

The Rural Municipality of Manitou Lake # 442

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March 7th, 2019

The cost for the completion of the following report was \$4477.07 including all taxes.

This report was accepted in its entirety by the Council of the RM of Manitou Lake # 442 on March 7th, 2019 at the regular meeting of Council.

No further action will be taken.

**Code of Ethics Complaint Investigation Report
Rural Municipality of Manitou Lake, No. 442**

**Prepared by:
Holly M. Hobbs, IPMA-ACP
Independent Human Resources Consultant**

January 24, 2019

A. INTRODUCTION

The Rural Municipality of Manitou Lake No. 442, on December 5, 2018, received a Code of Ethics Complaint. The Complainant was Robert (Bob) Walde, former Councilor and the Respondents were Ian Lamb (Reeve) and Joe Koch (Councilor, Division 6). The Complaint was regarding the sale/purchase of Joseph (Joe) Koch property.

Council proceeded to hire an Independent Human Resources Consultant to conduct an investigation of the Complaint and determine whether or not the Complaint was valid.

B. MANDATE

1. Meet with the Complainant and Respondents.
2. Meet with all Councilors and former Councilors who were part of Council at the time of the incident.
3. Meet with the Chief Administrative Officer and the Foreman of the Rural Municipality (RM).
4. Review the relevant legislation, policies, and bylaws, as well as any other pertinent documents, that may apply to the RM.
5. Provide the report to Administration and the Board on findings and conclusions.
6. This project is to commence on January 2, 2019 and will continue until the completion of the full report of findings and conclusions has been submitted.

C. THE COMPLAINT

The Complaint is written on Schedule "A" Formal Complaint Form and has two attachments. (Attachment #1)

Joe Koch, Respondent, provided a written response to the Complainant (Attachment #2)

Ian Lamb, Respondent, chose not to respond to the written Complaint.

D. INTERVIEWS

Interviews were conducted in person on January 2 – 3, 2019 with the following:

- Joe Koch – Respondent and Councilor, Division 6
- Bob Walde – Complainant and former Councilor Division 2
- Ian Lamb – Respondent and Reeve
- Norman Wright – Councilor, Division 3
- Joanne Loy – Chief Administrative Officer
- James Czerniak – Foreman
- Rick Swanstrom – Councilor, Division 5
- Kevin Bossert – former Councilor, Division 4
- Travis Lindsay – Councilor, Division 1

E. CHRONOLOGY OF EVENTS

October 10, 2017 – Joe Koch (Respondent and Councilor Division 6) listed his property with Hammond Realty. The listing was until October 9, 2018. It was listed at \$675,000.00. It was listed on-line, there was no sign on the property.

October 19, 2017 – The Foreman (James Czerniak) and Joe Koch attended a Canadian Public Works Association Rural Roads Workshop in Saskatoon. Joe met with his realtor on that day as well. The Foreman asked about the property and told Joe that it was too bad the RM of Manitou Lake didn't know he was selling, it would probably be good for the RM in both location and buildings. Joe stated that he didn't even think about that.

A few months later, the Foreman mentioned it to Ian Lamb (Respondent and Reeve). Ian said to forget about it, with all the stuff that was going on in the RM.

February 26, 2018, Joe Koch requested Hammond Realty to withdraw the listing.

March 13 – 16, 2018, SARM Convention. Joe Koch discussed his situation with a representative from Advisory Services and Municipal Relations, Government Relations. He thought he would have to resign as a Councilor in order to sell his property to the RM. He was advised that he did not have to resign, all he had to do was remove himself from the discussions and vote.

- Joe also asked Ian about this and Ian said no he wouldn't have to resign. Ian also checked with the CAO (Joanne Loy). The CAO also said no and double checked with Municipal Affairs.

The RM had been talking about purchasing land for the past several years. They needed space and a heated building. They had discussed upgrading the existing storage building, but there would be code issues.

May, 2018 - A few months later, around May, 2018, they were looking at purchasing a scale, but had nowhere to put it. The Foreman raised Joe's property again to Ian and was asked to do some checking, get a couple of quotes, and calculate what the purchase would save them.

June, 2018 - The Foreman advised the Reeve (Ian Lamb) when he had the information put together, sometime in June. The Reeve asked the CAO if public notice had to be given if Joe's property was going to be discussed at a meeting. The CAO advised that it did not. The Foreman asked the CAO to put it on the Council Agenda. Joe advised Ian that he had his proposal ready.

June 26, 2018, Estimate received from JDG Construction. This is an estimate that the Foreman requested as part of his research for presentation to Council. As it was an estimate, there was no charge and it was needed for the presentation to Council.

July 4, 2018 – the Agenda, along with other meeting information, was emailed to Mr. Walde (the Complainant and Former Councilor, Division 2) and Councilor Swanstrom by the CAO as they did not have an RM tablet or access to the RM's Drop Box account.

Other Council members receive the meeting information via Drop Box. Meeting information is usually provided to all Council members on the Tuesday or Wednesday before each Council meeting.

The Agenda for the July 5, 2018 meeting contained the item VIII – New Business – 3. Shop Proposal. (Attachment #3)

July 5, 2018 – Council Meeting

- At 11:26 am, the Reeve moved to an in-camera session to discuss human resources and long-range and strategic planning. This was carried and Councilors Walde and Swanstrom left as they refused to participate in the in-camera discussion regarding the Shop Proposal, even though it is their duty as Councilors to participate in Council meetings. Neither Councilor Walde or Swanstrom asked what the Shop Proposal was about nor did they ask if there were any issues with the employee who was also being discussed. Councilor Swanstrom left for the day at this time.
- Joe Koch declared a conflict of interest at 11:32 am. He subsequently submitted and read out loud, to Council, a written proposal. In the proposal, he extended an invitation to view the property and buildings on that day. He then left the in-camera session at 11:40 am. (Attachment #4)
- The Foreman gave his presentation – RM Manitou Lake #442 Future capital asset expansion proposal. 2018 (Attachment #5). Discussion ensued with the Foreman, the Reeve, and Councilors Wright and Bossert. The CAO was also in attendance.
- Council recessed for lunch at 11:55 am. Councilors Walde and Koch joined the remaining Councilors for lunch along with the Foreman, the CAO and the Office Assistant, Kim Lake. The Reeve advised Councilor Walde of the shop proposal and the plan to go look at the property after lunch.
- Following lunch, the Foreman, the Reeve, and Councilors Wright, Bossert, and Walde travelled to the property identified in the proposal and Joe Koch took them on a tour of the property and identified what was and what wasn't included in the sale. He also pointed out the particulars of some of the individual items and answered the specific questions that were directed to him.
- Council returned to Council Chambers at 2:07 pm and remained in-camera. Councilor Walde attended.
- Council rose from the in-camera session at 2:13 pm at which time a motion was made and carried to purchase the property.
- Joe Koch returned to the meeting at 2:16 pm.
- This information is contained on Page 3 of the July 5, 2018 council meeting minutes. (Attachment #6)

August 9, 2018, Councilor Walde made a motion to rescind the motion at the previous council meeting of July 5 where the motion was carried to purchase Joe Koch's land as presented. This motion was defeated. (Attachment #7)

October 15, 2018 – the land purchase went through on this date as it was the agreed possession date.

December 5, 2018 – a Code of Ethics Complaint was filed by Bob Walde (Complainant) against Ian Lamb (Reeve) and Joe Koch (Councilor, Division 6) (Respondents) in regards to the Sale/Purchase of Joseph Koch Property. (see Attachments #1, the Complaint and Attachment #8 – the RM of Manitou Lake No 442 Code of Ethics Bylaw No. 2016-02)

F. FINDINGS

As the Respondents have two very different roles in this situation, I will do the analysis for each separately. For informational purpose, the * attached to some statements on the Complaint filed indicates the basis for this claim exists on Page 6 of the SAGE Analytics Report (see Attachment #1, Page 3)

Joe Koch:

The Complaint states the following:

In the Sale/Purchase of Joseph Koch the code of ethics was breached in the following ways:

1. *Honesty. Most councilors were not aware of Joe's interest in selling his property**
 - In interviews with the Reeve and all Councilors who were Councilors at the time of the July 5, 2018 meeting, I find that all except two Councilors, Councilor Walde (Complainant) and Councilor Swanstrom were the only two who claimed that they were not aware of Joe's interest in selling the property prior to the July 5, 2018 Council meeting. As the word "most" implies greater than 50%, and more than 50% of Council was aware of Joe's interest in selling his property, this statement is incorrect.
 - When Council went into in-camera to discuss the proposal, these same two Councilors refused to attend.
 - SAGE Analytics stated that most members were not aware of the Councilor's interest in selling his farm property to the RM. (see Attachment #1, Page 3)
 - The Complaint is worded differently which gives it a new meaning; it states they weren't aware of Joe's interest in selling his property. I have first-hand information, direct from each of the Reeve and Councilors, upon which my investigation relies, that verifies that the Reeve and four Councilors were aware.
 - In addition, the RM of Manitou Lake does not have a bylaw or policy that pertains to the purchase of land and therefore, it is not a requirement for Councilors to have prior knowledge of Joe's interest in selling his property. As per the Municipalities Act 184(1), this is not required as it is a "may" statement. (Attachment #9)

This claim against Joe Koch is unfounded

2. *Objectivity. This land purchase was not conducted fairly and impartially**
 - Joe Koch read his proposal to those Council members present at the in-camera session. One councilor was absent and two, including the Complainant, refused to attend. His proposal contained an invitation to get a tour of the property and see what was included in the sale. As it was Joe's property, he chose to present his proposal as he was the one person who knew all of the details.
 - Joe did not enter into any discussions of this proposal.
 - Joe left the in-camera session at 11:40 am.
 - The proposal was then discussed in-camera.

- The Foreman gave a presentation that contained the rationale, cost savings and other benefits as well as two land acquisition estimates. Joe did not have any involvement in this.
- Following the lunch break, Joe gave a tour of the property and explained what was and what wasn't included in the sale. He also answered questions that were directed at him.
- The SAGE Analytics Governance Audit does not contain this language on Page 6. What it does state is that "it appeared that council acted in haste on this land purchase decision" and "This was a fairly large purchase and the decision was made by only four council members present". The word "appeared" does not mean that it did and of the three not attending, one, Joe Koch, declared a conflict of interest and another, Councilor Swanstrom, refused to attend. So, at most, there would only have been 1 more Councilor there for the discussion and vote.
- Joe was not a part of the in-camera sessions where the discussion and voting took place and therefore, he did not participate in the decision.

This claim against Joe Koch is unfounded

3. *Respect. There was total lack of respect for at least two councilors had no idea council had decided to purchase this or any other property at this time**

- Joe Koch did not tell any Councilors that his property was listed nor did he discuss this with any Councilors.
- The Foreman found out about the land for sale, and it was the Foreman who talked to the Reeve about it as he felt it would suit the RM's needs very well.
- Two Councilors chose to not attend the in-camera session where this was discussed. It was on the Agenda, as Shop Proposal, which they received prior to the meeting. Had they attended the in-camera session they would have heard the proposal and all of the information. The decision to purchase this property, did not come until after the in-camera session in the morning and after the tour of the property after lunch at which time the in-camera session resumed. In addition, the Complainant who was one of the two Councilors who chose to not attend the in-camera session in the morning, did attend the tour and the afternoon in-camera session where the decision was made to purchase. The vote was unanimous.
- The SAGE Analytics Governance Audit does not contain the language stated on the Complaint on Page 6, nor is there any evidence to support this claim.

This claim against Joe Koch is unfounded

4. *Transparency and Accountability. There was no apparent procurement processor due diligence making this purchase**
- Joe was not involved in the procurement, it was left to Council. He simply made his proposal and offered to provide Council with a tour. Therefore, this statement is not relevant to Joe Koch.
 - The Foreman prepared the rationale, estimates, benefits, and cost savings information for in-camera and if Council felt it needed more, it could have been addressed at that time.
 - The RM is not required by legislation to do this nor does the RM have a policy or bylaw regarding purchase of land and are therefore not required to engage a procurement processor. If anyone felt there was not due diligence in the information they received and / or the process they followed, it should have been stated at the in-camera meeting prior to voting on the motion.

This claim against Joe Koch is unfounded

5. *Leadership and Public Interest. Mr. Koch should not have written nor should have the reeve allowed Joe's letter regarding the property for sale before council's decision to purchase the property.*
- Joe knew he had a conflict of interest. He stated this immediately when the Reeve made the motion to go in-camera for the Human Resources and Long-Range and Strategic Planning items. Therefore, this was done "before any consideration or discussion of the matter" as required in the Municipalities Act 144(1)(a). (Attachment #10)
 - Joe disclosed the general nature of the conflict of interest, which was the sale of his land to the RM. 144(1)(b) (see Attachment #10)
 - Joe abstained from voting on any question, decision, recommendation or other action to be taken relating to the matter. 144(1)(c) (see Attachment #10)
 - Joe refrained from participating in any discussion relating to the matter. 144(1)(d) (see Attachment #10)
 - The definition of "discussion" is "an act or instance of discussing; consideration or examination by argument, comment, etc., especially to explore solutions, informal debate. The fact that Joe read his proposal to those in attendance at the in-camera session does not fit this definition. The tour he led also does not fit the definition of discussion as he pointed out and identified what was and what wasn't included in the sale and only answered questions that were factual and were directed to him.
 - Joe left the Council chambers in which the meeting was being held until discussion and voting on the matter concluded. 144(1)(e) (see Attachment #10)
 - In addition, 144(4) states: "if the matter with respect to which a member of council has a conflict of interest is a question on which, pursuant to this Act or another enactment, the member, as a taxpayer, voter, or owner, has a right to be heard by council: (a) the member shall leave his or her place at the council table, but is not required to leave the room; and (b) the member may exercise a right to be heard in the same manner as a person who is not a member of the

council.” Joe has the right to be heard as a taxpayer, voter, and owner and that gave him the right to present his proposal. Once presented, he removed himself and did not participate or even observe any discussion or vote on the matter. (see Attachment #10)

- There is nothing denying him the right put his proposal in writing so that when he left the in-camera session, they would all have the exact same information. It was also essential for Joe to make his presentation and to take them on a tour of the property before Council’s decision to purchase the property or not, so that they had all the pertinent information on which to make a decision.

This claim against Joe Koch is unfounded

6. *Responsibility. Council was led to believe this purchase had to be done immediately by both Joe and the reeve, causing council to act in haste**

- Joe was not present for the discussions so would not know if anything along that line was stated in the in-camera sessions.
- In his proposal, Joe stated that he originally had his property on the market until he decided to take it off when he thought to give the RM a chance to purchase it. This does not state anywhere that it had to be done immediately.
- SAGE Analytics stated, that “It appeared that council acted with haste on this land purchase decision.” (see Attachment #1, Page 3) Saying it appears so does not mean that they did.
- In addition, I reiterate, all present for the vote, voted in favour of the purchase, even the Complainant to this Complaint.

This claim against Joe Koch is unfounded

7. *Municipal Time and Assets. A lot of money was spent procuring this property without council’s full knowledge*

- Joe was not aware of any money spent in the procurement of the property.
- The only evidence provided in an effort to demonstrate a lot of money was spent in the procurement of the property, the JDG Construction Estimate, dated 6/26/2018, was at no charge. (Attachment #11)

This claim against Joe Koch is unfounded

Ian Lamb:

The Complaint states the following:

In the Sale/Purchase of Joseph Koch the code of ethics was breached in the following ways:

1. *Honesty. Most councilors were not aware of Joe's interest in selling his property**

- In interviews with the Reeve and all Councilors who were Councilors at the time of the July 5, 2018 meeting, I find that all except two councilors, Councilor Walde (Complainant) and Councilor Swanstrom were the only two who claimed that they were not aware of Joe's interest in selling the property prior to the July 5, 2018 council meeting. As the word "most" implies greater than 50%, and more than 50% of Council was aware of Joe's interest in selling his property, this statement is incorrect.
- When Council went into in-camera to discuss the proposal, these same two Councilors refused to attend.
- SAGE Analytics stated that most members were not aware of the Councilor's (Joe Koch) interest in selling his farm property to the RM. (see Attachment #1, Page 3)
- The Complaint is worded differently which gives it a new meaning; it states they weren't aware of Joe's interest in selling his property. I have first-hand information, direct from each of the Reeve and Councilors, upon which my investigation relies, that verifies that the Reeve and four Councilors were aware.
- In addition, the RM of Manitou Lake does not have a bylaw that pertains to the purchase of land and therefore, it is not a requirement for Councilors to have prior knowledge of Joe's interest in selling his property.

This claim against Ian Lamb is unfounded

2. *Objectivity. This land purchase was not conducted fairly and impartially**

- Joe Koch read his proposal to those Councilors present at the in-camera session. One Councilor was absent and two, including the Complainant, refused to attend.
- Joe left the in-camera session.
- The Foreman gave a presentation that contained the rationale, cost savings and other benefits as well as two land acquisition estimates.
- The proposal was then discussed in-camera.
- Following the lunch break, Joe Koch gave a tour of the property and explained what was and what wasn't included in the sale. He also answered questions that were directed at him.
- The SAGE Analytics Governance Audit does not contain the language stated in the Complaint on Page 6. What it does state is that "it appeared that council acted in haste on this land purchase decision" and "This was a fairly large purchase and the decision was made by only four council members present". The word "appeared" does not mean that it did and of the three Councilors not attending, one, Joe Koch, declared a conflict of interest and another, Councilor

Swanstrom, refused to attend. So, at most, there would only have been one more Councilor there for the discussion and vote.

- In neither in-camera session (morning or afternoon) were there any requests made to defer the decision to a later date or to get more information, for any reason.

This claim against Ian Lamb is unfounded

3. *Respect. There was total lack of respect for at least two councilors had no idea council had decided to purchase this or any other property at this time**

- Joe Koch did not tell any Councilors that his property was listed nor did he discuss this with any Councilors. It was the Foreman who asked him about it.
- The Foreman found out about the land for sale, and it was the Foreman who talked to the Reeve about it as he felt it would suit the RM's needs very well.
- Two Councilors chose to not attend the in-camera session where this was discussed. It was on the Agenda, as Shop Proposal, which they received prior to the meeting. Had they attended the in-camera session they would have heard the proposal and all of the information. The decision to purchase this property, did not come until after the in-camera session in the morning and after the tour of the property after lunch at which time the in-camera session resumed. In addition, one of the two Councilors who chose to not attend the in-camera session in the morning, did attend the tour and the afternoon in-camera session where the decision was made to purchase. The vote was unanimous.
- There is nothing in legislation that requires this information in advance. In addition, there is no RM bylaw or policy regarding a land purchase and this is not in violation of the Municipalities Act.
- The SAGE Analytics Governance Audit does not contain this language on Page 6, nor is there any evidence to support this claim.

This claim against Ian Lamb is unfounded

4. *Transparency and Accountability. There was no apparent procurement processor due diligence making this purchase**

- The Foreman brought the idea to the Reeve who initially did not ask him to pursue it. It wasn't until they were looking to purchase a scale but had nowhere to put it did the Reeve then ask the Foreman to prepare a proposal for the purchase of the land. There is no evidence to suggest in legislation or in the Procedures Bylaw that the Reeve acted in error by doing this.
- The Foreman then prepared the rationale, estimates, benefits, and cost savings information for in-camera. Once it was presented, if Council felt it needed more, it should have been requested it at that time.
- The RM is not required by legislation to do this nor does the RM have a policy or bylaw regarding purchase of land and are therefore not required to engage a procurement processor. If any Councilor felt there was not due diligence in the information they received and / or the process they followed, they should have

invoked Part V – Motions, 43. Motions and Debate, 43.3 of the RM Council Procedures Bylaw, prior to voting on the motion. (Attachment #12)

- SAGE Analytics stated, on Page 6, “the process lacked transparency and equity” (not accountability). It went on to state other processes that could have been followed, however, there is nothing in legislation, bylaw or policy that requires this.
- The SAGE Analytics report also states, that “although unusual, it appears that council had the authority to make this purchase.”

This claim against Ian Lamb is unfounded

5. *Leadership and Public Interest. Mr. Koch should not have written nor should have the reeve allowed Joe’s letter regarding the property for sale before council’s decision to purchase the property.*

- Joe knew he had a conflict of interest. He stated this immediately when the Reeve made the motion to go in-camera for the Human Resources and Long-Range and Strategic Planning items. Therefore, this was done “before any consideration or discussion of the matter” as stated in the Municipalities Act 144(1)(a). (see Attachment #10)
- The Reeve acted in accordance with the legislation with the order of events that followed the declaration.
- As per 144(4) of the Municipalities Act, Joe had a right to be heard. (see Attachment #10) The Reeve allowed him to be heard. In Joe’s proposal he also extended an invitation to council to view the property and buildings that day. Council immediately accepted his invitation.
- Joe then removed himself from the in-camera meeting.
- Council recessed for lunch at 11:55 am. Recess, as defined in the Procedures Bylaw 3. Definitions (z) states: “means an intermission or break within a meeting that does not end the meeting, and after which proceedings are immediately resumed at the point where they were interrupted”. (Attachment #13)
- They went for lunch followed by the tour they had agreed to take earlier. In-camera resumed at 2:07 pm when Council returned to Council chambers, as per the minutes of July 5, 2018. Joe was not in attendance.
- The process followed in this situation is in accordance with 141 to 144 of the Municipalities Act and the RM Procedures Bylaw.
- It was correct to allow Joe to present his proposal and provide them with the written copy. This way, when he left the in-camera session, they would all have the exact same information. It was also important for Joe to take them on a tour of the property before council’s decision to purchase the property or not so that they had all the pertinent information on which to make a decision.

This claim against Ian Lamb is unfounded

6. *Responsibility. Council was led to believe this purchase had to be done immediately by both Joe and the reeve, causing council to act in haste**
- In his proposal, Joe stated that he originally had his property on the market until he decided to take it off when he thought to give the RM a chance to purchase it. This does not state anywhere that it had to be done immediately.
 - SAGE Analytics stated, on Page 6, that "It appeared that council acted with haste on this land purchase decision." Saying it appears so does not mean that they did.
 - There was a question of whether they had to make the decision that day, and the response from the Reeve was that it didn't need to be done immediately, but Joe wanted to put it back on the market. Many felt that they needed to act quickly as land does not go for sale that often and they had been looking at options to expand for several years. In addition, as outlined in the SAGE Analytics report on Page 6, "Council members shared supportive comments that the land was in a favourable location for gravel stockpiling, the outbuildings could be used for storage of RM equipment, and the residence could be subdivided and sold".
 - In addition, I reiterate, all present for the vote, voted in favour of the purchase, even the Complainant to this Complaint.

This claim against Ian Lamb is unfounded

7. *Municipal Time and Assets. A lot of money was spent procuring this property without council's full knowledge*
- The only evidence provided in an effort to demonstrate a lot of money was spent in the procurement of the property, the JDG Construction Estimate, dated 6/26/2018, was at no charge.
 - There was no evidence to support this claim.

This claim against Ian Lamb is unfounded

G. CONCLUSION

Upon reviewing the Complaint, interviewing the Complainant, the Respondents and all witnesses to the Complaint, as well as all relevant documents, I find:

1. There is no evidence to support the claim against Joe Koch (Councilor, Division 6) nor are any of the individual statements in the claim substantiated and therefore, Joe Koch was not in violation of the Code of Ethics Bylaw No. 2016-02, as stated in the Formal Complaint filed by Robert (Bob) Walde on December 5, 2018; and
2. There is no evidence to support the claim against Ian Lamb (Reeve) nor are any of the individual statements in the claim substantiated and therefore Ian Lamb was not in violation of the Code of Ethics Bylaw No. 2016-02, as stated in the Formal Complaint filed by Robert (Bob) Walde on December 5, 2018.