoked forthwith.

72. This Report has been prepared for and is forwarded to Council for its consideration of our recommendations in light of the finding that the Respondent breached the Code. We note that our findings are conclusive and that they were not challenged by the Respondent when she had an opportunity to do so prior to the completion of our of investigation.

73. Subsections 223.4.1(17) and 223.6(2) of the *Municipal Act, 2001* provide that this Report is to be made public.

Respectfully submitted,

AIRD & BERLIS LLP



Paula Boutis
Integrity Commissioner for The Corporation of the City of Cambridge

Dated this 8th day of May, 2023