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Private and Confidential

Ian Findlay
60 Baker Street
Guelph, ON N1H 4G1

File: 087006.0001

Dear Ian:

Re: Municipal Conflict of Interest

Further to our telephone discussions, we wish to confirm in writing the advice we have given you with regard to potential conflict of interest in carrying out your duties as a Councillor for the City of Guelph. In particular, you inquired about whether or not you had a conflict in connection with the building of a parking garage on the Baker Street lot, including the potential for Baker Street to become a two way street and voting on matters relating to the Library and its location.

The Municipal Conflict of Interest Act governs the duty of a member of Municipal Council to disclose conflicts of interest and to abstain from participating in decision making when such a conflict exists. You operate a business on Baker Street in a location that you lease and do not own. Your primary business is the rental of Videos and DVD's. You were elected for a 4 year term in November, 2006.

Dealing first with the issue of the parking garage and the potential of Baker Street becoming a two way street, there is no doubt that you fall within the definition of pecuniary interest under Section 2 of the Act. In reviewing the caselaw, the threshold for establishing direct or indirect pecuniary interest is very low so that if the matter to be voted upon has even a potential to affect the pecuniary interest of you as a Councillor, it must be disclosed. The caselaw suggests that it is not the nature of the interest itself that establishes whether or not there is a pecuniary interest but in fact whether or not public perception would see this as a pecuniary interest at first blush.

When you fall under the definitions in Section 2 of the Act, you have an automatic duty under Section 5 to disclose that conflict and to abstain from voting on the matter unless you fit clearly within one of the exemptions set out in Section 4.

It is our opinion that Section 4(j) which states that Section 5 does not apply to your pecuniary interest if "by reason of the member having a pecuniary interest which is an interest in common

with the electors generally". In reviewing the caselaw relating specifically to this section and applying it to your fact situation, the building of a parking garage with or without stores and the changing of Baker Street from a one way to a two way street are both interests you would have in common with other downtown merchants and are not specific to the nature or type of the business that you own and operate.

With regard to the Library Site and the maintenance of the Library in the downtown, you are in a different position. There is an argument that your pecuniary interest is generated at least in part by the type of business which you run. You would have an interest in common with a bookstore type business which could also be seen to be in competition with the Library but not an interest in common with other retail shops such as clothing stores or service businesses such as hair salons and restaurants. Therefore, the exemptions found in Section 4(j) would not apply in connection with the Library issue.

We also looked at Section 4(k) to determine whether your interest could be considered so remote or insignificant that it couldn't be held reasonably to influence you. Again the caselaw has indicated that the standard is an objective one and even if you might not consider it to be significant, to the average elector it may be perceived as significant. The courts essentially have said that Municipal Councillors must avoid all participation in matters in which there is economic self-interest which maybe in conflict with their Public duty. Falling within the exemptions set out in Section 4(k) is a fairly high threshold and you would have to show very high degree of disconnect between your business and the purported interest. Again it is our legal opinion that you do not fall within the exemptions set out in Section 4(j) or Section 4(k) and accordingly are required to disclose your pecuniary interest in accordance with Section 5 of the Act and to abstain from voting on matters relating to the new Library site.

We trust this provides you with the information that you require. Should you require copies of the caselaw that we reviewed for your records, please do not hesitate to contact the undersigned.

It has been a pleasure assisting you with this matter and if we can be of further assistance please do not hesitate to contact us.

Yours very truly,
Miller Thomson LLP

Per:

Robin-Lee Norris
RAN/ss