

REPORT ON THE INVESTIGATION INTO WATER/SEWER IRREGULARITIES IN THE TOWNSHIP OF IGNACE

REPORT AUTHOR: Paul S. Heayn, Municipal Consultant, Dryden, Ontario

1. INTRODUCTION

On March 6th, 2017 I was contacted by email by Chantelle Gascon, CAO/ Clerk Treasurer for the Corporation of the Township of Ignace. Chantelle advised that the Township of Ignace is looking to engage the services of an Integrity Commissioner, specifically for the purposes of proceeding with Motion #698/2016, to investigate Council Conduct during the water and sewer investigations. They have directed that I contact you to do so, should you be interested. A copy of the Council Code of Conduct was also sent to me.

Further information was provided by Chantelle: *The Water and Sewer Investigations started in 2015. At the meeting of June 22, 2015, and the commencement of the water and sewer investigations, there were two resolutions: one approving the investigation of all water meters, which was defeated (only Mayor Kennard and Councillor Pesola were for) and one approving the investigation of the ten most concerning water meters which was Carried (Mayor Kennard and Councillor Pesola were against). These are the resolutions currently in question by some members of Council, as I had inadvertently forgot to include the recorded vote in the minutes, which were subsequently approved, and the recorded vote was not caught by anyone on Council, the Administrator Treasurer, or myself. The actual resolutions show the recorded vote results.*

Previous to that, a consumption report was brought forth to Council, as per their request. This was subsequently followed by a Utility Account Investigation in Closed Session on November 9, 2015. An RFP for the water and sewer investigations was issued in June 2016. Clow Darling was the successful proponent. Water and Sewer Investigations were reported to Council in Closed Session on November 8, 2016. There is one report, developed by the Operations Supervisor, and the results from Clow Darling, which to my knowledge, due to pending investigations, has not yet been made available formally to Council or the Public. The information above detailing the purposes of the Closed Meeting is available on the Regular Meeting agendas, which can be found on our website, under Council/Agendas and Packages. From this, please advise if you are able to conduct an investigation back to 2015, or if, due to the new By-Law, are only able to investigate Council Conduct as the investigations proceed?

Investigation on some properties, due to seasonal issues, is still ongoing. The Township of Ignace is installing water meters in all properties in July 2017 as part of the Ignace Water Conservation Project. More deficiencies may be observed at that time, so a final end date of the investigations is, at this time, not known.

You may wish to speak with the Councillors directly in regard to what result they are hoping to achieve from the investigation. If you would like their respective emails, I would be happy to provide those to you. If you would like to meet with Council please let me know and we can ensure a time is scheduled to do so.

Over the next few months a contract for service was signed and various documents were sent to me to start the investigation.

2. BACKGROUND

The Council contracted with Clow Darling Inc., an Engineering and Construction firm in Thunder Bay to investigate ten properties that were alleged to be by-passing the water meters. Included in the ten properties were a combination of businesses and residents. In fact, thirty six (36) properties were examined for irregularities. The majority of the thirty six (36) properties had their water meters installed correctly or were not tampered with. However, the Clow Darling investigation revealed:

- Four properties that by-passed the meter – Northwoods Motor Inn; Davey Lake R & RV Campground; Hertz Repair; and, K & S Service Centre/K & S Bairt Shop.
- Three cross or potentially cross contamination – Trading Post Motel; Shoprite; Ricci Trucking.

3. Summary of the Complaint

The Council is concerned with the loss of water revenue as well as the implications for any Council members that owned property that contravened *By-law No. 54/2016 – the Water/Sewer Operations, Maintenance and Usage of Ignace’s Waterworks and Sewer Works*.

Council is also concerned about the Clow Darling Report in that it mentions that the Northwoods Motor Inn had deliberately by-passed the water meter into this establishment. In addition, it allowed a water line to service a trailer park immediately adjacent to the Inn which used Township treated water and sewer services free of charge. In addition to the water/sewer services consumption being manipulated to reduce the Inn’s liability, Councillor Chicki Pesola was once a co-owner or directly received benefit of the reduced liability. This would violate the Council Code of Conduct should it be proved that Councillor Pesola received this benefit while a member of the Township Council. In addition, Councillor Pesola may have violated the Municipal Conflict of Interest Act if she had of voted or taken part in the discussions when Council considered hiring Clow Darling to investigate the systems irregularities.

4. INVESTIGATIVE PROCESS

In order to investigate this matter, I read several minutes of Regular Council meetings and minutes of Closed Council meetings from 2015, 2016 and 2017 pertaining to this matter. In addition, I read through the Clow Darling Inc. report that included thirty six (36) property investigations and the results of the tests they did.

In addition, I read through, and made notes on, Township By-Law #10/2017 passed March 2nd, 2017 which is the Code of Conduct that Council is bound to adhere to. Given that the Northwoods Motor Inn, co-owned at one time by Councillor Pesola, was a major violator when it came to using fee water via a “T” by-pass it was obvious that this Councillor was in conflict with the Code.

Council’s Code of Conduct states that Council members *must discharge their duties in a manner that recognizes and fundamental commitment to the well-being of the community and regard for the integrity of the Corporation*. Breaches of the Code of Conduct include knowingly breaching the law in the performance of his/her duties. *No member of Council shall grant any special consideration treatment or advantage in matters related to his/her position on Council to any citizen beyond that which is available to any other citizen.*

WHAT IS THE REPERCUSSIONS OF USER “STEALING” WATER FROM THE SYSTEM?

There is obviously a loss of water revenue and sewer revenue (i.e. sewer revenue is based on the volume of water usage). This would be multiplied by the number of years that the water system was by-passed.

WHAT IS EXPECTED OF THE UTILITY USER?

The utility user is the one paying for the system. If there are a few users that are stealing water by purposely by-passing their water meters, it lowers the revenue that should be derived from the system and most likely inflates user rates as the Township attempts to recoup the cost of operating the system. Those that are adhering to the By-Law would be overpaying for their share of the volume of water and sewer used.

5. INTERVIEWS WITH TOWNSHIP COUNCIL

On September 27, 2017, I met with Council to discuss the water/sewer investigations. Present were: Mayor Lee Kennard, Councillor John Taddeo & Councillor Shaun Defeo. Absent: Councillor Chicki Pesola and Al Graver. Staff Present: Acting CAO/Clerk/Treasurer Chantelle Gascon and Operations Supervisor Linda Colby.

I submitted a list of questions prior to the meeting in order to provide an agenda. The questions and the resulting answers gained at the September 27, 2017 Meeting are as follows:

1. I am curious as to how Council became aware that there were some irregularities in the water system. What prompted the investigation?
Newly elected Council in 2015 had some suspicions that some of the water meters/systems were not properly installed that would lead to a true use of Township water/sewer services (up to this point all meters were mainly installed in commercial establishments).
Chantelle Gascon questioned some of the consumption volumes and reported her questions to the CAO, Wayne Hanchard. As far back as 2009, Lakeland Plumbing performed a limited examination of some meters and apparently reported that they felt there was some by-passing of the meters in some establishments. A report tabled at Council early on, showed obvious discrepancies in the volume of water consumer by some establishments when compared to their neighbours.

The CAO at the time was asked to investigate this perceived unfairness but time dragged on until November of 2016 Council finally passed a resolution to hire Clow Darling Inc., an engineering firm from Thunder Bay, to examine a number of meter installations for irregularities, malfunctions or if they were indeed properly installed. It is important to note here that Council tabled two resolutions: 1] that directed Clow Darling to examine all meters (approximately thirty six {36} which were defeated (Yes – Mayor Kennard & Councillor Chicki Pesola; No – Councillors Taddeo, Graver and Defeo); and a second resolution 2] that directed Clow Darling to examine ten {10} of the perceived worst meters. In the end, Clow Darling examined all meters and produced a binder that detailed their findings.

2. Most by-pass “T’s” would have been evident when the meter readers went to read the meters at various locations. Would they not have seen the irregularities and reported them to the CAO? Was any irregularities reported at all by Staff?

Some of the installations were confusing and some “T”s that were eventually found were some distance away from the actual meter and would not have been seen by the meter reader. However, as stated, at one time Chantelle Gascon did report her suspicions to the CAO but the matter was not dealt with.

3. Council has discussed recovery of lost revenue due to some property owner’s by-passing the system. I believe Council has directed that those owners be back bill for one year to try and recoup some of the lost revenue. Is Council aware of how many months/years the said owners actually were obtaining free water?

Chantelle advised that the Township are allowed to bill two (2) years back under the Municipal Act and they are doing this or will be following this policy as they recoup some of the lost revenue. As for the Northwoods Inn, the Township will have to split the two year back billings to the old owner and the new owner based on when the sale went through.

4. Has Council considered other avenues of recouping some of the lost revenue from those owners that have circumvented the system? For example: after the by-pass is fixed and the meter is recording all water flowing through the system, take the average bill that the owner pays for in the next, say two or three years, and bill the owner the difference what he/she should have been paying multiplied by the number of years the Township knows the by-pass was installed.

The township will be billing two years back where appropriate.

5. By-law 54/2016 Part 11 Enforcement – calls for the owner, upon conviction, to pay a fine of \$5,000 per day for the first conviction and \$10,000 for the second and subsequent convictions. Has Council considered laying charges under this section or laying charges under the Provincial Offences Act “Set Fine Schedule” attached to this by-law?

The Ontario Provincial Police have information on some of the irregularities and it will be up to them if charges are laid.

6. Has the Township any evidence of what procedures the owners took to by-passed the water meter on some occasions and allowed the water to flow through the meter on other occasions? This would be effective providing evidence should Council choose to lay charges under the enforcement section of the by-law.

It can only be assumed that where there was a "T" installed in the matter like the Northwoods Inn that the valve by-passing the meter would be "squeezed" to allow only a portion of the water to be captured by the meter. The new owner of the Northwoods reported that he was not aware of the by-pass.

7. Up to this point, have any of the owners that obtained free water, paid back any water charges from prior years?

In the summer of 2017, new meters were installed in all businesses and residents. Those businesses that had irregularities have been corrected or repaired including the Northwoods Inn. There are only a few businesses that have to be billed back at this point.

8. Has Council sought advice from the Ministry of Municipal Affairs and Housing on what the next steps might be?

Council is aware that MMAH will not provide any guidance on this matter. I telephoned MMAH and spoke to Heather Nickerson about the situation, the loss of revenue and the legal ramifications of the investigation undertaken by Clow Darling. Heather reported that the Ministry would not issue any guidance for actions the Township may or may not take. They would only suggest that the Township seek legal advice if they felt it would help.

9. I understand that a new meter program was instituted in 2017 and new meters were to be installed throughout the Township. Has this been fully completed?

The new meters are all installed. The billing for those that had no meters in the past are still being billed at the flat rate while others that were billed on meter readings are being billed on the new meter readings. Once historical data is collected, various rates can be established and billed on a meter reading basis.

10. Concerning the new meter program, is the contractor installing all of the meters or can a local contractor or for that matter, the property owner install the new meter him/her self?

Neptune has installed all meters and they are able to be read remotely.

11. Have there been any checks since the Clow Darling report on any of the properties to ensure that the system is not being compromised or areas that needed corrected (e.g. cross contamination from a well) has in fact been remediated?

All discrepancies in the Clow Darling report have been looked into and repaired. With regard to Davey Lake Campground, the testing has been done on most of the water lines within the business and Linda is waiting on the campground to become vacant in order to test the balance of the property.

12. Going forward has Council developed a policy for Staff to examine the volume of water consumption by each property owner to identify variations when comparing one year to another? Does the water billing system flag significant variations in volume consumed – one billing period to the other?

Council and Staff are keenly aware now of the types of irregularities that can creep into the system. Once the new billing system from USTI is installed, fluctuations in volume will be automatically reported and this will allow staff to check the individual systems.

13. What does Council hope to achieve going forward so that this situation does not happen again?

Council is confident that the installation of the new meters and the correction of old discrepancies will be enough to head off problems in the future. With the installation of the new software, pertinent reports will be produced and will enable Staff and Council to receive current information about the system.

6. CONCLUSIONS

The Council of the Township of Ignace was mainly concerned with two things: 1) that there were irregularities in the water/sewer systems installed in the various businesses in the community, and 2) the reluctance of some Council members and Senior Staff to take the necessary corrective action to fix the problems.

The Council took the proper avenue in hiring the Thunder Bay Engineering firm, Clow Darling. Clow Darling investigated the entire installation of meters in the business sector and provided Council with clear findings. As a result of this detailed investigation and the installation of new meters in the entire township, all of the irregularities have been fixed and repaired.

From here on out, Council can look forward to reports from Staff about any particular problem and develop policies that help staff dealing with them. Council now has a mechanism, and I dare say a sympathetic willing Staff to take action when it is needed. In the past, procrastination was part of the problem.

7. SUMMARY

There are two concerns that I have with regard to Councillor Pesola's status as a member of Council during this investigation – whether or not the Municipal Conflict of Interest Act has been contravened and whether or not the Council Code of Conduct has been contravened.

THE MUNICIPAL CONFLICT OF INTEREST ACT

When I look at whether the Municipal Conflict of Interest Act has been contravened or not, I am of the opinion that it has. Specifically, in the early going when Council was questioning whether there were irregularities in the water meters in various businesses and urging the CAO to look into the matter, Councillor Pesola was present for all of the discussions and in some cases voted on motions pertaining to the matter.

In bringing action or a complaint to a Superior Court of Justice is a long and arduous affair. In most cases, the complainant would require a lawyer to solicit the court and it would take definitive evidence that such a contravention actually did occur.

In addition, the courts are cognizant of the fact that most Councillors of small municipalities are unaware or unsure of the laws governing them. Pecuniary interest is rarely understood even though at the beginning of every meeting the first thing Mayor and Councillors are asked is – does any member have any pecuniary interest with respect to the meeting's agenda.

Pecuniary interest is defined as:

*“A **pecuniary interest** in a matter, is one where there is a reasonable likelihood or expectation of appreciable financial loss or gain to the person”.*

If Councillor Pesola knew or was likely to have known that any discussion regarding the water meter investigation would likely discover the resultant reduction in the amount of water billings to her business interests, then she would have a Conflict. In an open meeting, after declaring a conflict of interest, Councillor Pesola should not take part in the discussions. In a closed session, Councillor Pesola must leave the room altogether. There is evidence that she did not.

Having said that, there are mitigating circumstances that a judge would find favourable to Councillor Pesola in that she clearly did vote “yes” to have Clow Darling investigate all businesses knowing full well that her previous business interests would come to light. In addition, she did declare a conflict of interest and did not hide the fact. And as stated above, judges usually err in favour of the councillor where it can be shown that the councillor, through inadvertence or by reason of an error in judgement made in good faith.

COUNCIL CODE OF CONDUCT

By-Law #10/2017 is the Township's by-law to govern the conduct of Council. Council Members hold positions of privilege. Therefore they must discharge their duties in a manner that recognizes a fundamental commitment to the well-being of community and regard for the integrity of the Corporation.

Ethical behaviour relies on the diligence of the individual Council Member. Breach of ethics impacts not only on the Member but also the Corporation. The moral standard a Councillor must adhere to, will impact the Councillor's relationship and trust of other Council Members, Township employee and the public.

Council Members shall serve the public interest by upholding both the letter and spirit of the By-Laws and Procedures of the Township of Ignace. Councillor Pesola's business had a water line by-pass and a "T" installed that restricted the volume of water passing through the water meter. Clearly contradicting the "spirit" if not the letter of the Water/Sewer By-law and providing favourable financial gain for her business interests and favourable advantage over other Township businesses and ratepayers.

Penalties

Section 223.4 (5) of the Municipal Act outlines the Penalties for contravention of the Code of Conduct:

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.

8. RECOMMENDATIONS

The Township has completed rectifying all of the Clow Darling Inc. reported irregularities. One of the biggest remedies that the Township has undertaken over the summer months of 2017 is the installation of water meters throughout the entire Township – businesses and residents. This is, in itself, a one hundred percent corrective action that will ensure all businesses and residents are starting out on the same foothold. Nepture Technology Group has provided the meters and the installations so that integrity of the system is intact.

The Township is still billing on the flat rate structure until such time as the new meters are read, a history of the volumes are determined and from there, a rate based system is instituted. All meters will be read remotely and customers billed based on their consumption.

Once new accounting software is updated by the Township's software licence (USTI), certain reports will be produced that will highlight the volume and the dollars billed. It is recommended that those pertinent reports be produced and delivered to Council on at least a half yearly basis so that Council can see for themselves the equity in the system - i.e. be able to compare one billing to another of similar or equal size.

I also agree with Council's recommendation to recover back two years of water billings where irregularities for whatever reasons, have shorted the Township revenue.

With regard to Councillor Pesola, I recommend not proceeding with any remedy under the Municipal Conflict of Interest Act. I also recommend a reprimand as a penalty under the Council's Code of Conduct. It is recommended that Council Pesola review the Pecuniary Interest definitions of her Oath of Office and familiarize herself with the meanings of those definitions.

9. ACKNOWLEDGEMENTS

I would like to thank Acting CAO/Clerk Treasurer for the providing the documents and information relative to this investigation.

I would also like to thank Mayor Lee Kennard, Councillor John Taddeo and Councillor Shaun Defeo for their assistance in helping me understand the investigation and providing details of past history and also the path forward.