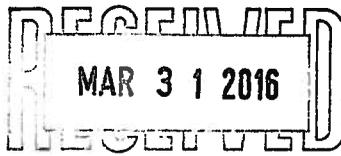


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March 31, 2016

A letter to the Mayor, Members of Council, Temagami CAO, Clerk of the Municipality of Temagami

Attachment:

- letter from Prefasi to Council dated March 17th

File
 Incoming
 Other
 Mayor
 Council
 CAO
 MA
 Building
 Finance
 Ec Dev
 Parks & Rec
 Planning
 Public Works
 PPP
 Social Services

Executive Summary

The municipality's resolutions surrounding the Clearwater Planning Waterfront Wall Enhancement Project circumvents the tendering process as set out in bylaw 14-1170 and in so doing denies other local contractors the opportunity to benefit from a Municipal contract totaling \$39,550 and which includes \$24,550 of its ratepayers' tax dollars.

The decision-making process followed in the Clearwater proposal has been tracked in an attempt to get a clearer picture of the events which transpired leading to the Municipality making an exception to its tendering policy in amending by resolution a bylaw requiring three tenders for the proposal, and in favouring one local contractor without tenders.

Minutes, council packages, agendas and correspondence have been reviewed in order to set a public record so that the public is aware of the flaws in the decision making, the discrepancies and the perception of conflict of interest, and in order for the public to have a basis to decide whether this is the open and transparent council that presented itself at the last election.

It should be noted that there were no minutes for Council meetings in 2016 posted on the Municipality's website, whether by accident or design. A request for the minutes was made of the Clerk of the Municipality of Temagami on March 22nd, 2016.

Further, at the writing of this letter there are no draft minutes available on the website for the March 17th meetings which were also requested of the Municipal Clerk, in person, on March 22nd.

After careful evaluation it was found,

- ❖ That a recorded vote defeated the Waterfront Wall Enhancement Project on February 25th,
- ❖ That on three separate occasions Mayor Lorie Hunter appeared to be in conflict of interest as she discussed and twice voted to support a proposal in which she has a personal/pecuniary interest in that her son works for the contractor,
- ❖ That Mayor Hunter's declaration of Conflict on item 8.6.2 on February 25th clearly indicated the intention of Mayor and CAO to have Council pass an exception to the bylaw that night,
- ❖ That a councillor who had sent in a letter of resignation to Council seconded a motion at a meeting at which he was not present,
- ❖ That the Clerk of the Municipality, Elaine Gunnell, attended a Council meeting, took the minutes, and recorded in the draft minutes that a councillor who was not at the meeting seconded an important motion which could result in the Municipality setting aside the requirements of its purchasing bylaw,
- ❖ That the Mayor and Council subsequently adopted a set of minutes which showed that a councillor seconded the critical motion in this matter when he was absent from the meeting,
- ❖ That a local planner who has a pecuniary interest in the matter directed Council to use a loophole in its purchasing bylaw which would allow the Municipality to offer a \$39,550 contract without the tendering process to a local contractor to whom she is married,
- ❖ That CAO Pat Cormier on two separate occasions failed to perform his duty as CAO by ignoring the section of the Purchasing bylaw which requires him to request in writing a resolution from council if

he feels that he faces an “unforeseen circumstance” which “necessitates” that Council set aside the requirements of the Municipality’s Purchasing bylaw,

- ❖ That two councilors saw the need for public consultation in this process and that council disregarded their advice,
- ❖ That the councilor who had not yet been placed on a committee and faced loss of remuneration due to lack of portfolio, and who originally voted against the “proposal”, is now the one who expressed the desire to change his vote in support of the motion that the Mayor has shown she wishes to pass,
- ❖ That council included in its proposed Capital Expenditure budget on March 17th the sum of \$25,000 for this project AFTER the project was defeated by Council resolution at a public meeting and BEFORE a motion to reconsider was presented to Council,
- ❖ That council rushed to judgement throughout this process, without benefit of public consultation, without a proper request from the CAO, and without regard to the public interest,
- ❖ That Council has acted in this matter without due diligence, with total disregard for the spirit and intent of its own Purchasing bylaw, a bylaw whose purpose is that an open and honest process shall be maintained that is fair and impartial,
- ❖ That sometimes, when you wave a bit of cash at some people, it entices them to disregard process, procedure and even the public interest,
- ❖ That this process has tainted a heartfelt and genuine family tribute. This was surely not the Wiles’ intent when initiating this project.

The following pages will detail in full the process that has been traced, the concerns in this matter and the evidence that supports those concerns.

This document also provides basis for the questions:

1. Have there been instances of Conflict of Interest and undue influence occurring throughout this process?
2. Are the ratepayers of Temagami in agreement with spending \$25,000 plus ongoing maintenance in perpetuity on the Petro-Canada wall while struggling to pare \$1,000,000 out of the capital expenditure budget?
3. Has council operated outside of its own Code of Conduct with regard to this “proposal”?
4. Were Wiles or their agent contacted by the Municipality to enquire as to whether or not the proposal was contingent upon the use of Clearwater Builders as the contractor?
5. As the “unforeseen circumstances” are not outlined in this case, where is the evidence that they “necessitate” an exception to the bylaw in terms of tendering?
6. Why did Council feel that the public did not deserve to be consulted?
7. Will the town now open this process to public consultation and fair competition?
8. Will the town now put out a call for tenders for this project as per their Purchasing bylaw?
9. Did Council explore the potential for other funding opportunities for this project instead of placing the burden on the taxpayers (i.e. crowdsourcing, sponsorship, grant applications, fundraising events, public donations) and instead of spending taxpayer’s money?
10. Can the ratepayers of Temagami have confidence that their council will begin to act in the public interest?

The undersigned speak truth to power.

Ron and Suzanne Prefasi

Much smoke. Many mirrors. Even a bit of magic - [sic] -.

As laid out in the Executive Summary, we oppose the Municipality's resolution which circumvents bylaw 14-1170.

It is the intent of this document to set the record so that the public is aware of the flaws in the decision-making, the discrepancies in process and the perception of conflict of interest in this item.

**Meeting 1. Regular Council Meeting
February 25th Council Meeting 6:30 pm**

At the onset of the meeting, Mayor L. Hunter declares a conflict on item 8.6.2 (an item which does not present at the table) and notes that it is due to the fact that her son works for the potential contractor.

A proposal from Clearwater Planning is presented to council.

The Clearwater Planning Memorandum comes before council *for the first time and indicates as background:*

- That in **December 2015**, Clearwater Builders, met with the Mayor and CAO to discuss options for the enhancement of the wall.
- That the Mayor and the CAO supported the proposal.
- That the Mayor and the CAO added recommendations for the design of the wall.
- That the Mayor and the CAO suggested that the next step necessary for the proposal would be a design and budget estimate to be presented to Council.

It would have been apparent on December 17th that to continue with this concept, which included Clearwater Builders as the sole contractor, the following would occur:

- the Municipality's tendering process as set out in Bylaw 14-1170 would have to be circumvented
- a potential conflict of interest for the Mayor would be an issue as her son works for Clearwater Builders.

These facts should have been immediately relayed to Clearwater Builders by both the Mayor and the CAO and the question should have been put as to whether Wiles would still be willing to enter into this project if Clearwater Builders were not the contractor.

The Clearwater Builders' Wall Project of December 2015

- has now morphed into a "Memorandum"
- is submitted by Clearwater Planning and no longer by Clearwater Builders
- is being referred to as a "Public-Private Partnership" (P3)
- The concept remains the same as presented in December:
 - it sets forth the same design;
 - contains the same builder;
 - the "Budget" asked for by the Mayor and CAO was prepared by Clearwater Builders and is a cost estimate of \$39,550, an amount which requires 3 tenders and which fails to address the cost of ongoing maintenance; and,
 - the concept uses Clearwater Builders as the contractor with no tendering.

- The “Memorandum” also directs Council to a loophole in the Municipality’s purchasing bylaw. Karen Beauchamp MCIP, RPP, CMO, provides a method by which the bylaw could be circumvented and the route to take (see page 4 of proposal) in order to allow Clearwater Builders to be the chosen contractor.

Hmmm.

Back to the meeting:

Resolution 16-089 moved by C. Lowery, seconded by J. Kenrick^[sic] is put on the table.

- That Council support in principle the Waterfront Wall Enhancement Project proposed by the Wiles family;
- That Council agree, subject to a suitable partnership agreement, to commit to contributing an upset limit of \$24,550 including HST (62%), with the Wiles Family contributing \$15,000 including HST; and,
- That Council direct staff to draft a partnership agreement for the project for Council’s consideration.

At this point two council members felt there was a **need for public consultation** on such an important issue and moved for a deferral to seek public consultation.

The amendment to resolution 16-089, an amendment to defer in order to seek public consultation, was then presented to Council,

Moved by Burrows, seconded by Harding.

The motion was defeated by Council.

Public consultation would have afforded the opportunity for dialogue regarding Public-Private-Partnerships (P3s) and could address the question of what Councillors know about a P3.

What makes this proposal a P3? The say of the planner for Clearwater Planners, the same person who gave council the route to deny other contractors the right to bid on the proposal. Does this proposal actually fit the definition of a P3? P3s, in fact, are well defined and are an instrument used by many municipalities across Ontario and across Canada, *with tenders*.

What differentiates a P3 from a donation with strings attached? In this case, only the opinion of the proponent’s planner. A P3 is a project wherein both partners have a medium to long-term attachment to the project and to each other, with benefits and responsibilities attached to each partner. This is why the process of public consultation exists when a P3 is contemplated; consultation so that both proponents and ratepayers are comfortable with the proposed partnership.

How well versed are the councilors about P3s? Has Temagami’s Council ever entered into a P3? Is Council familiar with what they are? It seems they may not have done due diligence here. The proponent in this partnership has no other responsibilities than to provide \$15,000 and to walk away from the project. They come to the partnership with \$15,000 and their contractor in hand. That’s the extent of the partnership. The Municipality is the “partner” who is paying for 62% of the project and maintaining it over time. The proposal states there will be additional, ongoing costs for the Municipality in the form of staining at minimum every two years, fencing and snow removal, and that the Municipality will carry the burden of having to provide money for maintenance of the wall when it can’t even maintain its existing roads, and water, and sewer and garbage removal.

Public consultation might have opened up many different and creative options and might also have opened up a dialogue as to the use of pressure treated wood on the waterfront. Does this set a precedent for the Municipality and expose it to a situation where a ratepayer, a contractor or a company waves cash at the Municipality like a magic wand and *POOF*, bylaws disappear in order to grab the cash.

The Contract which would be entered into if this Proposal goes forward. Public consultation would have also shown that this is a \$39,550 contract, not a \$24,550 contract. The contractor walks away with a contract from the Municipality for \$39,550. The Municipality's purchasing bylaw requires 3 tenders for such a contract regardless of where the money comes from – the province, the federal government or a private donor.

And back to the meeting.

The vote on resolution 16-089 as moved by C. Lowery, seconded by J. Kenrick^[sic]

A recorded vote was then taken. The Mayor voted in in favour of the motion.

Yah- Hunter, Lowrie and Koski

Nay- Burrows, Harding, O'Mara.

The motion was defeated.

The resolution is unexpectedly defeated! It is worthy of note that the Mayor's conflict declaration at the onset of this meeting is for item **8.6.2, an item which does not come to the table.** This suggests that the Mayor and CAO had anticipated that resolution 16-089 would be passed by Council and that the next resolution immediately following would be 8.6.2, the one that would create the exception to the purchasing bylaw and allow Clearwater Builders to be the sole contractor as per the "Memorandum".

Note: Though the issue of tendering is at the very core of how the municipality conducts its business and deals with the process that it must follow when it spends taxpayer dollars, the debate and deliberations on the issue were indeed not very thorough nor lengthy. They existed within a council meeting in which, in addition to dealing with such an important concept as to disable the tendering process, Council also:

- ❖ adopted the agenda;
- ❖ approved Minutes of two previous meetings;
- ❖ recorded 4 conflicts of interest;
- ❖ had 3 councillors remove themselves from the table at one point re: conflict of interest
- ❖ received and noted 6 staff reports;
- ❖ acted through motions on 2 committee reports;
- ❖ dealt with 8 action items (e.g. user fee reduction for the legion, changing the rules about tendering, a per capita grant, winter highway maintenance, a call for the competition bureau to investigate gas prices);
- ❖ tabled and voted on 8 resolutions;
- ❖ held a discussion which swayed a councillor to reconsider his vote on a motion;
- ❖ passed 2 bylaws;
- ❖ received 24 items of correspondence;
- ❖ moved and voted on 3 items of new business;
- ❖ moved and voted on 1 item of unfinished business; and,
- ❖ recorded a notice of motion for reconsideration.

All of this in a council meeting which lasted only 55 minutes!

A tailwind felt by the whole community.

The Motion to reconsider resolution 16-089

As we were not in attendance at the February 25th meeting we rely on former Mayor Ike Laba's correspondence (February 26th, re: meeting feb 25th) which states: "One of the councillors finally realized that the project had been killed and requested a motion to reconsider." One can only assume that some discussion ensued and at some point thereafter Councillor O'Mara declares his intention to reconsider his vote and a Motion to Reconsider is put into Notice of Motion for the next meeting.

The meeting is adjourned. 7:25 p.m.

**Meeting 2. Budget Meeting
March 17th, 2016 3:00 pm special meeting of council**

We attended the budget meeting on March 17th, wherein council considered capital expenditures. Councillors had been provided with a list which included \$4,056,564.00 (four million, fifty six thousand, five hundred and sixty four dollars) in capital expenditures and were told that they would have to pare it down by “about a million dollars” as Temagami did not have the money to do everything on the list.

Over the course of two hours, Council reduced capital expenditures by approximately \$600,000 by taking money out of roads, out of the grader reserve, out of lot development and out of numerous other items. At the end of the meeting, before they adjourned, they (all council members and the Mayor) quickly added \$25,000 for the Clearwater Wall Enhancement Proposal. **Yet, this proposal had been defeated at the February 25th meeting and a Motion to Reconsider had not yet been presented nor voted upon.**

Again, Hmmm.

**Meeting 3. Regular Council Meeting
March 17th, 2016 6:30 pm regular meeting of council.**

Once again, Mayor Hunter declares conflict of interest at the beginning of the meeting on a resolution (number unknown as of this writing) due to the fact that her son works for the contractor.

THE MOTION FOR RECONSIDERATION of 16-089 is put forward. Moved by O’Mara and seconded by Harding.

Resolution centers on the following:

- that Council support in principle the Waterfront Wall Enhancement Project proposed by the Wiles family;
- that Council agree, subject to a suitable partnership agreement, to commit to contributing an upset limit of \$24,550 including HST (62%), with the Wiles Family contributing \$15,000 including HST; and,
- that Council direct staff to draft a partnership agreement for the project for Council’s consideration.

The Mayor votes in favour of the Clearwater Proposal in a recorded vote as do 4 other councillors, with only councilor Burrows voting Nay.

The Clearwater Proposal has now been passed by resolution.

To recap: Council has now “supported in principle” The Clearwater Planning “Memorandum” presented to Council at the meeting that contains 3 noteworthy requests:

- That Council consider entering into a public-private partnership with Nancy and Terry Wiles for the Waterfront Wall Enhancement Project by committing funds in the amount of \$24,550 (tax in);
- that Council consider passing a resolution to deem the public-private partnership to be an exception from the purchasing methods described in Bylaw No. 14-1170, being a bylaw to establish purchasing policies for the Municipality of Temagami; and,
- **that an exception to bylaw 14-1170 be passed so that no tenders need be called, resulting in Clearwater Builders being the chosen contractor for the project.**

Motion to make an exception to the Municipal Purchasing Bylaw (tendering process)

Motion to make an exception immediately followed. The Mayor declared conflict of interest on this

resolution because as previously declared, her son works for Clearwater. She sits in the audience as Koski takes over the chair.

This motion is passed by Council.

Number 4. Purchasing Bylaw and Process

The deed is done. Council has just paved the way to award a \$39,550 contract to to Clearwater Builders without benefit of tendering. It has violated its bylaws. Council has attempted to **legitimize** its intention to not seek bids for this contract. Such a contract under bylaw would require 3 tenders. Now there is only one contractor for the proposal, Clearwater Builders.

Another deviation from process. A further transgression also occurred.

Let's look at this a little more closely.

Since this resolution of Council is a major deviation from one of the municipality's most important bylaws for fair tendering process, an item so crucial to fairness and to the social fabric of our community, it's essential to remember:

Purchasing bylaw passed March 13, 2014 and numbered 14-1170 reads in part:

- ✓ "Purpose of this bylaw...that an open and honest process shall be maintained that is fair and impartial;
- ✓ the purchasing policy will promote and maintain the integrity of the purchasing process
- ✓ to ensure openness, accountability and transparency while protecting the financial best interests of the Municipality of Temagami;
- ✓ all purchases of goods and services for the Municipality of Temagami shall be subject to the provisions of this Bylaw;
- ✓ from \$2,001 to \$25,000 Department Managers shall obtain at least **two written quotes** for the purchase of goods or services having a value from \$2,001 up to and including \$25,000; and,
- ✓ From 25,501 to 50,000 Department Managers shall obtain at least **three written quotes** for the purchase of goods or services having a value from \$25,001 up to and including \$50,000."

Section 4.10 of the above Purchasing bylaw speaks to the tendering process:

"In the event of an unforeseen circumstance where an exception to this policy is felt necessary, the CAO shall make a written request to Council and Council may authorize exceptions by resolution of Council."

There are two tests to section 4.10 of the Purchasing bylaw. One that the event be an "unforeseen circumstance" and the other being that an exception "is necessary".

Council is acting on a request from Clearwater Planners to change the purchasing bylaw and the planner relies on a loophole in bylaw 14-1170: section 4.10.

Really? A request from Clearwater Planners? A family wanting a specific contractor does not warrant a deviation from a bylaw.

The bylaw **requires** that in order to begin the process to enact an exception, Council act on a written request from the CAO when an "unforeseen circumstance" arises.

If such a written request from CAO Patrick Cormier exists, it was not presented at these meetings, nor have we unearthed it.

This means an exception to this bylaw was not done legally.

The nature of the “unforeseen circumstance” has not been disclosed by the CAO nor has any explanation of what made the exception to the bylaw “necessary” as required by law. There has been no discussion of “unforeseen circumstances” by Council and the CAO did not bring that information to Council.

The bylaw is very clear on this because **bylaws are important** in ensuring that the business of the Municipality is taken care of in a legal and reasoned way. Section 4.10 is **very clear**: *if the CAO feels that “unforeseen circumstances” necessitate an exception to the bylaw he shall make a written request to Council.*

In the absence of such a written request from the CAO, we believe that council acted hastily, without due diligence and without consideration of the purchasing bylaw requirements.

This sets a dangerous precedence for the future of the tendering process in Temagami.

Because proper legal process was not followed resolution #...(no number available as draft minutes are still not available as of the writing of this letter) has no legal foundation.

All of this points to one conclusion.

Council, the Mayor and the CAO have operated outside of the law, have not done due diligence, have disregarded Conflict of Interest, have contravened their Code of Conduct, have denied the public opportunity for public consultation, have denied fair competition and have shown themselves to not be acting in the best interests of the community.

March 17th, 2:00p.m.

To the Mayor and council:

Dear Mayor and members of Council,

The agenda for tonight's meeting lists:

- Ike Laba letter to Mayor and council, as forwarded to councillors by Mayor Hunter on February 29th, re: Wiles Family/Clearwater Builders Proposal,
- Reconsideration of Motion 16-089, defeated on February 25th, 2016, regarding Waterfront Wall Proposal.

Suzanne and I have known the McCart and Wiles families for close to 50 years, and know all too well how hard-working and dedicated to the community and how deserving these families are of recognition. Gordon and Irene McCart acted as surrogate parents to us when we were young and first married and became great neighbours when we lived on O'Connor Drive. In fact Gordon served on one of my councils and Irene was godmother to our youngest daughter. All but John are former pupils of ours. Nancy and Terry were our babysitters in their teen years. From our perspective, for these and for a number of other reasons, which include a solidification of lake and community, we can truly say that a memorial on the Waterfront Wall is a very fitting tribute.

Mr. Laba in his letter asks "How can anyone in their right mind refuse such a proposal?" . If you change the word "PROPOSAL" to "PROJECT", the answer would more than likely be "No one". However the "PROPOSAL" consists of the Wiles McCart family contributing \$15,000 and the taxpayers contributing \$24,550.

The problem with this?

1. Small businesses in Temagami face unjust and onerous service charges, far in excess of those in neighbouring communities, and ratepayers have struggled in the last two decades with increasing service fees and the raising of taxes, particularly those on waterfront properties with the attendant changes in assessment.
2. The Municipal Organizational Review Package which was recently made public forebodes a very bleak and difficult financial future for the village.
3. Recent correspondence to council from business owners, lake residents as well as Ike Laba's letter, speak of a dying community and boarded up businesses.

Is this the time then for the municipality to be expending close to \$25,000 on a beautification project when our service fees are so extreme, making it close to

impossible to sustain existing businesses in Temagami let alone to attract new ones?

Back to the question: Should the project go through? Our response is, "MOST DEFINITELY". However, not in the form of the present 'PROPOSAL'.

The McCart and Wiles legacy will remain forever, whether or not this proposal is accepted by council. To suggest that this proposal has to be done in a hurried and unthinking fashion with regards taxpayer's money is only to continue the Municipality's rush to financial disaster. To suggest that this proposal be accepted ignores our purchasing bylaw #14-1170, a bylaw which requires two tenders when expending such a sum of money.

We suggest therefore that the \$24,550 be raised through a community fundraising effort, where ratepayers, businesses and service clubs can contribute what they can and what they wish according to their ability and desire to do so.

The municipality should also take the time to apply for grants for its portion of the funds required for such a project.

It is our hope that the more forward-looking council members will take these thoughts into consideration and will reconsider their support of the Reconsider Motion being presented tonight.

Yours,

Ron and Suzanne Prefasi