

362 Main Street
Sackville, NB
E4L 3H6
June 12, 2022

Deputy Mayor Andrew Black
Town of Sackville, P.O. Box 6191
31C Main Street
Sackville, NB
E4L 1G6

Dear Deputy Mayor Black,

I am filing a formal complaint under the Code of Conduct for Members of Council and I'm addressing it to you because my complaint concerns the Mayor. I am also copying the Mayor and other members of Council as well as the CAO and Town Clerk.

My complaint relates to Section 33 of the Code of Conduct on Conflict of Interest Avoidance as well as Part 8 of the New Brunswick Local Governance Act which contains provisions on Conflict of Interest.

I believe the Mayor was in violation of both the Code and the Act when he presided over meetings of Sackville Town Council on February 14, 2022, March 14, 2022 and April 11, 2022. During those meetings, Town Council discussed and made decisions on a text amendment to By-law No. 244, the Town of Sackville Zoning By-law.

In summary, the text amendment provided a potential financial benefit to the Mayor's brother, Peter Mesheau, who is Vice President of Marketing and Communications at Atlantic Industries Limited (AIL). The Mayor should have declared a conflict of interest and left the room during all discussions about this zoning amendment and the votes that were held on it.

Background

On February 14, with the Mayor presiding, Council discussed an application from Andrew Fraser and Mike Wilson for a change in the by-law that would permit development in the unserved industrial area off TransCanada Highway Exit 500. The town planner's staff report dated February 14, said "a manufacturing and processing facility is proposed on the property" which is on Walker Road and which is zoned Industrial/Business Park. The planner's report noted that an amendment to the zoning by-law would be required to remove the regulation

stating ALL industrial development must connect to Town water and sewer services. It added: "As municipal services are not available in this area, this clause limits industrial development within the Town. To allow industrial development in the Walker Road industrial park a text amendment is necessary to modify the requirement that ALL industrial development must be on municipal water and sewer, and only impose this requirement where services are available to connect to."

Mike Wilson is the Chief Executive Officer of the AIL Group of Companies and Atlantic Industries Limited (AIL) is part of that group. As mentioned above, the Mayor's brother serves as Vice President of Marketing and Communications at AIL. It has since become public knowledge that AIL is planning to build and operate a plastic pipe manufacturing plant and storage facility on the Walker Road site, which would not be possible without passage of the zoning text amendment. If the Mayor did not know what Andrew Fraser and Mike Wilson were planning, he should have made inquiries to avoid a potential conflict of interest in case his brother's employer was proposing to develop the Walker Road site as an AIL project.

According to the minutes of the February 14 Town Council meeting, Council passed the following motion with the Mayor presiding:

#22-014 MOVED BY DEPUTY MAYOR ANDREW BLACK AND SECONDED BY COUNCILLOR SABINE DIETZ THAT WHEREAS COUNCIL HAS CONSIDERED AN APPLICATION FROM ANDREW FRASER AND MIKE WILSON TO AMEND BY-LAW 244, THE "TOWN OF SACKVILLE ZONING BY-LAW" BY CHANGING THE REQUIREMENT THAT ALL PERMITTED INDUSTRIAL USES ARE REQUIRED TO CONNECT TO MUNICIPAL SERVICES TO ALLOW DEVELOPMENT IN THE UNSERVICED INDUSTRIAL AREA OFF EXIT 500;
BE IT RESOLVED THAT THE COUNCIL OF THE TOWN OF SACKVILLE DIRECTS THAT THE APPROPRIATE BY-LAW BE PREPARED TO AMEND BY-LAW NO 244, THE TOWN OF SACKVILLE ZONING BY-LAW AS IT PERTAINS TO THE ABOVE NOTED CHANGE; THAT THE PROPOSED BY-LAW BE REFERRED TO THE SOUTHEAST PLANNING REVIEW AND ADJUSTMENT COMMITTEE FOR THEIR VIEWS; THAT THE NOTICE OF INTENTION REQUIREMENTS OF THE COMMUNITY PLANNING ACT BE FULFILLED WITH RESPECT TO THE PROPOSED AMENDMENTS,

AND SETS THE REGULAR COUNCIL MEETING OF MARCH 14TH, 2022, IN THE COUNCIL CHAMBERS AT THE TOWN HALL, 31 MAIN STREET, 2ND FLOOR, SACKVILLE NB AS THE DATE, TIME AND PLACE FOR THE PUBLIC HEARING OF CONSIDERATION OF OBJECTIONS TO THE PROPOSED BY-LAW. MOTION CARRIED.

At the Town Council meeting on March 14, the Mayor again presided over discussions about the zoning text amendment. No members of the public

showed up for the public hearing on that date as a notice for it on the Town's website referred to it as a zoning change with no details about the proposed manufacturing and storage facility. According to the minutes, Council passed the following motion:

#22-050 MOVED BY DEPUTY MAYOR ANDREW BLACK AND SECONDED BY COUNCILLOR MATT ESTABROOKS THAT COUNCIL GIVE FIRST READING IN NAME ONLY TO BY-LAW NO. 244-M A BY-LAW TO AMEND BY-LAW NO. 244 THE TOWN OF SACKVILLE ZONING BY-LAW. MOTION CARRIED.

At the Town Council meeting of April 11, the Mayor again presided as Town Council voted on second and third readings giving final approval to By-law No. 244-M to amend the zoning by-law clearing the way for development in the unserved industrial area including the proposed AIL pipe factory.

Legal rules

Section 33 of Town Council's Code of Conduct states:

CONFLICT OF INTEREST AVOIDANCE

33. Members are committed to making decisions impartially and in the best interests of the Town and recognize the importance of fully observing the requirements of the Local Governance Act, with regard to the disclosure and avoidance of conflicts of interest.

Part 8 of New Brunswick's **LOCAL GOVERNANCE ACT** includes:

Section **87(1)** which defines "family associate" as (a) spouse or common-law partner, (b) child, (c) parent or, (d) sibling.

Section **89(1)** which says, in effect, that a member of council has a conflict of interest when a family associate would benefit financially from a matter before council.

Section **91(5)** which requires members of council with such a conflict to disclose it and "immediately withdraw from the meeting room while the matter is under consideration or put to a vote."

Mayor's response

During the Town Council meeting on June 7, 2022, the Mayor declared he was not in a conflict of interest. He made his declaration during the public question period in response to my question about how he would respond to those who believed he was. Since he did not say why he was not in a conflict, I e-mailed him later to ask why. I published his response on my news website in a story on June

10 under the headline: "Sackville mayor denies any conflict of interest over AIL pipe factory."

Here is the Mayor's full response in italics:

Council considered a text amendment to the zoning by-law, which applied to all industrial zoned properties in the town and not an individual property or variety of properties owned by any particular company. This is why I provided the response I did at the meeting Tuesday evening, where I stated that I am not in a conflict of interest.

The Local Governance Act is clear that if a family associate (sibling in this case) stands to benefit financially from a matter before Council, a Council member must declare a conflict of interest and leave the room when that matter is discussed and voted on. Although the information was not disclosed publicly at the time, the only applicants seeking the zoning change were clearing the way for an AIL plastic pipe factory on Walker Road and the Mayor's brother is Vice President of Marketing and Communications at AIL.

Non-disclosure implications

If the Mayor had declared a conflict of interest, as he should have, members of the media and public would have learned that the zoning text amendment was directly related to a manufacturing project being planned by AIL, the company that employed the Mayor's brother. The applicants requested the text amendment because they knew that the AIL project could not go ahead without it. Sackville residents, who later wrote letters and made public presentations to the Mayor and Council expressing alarm about the AIL pipe factory would have had an opportunity to know about and appear at the required public hearing on March 14 to register their concerns before Council gave first reading and began the process of voting on the text amendment.

The Mayor's failure to declare a conflict when he should have and the Town's website notice of the public hearing, which mentioned nothing about a manufacturing proposal for the area, had the effect of depriving residents of an opportunity to attend the public hearing. It was only when they saw the site being cleared of trees that residents began to ask questions and learn what was going on, but again, this was only after Council had passed the text amendment and it had been registered in the Westmorland Registry Office.

The Mayor's failure to declare his conflict of interest was an element in the non-disclosure of information that accompanied Council's discussion of the zoning change and the voting process that it followed. Throughout, the zoning change appeared to be little more than a minor adjustment to allow development in the

Walker Road industrial area. The Mayor's contention that the text amendment applied generally and not to an individual property owned by a particular company does not accord with the facts in this case.

My request

The Code of Conduct for Members of Council says that Council may appoint an investigator to investigate a complaint. I request that you appoint an independent investigator to look into this complaint. In addition, I wish to make my complaint public and I therefore, waive all rights to confidentiality.

Yours truly,

A handwritten signature in blue ink that reads "Bruce Wark". The signature is written in a cursive style with a large, looped initial "B".

Bruce Wark
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