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OFFICE OF THE INTEGRITY COMMISSIONER

**INVESTIGATION REPORT  
REGARDING THE CONDUCT OF  
COUNCILLOR MARK GRIMES**

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**Valerie Jepson  
Integrity Commissioner  
July 5, 2016**

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# INTRODUCTION

In a formal complaint, a member of the public (the Complainant) alleged that Councillor Mark Grimes contravened the *Code of Conduct for Members of Council* (the “Code of Conduct”). The Complainant raised concerns about the Councillor’s role in relation to two entirely separate sets of circumstances. The investigation was, and therefore this report is, divided into two parts.

First, the report examines the Councillor’s role, including the statements he made to City Council, in relation to an agreement between Davies Smith Developments (DSD) and the City of Toronto pursuant to section 37 of the *Planning Act* pertaining to a condominium project known as “Eleven Superior.” The Complainant alleged that the Councillor misled City Council when he moved to amend the amount of section 37 funds payable by DSD to the City.

Second, the report examines the Councillor’s participation in a promotional video for a condominium project developed by Empire Communities (EC) and known as “Eau Du Soleil” (EDS). The Complainant alleged that it was improper for the Councillor to appear in the promotional video.

In addition to the specific concerns set out above, the Complainant stated that he has “serious concerns [about Councillor Grimes] with regard to his close relationship to developers.” My investigation explored this concern as it related specifically to the circumstances set about above.

## **Conclusions with respect to the Section 37 Agreement**

I have concluded that Councillor Grimes contravened Article XV (Failure to Adhere to Council Policies and Procedures) of the Code of Conduct when he engaged in discussions with DSD for community benefits outside the confines of the section 37 agreement between the City and DSD. These discussions were contrary to the City of Toronto’s “Donations to the City of Toronto for Community Benefits Policy.” With respect to his statements to Council about the section 37 agreement, I have concluded that although Councillor Grimes could have been clearer in his representations of City staff’s views, he did not intentionally mislead his Council colleagues or misrepresent staff’s views and accordingly his statements did not contravene the Code of Conduct.

The Councillor has accepted the findings and has apologized for his conduct in relation to the section 37 agreement. The investigation has caused the Councillor to review his practices and to learn from this experience, all of which will cause him to approach these kinds of circumstances differently in the future.

In relation to the section 37 agreement, I recommend that City Council adopt my findings that Councillor Grimes contravened Article XV of the Code of Conduct and impose no penalty or further remedial action on Councillor Grimes.

### **Conclusions with respect to the Promotional Video**

I have concluded that Councillor Grimes contravened Article VIII (Improper Use of Influence) of the Code of Conduct when he appeared in the promotional video for the benefit of EC because he used his title and the influence of his office for a purpose other than City business. Due to the role of Council members in relation to planning matters, members must not use the influence of their office to promote, or appear to promote, particular development proponents outside the confines of the development application process.

In the course of the investigation, I became aware of other interactions between the Councillor and EC that gave rise to Code of Conduct concerns:

- the Councillor's arrangement for EC to make charitable donations to two organizations (unrelated to the City or the Councillor); and,
- the Councillor's arrangement of an introductory meeting between his personal friend and a principal of EC.

I have concluded that the Councillor improperly used his influence to benefit a third party when he facilitated a donation from EC to the charitable organizations, and also when he arranged a meeting for his friend.

Although he stood to gain no financial advantage from any of these interactions – and I find that no actual benefit accrued to EC – the Councillor's actions were improper uses of his authority. The long-standing advice of this Office is that it is not permissible for a member of Council to be involved in soliciting donations, particularly from City stakeholders, regardless of whether the member stood to gain personal financial advantage. The Councillor's decision to introduce his friend to the principal of EC was an improper use of his influence and improperly blurred the lines between his private and public life.

The Councillor did not object to the principles underlying the findings. The investigation has caused the Councillor to review his practices and to learn from this experience, all of which will cause him to approach these kinds of circumstances differently in the future. In addition, he has also agreed to the following restrictions on his own dealings with EC as a way to remediate the circumstances:

- Neither Councillor Grimes nor his staff will deal privately with any principal or agent of EC *in relation to the EDS property or development* (in other words, he will only engage with EC and its representatives about EDS in public meetings).
- *For the duration of this term of Council*, Councillor Grimes will seek advice from this Office before engaging in any discussions with any principal or agent of EC.

In relation to the Councillor's dealing with EC, I recommend that City Council adopt my findings that Councillor Grimes contravened Article VIII of the Code of Conduct and impose no penalty or further remedial action on him.

### **General observations on Council's relationship to developers**

As described in greater detail below, members of Toronto City Council have a prescribed role that gives them a high degree of influence over the often lengthy course of a land use planning application. There is an incentive for developers to ensure favourable relations with a local councillor because there is much to gain or lose at all stages of a land use application. When councillors' dealings with developers are confined to City policies, there can be no perception of improper dealing. When councillors stray outside of these lines, harmful perceptions can easily arise.

On the other hand, members of the public must not be concerned with every interaction between a member of Council and real estate developers. Local governments are the primary decision-makers responsible for land use planning. Accordingly, real estate developers frequently must seek approvals from Toronto City Council to build in Toronto, and the City's current policy framework prescribes a role for members of Council throughout the planning application process. Members are permitted to escalate issues within the City on behalf of developers and to take points of view that are favourable to developers: such activity is not contrary to the Code of Conduct.

### **Structure of the Report**

This report is divided into the following four parts:

1. The procedural background to this investigation and the standard of proof I apply in the course of each investigation.
2. My investigation and conclusions in relation to DSD and the section 37 agreement.
3. My investigation and conclusions in relation to EC and the promotional video.
4. Conclusion and recommendations about remedial actions or penalties.

# PROCEDURAL BACKGROUND AND STANDARD OF PROOF

## **Procedural background**

The Complainant filed this complaint on February 4, 2015. On February 5, 2015, before my Office notified him about the complaint, Councillor Grimes contacted this Office to request an "independent review of any wrong doing" in relation to the section 37 agreement referred to above. It is unusual and not contemplated by the *Code of Conduct Complaint Protocol for Members of Council* (the "Complaint Protocol") for a councillor to request this Office to review prior conduct. I agreed to consider the request. At the February 10-11, 2015 meeting of City Council, the Councillor rose on a point of personal privilege to advise City Council of his request to this Office.

As with all formal complaints received by this Office, I reviewed the allegations against all provisions in the Code of Conduct, not just those identified by the Complainant. On February 9, 2015, I notified the Councillor and the Complainant that I would investigate the complaint and that due to the overlap between the Councillor's request and the complaint, his request for a review would be included in the investigation. Accordingly, I was not required to determine this Office's jurisdiction to deal with the Councillor's request to review his own prior conduct.

After the exchange of response and reply, the investigation commenced on March 11, 2015. I completed the last investigative step in late April 2016.

On June 1, 2016, as required by the Complaint Protocol, I provided the Councillor with a statement of proposed findings. The Councillor made submissions that have been considered and are reflected in this report.

## **Evidence and standard of proof**

In making findings of fact, I adhere to the standard of proof for fact-finders in civil cases identified by the Supreme Court of Canada, a balance of the probabilities.<sup>1</sup> The balance of probabilities standard requires a fact finder to "scrutinize the relevant evidence with

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<sup>1</sup> *F.H. v. McDougall*, [2008] 3 SCR 41, 61; 2008 SCC 53 (SCC), available at <http://canlii.ca/t/20xm8> (internal citations omitted).

care to determine whether it is more likely than not that an alleged event occurred."<sup>2</sup> Accordingly, the findings of fact throughout the following analyses are based on whether it is more likely than not that the events occurred.

## **THE SECTION 37 AGREEMENT**

### **The complaint and response**

The Complainant alleges that when Councillor Grimes moved a motion at City Council to reduce the amount of section 37 funds payable by DSD to the City for its Eleven Superior Project from \$250,000 to \$150,000 (the "Motion"), he "deliberately or inadvertently misled Council" when he said, "I have a technical amendment here that staff's okay with." The Complainant alleges it was wrong to characterize the amendment as "technical" and asserts that staff were not aware of the motion. The Complainant asserts that by moving the Motion to reduce the agreement by \$100,000 the Councillor deprived the community of the full value of the section 37 funds available to it.

In response to the complaint, the Councillor asserted that the agreement had not been finalized when the staff report was completed and that staff in the Planning Department were aware that the amount could change. The Councillor stated that he had full authority to negotiate and "direct"<sup>3</sup> the appropriate amount of DSD's section 37 contribution on behalf of the City and that the amount of \$150,000 was an appropriate amount that took into consideration contributions that DSD had made or intended to make in the future.

In reply, the Complainant disputed some of the Councillor's explanation about contributions that DSD had made or intended to make. The Complainant continued to assert that the "Councillor's failure to provide full, clear information [to City Council] about the nature of the amendment amounted to a lack of truthfulness and breach of trust that should deeply concern the Integrity Commissioner and City Council."

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<sup>2</sup> Ibid. at 61.

<sup>3</sup> During his testimony in this investigation, Councillor Grimes clarified that he does not "direct" City staff to fix section 37 amounts but rather he works with staff. His choice of the word "direct" was to indicate that he has a significant amount of authority in the section 37 negotiation process. The City's current section 37 guidelines contemplate that members of Council play a key role in negotiations.



## **Investigation Steps**

I reviewed the complaint, response, and reply, a video of the Council meeting in question, all related staff reports and Council decisions, as well as background material consisting of staff reports relating to the role of members of Council in the planning application process, including specifically in relation to section 37 agreements and relevant City policies.

I compelled records from the planning file relevant to the Section 37 Agreement and electronic records from the City, including records from the Councillor's office. The request yielded hundreds of records.

The following people were interviewed:

- The Co-owner and Partner of DSD (referred to below as the "DSD Partner")
- The former Development Manager of DSD (referred to below as the "DSD Manager"),
- The City of Toronto Planner with responsibility for this file (referred to below as "Planner1")
- The City of Toronto (BIA Office) Streetscape Designer/Capital Projects Coordinator with responsibility for streetscaping projects in the ward
- Councillor Mark Grimes
- The Executive Assistant to Councillor Grimes in 2011 and 2012 (referred to below as the "Councillor's EA")
- The current Executive Assistant to Councillor Grimes
- The current Director of Planning for Etobicoke York

Those with specific knowledge of the events in this case were interviewed under oath in accordance with the powers set out in section 33 of the *Public Inquiries Act*.

## **Background**

Some background information about the project and the vote by Council, most of which is a matter of public record, is required to understand the allegations about the Councillor's conduct.

### *The Planning Application for Eleven Superior*

Eleven Superior is the commercial name of a development project at the corner of Lakeshore Boulevard and Superior Avenue in the Councillor's ward in the west end of Toronto. The developer, DSD, submitted its planning application in 2010. Two community consultation meetings occurred, one in July 2010 and one on May 9, 2011.

Ultimately, the development proposal required an amendment to the Zoning Bylaw and was therefore required to be considered by Etobicoke York Community Council ("EYCC") and City Council.

On June 6, 2011, a staff report authored by Planner1, the City Planner assigned to the project, was submitted to the agenda of the June 22, 2011 EYCC meeting. The City Planning Division recommended that Council amend the Zoning Bylaw to permit the project and require the developer, DSD, to enter into a section 37 agreement to provide a contribution of \$250,000 for local parks improvements. The report stated that DSD agreed to the amount.<sup>4</sup> EYCC approved the staff recommendations.

On July 12, 2011, the EYCC decision came before City Council for approval. Councillor Grimes moved the Motion to reduce the section 37 contribution to \$100,000. The Motion was approved by a vote of 39-4. The item was adopted, as amended, by a vote of 37-6. When moving the Motion, the Councillor stated, "I have a technical amendment here that staff's okay with."

The zoning bylaw amendment was otherwise approved in accordance with staff's recommendations but was appealed to the Ontario Municipal Board. The appeal was dismissed on May 28, 2012.<sup>5</sup>

#### *Section 37 funds background*

Section 37 of the *Planning Act*<sup>6</sup> allows municipalities in Ontario to require an applicant to provide a community benefit<sup>7</sup> to the City when a proposed real estate development requires a zoning bylaw amendment allowing the proposed development to be larger (*i.e.* take up more space on a parcel of land) than allowed under the existing zoning bylaw. This increase (also known as a density bonus)<sup>8</sup> allows developers to build taller buildings with more units. Cities must have provisions in their official plans relating to authorizations for increased height and density before they can take advantage of section 37.<sup>9</sup>

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<sup>4</sup> Available at <http://www.toronto.ca/legdocs/mmis/2011/ey/bgrd/backgroundfile-38623.pdf>.

<sup>5</sup> July 6, 2012, Memorandum of Oral Decision of the Ontario Municipal Board, Case PL110834 (dismissing appeal).

<sup>6</sup> R.S.O. 1990, c. P. 13

<sup>7</sup> S. 37 refers to "Such facilities, services or matters as are set out in the by-law."

<sup>8</sup> Zoning bylaws generally include a limit on a development's "density", the percentage (or multiple) of the lot area that a building is permitted to occupy.

<sup>9</sup> *Ibid.* at s. 37(2).

Toronto has provisions in its Official Plan governing section 37 implementation<sup>10</sup> and also passed specific implementation guidelines in 2007<sup>11</sup> and 2014.<sup>12</sup> Unlike a park dedication or a development charge, section 37 does not require a specific type of benefit or a specific amount or value. Instead, it allows a municipality flexibility to address the needs of the local community in which a new development will be built.

As part of the planning approval process, section 37 benefits are approved by City Council,<sup>13</sup> and documented in an agreement between the City and the applicant.<sup>14</sup>

The City's implementation guidelines state that there is a role for the local councillor (in whose ward the new development project will be located) to play. In particular, it is up to councillors to consult with local communities to identify potential benefits in their wards<sup>15</sup> and councillors and their staff can take part in the process of negotiating section 37 agreements.<sup>16</sup> Because there is no formula to determine section 37 benefits, a councillor's knowledge of local needs could be very important to the negotiation process.<sup>17</sup> Further, the City expects councillors to take part in the negotiations.<sup>18</sup>

While City staff plays a role in the negotiations to make sure that City policies are complied with<sup>19</sup> and a councillor should consult with City Planning before the councillor conducts any independent negotiations,<sup>20</sup> the City gives high priority to proposed benefits that result from consultations with the local councillor and the community.<sup>21</sup> City Planning is required to notify a councillor before beginning any negotiations and to provide the councillor with available information and advice.<sup>22</sup> As a result, an individual ward councillor has significant influence over negotiation of section 37 benefits.

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<sup>10</sup> s. 5.1.1.

<sup>11</sup> "Implementation Guidelines for Section 37 of the Planning Act" and "Protocol for Negotiating Section 37 Community Benefits".

<sup>12</sup> "Improvements on the Section 37 Implementation Process".

<sup>13</sup> *Planning Act*, R.S.O. 1990, c. P. 13, ss. 34(1), 34(11). Only council is authorized to pass or amend zoning bylaws.

<sup>14</sup> *Ibid.*, s. 37(3).

<sup>15</sup> *Ibid.*, staff report p. 7.

<sup>16</sup> See *Ibid.* (explaining that City staff will provide training to councillors on these topics).

<sup>17</sup> See s. 37 Implementation Guidelines and Negotiating Protocol at s. 2.5.

<sup>18</sup> *Ibid.* at ss. 2.6, 2.11.

<sup>19</sup> *Ibid.*, s. 2.12.

<sup>20</sup> *Ibid.*, protocol, "Other issues", para (i).

<sup>21</sup> *Ibid.*, Protocol, "Determination of Appropriate Types of Community Benefits" p. 34.

<sup>22</sup> *Ibid.*, Protocol; "Consultation With Ward Councillor", paras. (i)-(ii).

## *City community benefits policies*

Section 37 funds are simply one type of community benefit. The City has a policy with respect to community benefits, as well as a number of other policies relating to "community benefits, naming rights, sponsorships and honourific naming," which are managed by the City's Office of Partnerships.<sup>23</sup>

The "Donations to the City of Toronto for Community Benefits Policy" (the "Community Benefits Policy"),<sup>24</sup> which has been in effect since 2006, has as its objective:

City building is a collective and ongoing endeavour. Seeking or obtaining voluntary donations for community benefits provides valuable contributions to city building. Partnership opportunities for donations for community benefits should respect relevant legislative and policy provisions and occur within an ethical framework that preserves the integrity of municipal decision making processes.<sup>25</sup>

[emphasis added]

The policy prohibits the City from requesting any "conditions, contributions, and community benefits" from an applicant seeking a City approval (including planning approvals) unless such requests are permitted by the decision-making process.<sup>26</sup>

The Community Benefits Policy contains specific rules for planning approvals. It states,

Voluntary donations for community benefits that fall outside the scope of a planning approval may not be solicited and offers may not be accepted from an

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<sup>23</sup> Partnership Policies:

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=33479ae0919ef310VgnVCM10000071d60f89RCRD&vgnextchannel=9aac8ed34ce9e310VgnVCM10000071d60f89RCRD>

<sup>24</sup> The current version of the policy, revised in 2012 after the events at issue took place, is available on the website of the Toronto Office of Partnerships, at [http://www1.toronto.ca/city\\_of\\_toronto/toronto\\_office\\_of\\_partnerships/files/pdf/donation\\_policy.pdf](http://www1.toronto.ca/city_of_toronto/toronto_office_of_partnerships/files/pdf/donation_policy.pdf). The provisions of the Policy applicable to this case were in effect and unchanged by the 2012 amendments. The original policy, adopted in 2006, is available at <http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl003.pdf>.

<sup>25</sup> <http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl003.pdf>.

<sup>26</sup> 2006 Community Benefits Policy, ss. 1.1, 1.4.

applicant or their representative concurrent to a planning approval or from a party proposing to make a planning application.<sup>27</sup>

In addition, for clarity the Policy establishes a blackout period during which discussions about voluntary donations are not permitted.<sup>28</sup> The blackout period commences from the date the Councillor receives information that an individual, organization or company has an interest or intent in submitting an application for an approval and it ends when the matter is finally resolved.

The policy is in place to ensure that a benefit to a City facility or service does not improperly influence a City decision. This policy applies to all public officials, including City staff and members of Council.

### **Relevant provisions of the Code of Conduct**

Examining the Councillor's role in relation to the section 37 agreement required consideration of the following articles of the Code of Conduct: IV (Gifts and Benefits), VI (Use of City Property, Services and Other Resources), VIII (Improper Use of Influence), XII (Conduct Respecting Staff) and XV (Failure to Adhere to Council Policies and Procedures). Although the Preamble cannot support a stand-alone contravention of the Code of Conduct<sup>29</sup>, it provides a helpful framework within which to review the Councillor's actions. Relevant provisions of the Code of Conduct are reproduced at Appendix A to this Report.

#### *Article relevant to Councillor's statement to Council – Article XII*

The Councillor's statement to Council contained a representation about the opinion of City staff, requiring consideration of Article XII (Conduct Respecting Staff). Article XII deals with the obligation of members of Council to be mindful of the unique role of staff. It states, "there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles."

At a high level, Article XII outlines the following principles and standards for how members of Council interact with the public service:

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<sup>27</sup> Ibid., s. 1.4.

<sup>28</sup> Ibid., ss. 1.1, 1.5.

<sup>29</sup> See the Integrity Commissioner's July 8, 2005 report to Council; attachment 7 (<http://www.toronto.ca/legdocs/2005/minutes/council/cc050719.pdf#page315>)

- Public servants serve Council as a whole and the combined interests of all members as evidenced through the decisions of Council.
- Members of Council must be respectful of the role of public servants to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of Council.
- Members of Council are responsible for preserving public trust and confidence in the integrity of the public service and for supporting a public servant's responsibility to provide professional and frank advice.

There is no express obligation for members of Council to tell the truth. However, the Preamble to the Code of Conduct states that members should perform their functions with integrity. Integrity connotes moral uprightness and honesty<sup>30</sup> and is generally understood to include the quality of being honest and fair.<sup>31</sup>

As noted, the Preamble cannot form the basis of a stand-alone contravention, but it is useful to assist with interpreting the Code of Conduct and in the practical terms of this case, it is relevant to understanding the obligations of the Councillor as it relates to statements about staff's opinion.

In this case, for the Councillor to have contravened Article XII of the Code of Conduct, it must be established that the Councillor made an incorrect statement about staff's view and that he intended to provide incorrect information to Council about staff's views. A statement which may have been misconstrued, or a well-intentioned misunderstanding, will not lead to a breach of the Code of Conduct.

*Articles relevant to the Councillor's role in relation to the agreement and the Motion – Articles IV, VI, VIII and XV*

The Councillor's role in relation to the section 37 agreement and the Motion potentially engage Articles IV, VI, VIII and XV of the Code of Conduct.

Article IV (Gifts and Benefits) prohibits members of Council from receiving any gift or benefit connected with their duties as a member of Council, with very limited exceptions. Article VI (Use of City Property, Services and Other Resources) requires that members of Council use City property and resources only for the business of the City and no other purpose. Article VIII (Improper Use of Influence) requires that members of

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<sup>30</sup> Canadian Oxford Dictionary

<sup>31</sup> Merriam-Webster Dictionary

Council use the influence of their office exclusively for the exercise of their official duties.

For the Councillor's conduct to have contravened Articles IV, VI or VIII of the Code of Conduct, it must be established that the Councillor moved the Motion for a purpose unrelated to his role as councillor, in this case to improperly benefit himself, his family, friends or associates. Benefitting oneself could include receipt or promise of gifts or benefits.

Article XV (Failure to Adhere to Council Policies and Procedures) requires members of Council to observe the terms of all policies and procedures established by City Council. The City's policies and guidance in relation to section 37 agreements and community benefits, described in the background section above, are of relevance to this case. For the Councillor's conduct to have contravened Article XV, it must be established that he failed to follow either the City's section 37 policies and guidelines or the City's Community Benefits Policy.

With respect to community benefits in relation to the Eleven Superior project, the applicable blackout period for discussions about community benefits (other than the section 37 agreement) ended in May 2012, the date on which the matter was finally resolved at the OMB.<sup>32</sup>

### **Findings**

#### *The Councillor stood to gain no private advantage in relation to DSD*

The investigation has established that neither the Councillor nor any person in his family stood to gain any private advantage from DSD as a result of the Councillor's role in relation to the section 37 agreement. I form this conclusion in reliance on the Councillor's testimony under oath that he has no interest in DSD nor has he ever received a benefit of any kind from DSD or anyone on its behalf, including the promise of a future benefit. The Councillor's statement was corroborated by testimony under oath of the DSD Partner.

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<sup>32</sup> 2006 Community Benefits Policy, ss. 1.2.1-1.5.5.

*City Staff were aware of the ongoing negotiations between the Councillor and DSD*

When discussions about the section 37 agreement began in May 2011, the Councillor and planning staff agreed that an appropriate section 37 amount was \$250,000. DSD resisted the amount and sought a lower number. In the interests of time and in an effort to meet the final City Council agenda deadline prior to the summer break, DSD agreed to allow the amount of \$250,000 to be included in the July 6 staff report on the understanding that further discussions would occur.

DSD believed the amount of \$250,000 was too high because it was more money than it had paid for other similar buildings in other municipalities in Ontario and in comparison to its contribution made in relation to another nearby project.

In advance of the Community Council meeting, the DSD Partner emailed both Planner1, the City Planner with responsibility for the file, and the Councillor's EA requesting a reduction. Planner1 re-directed the DSD Partner to the Councillor for further discussions. The Councillor's EA told the DSD Partner that the Councillor would move a motion at the Community Council meeting to reduce the amount. No motion was moved at the Community Council meeting, and the staff recommendation (i.e. \$250,000) was approved.

As the July 12 City Council meeting drew near, Planner1 continued to be aware that the amount of the section 37 agreement could change. In a July 5, 2011, email to the City lawyer drafting the necessary documentation Planner1 wrote, "the applicant and the local councillor were to have further discussions regarding the exact contribution amount, so far, I haven't heard anything."

Until July 6, 2011, City staff and the Development Manager at DSD (not the DSD Partner) were proceeding on the basis that the section 37 amount was set at \$250,000.

At some point prior to the July 11, 2011 Council meeting, a conversation between the DSD Partner and Councillor Grimes occurred. During this conversation, Councillor Grimes agreed to bring a motion to reduce the amount to \$150,000.

On July 11, 2011 at 3:38 p.m., the Councillor's EA sent the DSD Development Manager an email advising her that the Councillor would be moving for an amendment to reduce the section 37 contribution to \$150,000 at the City Council meeting. The Councillor's EA asked if DSD had "any estimates yet for the work discussed – i.e. the roof and the blue cement painting." The Development Manager at DSD responded within half an hour:

Our landscape architects are working on it right now. However, the principal architect is on vacation until the 25th of July. In the meantime, our consultant will confirm the dimensions of the existing concrete pad



and boardwalk in order to obtain cost estimates for the new stage/sun shelter and archway. As for the blue concrete, we should get an estimate from [...] shortly.

Regarding the budget for this work, our meeting with the Councillor last week did not specify a firm amount to be allocated to these items. Are we assuming a budget of \$100,000? Since the Councillor will be moving for an amendment to \$150,000 from \$250,000?

The email suggests that the reduction of \$100,000 was in exchange for DSD's agreement to carry out other work in kind: a new stage/sun shelter and replacement blue cement at Amos Waites Park. In light of the timing of the discussions, the Community Benefits Policy did not permit discussions about such voluntary contributions, contributions outside of the confines of the section 37 agreement. I will return to this issue below.

#### *Circulating the draft motion to staff*

Around 4 p.m. on July 11, City staff were informed that the Councillor would be moving to reduce the amount to \$150,000 at City Council. The Councillor's EA circulated a draft motion to the then Chief Planner and Planner1 with the request, "Please let me know if you wish changes." The motion contemplated that the \$150,000 contribution would be either in cash or "in kind." Planner1 circulated the draft to other City staff including the City Solicitor working on the file.

City staff (i.e. Planner1 and the City Solicitor with charge of the file) informed the Councillor's office that a section 37 agreement with an in-kind component was a much more complicated agreement to draft and it would not be possible to do so in time for the Council meeting.

Planner1 emailed the Councillor's EA at 4:55 pm to say, "is it possible to have \$150,000 cash only?" The Councillor's EA wrote back at 5:02 to say, "Yes it is \$150,000 cash only. Anything else will be just a donation not the community, (and dealt with later.) outside of this agreement. is that okay? [sic]" [emphasis added]. Planner1 replied, "..., please make sure your motion is clear to reflect the below."

In response to the draft motion, City staff prepared two versions of the section 37 agreement, one with a section 37 amount of \$150,000, and one with a section 37 amount of \$250,000.

In this investigation, Planner1 testified that he did not have an opinion about the appropriateness of the amount of \$150,000 and he believed that at this point in the

timeline, it was a matter for Council to decide. He explained that Council is always free to accept or reject staff recommendations.

### *The Motion before City Council*

At 9:43 am on July 12, 2011 (the day of the Council meeting) the Councillor's EA forwarded a revised draft motion to the Clerk, Planner1, and the City lawyer. Less than an hour later, Councillor Grimes rose to address the item and tabled the Motion. He stated "I can release that... I have a technical amendment here that staff's okay with."

### *The reason for the reduction*

In response to this complaint and in his testimony, the Councillor asserted that although he initially sought to obtain \$250,000, the amount of \$150,000 was an appropriate section 37 amount. He also said that it took into account other contributions made by DSD:

- excess costs incurred by DSD in relation to previous work it completed in Amos Waites Park (referred to below as the "excess costs"); and,
- planned streetscape improvements to be completed by DSD adjacent to Eleven Superior (referred to below as the "streetscaping").

As described above, the evidence in this investigation suggested another rationale for the reduction: a possible voluntary contribution of future improvements to Amos Waites Park.

Each of the Councillor's explanations and the third rationale are examined below.

### **Excess costs**

The Councillor asserted that, in part, the section 37 amount was reduced to take into account excess costs paid by DSD in relation to a previous project. Prior to Eleven Superior, DSD built another development project in the Councillor's ward: Hearthstone by the Bay ("Hearthstone"). As part of the planning approval process for Hearthstone (completed in 2009), DSD entered into a section 45 agreement that required it to make in-kind contributions to redevelop Amos Waites Park.<sup>33</sup> This contribution involved

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<sup>33</sup> At its April 6, 2009 meeting, City Council authorized staff to enter into the agreement. Section 45 of the Planning Act allows the City to impose conditions on a development when it approves a minor variance. In this case, the Committee of Adjustment approved a variance permitting DSD to add an additional two

significant renovations to the park including the installation of pathways and a stage. The work was carried out in partnership with the City and in accordance with applicable City policies.

One component of the renovation at Amos Waites Park was that the pathways were to include blue-coloured cement. When it came time to incorporate the blue cement into the project, the cost to acquire the cement exceeded the budgeted amounts. The evidence is that either the Councillor or a representative of the City agreed to reimburse DSD for the extra costs for the blue cement if they agreed to incur them. DSD provided the blue cement; however, the verbal agreement was not documented. From April 2011 until late October 2013, DSD pursued reimbursement of these amounts from the Councillor's office, but was unable to recover the money because there was no documentation.

In this investigation, the DSD Partner testified that the amount remains outstanding and unpaid.

I find that the excess payment for blue cement was unrelated to the section 37 agreement because there is documentary evidence, to which I give significant weight, to demonstrate that DSD continued to pursue reimbursement well after the July 2011 discussion. It is therefore not possible that the reduction of the section 37 funds was "on account" of the overpayment – had this been the case, DSD would most likely have ceased pursuing the claim.

### **Streetscaping**

The second justification offered by the Councillor for the reduction in the section 37 amount was streetscaping promised by DSD.

As a condition of developing the project, DSD was required, as any developer would be, to complete the City-owned portion of the sidewalk adjacent to the building as per specifications established in the approved site plan.

Around the same time that construction of Eleven Superior was underway, the business improvement areas (BIAs) along Lakeshore Boulevard were developing a master streetscape plan so that streetscaping across Lakeshore Boulevard would be consistent. This streetscape plan was approved in principle by Toronto City Council at

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storeys to the building and recommended the park improvements as a condition.  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EY25.38>.

its August 2014 meeting.<sup>34</sup> When this plan is formally approved, all site plans for new developments along Lakeshore will be required to comply with the streetscaping specifications set out therein.

DSD was aware of the local BIA's plans and wished to cooperate with those plans. The streetscaping requirements now form part of the site plan and will be completed. Although it was possible for DSD not to cooperate with the wishes of the BIA, I have concluded that DSD would have cooperated with the BIA regardless of the amount of the section 37 agreement because it was consistent with DSD's overall approach to cooperate with the community. I therefore find that the streetscape improvements were unrelated to the section 37 agreement.

### **Additional Improvements**

There is a third explanation for the reduction in the section 37 amount. Though the Councillor did not put this explanation forth in his response, I have concluded that the promise of additional improvements at Amos Waites Park referred to below as the "Additional Improvements," was the reason for the reduction in the section 37 amount.

As described above, on July 11 (the day before the Council meeting), in an email to Planner1, the Councillor's EA stated that in addition to the \$150,000 section 37 payment, DSD would be making other contributions to the community in the form of a donation only and "dealt with later." On the same day, the Councillor's EA and the DSD Development Manager exchanged emails about obtaining quotes and pricing for replacement blue cement, "a new stage/sun shelter and archway" and discussed a "budget" of \$100,000.

Soon after the Motion passed in late July 2011, DSD took steps to obtain cost estimates for the Additional Improvements. A meeting between DSD and the Councillor occurred in July 2011 to discuss the plans. In September 2011, DSD provided Councillor Grimes' office with drawings of the planned Additional Improvements and the Councillor provided input on the design. No activity appears to have occurred in relation to this issue from October 25, 2011 until almost a year later in October 2012.

In the meantime, the zoning approval for Eleven Superior was appealed to the Ontario Municipal Board. In May 2012, the OMB rendered its decision in the Eleven Superior application.

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<sup>34</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EY35.72>

In October 2012, December 2012 and June 2013, staff in the Councillor's office followed up with DSD to inquire about the status of the Additional Improvements. DSD provided the Councillor's office with status updates, including dates for possible completion of the work. In a December 2012 email exchange, the Councillor's EA forwarded the update to the Councillor with a note advising him that if the project proceeded they (the Councillor) would "need to go through the Partnership office to accept the donation [emphasis added]."

A meeting took place between the Councillor and representatives of DSD around July 15, 2013, at Amos Waites Park, to discuss the Additional Improvements. In early July, 2013, staff in the Councillor's office emailed the DSD Development Manager to advise that from the Councillor's perspective, the plans were finalized and he requests that the project be put "in motion asap".

The DSD Development Manager, the DSD Partner, the Councillor, and the Councillor's EA all testified that notwithstanding the email correspondence there was never a legally binding agreement with respect to the Additional Improvements. The Additional Improvements have never been constructed and there are no current plans for DSD to build them.

The Councillor testified that there were deficiencies with the Amos Waites Park improvements completed in 2009 and that he, along with members of the community, wanted certain improvements made to the park. He was familiar with the drawings circulated by DSD and testified that these drawings were in fact being used in current discussions about the need to improve the park. Councillor Grimes explained that he sought, and even today continues to seek, that the Additional Improvements be made to the park. He testified that if the specifications were "costed" he could bring a motion to allocate section 37 funds for this purpose but he said that before that could happen he would need to consult with the community.

I find that when Councillor Grimes and the DSD Partner agreed to the lower section 37 agreement amount, they discussed the possibility that DSD might contribute the Additional Improvements in lieu of the larger amount. Both the DSD Partner and Councillor Grimes provided sufficient instruction to their staff to yield the email exchanges set out above and, from the perspective of DSD, actions to obtain quotes and drawings. I have concluded that until at least 2013, Councillor Grimes believed that DSD had made a commitment – although not a legally binding commitment – to contribute the Additional Improvements to Amos Waites Park. Councillor Grimes had not yet worked out how the contribution would be made and recognized that this detail would need to be worked out later.

The discussions about the Additional Improvements did not amount to any binding agreement. It was not possible to do so. Members of Council do not have authority to

enter into agreements with third parties for donations to the City.<sup>35</sup> Furthermore, the discussions were expressly prohibited by the Community Benefits Policy.

The existence of a possible third justification and the fact that it was not included in the Councillor's response caused me pause. I explored whether this discrepancy should impact my assessment of the Councillor's credibility in responding and giving evidence in this investigation. I have concluded that it does not.

I found the Councillor imprecise but forthright in his answers to questions in his interviews. Some of the events at issue took place more than four years prior to the complaint. The Councillor did not deny that the discussions occurred and when presented with the emails acknowledged and remembered them, providing additional context.

The Councillor's inclusion of information about the excess costs and the streetscaping in his response to this complaint is best understood as an overall justification for the appropriateness of the amount. In other words, he – through his response – wished to serve two objectives: demonstrate his compliance with the Code; and, demonstrate that he achieved value for the community.

I have concluded that if the Additional Improvements were completed – leaving aside the fact that such negotiations and contributions were not permitted – the Councillor would have included this information as further support for his position that the \$150,000 was an appropriate contribution in light of all of the other contributions made by DSD.

## **Analysis**

### *The statement to Council*

The evidence is that the Councillor and planning staff initially agreed that an appropriate section 37 amount was \$250,000. DSD resisted the amount but in the interests of time, agreed to allow the number to be included in the report with the understanding that discussions could continue. Discussions continued and DSD persuaded the Councillor

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<sup>35</sup> A narrow exception to this rule allows Members to solicit donations to Community Events, under the "Council Member-Organized Community Events Policy" and such donations are technically to the City. However, such donations are very different from contributions made in conjunction with planning approvals. Nevertheless, they are also regulated by a policy, must be disclosed, and subject to an annual cap.

to reduce the amount. City staff were aware of, but not a party to, these late negotiations.

Councillor Grimes' statement to Council that staff were "okay" with the amendment could be interpreted to mean that staff approved of every aspect of the Motion, including the amount. It was Councillor Grimes' position that if staff had a concern with the amount he would have been informed and he would have resolved the issue with staff prior to presenting the Motion.

The evidence supports the Councillor's position. In the hours leading up to the City Council meeting, Councillor Grimes' staff informed Planner1 and the Chief Planner about the Motion. Staff raised concerns about the Motion (unrelated to the amount) and these concerns were addressed. Had City staff raised a concern about the amount, which they did not, I am satisfied that Councillor Grimes would have worked with staff to try to resolve the concern.

Planner1's evidence is that he did not have an opinion about the amount of \$150,000 because it was Council's prerogative to adopt or amend staff recommendations. In light of the fact that Planner1 was aware of the possibility of future negotiations, I do not interpret Planner1's neutrality on the amount as a suggestion that the amount was not appropriate, but rather that he believed that at this point in the timeline the matter was for Council to resolve.

The Complainant also takes issue with Councillor Grimes' characterization of the amendment as a technical amendment. This is a valid concern. The change was not technical but substantive. However, the Motion did not conceal the substance of the amendment. Any member of Council who had reviewed the report would recognize that the Motion resulted in a substantive change.

As is evidenced in this case, councillors exercise a high degree of influence and discretion in relation to section 37 agreements. While councillors work with staff to negotiate section 37 agreements, staff rely on councillors for input and – as in this case – direct dealings. Yet, ultimately, it is for Council as a whole to decide whether to accept the terms of any given section 37 agreement.

Ideally, the staff report would not have been finalized until the agreement was firm. In hindsight – particularly in the face of this complaint – it is obvious that it would have been better for the Councillor to have been more specific in his statement to Council about the circumstances leading to the amendment.

Councillor Grimes could have more accurately explained the context of the Motion; however, I find that he did not intentionally misrepresent staff's position on the merits of the Motion. He did not contravene the Code of Conduct in relation to his statement.

Although the evidence does not support a finding that the Councillor contravened the Code of Conduct, the circumstances in this case illuminate why it is important for members of Council to act with caution and due precision when making statements about the views of staff.<sup>36</sup>

*The reasons for the reduction*

### **No private advantage**

There is no evidence that Councillor Grimes' actions in relation to the Motion were part of any effort to further a private advantage. I therefore conclude that the Councillor's conduct did not contravene Articles IV, VI and VIII of the Code of Conduct.

### **Compliance with the Community Benefits Policy**

The discussions and correspondence that occurred between July and September 2011 about the Additional Improvements were contrary to the Community Benefits Policy. The Community Benefits Policy provides that "voluntary donations for community benefits ... may not be solicited and offers may not be accepted from an applicant concurrent to a planning approval...". The Community Benefits Policy prescribes a blackout period that begins when a planning application is commenced and concludes when the application decision-making process is complete. In this case, the application decision-making process concluded in May 2012.

I have considered whether the discussions were too preliminary to trigger the obligations in the policy. In my view, the policy contains no threshold level of engagement before it is triggered. The absence of a threshold makes good sense and is consistent with the overall objectives of the policy that while voluntary donations to community benefits can contribute to city building, care must be taken to ensure that donations are made in a way that preserves the integrity of the City's decision making processes.

In my view, the Community Benefits Policy is one of the City's more significant policies because it sets out clear rules of engagement for how City officials interact with

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<sup>36</sup> As a matter of practical advice on the issue of speaking for staff, see Fenn, Michael, "Successful Staff/Council Relations: Old Lessons For New Challenges," Policy and Management Briefs, Association of Municipal Managers, Clerks and Treasurers of Ontario:  
[http://www.amcto.com/imis15/Documents/Resources%20and%20Pubs/Fenn\\_Council%20Staff%20Relations\\_Final%20.pdf](http://www.amcto.com/imis15/Documents/Resources%20and%20Pubs/Fenn_Council%20Staff%20Relations_Final%20.pdf).



stakeholders during times when the City is involved in making administrative decisions that affect a stakeholder's interest. It ensures that stakeholders cannot use voluntary donations to influence City decision-making.

When the Councillor engaged in discussion with DSD about the Additional Improvements during the blackout period, he acted contrary to the Community Benefits Policy.

It is incumbent on members of Council to enhance and build up the trust and confidence that the public has in its decision-making – the objective of the Community Benefits Policy. Accordingly, I conclude that the Councillor contravened Article XV when he engaged in discussion with DSD about the Additional Improvements in June, July and September 2011.

My recommendations about an appropriate penalty or remedial action are set out in the conclusion to this report. I will now turn to the second part of the investigation, relating to the Councillor's appearance in a promotional video for another development company.

## **VIDEO APPEARANCE**

### **The complaint and response**

In 2014, the Councillor appeared in a video produced by Empire Communities (“EC”) to promote Eau du Soleil (“EDS”), a development project under construction at 2183 Lakeshore Blvd. West in the Councillor’s ward.

The video includes the logo for EC and EDS and is one in a series of videos encouraging people to purchase condominiums at EDS. The Councillor appears in the video and states:

Well, I'm Councillor Mark Grimes from Ward 6, Etobicoke Lakeshore. I was elected here in 2003. Lifelong resident. Grew up. With my wife Anne and our five kids. So I know the area I walk on very well. Back in '03, decided to run for Council to see what we could do to revitalize the area. This was one of the first areas that I came down to. We had a plan down here from far back to revitalize our waterfront and has been absolutely fantastic, was happier.

How I met Empire was that they came in with Beyond the Sea, down on the curve on Humber Bay, across Marina Del Rey. They came in; I met Daniel Guizetti and his team and great people to work with. Beyond the Sea went up -- the three towers went up -- and sold out within hours,

which was unheard of. That kind of neighbours on the border of Mimico, which was just recently voted one of the top ten places to live in Toronto. So, all this activity on Humber Bay Shores -- the wave is coming west up near Mimico, also revitalized its main street. And it's just great to see all the great activities happening and a lot of it has been because of Beyond the Sea and their investment in our community and Humber Bay Shores. The activity, I mean there's something here for everybody -- if you're a jogger, you're a walker, you want to take your baby in a stroller, you want to sail -- there's great sailing clubs right at your door step. You can walk over to your yacht club. If you have a dog or want to bird watch, you fly kites -- there's boat modelling ponds right here. There is just everything here. You got transit at your doorstep, express bus running downtown, there's just -- it's all here with -- you know -- the great, billion-dollar view of the City. You have kind of like suburb living with a downtown feel so you kind of get the best of both worlds here.

The video is available on the EC YouTube channel and it has had more than 11,000 views.

The Complainant states that the Councillor's participation in the video was contrary to Article VIII of the Code of Conduct. In support, he relies on sample advice provided by the Office of the Integrity Commissioner with respect to Article VIII:

Q. a Member attends an event in her or his Ward celebrating the completion of a significant property development. The property developer asks the member to pose for a photograph along with other dignitaries attending the event. Should the member agree?

A. Inquire as to the use that the developer intends to make of the photograph. If the answer is that it will be used for advertising or other promotional purposes, decline the invitation: see Article VIII of the Code of Conduct.

In response to the complaint, the Councillor stated that he believed his involvement in the video would help "to promote ward 6 and bring awareness to a part of the city that is often overlooked." The Councillor stated that other members of Council were involved in similar activities and disputed that his conduct was improper.

In his testimony in this investigation, the Councillor elaborated that he agreed to participate in the video to promote the ward and as part of his efforts to bring revitalization to the area. He acknowledged that it may have been better if he did not

appear in the video, but he emphasized that his intention was to promote the ward, not EC.

### **Investigation steps**

To investigate the allegation, I reviewed the complaint response and reply, the video, staff reports and Council decisions relating to EDS, compelled records from the City of Toronto, including electronic records in the Councillor's office. The request yielded hundreds of records.

The following people were interviewed:

- The Co-Founder and EVP, Industry Relations of EC (referred to below as the "EC EVP")
- Councillor Mark Grimes
- The Councillor's current and former Executive Assistants

### **Relevant provisions of the Code of Conduct**

The investigation in relation to the video required consideration of Articles IV (Gifts and Benefits) and VIII (Improper Use of Influence). These provisions are summarized earlier in this report in relation to the section 37 agreement and are reproduced in Appendix A.

For the Councillor's conduct to have contravened the Code in relation to the video appearance, it must be established either:

- that appearing in the video and lending his name and title to the project is not a proper use of a councillor's influence; *or*
- that the Councillor, his family, friends or associates stood to gain a private advantage or benefit for his participation in the video. As noted, benefiting oneself could include receipt or promise of gifts or benefits.

It was necessary to understand the relationship between Councillor Grimes and EC. In the course of this investigation, I became aware of two other interactions between the Councillor and EC that also gave rise to issues under Article VIII (Improper Use of Influence).

### **Findings**

EC is a large property developer in the Southwest Ontario region. It has developed several condominium projects across Toronto. It is the developer of a large project called EDS.

### *Circumstances leading to the Video Appearance*

In 2014, EC was involved in activities to promote sales of units at EDS. At that time, the EC EVP, a principal with EC, was responsible for the marketing activities of the company. His idea was to create a series of online videos from the perspective of the architect, interior designer, landscape architect and the local councillor. The EC EVP explained that he had seen other similar-sized development companies employ similar marketing campaigns. He also explained that city councillors (across SW Ontario, not just in Toronto) are ordinarily invited to and attend ground-breaking ceremonies and make statements about the benefits of the community. He said that from his perspective it made sense to invite the Councillor as the local spokesperson for the neighbourhood.

None of the video participants, including the Councillor, were paid or compensated in any way for their appearance.

Councillor Grimes attended the EDS offices to shoot the video on April 16, 2014. He answered questions asked by the producer of the video.

### *The Relationship between Councillor Grimes and EC*

#### **City business**

The Councillor testified that his main contacts at EC were the EC EVP, another EVP for EC and EC's consultant planners. As noted, a high volume of email records were reviewed in the course of this investigation. In general, the records reveal frequent correspondence between representatives of EC – primarily their consultant planners – and the Councillor's office. The Councillor and his staff were involved in assisting EC to resolve two significant issues:

- From December 2012 to until mid-2013, issues related to site plan variances required by EC to construct its sales centre for the EDS project.
- From September 2013 until early 2014, issues related to concerns that EC raised with respect to a development charge credit request. The issue relating to the development charge was resolved favourably to EC in spring 2014.

The records evidence the efforts of the Councillor and his staff to understand the issues and to facilitate meetings with senior City staff to address the issues. Representatives of EC contacted the Councillor's office when they had concerns about City staff's approach in relation to the sales centre site plan and the development charge credit. Councillor Grimes testified that it is rare for him to disagree with the approach of planning staff but if a developer presents a concern and he agrees with it, he will advocate within the City processes for the developer to have the issue raised. There is no evidence that

anything unusual or out of the ordinary took place with respect to the Councillor's interventions. He was clearly on-side with the EC but his efforts were focused on appropriately escalating the concerns.

### **The Councillor and the EC EVP**

The Councillor and the EC EVP, the main contact for the video, have only met four or five times, mainly as a result of the fact that the EC EVP was heavily involved in BILD, the Building Industry and Land Development Association.

### **No financial interest**

The Councillor has no financial interest or stood to gain any private advantage from EC. I form this conclusion on the basis of the testimony under oath of the Councillor and the EC EVP.

The Councillor testified that neither he, nor any family member or business for which he has an interest, has any interest in EC or had ever received a benefit of any kind from EC or the EC EVP, or any principal or agent of EC, including the promise of a future benefit.

The EC EVP testified that EC has never given Councillor Grimes or his family any gift, that to his knowledge Councillor Grimes does not own any properties developed by EC and that he does not own any interest in EC.

The EC EVP recalled that he may have purchased Councillor Grimes dinner at or after a BILD event in Toronto in 2010 or 2011. The Councillor recalled the event but denied that the EC EVP paid for dinner, testifying that his ordinary practice is to pay for himself. This evidence was useful to assess credibility but I find that no specific gift was given by the EC EVP to the Councillor.

### *Other interactions*

The records reviewed in this investigation also included correspondence between the Councillor and representatives of EC that raised other concerns in relation to the Code of Conduct.

### **Donations from EC**

On two occasions, Councillor Grimes arranged for EC to make donations to third party fundraising initiatives.

In June 2014, Councillor Grimes attended an event at a school within the ward. He was informed about a fundraising initiative to complete a playground for which there was a

\$33,000 funding deficit. While at the event, he contacted a representative of EC to request funding support, which was immediately agreed to. On the day of the event, the fundraising organizer described the Councillor's efforts in an email as follows:

Some members of [a local school group], myself included, just had an incredible meeting with Mark at the school. Within five minutes he was able to secure all the remaining funding we require to bring our outdoor classroom to life. Needless to say, we were all truly amazed and grateful beyond words.

I've gone ahead and attached a PDF version of the funding graphic we presented to him. I thought you might like to have an electronic version on hand should you need to pass it along to the very generous supporter, Empire Communities – or any other potential supporters.

Please pass along our sincerest gratitude to Mark on behalf of the entire school. As mentioned, I think we were all a little speechless at the news and we'd like him to understand just how grateful we are for his efforts.

[Emphasis added.]

The Councillor provided the following context. As a councillor, he is often asked for donations by the community that he cannot accommodate. In this case, he thought he could assist by introducing representatives of EC to the school.

On July 11, 2014, representatives of EC attended a public event to present a ceremonial cheque to the local school.<sup>37</sup> The Councillor's office coordinated the cheque presentation and the Councillor attended. His appearance was documented in a photograph published in the *Toronto Star*.

The EC EVP did not attend the cheque presentation, although he was aware of it and recalled that it was to build a playground. He explained that the donation was consistent with EC's ordinary efforts to contribute to community building activities. He

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<sup>37</sup> Announcement that appeared on the blog of Empire Communities: <http://blog.empirecommunities.com/2014/07/david-hornell-jr-school-outdoor-classroom/>; and picture that appeared on thestar.com: [https://www.thestar.com/life/homes/2014/07/11/empire\\_communities\\_contribution\\_saves\\_outdoor\\_classroom.html](https://www.thestar.com/life/homes/2014/07/11/empire_communities_contribution_saves_outdoor_classroom.html)

said that EC seeks out opportunities to engage the community as part of its corporate social responsibility.

The Councillor made a similar connection between EC and another charitable cause in September 2014 when he introduced a representative of EC to the Road to Conquer Cancer street hockey tournament, an event that is not connected to the local ward. Although the donation was from EC to the tournament, the tournament consulted the Councillor about how the funds would be used.

The Councillor downplayed his role in relation to these donations, indicating that he merely connected a deserving charity to a possible donor. In relation to the donation to the school, he did more than make a connection, he made the request and facilitated the announcement event, at which he appeared. In relation to the donation to the Road to Conquer Cancer, he was – at minimum – consulted by the charity about where EC's donation should be directed.

### **Introducing a friend**

In May 2014, the Councillor asked the EC EVP to meet with his personal friend to discuss the friend's business, which offered a product for condominiums. The EC EVP agreed to meet with the Councillor's friend and two meetings occurred: an introductory meeting between the three men and a second meeting where the friend made a sales pitch to EC. The Councillor did not attend the sales pitch.

The Councillor testified that he does not have any financial interest in his friend's business, evidence that I accept.

The EC EVP stated that he felt no obligation to meet with Councillor Grimes' friend and that he routinely meets with people about similar types of businesses. Nothing ever came of the meeting and no business was transacted between EC and the friend's business.

### **Analysis**

#### *The video*

Had the Councillor sought advice from this Office in relation to the video, he would have been advised not to participate in the manner that he did. The advice referenced by the

Complainant, which suggests that Councillors should not participate in such activities, has been available since 2008<sup>38</sup> when it was included as general advice in the 2007 Annual Report of the Integrity Commissioner. Since 2011, it has appeared in the Annotated Code of Conduct that is available on the Office of the Integrity Commissioner website.

Article VIII states plainly that "[n]o member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties." In other words, it is contrary to the Code of Conduct for any councillor to use the influence of their office for a purpose unrelated to Council business.

The Councillor is identified as a member of Council in the video. His statement includes general promotion of his ward. However, it is also a clear endorsement of the business *bona fides* of EC. This type of endorsement is not an exercise of his official duties as a Councillor and it is therefore contrary to Article VIII of the Code of Conduct.

In the context of a planning application, there is a heightened need to avoid endorsements like the one that occurred in this case. Members of Council play a significant role in the planning and development application process. They act as community facilitators and contacts for developers, residents, and other stakeholders to assist with navigating the planning application process. In addition, they are administrative decision makers when planning applications come before City Council for approval. When performing their role, members of Council are required to take positions about various applications that come before them.

In consideration of the significant official role that members of Council play in the planning application process, members of Council must confine their support for developers or applications to the formal processes in which their participation is set out and regulated. When a member of Council involves himself in advocacy and support of a particular developer outside of the City's processes – in this case in the form of a promotional video – he not only acts in contravention of the Code, but also creates a perception that he has a stake in the interests of the developer that he may or may not actually have. This perception can be damaging to the trust and confidence that the public has in City Council's decision-making processes as it relates to land use planning.

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<sup>38</sup> Annual Report of the Integrity Commissioner, 2007 at p. 13:  
<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-14755.pdf>



As noted, the Councillor was provided with a statement of my proposed findings prior to finalizing this report. In response to the proposed findings, the Councillor made submissions about my interpretation of the Code of Conduct, asserting that it was too broad and that did not properly take into account that carrying out a member's official duties could sometimes align with the commercial interests of a third party.

My interpretation does not preclude a councillor from taking a position that aligns with the commercial interests of a third party. My concern in this case is for the public perception of activities that occur outside the formal processes for planning applications. It is not improper for a member of Council to advocate in favour of a development proponent in, for example, a Council debate as long as the member does not have a pecuniary interest or is not otherwise in contravention of the Code or other regulations. The Councillor's Office, in fact, was appropriately involved in assisting EC to navigate certain parts of the planning application process in the weeks and months that surrounded the video, activities which were squarely within the Councillor's authority and responsibility.

When the Councillor appeared in the video promoting EDS and EC, it was an improper use of the influence of his office and he therefore acted contrary to Article VIII of the Code of Conduct.

#### *The donations*

Had Councillor Grimes requested advice from this Office about whether he could facilitate donations from EC to the local school or the Road to Conquer Cancer, he would have been advised that he should not. Councillors need to be cautious when it comes to fundraising, even for community organizations, because there is a potential that a councillor could be asking for funds from businesses or individuals who are interested in doing business with the City or who are seeking an appointment or permit on an unrelated matter.

This issue was examined in former Commissioner Janet Leiper's 2010 report regarding the conduct of then-Councillor Rob Ford.<sup>39</sup> Although the 2010 case addressed fundraising for a charitable cause in Councillor Ford's name, the principles underpinning the advice are germane to the issues in this case. Commissioner Leiper wrote:

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<sup>39</sup> Report regarding the conduct of then-Councillor Rob Ford, 2010 at p. 12 (<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-33227.pdf>)

Article VIII provides that “No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.” The position of City Councillor carries both power and responsibility. The reality of public office is that Councillors have influence. This reality means that Councillors are responsible for acting with integrity and being seen to be acting with integrity.

Where a Councillor asks someone to give money to a personal cause in his or her role as Councillor and underlines that role by putting the request in an official format, that is, on Councillor letterhead, this is a use of the influence of office for a cause that is not part of the Councillor’s public duties. ... Councillors make significant decisions by voting in Council and committees, in having access to fellow Councillors, to the Toronto Public Service and to the public at large through the media. Councillors make decisions, set policy and determine how taxpayers’ money will be spent. ...

The problem with using one’s influence, even for a good cause, is that such a request can be received in many different ways. The recipient may wish to do business with the city, lobby the city, or be appointed by the city. Alternatively, the individual may work for the city or appear as an advocate for other citizens. The recipient may have made a deputation before committees or community councils. The recipient could take such a request as a way to gain an advantage by making a donation. Alternatively, [...], recipients could feel uncomfortable for declining to donate.

In this investigation, Councillor Grimes acknowledged the need to avoid soliciting donations from City stakeholders with live issues before Council. However, he stated that at the time the donations were made, EC's business before the City was complete and there were no remaining issues with respect to planning approvals.

The long-standing advice of this Office is that there is no permissible time for members of Council to be involved in soliciting donations of any kind. The circumstances in this case demonstrate why.

I have concluded that it was improper for Councillor Grimes to solicit and facilitate the donation from EC to the school. The donation was significant – \$33,000 – and it came on the heels of protracted dealings between the City and EC with respect to two significant issues for EC: the development charge owing on the EDS project and the location of its sales centre. Representatives of EC were in frequent contact with the Councillor's office about the development charge issue – a very significant issue for EC

– until spring 2014. Further, the Councillor had just appeared in a video to promote the *bona fides* of EC. Mere months later, the Councillor made the donation request.

There is no factual basis to conclude that the Councillor's efforts in relation to the development charge issue are directly connected to the donation. However, the context gives rise to a reasonable perception of such a connection by the public: there was a brief period between EC's donation and the resolution of EC's development charge issue, and the Councillor was able to quickly and easily obtain EC's donation to the school. Had the development charge issue not been resolved to the satisfaction of EC, one could reasonably wonder whether the Councillor could have successfully solicited such a significant donation with just a phone call.

As I have previously ruled<sup>40</sup>, the perception of improper influence can cause harm to public confidence in Council equal to actual improper influence. I have no doubt that the Councillor was motivated by good intentions towards the organization and his community, but he has a duty with every interaction he has to promote trust and confidence in the integrity of City decision-making processes. When dealing with developers who have significant interests before City Hall, he, and all members of Council, must act with extreme caution to avoid the appearance of improper influence.

#### *The introduction to the Councillor's friend*

Had the Councillor sought advice from this office about whether he could make a request of the EC EVP that he meet with the Councillor's friend, he would have been advised not to do so. At the end of the day, the Councillor's introduction did not amount to anything. The evidence of the EC EVP, which I accept, is that he felt no obligation to meet with the Councillor's friend. Although the Councillor stood to gain no direct financial benefit from introducing his friend to the EC EVP, he was doing his friend a favour by asking for a favour from the EC EVP and thereby improperly blurring his public and private lives.

A key principle of the Code of Conduct is that members of Council must arrange their private affairs in a manner that promotes public confidence. Coupled with Article VIII, this means that members of Council cannot use the influence of their office for any purpose other than City business. Facilitating an introduction to a friend is not City business.

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<sup>40</sup> Investigation Report Regarding Conduct of Mayor John Tory, January 28, 2016 at p. 10 (<http://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-88691.pdf>)

It would not be reasonable to expect that members of Council completely eradicate normal professional interactions such as connecting two professional colleagues with an interest in the same project and I recognize that a large part of a member of Council's job is to bring community groups together and facilitate positive relations. However, in this case and with particular regard for the timing of the request, I find that it was improper for the Councillor to make the introduction between his friend and the EC EVP.

For the same reasons set out above in relation to donations, it is not appropriate for members of Council to request personal favours from City stakeholders, particularly from stakeholders who are subject to City Council decision making processes like the planning approvals process. This was an improper use of the Councillor's influence and contrary to Article VIII of the Code of Conduct.

## **CONCLUSION**

I wish to reiterate and state clearly – there is no evidence that Councillor Grimes was motivated in his interactions with DSD or EC by an opportunity for personal financial gain. That being said, his conduct was nevertheless contrary to the Code of Conduct.

With respect to the discussions about the Additional Improvements and the donations, it is my view that Councillor Grimes was motivated by his wish to achieve improvements to Amos Waites Park and to help a local school raise funds, respectively. With respect to the video, it is my view that the reason he agreed to appear was to promote the ward and in furtherance of his campaign commitment to bring revitalization to the ward.

It is to be expected that members of Council will engage in continuous efforts to achieve improvements in local parks, schools and community centres and to fulfill campaign promises. It is not contrary to the Code of Conduct to engage in activities that benefit the ward. However, when members of Council seek to engage developers in these improvement efforts, they must act with strict adherence to City policies and the Code of Conduct, both of which set out clear rules of engagement.

Members of Council have a high degree of influence over the course of a planning application. That is, councillors can request staff to prioritize an item for inclusion on an agenda, negotiate section 37 amounts, arrange meetings with senior staff to resolve issues and are responsible for an application's final disposition before Council. Developers have a lot to gain or lose at all stages of a planning application file, from assessment of development charges, section 37 negotiations, favourable zoning bylaw amendments, and timing and accordingly have much to gain by developing favourable relations with a councillor.

Ensuring that councillors' dealings with developers adhere to the Code of Conduct and the Community Benefits Policy helps to promote transparency, to assist members to

avoid reasonable perceptions that their decisions have improperly been influenced by developers, and to ensure that members of the public have confidence in the process. In short, adherence to the Code and City policies helps to protect the integrity of the City's planning approval process.

On the other hand, members of the public must not be concerned with every interaction between a member of Council and real estate developers. Local governments are the primary decision-makers responsible for land use planning. Members are permitted to escalate issues within the City on behalf of developers or to make statements in favour of development interests, as long as the member is otherwise in compliance with the Code and the clear rules of engagement in place for dealings between members of Council and developers.

### **Remedial Actions or Penalties**

The Code of Conduct and the *City of Toronto Act, 2006* contemplate that contraventions may require remedial actions or sanctions. An example of a remedial measure is an apology or a requirement to repay or reimburse moneys received.<sup>41</sup> The *City of Toronto Act, 2006* enables Council to impose one of two sanctions: a reprimand or a suspension of remuneration.

While remedial actions and sanctions may be appropriate in some cases, they are not necessary for Council to convey the seriousness with which it views councillor misconduct. A report that a member of Council has contravened the Code of Conduct forms part of the public record and is significant. When City Council adopts a finding that one of its members has contravened the Code, it sends a message that it is committed to the principles and standards set out therein.

#### *The section 37 agreement*

Councillor Grimes was cooperative and forthright in this investigation. In response to the findings in relation to the section 37 agreement, he has advised me that he accepts the finding and he apologized for his error. In addition, Councillor Grimes has indicated that this case has caused him to review his practices and to learn from this experience, all of which will cause him to approach similar circumstances differently in the future.

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<sup>41</sup> [Madger v. Ford, 2013 ONSC 263 \(Canlii\) at para 67](http://canlii.ca/t/fvsgj) (<http://canlii.ca/t/fvsgj>).

In consideration of the circumstances, the Councillor's acceptance of the findings and, in particular, his decision to act with greater caution in the future, it is my view that no further sanction is warranted and that in light of the Councillor's apology no further remedial action is necessary.

#### *The video appearance, donations and introduction*

With respect to his appearance in the video and the other dealings with EC, the Councillor appropriately made submissions about how the Code of Conduct should be interpreted but he did not dispute the fundamental underlying principles set out in the report.

The investigation has caused the Councillor to review his practices and to learn from this experience, all of which will cause him to approach these kinds of circumstances differently in the future.

As a way to remediate the circumstances, I proposed and the Councillor agreed to the following voluntary actions to address the issues in relation to EC:

- Neither Councillor Grimes nor his staff will deal privately with any principal or agent of EC *in relation to the EDS property or development* (in other words, the Councillor and his staff will only engage with EC and its representatives about EDS in public meetings).
- *For the duration of this term of Council*, Councillor Grimes will seek advice from this Office before engaging in any discussions with any principal or agent of EC.

In consideration of the circumstances, the Councillor's acceptance of the principles underlying the findings and his decision to act with greater caution in the future, it is my view that no further sanction is warranted and that in light of the Councillor's willingness to comply with the above-noted voluntary actions no further remedial action is necessary.

#### *Applicability to all members of Council*

This case should act as a refresher and a reminder for all members of Council that they must act with due care when interacting with real estate development companies. As noted throughout this report, members of Council exercise significant authority and influence over the planning application process. Former Integrity Commissioner Janet Leiper described the reality of members' authority as follows,

The position of City Councillor carries both power and responsibility.  
The reality of public office is that Councillors have influence. This reality

means that Councillors are responsible for acting with integrity and being seen to be acting with integrity.<sup>42</sup>

This reality requires therefore that members of Council ensure that their actions at every step build up the trust and confidence that stakeholders and the public have in the decision-making process. Members of Council can look to specific City policies to guide their actions and when there are none, turn to the principles of the Code of Conduct. This Office is available as a resource to members of Council and their staff to provide advice on a case specific basis.

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Valerie Jepson  
Integrity Commissioner  
July 5, 2016

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<sup>42</sup> Report regarding the conduct of then-Councillor Rob Ford, 2010, at p. 20 (<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-33227.pdf>).

# APPENDIX A

## Relevant Code of Conduct Provisions

### PREAMBLE

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the City of Toronto's reputation and integrity.

To these ends, during its first term as a unified City, the City of Toronto, as one of several initiatives, adopted a Code of Conduct for Members of Council. Subsection 157(1) of the City of Toronto Act, 2006 now requires the City to establish codes of conduct for members of Council. In response to this requirement, the City has revised and updated the original Code of Conduct. It is intended to supplement and be compatible with the laws governing the conduct of members.

The key statements of principle that underline the Code of Conduct are as follows:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner; 3
- Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws of the Federal Parliament and Ontario Legislature, and the laws and policies adopted by City Council.



#### **IV. GIFTS AND BENEFITS**

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions listed below.

For these purposes, a fee or advance paid to or a gift or benefit provided with the member's knowledge to a member's spouse, child, or parent, or to a member's staff that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.

The following are recognized as exceptions:

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law, in the case of members running for office;
- (d) services provided without compensation by persons volunteering their time;
- (e) a suitable memento of a function honouring the member;
- (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
- (g) food and beverages consumed at banquets, receptions or similar events, if:
  - 1. attendance serves a legitimate business purpose;
  - 2. the person extending the invitation or a representative of the organization is in attendance; and
  - 3. the value is reasonable and the invitations infrequent;
- (h) communication to the offices of a member, including subscriptions to newspapers and periodicals; and
- (i) sponsorships and donations for community events organized or run by a member or a third party on behalf of a member, subject to the limitations set out in the Policy on Council Member-Organized Community Events.

Except for category (c) (political contributions allowable by law), these exceptions do not apply where such gifts or benefits are provided by

lobbyists or their clients or employers (as defined or described in Municipal Code Chapter 140, Lobbying). For these purposes, a lobbyist is an individual, organization or business that:

- [i] is lobbying or causing the lobbying of any public office holder at the City, a local board (restricted definition) or the board of health;
- [ii] the member knows is intending to lobby, having submitted or intending to submit a registration to the Lobbyist Registrar for approval to communicate on a subject matter; or
- [iii] is maintaining an active lobbyist registration with the City even though not having a current active subject matter registered with the lobbyist registry.

...

## **VI. USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES**

No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, Council transportation delivery services and member of Council expense budgets) for activities other than the business of the Corporation. Nor should any member obtain personal financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

## **VIII. IMPROPER USE OF INFLUENCE**

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- (a) that is of general application;
- (b) that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits of a member of Council.

## **XII. CONDUCT RESPECTING STAFF**

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the City Manager, staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.

## **XV. FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES**

A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, members of Council

are required to observe the terms of all policies and procedures established by City Council.

This provision does not prevent a member of Council from requesting that Council grant an exemption from a policy.