

IN THE MATTER OF the *Town of Collingwood Judicial Inquiry*  
AND IN THE MATTER OF the *Public Inquiries Act*, S.O., 2009  
AND IN THE MATTER OF the *Municipal Act*, 2001, S.O. 2001

**PART II**  
**SUBMISSIONS OF EDWIN HOUGHTON WITH RESPECT**  
**TO THE COLLINGWOOD JUDICIAL INQUIRY**

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1. The evidence in Part II of the Inquiry consisted of Revised Foundation Document No. 2 and the documents referred to therein, 14 witnesses, 2 Affidavits, and documents that were entered into the Inquiry Court Book during the Part II. Evidence was taken between September 11 and October 24, 2019.

**No Personal Benefits Were Received by Houghton or his Family**

2. Before dealing with evidence and submissions on behalf of Mr. Houghton, relating to Part II of the Inquiry, it is important to underline that the evidence in Part I of the Inquiry and the evidence in Part II of the Inquiry does not support a conclusion that Ed Houghton or his wife, received any inappropriate personal benefits arising from the activities examined in the Inquiry.

3. Funds received by Mr. Houghton's family, as evidenced in Part I of the Inquiry are spoken to in Mr. Houghton's Part I Submissions at page 22, paragraph 70, to and including page 26, paragraph 83. It should be concluded that there were no payments received by Mr. Houghton or his family for any of Mr. Houghton's activities in regards to the Collus Power transaction or other related activities. To conclude otherwise would be contrary to evidence of numerous parties. It is submitted that this Commission should conclude that the only funds received by Mr. Houghton, were a bonus approved by the

Collus Power Human Resources Chair and paid by Collus Power to its then President and CEO, for his extensive and exemplary efforts leading to the sale of Collus shares. The above bonus was one of four bonuses paid by Collus Power to three other employees and the former Chairman of the Board for their efforts in the above process. The evidence confirms that although there were no minutes of the Human Resources Committee Meeting at which the bonuses were approved, there was a memo executed by Joan Pajunen, Chair of the Human Resources Committee, and then acting Chair of the Collus Power Board that provided the proper corporate authority for the payment of the bonuses.

4. With respect to Part II of the Inquiry, an examination of the financial records of Greenleaf Distribution Inc. ("Greenleaf") and the financial records of Compenso, confirm that Mr. Houghton did not receive any portion of the funds earned by either Greenleaf or Compenso or received any benefits arising from the matters examined in Part II of the Inquiry.

5. It is accordingly submitted that the evidence of Mr. Houghton's involvement in Part II of the Inquiry must be examined, free from any allegations of personal benefits received by the Mr. Houghtons.

### **Houghton's Credibility**

Mr. Houghton's reputation for integrity following a 39 year career with the Town of Collingwood was firmly established in Part I and Part II of the Inquiry. This reality is best exemplified in Part II of the Inquiry by an examination of a July 29<sup>th</sup> email forwarded to the Executive Management Committee ("EMC") by Clerk, Sara Almas. While discussing the continuation of the EMC, Ms. Almas echos the sentiments of Mr. Houghton's peers and states "I really appreciate Ed's role – as the acting CAO, Ed has been so important!! I am sure Ed and us all realize how important HE has been!" There is no doubt that as a result of his career, Mr. Houghton developed a reputation for integrity and selfless community work that must be considered when assessing Mr. Houghton's evidence and actions in both Part I and Part II of the Inquiry. (TOCO549528)



## **Mr. Houghton Becomes Acting CAO of the Town**

6. In April of 2012, following Kim Wingrove's termination, Ed Houghton was approached on at least two occasions to take on the task of Chief Executive Officer. He was, at that time, approached by both the Mayor, Sandra Cooper and the Deputy Mayor, Rick Lloyd. Mr. Houghton turned down the first two requests. It was not until he was approached a third time, that he agreed to assume the role on three conditions. The first condition was that he would be described as Acting CAO, the second was that he would not in any way be blamed for the termination of Kim Wingrove and the third was that an Executive Committee would be formed to assist in decision making. It was at all times, the assertion of the Mayor and Deputy Mayor, that he would be Acting CAO for two or three months. Mr. Houghton was not paid to assume the acting CAO position, but did so without remuneration in order to thank the Town for his 39 year career. At the time of his appointment on April 12, 2012, Mr. Houghton was already fulfilling three different full-time roles in the community as was evidenced by many, Mr. Houghton was an extremely busy person. Mr. Houghton was President and CEO of Collus Power and in charge of its amalgamation with Power Stream. In addition, Mr. Houghton was President and CEO of Collingwood Public Utilities, responsible for water and water treatment in the Town, and was also executive director of Engineering and Public Works, including waste water, storm water, roads, buses, airports and railways. In his evidence, Mr. Houghton describes that following assuming the role of Acting CAO, he was working 7 days a week, 20 hours per day. It is a reasonable conclusion, that Mr. Houghton's gigantic workload, made it extremely challenging for Mr. Houghton to fulfill his obligations as Acting CAO.

7. Mr. Houghton chose three additional members of the EMC. The first was Sara Almas, the town clerk, because of her knowledge of the Town and Town obligations at City Hall. The second was Marjorie Leonard, the town treasurer, because of the skills and attributes in the finance and procurement area. The third was Mr. Irwin, a Collus Power employee, that had worked in the Town for 13 years in Collus Power's IT department. It is also a sound conclusion, that given his workload and the fact that he had no experience as CAO, that Houghton would require the expertise of the EMC to

fulfill the role of Acting CAO. It is important to observe that Mr. Houghton had no experience as CAO and was given no instruction and/or education to assist in managing the substantial issues, including procurement and conflicts of interest issues that he would face. It is interesting to note evidence adduced during Part III of the Inquiry, which confirmed that education now plays a significant role for present councillors and Staff. Councillors in Ottawa were said to receive 5 weeks of education before their actual induction while councillors in other jurisdictions received annual or semi-annual training in conflicts of interest. Mr. Houghton received no such support as Acting CAO and had three full time positions to fulfill. Not only did Mr. Houghton not receive this support, he did not receive a copy of the CAO job description, nor any reference materials, by-laws or formal orientation by either Legal or Council. His intentions were to honourably assist the Town for a period described to be two to three months. One must conclude that the Town took advantage of Mr. Houghton's altruism and placed him in a position where errors were inevitable. It could also be concluded that Mr. Houghton played an unknowing role in the Mayor and Council's platform to reduce debt, taxes, reduce spending on consultant's and legal fees and do more with less and that it was inappropriate for the Mayor and Deputy-Mayor to put Mr. Houghton into this position, well recognizing his substantial work load. In the testimony of Deputy Mayor Lloyd, he considered Mr. Houghton assuming the role of Acting CAO as a further dividend from Collus Power to the Town of Collingwood. It was also evidenced in Mr. Houghton's testimony that he was also asked to be the CAO of the Collingwood Public Library which he rightfully declined. Mr. Houghton has already paid a significant professional and personal price for his efforts to do the right thing for the community that he once loved. Ms. Leonard also states in her testimony of October 16, that today the Town of Collingwood has many new employees including the Accountability Officer and Purchasing Officer.

8. The evidence discloses that immediately upon becoming Acting CAO, Mr. Houghton became aware of issues surrounding the central park March 2012 Steering Committee Report, recommending that the Town construct a \$35 M Multi-Use Recreation Facility ("MURF"). Mr. Houghton also became aware that Ameresco and its associated company, Greenland, apparently represented by former Mayor Geddes, were anxious to

secure the opportunity to construct the MURF. On April 17, 2012, five days after Mr. Houghton's appointment, a meeting with Ameresco and Greenland was convened with attendees including, 2 from Ameresco, 3 from Greenland, Mayor Cooper, Deputy Mayor Lloyd, Councillors Hull and West, Ms. Proctor, Ms. Leonard and Ed Houghton. Over time, the Mayor attended two meetings with Ameresco, while the Deputy Mayor attended four meetings. Ms. Proctor attended twice, Councillor West once, and former CAO Kim Wingrove, met Ameresco on March 7, 2012. (AME0000001)

9. Given the interaction planned and carried out with Ameresco by the Mayor, other councillors and Staff, Mr. Houghton assumed there was nothing irregular about contact with contractors. The evidence discloses that on April 13, 2012, Mr. Houghton's second day on the job, Pat Mills of Sprung, who had heard about the Central Park report, attended Collingwood Town Hall to meet with former CAO Kim Wingrove. Finding her no longer in that role, he left a message for Ed Houghton with Shelley Fuhre. Thereafter, and on April 25, 2012, Mr. Houghton and Mr. Mills, met in the City of Toronto, where Houghton was attending on other matters, to discuss the attributes of Sprung. During the September 12, 2019 testimony of Sara Almas, she states on page 175 that, "it was not inappropriate for Ed to make inquiries."

### **June 11<sup>th</sup> Council Meeting**

10. Evidence discloses on May 8, 2012, Kevin Lloyd sent an email to Mayor Cooper, Deputy Mayor Lloyd, Councillors West and Hull and Ms. Proctor. This is the first of a series of emails in which Council suggests that the Central Park plan is too expensive and that they will need to consider alternatives (TOC0154798). Further emails follow involving Councillor West, Councillor Kevin Lloyd, Deputy Mayor Lloyd, Councillor Gardhouse, Councillor Chadwick and others, all confirming what appears to be Council's general view that the Central Park plan was too expensive, that to pursue same would only end up in failure, and alternatives must be considered. The history of historic recreational failures within the Town were also discussed in these emails. Councillor

Kevin Lloyd confirmed that “this time I don’t wish to fail”. (TOC0154975, TOC0156804, TOC0156812)

11. On May 13, 2012, Mayor Cooper emailed Acting CAO Houghton, Ms. Proctor and Councillor Kevin Lloyd, advising that after hearing from councillors about deferring the Central Park motion, she suggests a workshop or strategic planning session to gauge the mood of Council with respect to proposed and alternate recreational projects. Both the Acting CAO and Ms. Proctor respond that this is a good idea. (TOC0156981) As set out in paragraph 129 of Foundation Document No. 2, on June 7, 2012, Ed Houghton emailed Council and department heads with respect to the Mayor’s proposed strategic planning session, which was scheduled for June 11, 2012. In his email, Mr. Houghton explained that he would be the facilitator for the session, that Marta Proctor would provide a detailed summary of the work completed to date, and Marjorie Leonard would provide “a very brief look at funding options”. (TOC0169506)

12. At the June 11<sup>th</sup>, 2012 strategic planning meeting, Mr. Houghton was the facilitator and spoke of goals and objectives. Ms. Proctor provided a detailed overview of the Central Park plan. Ms. Leonard gave options for funding. Each councillor was given five minutes to give his/her views on the recreational facilities issues. A summary of Council’s comments was recorded on a flip chart. (TOC0173022) The flip chart and the comments contained thereon again confirm the growing consensus of Council that the Central Park plan was too expensive, that ice and water was a priority and that there was a definite urgency to answer the immediate needs of the public. At the meeting, Deputy Mayor Lloyd distributed Sprung brochures that he had obtained at an earlier FCM conference. There was considerable interest in the brochures. In his evidence, Ed Houghton confirmed that the attitude and approach of Council was becoming clear. During the October 7, page 114 testimony of Rick Lloyd he states, “don’t be fooled by the \$35 million, it’s not 35 million.....I would surmise that it would be closer to 42 or 44 million, which quite frankly in a population of a community of 22,0000, it just wasn’t within the realms of what we can afford”. Rick Lloyd further testified on page 118 that, “the 35 to 44 million was out of the question totally. And I’m not the only Councillor,.....there’s all kinds if emails from other councillors saying its impossible.”

13. On June 12, 2012, the day after the strategic planning counsel meeting, Deputy Mayor Rick Lloyd emailed acting CAO Ed Houghton and asked - “would you get a price for a fabric cover to completely go over the Centennial Pool and building at Heritage Park. And please get a cost for a fabric building to go over the outdoor ice pad at Central Park”. (TOC0547027).

14. Mr. Houghton forwarded Deputy Mayor Lloyd’s email to Clerk, Sara Almas writing “Here you go. Cover the Centennial Pool and we forget about the Y! Why is nothing ever easy!” It is submitted that Mr. Houghton and Staff are beginning to feel the pressure arising from the sense of urgency expressed by the Deputy Mayor and other councillors.

15. Sara Almas sensing the inappropriate nature of Rick Lloyd’s independent request of Staff responds “Could you ask Rick to ask you in an email that all council and Marta sees, to include approximate cost for these in our report back to Council. If no one objects, ask Ron and Dave or Dennis to get a couple of prices”. (TOC0547027)

16. Thereafter, and on June 14<sup>th</sup>, 2012, and presumably as a result of a request made to Rick Lloyd by Ed Houghton, who was following Sara Almas’ advice, Rick Lloyd reissued his email request for pricing to all of Council, the EMC and Ms. Proctor (TOC0172221). This email is significantly more prescriptive and asks Staff to get a price for a Sprung structure to cover the Centennial Pool and the outdoor rink. Clearly the Deputy Mayor was becoming the guiding architect of this alternate plan.

17. Mayor Sandra Cooper replied to the group supporting the idea. “Thank you for offering this suggestion ....” (TOC0172262). The enthusiasm of Council to the idea of obtaining prices and to the idea of Sprung structures over the pool and an ice rink is echoed in emails from Councillors Cunningham, Hull and Kevin Lloyd. (TOC0172233, TOC0172262, TOC0172271)

18. In the face of this exuberant response by Council, and the Mayor Staff commenced necessary efforts to obtain pricing. Although their efforts did not result from a Council resolution, they did result from a request to Staff, which was circulated to all councillors

and the EMC, to which there was no objection. It is submitted that in all the circumstances, the efforts made by Staff described hereafter were appropriate.

19. On June 13, 2012, Pat Mills directed a follow up email to Ed Houghton requesting a meeting with the “Central Park Redevelopment Team”. In the face of Rick Lloyd’s June 12<sup>th</sup> email, Mr. Houghton responded to Mr. Mills’ writing “I have been asked by a member of Council to get a rough estimate for the installation of two fabric buildings. Can we discuss this?” (EHH0000023). Mr. Mills responded by suggesting a meeting to obtain particulars.

20. Thereafter, and following Rick Lloyd’s June 14<sup>th</sup> second request for pricing, Marta Proctor forwarded Deputy Mayor Lloyd’s email to Dennis Seymour and Darren Potts and wrote “Saw this one coming ... can you please confirm some approximate pricing and what specifically it would/could include for both.” Thereafter, and on June 19<sup>th</sup>, 2012, Dennis Seymour and Darren Potts met with Sprung representatives. Additionally, and on June 21<sup>st</sup>, Rick Lloyd and Ed Houghton had a conference call with Sprung representatives in an attempt to provide Sprung with the information they need to provide pricing. During this call, it became clear to Rick Lloyd and Ed Houghton that two Collingwood groups were pressing Sprung for the same information. The evidence of Ed Houghton and Deputy Mayor Lloyd, confirms that as a result of this revelation, Deputy Mayor Lloyd asks Ed Houghton, for the first time, to be the contact with Sprung. It is submitted that given the fact that two groups from the Town are pressing Sprung for the same information, that Rick Lloyd’s request was reasonable and appropriate. In his evidence, Houghton explains, the meaning he took from Rick Lloyd’s comment, i.e. that if the Town was going to have discussions with Sprung, there should be one point of contact, being the CAO’s office, so that the contacts with Sprung might be coordinated. The comment did not mean that Ed Houghton “was the only one that would ever be able to speak to Sprung”. (*Houghton Evidence, October 16, pg. 174*). During Rick Lloyd’s testimony on October 7, pg. 215 he states, “I felt it important that not everyone and their brother were working back and forth with Sprung.” To be clear, the Deputy-Mayor ordered Mr. Houghton to be the contact with Sprung, it was not something Mr. Houghton requested.

21. The issue again arose in an email chain of July 24<sup>th</sup> and 25<sup>th</sup>, 2012, between Ed Houghton, Marjorie Leonard, Larry Irwin, Sarah Almas and Dave McNulty. In an email, Ed Houghton responds only to Mr. McNulty “The last point I should make is that I will be the contact person with Sprung. The Deputy Mayor made that perfectly clear with me on the weekend”. McNulty responded, “Okay. Got it.” It is submitted that Mr. McNulty unfortunately misunderstood the import of Mr. Houghton’s remark and on the 17<sup>th</sup> day of August, in an email, advised Richard Dabrus of the architectural firm WGD, that he was not to be in contact with Sprung. (TOC0200936) This issue, it should be concluded was an unfortunate misdirection provided to WGD by McNulty and was not intended by Houghton.

### **The Mayor Meets Sprung**

22. The evidence before the Commission disclosed that on July 4<sup>th</sup> and 5<sup>th</sup>, Pam Hogg exchanged emails with attendees for a July 11<sup>th</sup>, 2012 meeting between Sprung and representatives of the Town. The invitees included Mayor Sandra Cooper, Deputy Mayor Lloyd, Ed Houghton, David McNulty and Sprung representatives, Tom Lloyd, David McNeil and Pat Mills. (TOC0180240, CPS0003459) In his evidence, Mr. Houghton explained that the meeting was part of the “investigation stage” and that “its part of their due diligence”. Mr. Houghton goes on to explain that at the meeting, Sprung representatives describe their technology, including their double membrane system and its R30 insulation factor and that they had erected 12,000 Sprung structures in 95 countries. It is submitted that at this early introductory stage of the process, there was nothing inappropriate about Town representatives meeting with Sprung to obtain a better understanding of, what at this juncture, was nothing more than an interesting alternative technology. The July 11<sup>th</sup> meeting between Town representatives and Sprung representatives was had in the context of a planned Council meeting of July 16<sup>th</sup>, 2012, which followed the June 11<sup>th</sup> strategic planning meeting with Council and was designed with the assistance of Staff to consider alternative resolutions that might move the recreational facilities project forward. (*Houghton’s Evidence, October 16<sup>th</sup>, pages 176 to 179*)

## **The July 16<sup>th</sup> Council Meeting**

23. As the Council meeting of July 16<sup>th</sup> approaches, emails between Councillors Chadwick, Deputy Mayor Lloyd, Kevin Lloyd, Gardhouse, Mayor Cooper and Councillors Cunningham, West and Hull reveal the mood of Council. This includes a distrust and frustration with the involvement of the YMCA in the MURF project, a clear expression that the project as recommended by the Central Park Steering Committee is too expensive and a sense of urgency to move the project forward. In this respect, Councillor Guardhouse reacts and writes “\$5+M for the Y pool ... \$5+M to move and rebuild the ball diamonds, + demo the outdoor rink ... \$2+M to reno/join the buildings .... \$12+M without an ice cube!” Councillor West is aghast that someone “has the nerve to say there is no urgency”. Deputy Mayor Lloyd wrote “I have asked Ed to include an additional option for tomorrow. Keep the outdoor ice as is, and build a second ice surface either traditionally or Sprung. I’m for getting the job done.” (TOC0170540, TOC0170563, TOC0170573, TOC0172239, TOC0172262, TOC0172274, TOC0172287, TOC0184413, TOC0184616, TOC0184638, TOC0184656)

24. As set out in paragraphs 219 to 223 of Amended Foundation Document No. 2, on July 16, 2012, at 4:04 p.m. Dave McNeil of Sprung emailed Deputy Mayor Rick Lloyd, a link to three initial budgets for three Sprung turnkey structures. The said email was copied to Mayor Cooper, Dave McNulty and Ed Houghton. The evidence discloses that the three budgets were not presented at the Council meeting that evening. It is submitted that the evidence of Ed Houghton explains that he did not place the budgets before Council in that by 3:30 that afternoon, he had left his office and had not seen Mr. McNeil’s email prior to the commencement of the Council meeting. Mr. Houghton also speculates that Deputy Mayor Lloyd would also not have been aware of the Sprung budgets in adequate time to place them before the Council meeting. (*Houghton Evidence, October 16, page 179*)

25. During her evidence, Marta Proctor confirmed that the resolutions put before Council on July 16<sup>th</sup> were drafted by her. It is clear, however, that on July 11<sup>th</sup>, 2012 at



1:00 p.m. Marta Proctor forwarded the draft resolutions for the July 16<sup>th</sup> Council meeting to the EMC. The draft resolutions were also forwarded to her Council Representatives, Councillors Keith Hull and Dale West (TOC0183198). Ms. Proctor's email asks recipients, including councillors, "Please send me any additional editing suggestions". The email chain further evidences suggested drafting changes and input from not only Sara Almas, a member of Staff, but also from Councillor Dale West. It was also evidenced that Ms. Proctor sent other reports and documents not only to her Council Representatives but to her Parks Recreation & Culture Committee members who were not even Council Members. It is submitted that it appears to have been common practice to involve councillors in Staff deliberations at that time.

26. As set out in paragraph 208 of the Foundation Document, the final summary of resolutions documents were divided into two categories: "Direction A: Central Park Redevelopment Options" and "Direction B: Other Project Options". Included in Direction B were options to cover the outdoor rink and/or outdoor pool with a "fabric building" or a "roof structure". (CJ10008028 at pg. 135-144)

27. The minutes of the July 16<sup>th</sup>, 2012 Council meeting confirm that Ed Houghton provided an introduction, while Marta Proctor, Director of PRC, reviewed the resolutions being considered. The minutes further confirm that Council passed a resolution that stated "That Council direct Staff to pursue the following recommended options and develop a project timeline and detailed estimates and bring the report back to Council no later than August 27<sup>th</sup>, 2012.

1. Construct a single pad arena, that could be phased into a double pad: and
8. Enclose the outdoor pool with a fabric building."

It is submitted that the resolutions directing Staff were clear and prescriptive, particularly with respect to "enclosing the outdoor pool with a fabric building". (CJ10008083, pg. 7)

28. It is submitted, however, that the mood of Council evidenced by various councillors' remarks at the meeting, began to ratchet up the pressure on Staff to expeditiously

complete a report and to give every consideration to fabric or Sprung type buildings. The following comments were noteworthy:

- Deputy Mayor Lloyd, at page 22 said “You know as chair of the budget, my concern with this project is initial cost and our ability to service the debt and the debenture debt” ... “I don’t disagree that we need it, I don’t disagree that we needed it 10 years ago, in fact. But \$35M+ is a lot of money whether its phased in or not.” “However, I also realize that the people want, and in fact deserve a new ice pad, and that they want and deserve an indoor six lane 25 metre pool. And I am prepared to support the additional operating costs of those facilities”. ... “The structure could either be an architectural membrane or fabric building, that can be repurposed in the future.”
- Councillor Chadwick, at page 24 stated “We know there’s a demand for ice time and we know there’s a demand for the pool.” ... “And I like the idea of looking at some alternatives, but alternatives that mesh with the future plan that we’ve already put in place.” ... “So maybe we can actually have something in the very near future.”
- Councillor West, at page 25 stated “But we do have some urgencies right now. We do have the urgency, and again, I’ll speak from what I know.” ... “So, we’re not talking about wants for ice and we aren’t talking about something that isn’t urgent. It is. We’ve got to do something about that.”
- Councillor Edwards, at page 27 stated “But if we don’t start somewhere, then we won’t realize what we need to. And I’ve been on this trail for 9 years. I think it is, and its about time we got the ball rolling in the right direction and pulling together. And what I hear from around the council table is I think the same thing.”
- Councillor Cunningham, at page 27 stated “I’ve been coming to Council since 1997. Used to sit here and I I’ve listened to this and listened to it and listened to it.” ... “And let’s call a spade a spade. We’re in the ditch for \$50M. I rather doubt that we can afford \$35M.” ... “Buy these buildings that Mr. Lloyd is talking about and giving us instant access to a new arena at the exhibition park, as I call it. Leaving the outside rink there and enclosing the pool and you’ll – it’s a done deal.”

- Councillor Lloyd, at page 30 stated “I’m not much on regurgitation and rehashing and going around in circles. It’s time we got on with this.” ... “So, let’s get on with it please. I agree with Deputy Mayor Lloyd. Let’s get some alternative costing done. Let’s make some decision and let’s make this happen.

29. During the course of the July 16, 2012 Council meeting, Deputy Mayor Rick Lloyd emailed Ed Houghton requesting that the Staff report date be moved up from August 27 to July 30<sup>th</sup>. Mr. Houghton replied “make it no later than August 27<sup>th</sup>” (TOC0185481). In his evidence, Mr. Houghton made it clear that his email was in error and that it should have read “no sooner than August 27<sup>th</sup>”. Mr. Houghton further describes that during the course of the meeting, the Deputy Mayor turned his chair around and asked if it could be sooner and that Houghton told him not earlier than August 27<sup>th</sup>, thereby correcting the error in his email. This evidence makes it clear that Council, and in particular, Deputy Mayor Lloyd, wished the requested Staff report completed on an urgent basis. Were it not for Mr. Houghton, the date would have been earlier. During Rick Lloyd’s testimony on October 7, page 210 he states, “I was aggressively pushing to get this done.” (*Houghton Evidence, October 17, pages 22 - 23*) Again, the Deputy Mayor is the guiding architect.

30. During the July 16, 2012 Council meeting, Marta Proctor expressed “I am concerned a little about the timeline and the obligations we have as Staff with the events and summer schedules” (CJI0011234, pg. 39). It is regrettable and inappropriate that Ms. Proctor, the Parks and Recreation Director, and as such in charge of this significant recreational project, did not advise Council at the meeting that she was taking 3 weeks of holidays prior to the requested Staff report return date of August 27<sup>th</sup>, 2012. Ms. Proctor’s absence put further stress on Staff and Mr. Houghton to meet Council’s deadline of August 27<sup>th</sup>. The stress and frustration being experienced by Staff is illustrated in an email chain from Acting CAO to the EMC regarding a complaint from Councillor West. During the course of same, Sara Almas expresses that she is “sick and tired of meeting with her” being a reference to the necessity to continuously meet with Marta Proctor to bring her up to speed with respect to the status of the Staff report (EHH0000010).

31. Also, during the course of the July 16<sup>th</sup> Council meeting, Councillor Lloyd stated “As chair of finance, I would really like to work with Staff and our CAO to come up with an alternative. I would like to see a report back for our next Council meeting, which is July 30<sup>th</sup>. Again, to look at covering our Centennial Pool and a new ice pad at Central Park.” (CJI0011234, page 22). It is to be noted that there was no objection from the Mayor or other councillors to the proposal that the Deputy Mayor Lloyd work with Staff and the CAO to come up with alternatives. Ed Houghton, in his evidence in chief, explained that he took the statement from Rick Lloyd, which was not objected to by the Mayor or Council, as a direction that he was to work with Deputy Mayor Lloyd in completing the Staff report. It is submitted that Mr. Houghton’s conclusion in this respect, particularly for a new unschooled CAO, was not improper. It must be noted that in Mr. Houghton’s 39 year career he worked with a professional Board that was very much involved and expected Mr. Houghton to fulfil their wishes and obey their instructions. If there is any blame to be levied for Staff working with Deputy Mayor Lloyd, that blame should be leveled at the Mayor and the leaders of Council who bear the primary obligation to direct and govern the municipalities process, including the nature of the relationship between Council and Staff. (*Houghton Evidence, October 17, page 19*)

32. At the Council meeting of July 16, 2012, the Town had directed Staff to pursue options to construct a single pad arena and to enclose the outdoor pool with a fabric building. It is submitted that in keeping with that obligation, Council had the Central Park Steering Committee’s report which provided estimates for a bricks and mortar construction approach to the arena. In addition, Town Staff had engaged WGD to explore the relative costs of a prefabricated steel building and a fabric structure. In order, it is submitted, to further explore construction options and to comply with the July 16 Resolution, arrangements were made for Town Staff and others to meet with Sprung for a second time, on July 27<sup>th</sup>, 2012. Ed Houghton details the nature of that meeting in his evidence in chief. (*Houghton’s October 16<sup>th</sup>, pgs. 181 to 189*)

33. In attendance at the meeting were Sprung representatives, Tom Lloyd and Dave McNeil and representatives of BLT, being Dave Barrow and Mark Watts. Town

representatives were EMC members, Larry Irwin, Ed Houghton and Marjorie Leonard. Sara Almas was unable to make the meeting. In addition, Staff members, Dave McNulty and Dennis Seymore attended, along with Deputy Mayor Rick Lloyd.

34. Mr. Houghton's evidence confirms that it was during this meeting that Sprung introduced BLT as the "installer of the Sprung facilities" and "a partner of Sprung". Marjorie Leonard's evidence was to the same effect. It is submitted that as a result of the information received by the Town attendees at the meeting, including Leonard and Houghton, that BLT was the construction partner of Sprung, Houghton and others believed that the alternative of pricing construction by other than BLT was not an option. Accordingly, Mr. Houghton advised that the practice developed among Staff of referring to them as Sprung/BLT. It is further submitted that this understanding is the reason why Staff did not explore in their report, the prospect of an RFP for the construction aspect of the Sprung roof installation. *Houghton Evidence, October 16, page 186-187) (Leonard Evidence, October 15, page 105 – 106)*

35. In addition, commencing at page 184 of his October 16<sup>th</sup> transcript, Mr. Houghton describes the discussions had that day with Sprung/BLT with respect to the Sprung shield. Mr. Houghton, in his evidence, describes the Sprung shield as being "an 8 foot aluminum piece that goes around the entire perimeter of the building". He stated that Sprung advised that only 5% of the 12,000 buildings that had been erected to that date, had installed the Sprung shield. He further advises that the cost of the shield was expensive being \$250,000 to \$400,000 for the installation. Mr. Houghton confirms discussions had that Collingwood was "not typically a high vandalism area" and that someone from BLT said that forced access would likely not be through the membrane in that "you can go right to the door and smash the door if they wanted to get in". It is submitted that it was a reasonable conclusion that the Sprung shield was an unnecessary expense for Collingwood to incur. It is further submitted that common sense would not require Staff to seek Council's advice with respect to the choice of each and every option available with respect to this recreational construction project. It is submitted that for the reasons described above and given the consensus among Town attendees at the meeting, it was a proper conclusion that the Sprung shield was an unnecessary expensive

option that should not be purchased or considered by the Town. It is of note that Rick Lloyd, in his testimony (*Deputy Mayor's Evidence, October 8<sup>th</sup>, pgs. 116, line 1*), testifies about the July 27<sup>th</sup> meeting that he and Staff had with Sprung/BLT. He notes that during that meeting, the prospect of purchasing the Sprung shield was, for good reasons, discussed and rejected. Again, at page 1, Mr. Lloyd testifies "I take full responsibility as the Deputy Mayor, no doubt, I should have brought it back to Council, at least informed them. I never even thought about it, to be honest with you".

36. At page 197 to 199 of his October 16<sup>th</sup> transcript, Houghton describes "a confusing conversation" during the July 27<sup>th</sup> meeting, during which Tom Lloyd told the meeting, "well you can go direct and purchase it direct, but there are risks of doing that", in reference to the purchase of the Sprung textile roof. Houghton describes being told at the meeting, that if you did so, "you can buy it direct, but then ... you could have BLT install it ... , but you take the risk of the ... once its shipped and once its on site, it's your responsibility... ". "It was like you can do this, but its probably going to cost you more money and there's going to be a significant risk." As set out above, Houghton describes that this "was a confusing conversation". Presumably, it is submitted it was confusing because of earlier advice in the conversation, pursuant to which the Town's representatives had understood that Sprung/BLT were partners and that BLT was a necessary installer. Houghton, in his evidence, also describes that in 1999, during the construction of the Collingwood Water Filtration Plant, the Town separately sole sourced and purchased the necessary Zenon technology and that this approach led to design problems, construction delays and increased costs for the Town. Given the confusion that this conversation engendered in both Ed Houghton and it would appear in Marjorie Leonard, given the increased risk and the prospect of increased costs, and given Mr. Houghton's earlier experience during the water filtration plant construction, it is not unreasonable that the Staff in attendance at the meeting, did not understand that there may have been an opportunity to use a separate RFP for the installation of the Sprung membrane and necessary construction at the arena and pool. Additionally, it is submitted that given the confusing nature of the conversation and the potential for increased expense and responsibility, that the prospect of purchasing the fabric membrane directly from Sprung was not an option put before Town Council.

37. Additionally, it is submitted that the evidence of Ed Houghton (October 16, page 187) is noteworthy. “It was a confusing conversation because again, our – our belief was – and I think that’s why we always referred to this as Sprung/BLT. We didn’t differentiate between Sprung/BLT”. Again, the evidence of Marjorie Leonard was to the same effect (October 16, page 119). Staff therefore felt it was of no consequence that the Town ended up contracting with BLT, not Sprung and that the issue of the contacting parties were not raised in the Staff report and particularly when Staff did not differentiate between the two. As it turned out, the difference was of no consequence during construction and did not cause a mischief. It appears that BLT’s construction manager, Paul Wader and Ron Martin, the Town’s representative worked very well together. An example of the excellent relationship was the two parties ability to amend the payment schedule when the Town came to the view that it needed changing. Again, no mischief was occasioned from the apparent change in contracting parties.

#### **Contact with Bonwick and Abbey Stec**

38. It is evident from the phone records filed with the Commission that there was substantial phone contact and indeed, personal contact, between Bonwick and Houghton during the months of April to and including August 2012. It is the evidence of Mr. Houghton (October 18 – page 40 to 48) that very few of the contacts involved were in respect to the Sprung/BLT sale to the Town. Bonwick was, during that period, involved in innumerable issues in the Town of Collingwood as he had historically been, and many of these issues led to phone conversations and phone contacts with Ed Houghton.

39. Ed Houghton was the President & CEO Collus Power, soon to be Collus PowerStream and Bonwick continued to work with PowerStream until the end of 2012. The Collus/PowerStream transaction was to close July 31, 2012, necessitating substantial contact. There were logos to be designed, Ontario Energy Board approvals and interrogatories to complete, possible Collus/PowerStream consolidation with at least three nearby municipalities to be discussed, the shared service agreement to be

negotiated, the sale and closing of the Mountainview Hotel, in which Bonwick was involved, as was the ministry, Raglan Street servicing and redevelopment, the redevelopment of the corner of Hume and Hurontario Street, the local snowmobile club in which Bonwick and Houghton were involved and the rerouting of the highway bottleneck immediately outside the Mountainview Hotel.

40. Again, Houghton's evidence makes it clear that their interactions from time to time involved some communications on BLT administrative activities, but no lobbying with respect to the Sprung/BLT purchase or the eventual sole sourcing of that acquisition.

41. Examination of specific contacts between Bonwick, Stec and Houghton confirm same. An August 1<sup>st</sup> email from Abbey Stec to Dave Burrow, Mike Watts and Paul Bonwick suggest that Bonwick and Houghton spoke on that day regarding "the Collingwood project" (CJI0007247). In his evidence in chief (October 18 – page 209 to 214), Mr. Houghton explains this contact. He indicates that on that day, Bonwick advised "that he, through Ms. Stec, had created a relationship with Sprung and then ultimately, BLT and that they're going to be working with BLT and that Ms. Stec was going to be basically the facilitator ... the local facilitator for BLT". Mr. Houghton confirms that he did not pass that information on to anyone at that time. Mr. Houghton states that Bonwick's efforts as a consultant on behalf of PowerStream, evidenced in Part I, were fully revealed in a meeting between the Town and PowerStream on June 28<sup>th</sup>, 2011. This meeting involved the Mayor, the Deputy Mayor, Kim Wingrove, the Town's CAO at the time, Mr. Bentz, President & CEO of PowerStream, City of Barrie Mayor Jeff Lehman, a Board Member of PowerStream and Dean Muncaster, Chair of Collus Power. Mr. Houghton explained that he was made fully aware of the meeting, its participants, the reveal of Bonwick's involvement as a consultant and their reaction to that disclosure. It was clear that the Town leaders, including the Mayor and Deputy Mayor did not see Bonwick's involvement as a conflict of interest. In fact, Dean Muncaster, Mr. Houghton's boss at Collus PowerStream, had said to Mr. Houghton "If Bonwick can help get a better deal for Collingwood, God bless him". It is submitted that if Houghton's "emotional allergy" to the involvement of Bonwick did not raise a concern among the Town Council leaders, then it wasn't for an acting CAO to raise the issue. Again, as explained in Part III of our inquiry,



it is for the Mayor and other leaders of the Council to set the tone and culture for the community's municipal government. In the face of their reaction on June 28<sup>th</sup>, 2011, it is completely understandable that Houghton did not react to Bonwick's revelation on August 1<sup>st</sup>. Additionally, Houghton testified that he believed the Deputy Mayor, for reasons to be explained later, and very possibly the Mayor already knew, accordingly, who was he to tell.

42. Emails between Bonwick and Houghton on August 6, 2012 (TOCO195563.001) arrange an August 7<sup>th</sup> meeting between the two. It is clear from the emails that there was a number of intended topics of conversation, including the Mayor's golf tournament, BLT, the new board of Collus PowerStream and the traffic choke point at the Mountainview Hotel. Mr. Houghton's evidence (October 17<sup>th</sup> transcript, page 214 to 218) confirm that the most significant discussion at that meeting was the Mayor's golf tournament and the prospect of it being the launch point of the new brand, Collus PowerStream, including discussions about the nature of the launch and the fundraising which it might engender. Neither Mr. Houghton or Mr. Bonwick were able to relate any significant matters of discussion related to Sprung/BLT. Further email chains (CJI0007217, CJI0007218, and CJI0007208) reveal contacts between Houghton, Bonwick and Stec on August 21<sup>st</sup>, August 24<sup>th</sup>, August 27<sup>th</sup> and August 28<sup>th</sup>. Mr. Houghton's evidence, (October 18<sup>th</sup> transcript page 218 to 222) reveal nothing of an inappropriate nature arose from those contacts.

43. The August 21<sup>st</sup>, 2012 contact (CJI0007217) appears to confirm that Houghton, with Bonwick's cooperation, was forwarding Sprung's earlier budget estimates to BLT to ensure that prices that were about to be quoted by BLT would be as reasonable and as low as possible in relation to Sprung's earlier budget numbers. Further, the documents reveal that Mr. Houghton did discuss, not the numbers, but the format in which he wished to receive numbers from BLT. In addition, in conversations with Ms. Stec, Mr. Houghton pressed to ensure that the large garage type doors at the pool were in fact included in the anticipated estimate. None of these interactions are improper. An email of October 27<sup>th</sup> (TOCO205857.001) between Bonwick and Houghton, discusses Bonwick's suggestion

that Guardhouse had attempted to sabotage the process. Houghton's evidence confirms that he had no understanding of Bonwick's allegation in this respect and gave it no attention. Interaction between Stec and Houghton on August 28<sup>th</sup> (CJI0007201) reveal nothing but a discussion between the two parties in which advice was passed from Ms. Stec with respect to some of the Town's choices of options. Again, none of these interactions are other than processing of a potential transaction which the Town had instructed Staff to investigate. There is nothing inappropriate or of a lobbying nature in any of the interactions.

44. In his evidence, (October 17<sup>th</sup> transcript, page 223 to 230) Houghton reveals that he had a conversation with Bonwick on August 29<sup>th</sup>, during which Bonwick expressed a wish to tell Houghton the size of his fee from BLT and Houghton resisted receiving that advice. Houghton describes that he did learn through the course of the conversation that any fees being charged by Bonwick were coming out of the overhead of BLT. This was confirmed by Bonwick in cross-examination *Bonwick Evidence, October 24, pages 69 - 70*). Houghton describes that on that evening when leaving the office and sitting in his car, he received an email from Bonwick which was difficult to read on his blackberry and was therefore sent to his wife's home email address, as he frequently did, in order that he might review it later in the evening. Mr. Houghton describes that the email appears to suggest that the revenue that Mr. Bonwick was receiving from this project was "\$675,000 approximately, maybe a little more", and that his reaction from reading the email was "that's a big number". Houghton further describes that although he would have been in the Town of Collingwood's offices the next day, he did not reveal this number to any other parties. He explains that he did not do so in that he had "already been reassured that it was part of the overhead of BLT, so it wasn't coming directly out of Collingwood's pocket". Houghton confirms "I still felt that it was still not my business. I don't know (the revenues) of the people who supplied the concrete. I didn't know the revenues of those that did the electrical work or any of those kinds of things". It is submitted that Houghton would also have had in his mind the explanation provided above that Bonwick's June 28<sup>th</sup> discussion did not raise an alarm with Town leaders. In the circumstances, it is submitted that this explanation was a satisfactory one. Bonwick's fee

coming from the overheads of BLT was further evidenced in the testimony of Dave Barrow of October 3, page 266. Mr. Barrow is asked if the Town of Collingwood paid any extra money for the facilities as a result of the agreement they had with Green Leaf? Mr. Barrow replied, "No". Further on October 3<sup>rd</sup>, page 268, Mr. Barrow states, "I believe that building was built at significant savings and they got an ultimate product."

45. The phone records also show substantial contact between Ed Houghton and Deputy Mayor Lloyd during the months April to August 2012. There were innumerable contacts between Rick Lloyd and Ed Houghton during this time (*Houghton Evidence, October 18, pgs. 47-48*). As Chair of Public Works, Mr. Houghton testified that he would often receive calls nearly daily from Rick Lloyd about a variety of issues in that department. Mr. Houghton also described that Rick Lloyd was very intrigued, excited and involved in the recreational facilities project and in our submission the chief architect. Houghton further described that "Rick would hear something, call and ... we'd discuss it". As a result of the above, Deputy Mayor Lloyd and Houghton spoke often.

46. In his evidence, (*Houghton Evidence, October 17, pgs. 261-264*), Houghton describes a telephone conference had on August 22<sup>nd</sup> between Rick Lloyd, Paul Bonwick and himself. Mr. Houghton described that Deputy Mayor Lloyd was agitated that Sprung/BLT made a sales call on the Mayor of Wasaga Beach, Cal Patterson. Houghton describes it was a lengthy conversation in which the Deputy Mayor was agitated and eventually Bonwick asked the Deputy Mayor to put it in an email and he would deal with it. Houghton, on the other hand, had little interest in the conversation and continued to work on his computer during the course of Rick Lloyd's remarks. Rick Lloyd did, in fact, forward to Bonwick an email expressing his concerns about this Sprung/BLT sales call (Doc No.CJI0007255). The email and the necessity for the phone call are significant in that they confirm that Deputy Mayor Lloyd must have known on August 22<sup>nd</sup>, 2012, that Bonwick was acting on behalf of either BLT or Sprung, otherwise there would have been no purpose in the Deputy Mayor raising the Wasaga Beach issue with Mr. Bonwick, either in the conference call or the subsequent email.

## Interaction with WGD

47. Ed Houghton's evidence in chief (*October 17<sup>th</sup> transcript, pgs. 230-240*) explains why it is that Mr. Houghton had a limited understanding of the fact that WGD had been retained to assist in the development of certain aspects of the August 27 Staff report and appeared confused when other Staff referred to the efforts of WGD. Mr. Houghton's evidence disclosed that there was a department heads meeting on July 17, 2012, the day after the July 16 Council meeting. It was at the department head meeting that Ms. Proctor suggested WGD might assist in providing estimates for a covered ice pad at Central Park. She did so, given the fact that WGD had done the initial estimates for the MURF contained in the Steering Committee's March 2012 report. Unfortunately, Mr. Houghton was not at the July 17<sup>th</sup> department heads meeting and appears not to have read the minutes that arose from same. Accordingly, Mr. Houghton was not aware that WGD had been retained for that purpose. The July 17 department heads meeting minutes are (TOC0188070).

48. Further, and on July 19<sup>th</sup>, 2012 at 4:10 p.m., Dave McNulty sent the draft WGD terms of reference to Marta for her comments (TOC0187441). Mr. Houghton is not copied on this document and continues to be unaware of WGD's retainer. On July 20<sup>th</sup>, 2012, Dave McNulty sent the ice arena terms of reference to WGD. Again, Mr. Houghton is not copied and is therefore unaware of the retainer (TOC0188041.1).

49. Mr. Houghton is copied on email strings between Marjorie Leonard, Dave McNulty and himself on July 24<sup>th</sup> (TOC0189770, TOC0189916 and TOC0189964). For the reasons set out above, Mr. Houghton is confused about WGD's retainer and indicates he is not sure "where pre-engineered steel fits in".

50. Again, in emails of August 7<sup>th</sup> between Houghton and Dave McNulty, Mr. Houghton is pressing for status of the Staff reports on the Mountainview Hotel and the recreational project. McNulty replied and advises that WGD was to have the information back to the Town by August 15. Houghton responded "Remind me again what WGD is doing? Mr. Houghton's further confusion is explained by Staff's failure to keep him in the loop with respect to the retainer of WGD and his substantial work load (TOC0195597). On August

8, 2012, WGD forwarded three Central Park master plan drawings to Ms. Proctor. Again, this exchange and the drawings were not shared with Mr. Houghton (TOC0196651), leaving Mr. Houghton further out of the loop with respect to the activities of WGD.

51. It is submitted that in spite of clear direction given to WGD in their initial terms of reference and in further correspondence directed to them by Dave McNulty, WGD failed to provide Staff with the necessary information to help them analyze fabric roofs or “Sprung like structures” as the Town resolutions had requested. Mr. Houghton’s evidence is helpful in confirming same. (*Houghton’s Evidence of October 17, pgs. 247-253*)

52. Houghton refers the Commission to WGD’s initial terms of reference (TOC0188041.1) and notes that in column 2 and 3 of the Chart contained therein, WGD is specifically referred to “Sprung or equivalent buildings” for both the pool and single pad arena. Further, and by email of August 17 at 9:00 a.m., McNulty specifically directs Richard Dabrus to the Sprung fabric building (TOC0200936), and forwards to him a Sprung multi-page brochure setting out the characteristics of Sprung that McNulty clearly felt would be useful to WGD in their analysis.

53. In spite of this specific direction, the analysis returned by WGD to Staff at 1:30 on August 17 (TOC0201146), bears little relationship to the analysis of fabric roof products that Staff had wished. Again, later on August 17<sup>th</sup> at 3:23 p.m., an email from WGD with a further amended submission for their report (TOC020198, TOC0201266), again provides an inadequate analysis of the benefits of the fabric roof option or Sprung structures in particular. It is submitted that WGD’s report was less than helpful to Staff in their efforts to analyze roof structures, and in particular, fabric roof structures, to which the Town’s July 16 resolution had directed them. In the evidence of Dave McNulty, he states on September 26, page 235, “I think that all along and – and up until the end, I’m not sure that WGD had a clear understanding of the Sprung structure, or the – the – features of it. I had the – and – and their cost estimate I don’t believe was specifically on that type of structure. And so, I think I had some question in my mind of the validity of their estimate.....they are still looking at the wrong type of fabric building.” Even during the testimony of Richard Dabrus of WGD, it was clear that he had little knowledge of the

project and many years later he still had little understanding of sprung structures. His testimony showed that he had a cavalieri attitude towards the inquiry and provided significantly erroneous answers. During his cross examination, Ryan Breedon asked, “and in you testified that in 2012 the approximate costs would have been \$80 a square foot” Dabrus responds, “Did I really say that? I’ll have to retract that the, because that probably would have been too light. .... the envelope is \$200 a square foot.”

### **Council’s Continuing Enthusiasm for Sprung Leading Up to Council’s August 27<sup>th</sup> meeting.**

54. The continued enthusiasm of Council for ice and water and the use of Sprung structures continued after the July 16, 2012 Council meeting. In his evidence, Mr. Houghton advises that he was hearing from Councillors, including Dale West, Deputy Mayor Lloyd, Kevin Lloyd, Chadwick and Edwards that “There is a desire for this to move forward”. Houghton described that “the crescendo is starting to build”. (*Houghton’s Evidence of October 17<sup>th</sup> transcript, pg. 256*)

55. The momentum is confirmed by several emails. On July 16<sup>th</sup>, Deputy Mayor Lloyd sends an email to Councillor West to discuss the outcome of the Council meeting. Councillor West exclaims “We are closer than we have ever been!” (TOC0185611)

56. In an email of July 16<sup>th</sup>, 2012 at 10:25 p.m. between Deputy Mayor Lloyd and Councillor Cunningham, Councillor Cunningham states “The good ole boys prevail as always”. (TOC0185617) On August 23<sup>rd</sup>, Councillor Lloyd replies to a citizen’s concerns regarding Central Park. Councillor Lloyd states, among other things, that \$35M is too much and that alternatives will be considered and that a report will be forthcoming that will result in an affordable, high quality state of the art ice pad. (TOC0203567) On August 24<sup>th</sup>, Mayor Cooper responds to a comment from a private citizen, and says “I encourage you to visit the Sprung website” (TOC0203901). On August 26<sup>th</sup>, Councillor Chadwick responds to a citizen and copies all of Council, Ms. Proctor and the Acting CAO. In his response, Councillor Chadwick reaffirms that this proposal is not temporary and

underlines that the fabric structures can be repurposed. It is submitted that Council's enthusiasm is indeed peaking and that Staff is acutely aware of it.

### **Houghton's Request for Extensions**

57. As earlier discussed in these submissions, the 42 day timeline for the completion of the Staff report for presentation on August 27<sup>th</sup> was not a timeline to which Mr. Houghton agreed. In fact, if it were not for his efforts, Deputy Mayor Lloyd would have pressed for a July 30<sup>th</sup> due date. In his evidence in chief, Houghton explained that he made two requests of Deputy Mayor Lloyd and at least one request of Mayor Cooper for an extension of Staff's time to complete the requested report. On each of those occasions, Houghton expressed that the timeline was really tight and that Staff were very busy. The response on each occasion was that "We would like to drive forward" and therefore, Staff did. Accordingly, it cannot be concluded that Mr. Houghton failed to seek an extension to the deadline.

### **Creating the Staff Report**

58. It was the assertion of Marjorie Leonard, in her testimony, that Mr. Houghton had directed her to commence writing the Staff report. It was Mr. Houghton's evidence that no such direction was given to Ms. Leonard. To the contrary, it was his evidence that by an email of August 14, 2012 (TOC0199345) from Ms. Proctor to Sara Almas and Marjorie Leonard, a request was made for a meeting between the three female staff. The title of the email was "Central Park Recommendation Report". Presumably, the three ladies were meeting to discuss the drafting of the Staff report. It appears that the three ladies and Dave McNulty, met to discuss the Central Park Recommendation Report on August 17. Later that day, Ms. Leonard sent an email to the Acting CAO stating that "We have not received any information from Sprung/BLT. Could you contact them for the information asap." (TOC0517088) Clearly, following the August 17<sup>th</sup> meeting, Ms. Leonard was considering the preparation of the first draft of the Staff report. The said draft was then circulated on October 18<sup>th</sup>, 2012 at 10:34 by Ms. Leonard sending the first draft to the EMC, Ms. Proctor and Dave McNulty. (TOC0201377, TOC0201378) It is

submitted that a reasonable conclusion from the above emails and the testimony received is that, at the meeting of August 17<sup>th</sup>, 2012, the four parties attending, not including Mr. Houghton, agreed that Marjorie would prepare the first draft. (*Houghton Evidence, October 17 pgs. 37-39*)

59. It is to be noted that the first draft prepared by Marjorie Leonard and forwarded to Ms. Proctor and others, contained a signature page confirming that the report was submitted by the EMC with input from Ms. Proctor and Mr. McNulty. It is important to note that the signature page did not change throughout the revisions and/or the final version of the report. It was the assertion of Marta Proctor, in her evidence, that in a conversation had on August 25<sup>th</sup>, Mr. Houghton had, in a heated telephone call, pressed Ms. Proctor to be a signatory to the report. It is submitted that Ms. Proctor's assertion in that respect is clearly inaccurate in that on the signature page of all drafts of the report, including the final draft, Ms. Proctor was noted to be a contributor. Accordingly, there would have been no need for Mr. Houghton to press her to include this acknowledgement. Additionally, by August 25<sup>th</sup>, the report had already been circulated to Council, along with the existing signature page and therefore no need for the call. It is submitted that the evidence of Mr. Houghton in this respect, should be preferred than that of Marta Proctor. (*Proctor Evidence, September 23 pg. 77*) (*Houghton Evidence, October 17 pgs. 265 – 269*)

60. An email chain of October 21<sup>st</sup> confirms the frustration experienced among Staff resulting from Marta Proctor's 3 week vacation during the course of the preparation of this significant Staff report. (EHH0000010) The email and the evidence of Ed Houghton, confirms that an email was forwarded by Councillor West, suggesting that Marta Proctor felt out of the loop. This assertion by Ms. Proctor was obviously disappointing to Mr. Houghton, given the efforts that EMC was expending to complete the Staff report and to attempt to keep Ms. Proctor in the loop. The sentiments of Staff are reflected in the comments made by Sarah Almas, who confirms that she is "sick and tired" of her frequent meetings with Marta Proctor to keep her fully advised. (*Houghton's Evidence, October 17, pgs. 39-41*)



61. In any event of the periodic friction between Marta Proctor and other Staff members, it is evident that her relationship with Mr. Houghton remained collegial. In an email dated September 19, 2012, (TOC00215881), she thanked Mr. Houghton for his understanding during her recent absences.

62. On August 18, 2012, Marjorie Leonard sent the first draft of the Staff report to the EMC, Marta Proctor and Dave McNalty (TOC0201377). On August 19, 2012 at 11:29 a.m. (TOC0517810), acting CAO Ed Houghton forwarded the first draft to Deputy Mayor Lloyd. Shortly prior to doing so, Mr. Houghton had had a conversation with Marjorie Leonard, in which he advised that he was doing so and Marjorie had expressed a wish to clean up the report and to send Deputy Mayor Lloyd a cleaned up copy, which she did.

63. In his testimony, Mr. Houghton explained why he did so. His first reason was that at the July 16<sup>th</sup> Council meeting, Mr. Lloyd went on the record and indicated that he wanted to be involved and there was no objection to his proposed involvement. The second reason proffered by Mr. Houghton was that Rick Lloyd was a Council representative as Chair of Finance, and Council representatives brought a different perspective to what Staff was doing. Mr. Houghton explained that the Town had done that “since the begin of time” ... “they may not do it today, and that’s fine, but we did that back then. It didn’t appear to be inappropriate back then”. (*Houghton’s Evidence, October 17<sup>th</sup> pgs. 270-271*). Set out in these submissions are examples of other Staff forwarding draft Staff documents to councillors. It is submitted that this was not an unusual practice, nor an inappropriate practice given the culture of Council in the years 2011, 2012 and prior.

64. In the same email chain set out above, Rick Lloyd responds that the report “needs Ed Houghton’s positive spin in a redraft” ... “as well, we must be careful not to give too much information”. In his evidence, Mr. Houghton explains that the Deputy Mayor was “sort of a gregarious, positive kind of guy, so he likes to have that positive spin”. Mr. Houghton further advised that he took the Deputy Mayor’s words “not too give too much information” to be a discussion of the principle, that “if you want something pushed

through Council, you give councillors a very large report, and if you want something to be clear and concise and understood, provide less words and less pages of information.” It is submitted that Mr. Houghton took the Deputy Mayor’s words as nothing more than a comment on a style choice that the writer of a Staff report might make. Mr. Houghton further explained in his evidence, that he did not make any changes as a result of the Deputy Mayor’s comments set out above and that his only changes were changes made at the end of deliberations to the final draft of the report.

65. On August 23<sup>rd</sup>, 2012 at 5:59 p.m., Dave McNulty started an email chain with the EMC, including Marjorie Leonard, Ed Houghton, Larry Irwin and Sarah Almas. At 6:59 p.m. that day, Ed Houghton responded to all those on the email chain, “Thanks Dave, and thanks for our earlier call” (TOC0203834). Phone records confirm that at 6:05 that evening, Ed Houghton and Dave McNulty had a 21 minute phone conversation which Mr. Houghton explained arose as a result of Mr. McNulty’s 5:59 email, in the same email chain, in which he advises that he was “Working on another draft. Same information, but a different approach to the report.” Mr. Houghton explained the nature of the call at 6:05 between he and McNulty. He stated that the conversations were about the “different approach” to the report that McNulty suggested he was taking and there were no discussions in that conversation about procurement or RFPs or sole sourcing. It is submitted that this is confirmed by Dave McNulty’s 7:08 p.m. email reply, only sent to Mr. Houghton, in which he asks “Is your thinking that the procurement is done? Or that we still need to go through the process of an RFP or something?” (TOC0203834) (*Houghton’s Evidence, October 17, pgs. 275-276*).

66. Mr. Houghton explained that he did not reply to McNulty’s email of 7:08, but that he spoke to Marjorie Leonard. Mr. Houghton testified that he understood procurement was part of Marjorie Leonard’s portfolio. Sara Almas and David McNulty gave evidence to the same effect. Houghton called her at approximately 8:00 p.m. that evening to seek her advice with respect to the question asked by McNulty. Houghton explained, as had Deputy Mayor Lloyd, that Ms. Leonard was a demonstrative person and “I certainly did not, nor would I have the ability to have dictated her eventual response to McNulty”, as

had been the evidence of Marjorie Leonard. Houghton testified that Ms. Leonard was “very confident that we had done our due diligence and that she would reply to Mr. McNulty’s query”. (*Houghton Evidence, October 17 pgs. 277- 281*) (*Almas Evidence, September 12 pg. 168*) (*McNulty Evidence, September 24 pg. 175*)

67. It had been the evidence of Ms. Leonard that she had, in essence, in her phone call with Mr. Houghton on the evening of August 23<sup>rd</sup>, been intimidated into writing her email of August 23<sup>rd</sup> at 8:27 p.m. to Dave McNulty and others, wherein she expressed, that for procurement purposes, “I think we have done our due diligence”. (TOC0517069) Mr. Houghton’s evidence is in essence, a denial of that assertion. It is submitted that the evidence of Mr. Houghton is to be preferred to that of Marjorie Leonard with respect to the Houghton telephone call. Leonard had the opportunity to correct her stated opinion on several occasions and chose not to do so. The first of those opportunities was in an 8:30 a.m. meeting of the EMC the next morning, at which Almas, Houghton, McNulty and Proctor attended and the draft report was discussed. There is no evidence that Ms. Leonard resiled from her opinion in that meeting. In fact, at 10:46 a.m. that morning, following the 8:30 meeting, Ms. Leonard sent Dave McNulty and the EMC the procurement sections to be included in the Staff report (TOC0204034) in which she expressed the same opinion. Nor does Ms. Leonard express a contrary view during her attendance at the August 27<sup>th</sup> Council meeting. Clearly her opinion, continued to be as expressed in her email to Dave McNulty, and re-expressed in her draft procurement email sent to the EMC on August 24<sup>th</sup> at 10:46 a.m. Additionally, Ms. Leonard’s 10:46 procurement section was circulated to all the EMC and then amended by Dave McNulty and recirculated to the EMC (TOC0204100), giving Ms. Leonard further opportunities to resile from and/or amend her procurement opinion. She did not do so. The character of Ms. Leonard is such that she would not write anything in a report that she doesn’t believe to be correct. This is evidenced in Rick Lloyd’s testimony of October 7, page 228, where he talks of his many years of knowing Ms. Leonard, “I can assure you that Marjory Leonard would not have made any changes to the staff report if she didn’t think it was appropriate.” In Ms. Leonard’s testimony, on October 16, page 84, when asked if Mr. Lloyd’s characterization of her is correct, she states, “that would be correct.” Further on

October 16, page 85, Ms. Leonard is asked about the changes made to the Staff Report on the 23<sup>rd</sup> and 24<sup>th</sup> of August and if she wasn't satisfied, she would have spoken up. Ms. Leonard responded, "Yes". The questioning goes further and Ms. Leonard is asked, "in fact, you had an obligation to speak up if you weren't satisfied and of the view that things weren't moving forward properly, correct?" Ms. Leonard responded, "Correct. I can't recall if I did speak up at that meeting. I'm normally very outspoken". It is of interest to note that on November 3, 2019, Collingwood Today reported that the Town of Collingwood made 34 purchases over \$2,500 without a tender process.

68. Foundation Document No. 2 and the testimony at the Commission made it clear that McNulty forwarded his amended draft of the Staff report to the EMC and others at 11:44 on the evening of August 23<sup>rd</sup> (TOC0203890, TOC0203891) and that Ed Houghton further amended McNulty's draft and circulated it to the EMC and others at 7:34 a.m. on the morning of August 24<sup>th</sup> (TOC0203896, TOC0203897). Again, it is the evidence of Mr. Houghton that in his amended August 24<sup>th</sup>, 7:34 a.m. draft, he made limited corrections designed exclusively to clarifying the numbers that had already existed in the report and to making them more readable. (*Houghton's Evidence, October 17<sup>th</sup>, pgs. 282-283*). The documents confirm same.

69. In Mr. Houghton's testimony, he confirmed that Marjorie Leonard called a meeting for 8:30 on the morning of August 24<sup>th</sup>. Ms. Leonard, Ms. Almas, Mr. Irwin, Mr. McNulty and Mr. Houghton were in attendance. Mr. Houghton described that the purpose of the meeting was to "gather the troops, make sure that the report is full, that we know where we are going, have a discussion about it, flush out any thoughts or comments."

70. Mr. Houghton's evidence confirms that it was a lengthy meeting with a fulsome discussion of the issues that continued until approximately 10:00 a.m. He described a discussion with respect to Staff recommendations and that the then draft report did not contain them. Accordingly, Ms. Almas, the Clerk, indicated that she would attempt to draft them. Mr. Houghton further describes a fulsome discussion with respect to the procurement section, and that there was consensus with respect to the

procurement section that Marjorie Leonard agreed to attempt to memorialize. Finally, Mr. Houghton describes a discussion about the “numbers” to be put in the report. He describes that McNulty attended that morning with his files containing the numbers he had prepared. The evidence confirms that the numbers were discussed and it was decided that with respect to the costs for a pre-engineered steel arena, a range of cost would be stated, being \$11,100,000 - \$12,300,000, and that McNulty explained that his numbers were an attempt to make an apples to apples comparison between two green energy products with different leads points inherent in their basic structure and that given that the “energy products were about a million and change, and there was also a little bit of a discussion about what does site work mean ... so we gave the range of \$1.2M, so it was from \$11.1 to \$12.3”, and that there was “a consensus developed as to what the numbers might be that would go into the report” and that the group felt more comfortable putting a range in so that we weren’t overstating, the energy costs. (*Houghton’s Evidence, October 17, pgs. 284 to 289*)

71. The above testimony of Houghton, makes it clear that the draft report that Houghton circulated at 12:05 on August 24<sup>th</sup> (TOC0204146) had been largely completed by cutting and pasting Marjorie’s amended procurement section, Sara’s amended resolutions, and the consensus reached with respect to numbers directly into the report.

72. Thereafter, and at 12:05 p.m. on August 24<sup>th</sup>, 2012, acting CAO Houghton sent out what came to be the final draft of the report that incorporated the resolution section, the procurement section and the numbers on which there had been a consensus (TOC0204146). In that email forwarded to the EMC and Dave McNulty, Mr. Houghton stated “Please take a look and adapt, if needed. Call my cell if you need me.” Presumably, those receiving the email and the final report reviewed same and none of the parties chose to suggest any amendments. It is submitted that the final report was a consensus report completed with the input and agreement of all of the EMC and Dave McNulty.

73. It is of interest to note that Ms. Almas copies both Deputy Mayor Lloyd and Mayor Cooper on the emails relating to the resolutions section (TOC0204140, TOC0304156) Mr. Houghton's final email of 12:05 was not directed to the Deputy Mayor or the Mayor (TOC0204146).

74. The evidence in chief of Ed Houghton is helpful in understanding many of the numbers and references contained in the final August 27<sup>th</sup>, 2012 Staff report (TOC0204147). (*Evidence of Ed Houghton, October 17, pgs. 295-300*). In his evidence in chief, Mr. Houghton explains that the total pool enclosure costs set out in page 3 of the above described final report, being \$3,225,000 was a number that came from BLT/Sprung budgets and was a number that was discussed and confirmed at the 8:30 meeting on the morning of August 24<sup>th</sup>.

75. Mr. Houghton further explained that the site servicing allowance of \$200,000 was a number that had been discussed by Mr. Houghton, Dave McNulty and Brian MacDonald, with input from the Deputy Mayor, who it is said, had significant experience with respect to site servicing costs.

76. Mr. Houghton, in his evidence, then went on to describe the nature of the numbers contained on page 4 of the final report, paragraph 4. Mr. Houghton's testimony made it clear that he believed the number "\$7,392,000 as compared to \$11,100,000 - \$12,300,000, were estimates provided by WGD for the insulated architectural membrane versus the pre-engineered steel arena". (Oct 17, pg. 298). Not fully understanding what WGD was doing, Mr. Houghton thought the numbers were from WGD's report. Mr. Houghton also explained the last full sentence of paragraph 4 on page 4 of the final report, which states "Whereas a similar addition to the pre-engineered steel arena would add up to \$1M to the investment," should either have been removed or should have said that the cost of the second floor improvements are included in both estimates. He advises that the phrase "where as a similar addition to the pre-engineered steel arena, would add up to \$1M to the investment" is a phrase that was contained in earlier iterations of the report and should have been removed in this iteration, but by inadvertence, was not removed.

77. Mr. Houghton further explained the numbers below the first paragraph on page 5 of the final report, he advises that he is uncertain where the number \$7,476,000 came from, but that this number should have been \$7,392,000. The number actually used was a slight overstatement of the single pad arena cost. He further advises that the accessories, such as the Zamboni and scoreboard costs were, in fact, \$316,000 as described in the estimates of Sprung/BLT. Again, the \$500,000 for site servicing allowance was the same number for arena site servicing utilized on page 4 of the report.

78. Mr. Houghton gave evidence with respect to the preparation of the discussion section found at the bottom of page 5 of the final Staff report (TOC0204147). Mr. Houghton advised that “the discussion section mirrors the procurement section” written by Marjorie Leonard on August 24<sup>th</sup>, 2012 at 10:46 a.m. It was in fact reviewed by the EMC and Dave McNulty and amended by Dave McNulty (See Foundation Document No. 2, paragraph 413). (*Houghton Testimony, October 17 – pg. 303*) Again, the discussion section was not in words chosen by Mr. Houghton, but were the words chosen by Marjorie Leonard, who it was confirmed by the testimony of Sara Almas, Mayor Cooper and Deputy Mayor Lloyd, was in charge of procurement bylaws and their imposition. Additionally, the wording of this section is in keeping with Marjorie Leonard’s email to Dave McNulty at 8:27 on the evening of August 23<sup>rd</sup>, in answer to Dave McNulty’s 7:08 p.m. August 23<sup>rd</sup> email in which he asks “Is your thinking that our procurement is done?”. It is submitted that Mr. Houghton’s circumstances as Acting CAO must be given every consideration. The evidence discloses that Mr. Houghton was a placeholder for what was anticipated to be a two to three month period. Again, given his lack of experience and/or training to take on the acting CAO position and given his substantial workload, there is no question that Mr. Houghton, as was a condition of his appointment, developed and relied on the experience and opinions of the full time paid Collingwood Staff, including in this case, the procurement thoughts of the Town of Collingwood’s treasurer, Marjorie Leonard, assisted by the Procurement Manager, Dave McNulty, who had reviewed and amended the discussion section, which is, in essence, the procurement section of the report.

79. With respect to the “Department Head Review” section, it is acknowledged that the report was not circulated to department heads for comment on August 23<sup>rd</sup>. The time to complete the report was such that the report was not ready by August 23<sup>rd</sup> and therefore not reviewed by department heads. Mr. Houghton’s evidence confirms that the last two lines of section 4 on page 6 of the report, were “boilerplate” lines, which should have been reviewed and taken out of the report by Mr. Houghton and/or the EMC or Staff on their final review of the report on August 24<sup>th</sup>, 2012. This is particularly so when Mr. Houghton circulated the final draft to the EMC, McNulty, etc. at 12:05 p.m. on the 24<sup>th</sup>, (TOC0204146) requesting any comments or amendments that were felt appropriate.

80. There were those that would argue that the above described discussion section, found on page 5 of the report, was not in keeping with the existing town bylaws relating to procurement. Again, Mr. Houghton’s involvement in this respect, must be judged in light of his substantial, three full-time job, workload at the time, his placeholder position as CAO, his lack of experience and/or training to take on the role of CAO, and his understandable reliance on the EMC and senior Staff to provide him with guidance on technical matters, such as procurement. Additionally, one must consider the enthusiasm expressed by Deputy Mayor Rick Lloyd, the Mayor and other councillors for the architectural fabric membrane/Sprung roofs that were then under consideration. It is submitted there is no doubt that Council’s exuberance in this respect placed Staff in a position where they would have believed that councillors expression of need for “ice and water” on an “urgent” basis put pressure on Staff to attempt to satisfy Council’s wishes. This cannot be said to be an insignificant factor, particularly given the evidence of both Sarah Almas and Marjorie Leonard, that they, in essence, were mindful of Council’s wishes, in order to ensure their continuing employment. It must also be argued that the EMC and Staff were legitimately of the view, following their research, that the fabric roofs provided by Sprung, were the only roofs without a history of collapse, an admirable insulation level and the Tedlar system, that made Sprung the only supplier who should be seriously considered for the arena and pool installation.

### **August 27<sup>th</sup>, 2012 Council Meeting**



81. In his testimony, Ed Houghton confirms that at the Council meeting of August 27, 2012, Tom Lloyd of Sprung provided a brief overview of the Sprung facility at the request of the Acting CAO. This made sense given the recommendation to sole source. Mr. Houghton further testified that a presentation was given to Council by himself and Ms. Leonard (TOC0206027). Houghton noted that at 2:08 p.m. on August 27<sup>th</sup>, prior to the Council meeting, he forwarded the Staff presentation, including the financial portion and the procurement section to the EMC and Ms. Proctor addressing “Please take a look at the presentation and let me know if you see anything wrong or any inaccuracies. Marjorie, could you specifically look at the financial portion near the end, including the procurement part, since you will be giving this part.” Again, Mr. Houghton is pressing the EMC to review the materials and presentation that will go before Council on that evening to make sure that there are no inaccuracies or errors. Mr. Houghton specifically asked Marjorie to review the procurement part and the financial portion to ensure their accuracy as she’s the one who would be giving that presentation. Again, Marjorie advised of no inaccuracies or anything wrong with, either the procurement part or the financial part of the presentation, which she personally delivered to Council on that evening. Clearly, Mr. Houghton was relying on the assistance of the EMC to make sure that the presentation and its elements, including procurement, were as they should be. (*Houghton’s Evidence, October 18, pgs. 6-9*). It would be out of keeping with the evidence to conclude that Houghton was solely responsible for any frailties in the report.

82. The minutes of the August 27<sup>th</sup> Council meeting reflected that Council voted to receive Staff report (EMC2012-01) and to purchase and construct an insulated architectural membrane for year round single pad ice arena at Central Park, on a vote of 8-1, and an insulated architectural membrane structure over the existing outdoor pool by a vote of 7-2. (CJ1008068, pgs. 3-4) This was an inevitable decision by this council and can’t be said to be the result of the minor frailties in the staff report.

## **Contract and Payment Schedule**

83. On August 30, 2012, BLT emailed a copy of a 46 page design build stipulated price contract to Mr. Houghton. The payment schedule was contained in the contract. (TOC0207515, TOC0207516) On the same morning, Mr. Houghton emailed the contract, including the payment schedule to John Mascarin of Aird & Berlis, asking Mr. Mascarin to review same. (ARB0000236) At 1:08 p.m. on the same day, John Mascarin returned Mr. Houghton's email indicating that he has had an opportunity to review the agreement and advised that the agreement is "generally satisfactory" (ARB0000476). Mr. Houghton further advises that he took the trouble to review the payment schedule with Deputy Mayor Lloyd, who had substantial experience in the construction business. (*Houghton's Evidence, October 17, pgs. 202 - 203*) It is hard to conceive of other due diligence that Houghton might have done. There is additionally no suggestion in any of the evidence that Mr. Houghton was aware that the significant up-front payment in the payment schedule would allow Mr. Bonwick to be paid in full from the first advance. Mr. Houghton would have known nothing more than that the first advance would allow BLT to purchase the Sprung roof system from Sprung. It is submitted that it cannot be argued that by accepting the payment schedule, Mr. Houghton preferred the interests of Mr. Bonwick over those of the Town. In fact, the reality is that Mr. Houghton had both the contract and the payment schedule reviewed by legal counsel and Deputy Mayor Lloyd before both the contract and the payment schedule were placed before Mayor Cooper for signature. It also seems clear that prior to signing the contract on August 30<sup>th</sup>, Mayor Cooper had the opportunity to discuss the contract and the payment schedule with not only Deputy Mayor Lloyd, but also Marjorie Leonard, who attended the meeting to provide the Mayor with the contract and payment schedule (TOC207570), it was the evidence of Mr. Houghton that he was told by the Mayor that Marjorie Leonard attended the meeting between the Mayor and Deputy Mayor to discuss the contract and payment schedule. Ms. Leonard attended, as the Town treasurer, and had an obligation to review the contract before it was signed. (*Houghton's Evidence, October 18, pg. 15*)

84. It is the evidence of Mr. Houghton that no one negotiated the contract with BLT because it was not allowed. In Mr. Houghton's testimony of October 22, Ms. McGrann asks if anyone negotiated with BLT on behalf of the Town. Mr. Houghton replied, "I didn't think we were allowed to negotiate .....where have we ever negotiated where we are procuring something? .... I think even Ms. Leonard said at the end she didn't believe at that time (2012) we could negotiate." Mr. Houghton further states, "if we were able to negotiate, I would have expected that those people who knew it better than I, like, potentially Ms. Leonard would have said to me we need to negotiate. It was not my understanding that we could." Mr. Lloyd in his testimony of October 8, and in regards to negotiating with a Contractor states, "I see the Town trying to do that, but I'm not necessarily convinced that that's the role of municipalities." In the evidence of Ms. Leonard, she is asked, are you aware when fixed prices came in that the municipality would typically negotiate beyond that point? Ms. Leonard replies, "No I am not aware of that".

85. The evidence of the expert, Mr. Scott, was that a significant up front payment was not unusual in a design build project. (Evidence of John Scott, October 17, pgs. 91-95). In any event, following the payment of the initial up front draw, set out in the payment schedule, Paul Waddell and Ron Martin agreed to an amended payment schedule which more equitably reflected the status of the construction project. (TOC0511164)

### **Changes to the Pool**

86. On October 15, 2012, Council passed a Resolution directing Staff to incorporate a warm water therapy pool into the Centennial Pool project. The draft Staff report which had been prepared for Council, recommending the therapeutic pool, was sent by Marta Proctor to not only Councillors Hull and West, but also to her PRC committee members, who were members of the public. Mr. Houghton, again made it clear in his evidence, that circulating draft reports to councillors, was not an unusual practice at that time (Houghton's evidence, October 18, pgs. 22 and 24). Mr. Houghton confirmed his understanding that BLT obtained three quotations for the therapeutic pool (not on RFP) and that it became an extra to the BLT contract. On November 5<sup>th</sup>, 2012, Council received

a deputation from the Collingwood Clippers suggesting enhancements and expansion to the pool (CJI0008047). On February 11, 2013, Council receives a Staff report (PRC2013-07) detailing the effect on Town finances of the enhancement and recommending it proceed. The same was approved by Council (TOC0516920).

### **Dave Barrow Correspondence re Sprung Shield**

87. On July 12, 2013, the Town was notified that there had been vandalism at the Heritage Park pool. On July 13, 2012, Councillor Chadwick sent an email to certain councillors and Staff wondering why the Sprung shield, which he thought was part of the design, was not installed (TOC0343141). Ron Martin was asked to comment on why there was no Sprung shield in the building. On July 22<sup>nd</sup>, Ron Martin emailed Dave Barrow of BLT and made the above inquiry of Mr. Barrow. On the same day, Mr. Barrow responded and said that BLT had discussed it in a meeting with Ed Houghton, Marjorie Leonard and Larry Irwin and that vandalism was low and the cost was high and it was not thought to be an issue. Again, on the same day, Ron Martin wrote to Houghton, Leonard and Irwin and asked "Before I send this response to Council, do you all agree with Dave's comments?" It is submitted that given that invitation, Mr. Houghton chose to email Dave Barrow directly and to detail his memory of the "Sprung shield" discussion, which had occurred at earlier times. Mr. Houghton concluded his email by saying "I hope that you remember my points when you revise your comments since this will be an issue". It is submitted that there is nothing improper about Mr. Houghton's response to Dave Barrow. Mr. Houghton had simply advised Mr. Barrow of his memory of the conversation that he confirms was had by councillors and Staff with BLT on July 27<sup>th</sup>, 2012. It cannot be said that Mr. Houghton is attempting to conceal relevant facts from Council or to inappropriately influence Dave Barrow's response. There is nothing inappropriate about Mr. Houghton's effort to create an accurate record of discussions earlier he had with BLT. (*Houghton's Evidence, October 18<sup>th</sup>, pgs. 28-36*) In fact, in his response, Dave Barrow acknowledges many of the memories raised by Houghton and put them in his expanded response. (CJI0006198)

## **LEED Certification**

88. In his evidence, Mr. Houghton details what was learned from Sprung with respect to the potential for LEED's certification. Clearly, Sprung did not tell the Town's representatives that a Sprung building would automatically qualify for LEED's certification. Mr. Houghton explains that the Sprung building itself was said to contain many features that would be credits toward LEED's certification, and that this provided comfort with respect to the building structure itself. None of this suggests an automatic LEED certification. Similarly, in the same evidence, Houghton advises that it was never the intention of Staff to recommend the extra expense that would be necessary to make a successful LEED's certification application. (*Houghton's evidence, October 18<sup>th</sup>, pgs. 36-40*) Similarly, in the final Staff report (TOC0204147), at page 4, second paragraph, the report advises Council that "In order to receive the accreditation, there would be additional commissioning costs for either building system". Given the phrasing set out above, it cannot be said that the Staff report suggested that to construct the project with a Sprung structure would automatically achieve a leads silver standing. The phrase set out above, made it clear to the reader that there was no automatic LEED's certification available if a Sprung structure was used.

## **John Scott's Expert Evidence**

89. It is submitted that John Scott was an excellent witness who provided a number of very helpful insights, useful in assessing the process the Town undertook to arrive at its recreational facility contract with BLT and to complete that contract.

90. It is submitted that Mr. Scott's credentials as an expert in design build projects was well established. In his evidence (*John Scott's Evidence, October 18, pgs. 45-102*). He explained that he had had in excess of 50 years in the construction business and had taken a number of courses, including studying engineering technology, LEED's certifications and quantity surveying. It was evident that the great majority of his work life in the industry was spent with Wheelwright Construction. His experience with the

company included 4 to 5 years as a project coordinator and 9 years a project manager. Thereafter, he worked as vice president of sales and construction for Wheelwright for a period of 9 years. He then worked for Matthews Construction for a period of 3 years, from 1992 to 1995, where he was responsible for international sales and design build projects. Thereafter, he returned to Wheelwright and ran the company from approximately 1996 to 2017, where he increased the company's gross sales from \$2M a year to \$30M. Mr. Scott made it clear that throughout his career, 90% of the work in which he was involved were design build projects of all sizes. Finally, he was a member of the prestigious Presidents Advisory Council for the American Building Company and served on the executive of that organization for 3 years. It can be concluded that his expertise in design build projects was substantial.

91. Mr. Scott was able to assist with a definition of design build projects. He described them as projects, unlike conventional construction, where the designers, architects and engineers all worked for the contractor rather than the owner. It was clear from his evidence, and other evidence heard through the course of the inquiry, that the eventual contract for the construction of two Sprung structures, was in fact, a design build project and therefore had unique characteristics different from those of conventional construction.

92. At an earlier time, the Commission had heard the evidence of Ron Martin, project coordinator and/or Town representative on the Sprung/BLT projects. Prior to testifying, Mr. Scott had the opportunity to review Mr. Martin's evidence, along with an opportunity to review the CCDC contract between the Town and BLT, including the payment schedule. At pages 70-71 of his October 18 testimony, Mr. Scott noted that Ron Martin had no expertise in design build projects, and accordingly, would have difficulty transitioning from the conventional construction approach with which Ron Martin was familiar, to the design build project of Sprung/BLT. It is therefore submitted that where the evidence of Mr. Martin and Mr. Scott differ, the expertise of Mr. Scott in design build projects should be preferred to the evidence of Ron Martin.

93. At page 72 of his evidence, Mr. Scott describes that the form of CCDC contract signed by the Town with BLT was, in fact, a contract specifically for design build projects and that the same was quite functional for this particular application. Mr. Scott described that the form of contract was designed by the Architect's Association and the Contractor's Association. He further confirmed that the contract had been filled out properly and that all items had been covered.

94. The payment schedule was part of the August 30<sup>th</sup> Town/BLT contract. In his evidence at page 91, in contrast to Ron Martin, Mr. Scott advised that he had no concerns about the nature of the payment schedule. He stated that design builders seldom start a project without a significant deposit. He described this as the "norm" and explained that as soon as the contract was signed, the contractor would want to order and pay for significant items, such as the Sprung roof and/or extended delivery items, like the refrigeration equipment and/or the arena boards. At page 92, he described that "its good for both sides, the client knows that his contract is secured and the contractor knows that he is in a good position". At page 92, Mr. Scott also described that the second payment in the schedule, to be made when the site work inside 10 feet from the structure was complete, "makes sense".

95. At page 76 of his testimony, again in contrast to the evidence of Ron Martin, John Scott explained that construction bonds in design build projects are a rarity and in his experience were utilized in less than 2% of design build contracts. He described that he had seen only one bond in his last five years of experience, during about 50 projects. At pages 77-81 of his testimony, Mr. Scott described that this is the case for both large or small design build projects, because once the owner has assured himself that he is dealing with a reputable contractor, then there is no need for a construction bond. Mr. Scott described that requiring a construction bond reduces bidders by a least 50% in that the monthly reporting requirements to the insurance company are quite onerous and that generally, there is a requirement for a deposit of 50% of the amount of the bond. Accordingly, fewer bidders present themselves and, in particular, local smaller builders from the community are less able to be involved. He described the unsatisfactory

adjustment process which he has experienced with bonding companies. Finally, the bonds are described as quite expensive.

96. At page 76, Mr. Scott stated “The requirement for a construction bond from an owner, I would think would be when there is something questionable about the contractor they’re using. If they’re comfortable with the contractor and they get statutory declarations at the end of each month, that people have been paid on site and there is payment certifier visits to the site, I don’t see any need for a bond”. Although there was no evidence put before the Commission on the issue, it is a fair assumption that prior to making payments to BLT, the Town would have followed standard construction lien practices, including statutory declarations and the attendance of payment certifiers to the site. Certainly, there is no evidence that this standard procedure was not followed. Accordingly, given the above evidence, it cannot be said that Mr. Houghton or the Town failed to take adequate steps to protect the Town against non-performance or under performance by BLT. Further, given Mr. Scott’s evidence with respect to the appropriateness of the payment schedule, it cannot be said that Houghton agreed to a payment schedule with BLT that allowed Mr. Bonwick’s fees to be paid in full as part of the Town’s initial payment to BLT. This is particularly so when there was no evidence that Mr. Houghton had any knowledge of Bonwick’s payment schedule with BLT.

97. At page 98 of his testimony, John Scott describes the very limited price negotiation that is standard practice in a design build contract. “By the time you get close to the contract signing, there has been considerable back and forth and it might be things that maybe can’t afford to put in the project, maybe it’s the bleachers in the arena, maybe it’s the type of bleachers, whether they were individual seats with arms or whether they are bleachers or something like that. I would think that would be developed as the projects get close to signing. But, by the time you are going to sit and sign, I would think the negotiation of price is over”. At page 98, Mr. Scott makes it clear that it’s the scope of work that is probably extensively discussed rather than a negotiation of the price. As the Commission has heard, there were a number of meetings between Sprung/BLT and Town Staff, including telephone conversations of July 21, meetings of July 27<sup>th</sup> and a further



meeting on August 3<sup>rd</sup> in which the scope of work was discussed. Therefore, as is standard in a design build project, once the scope of work has been agreed, there is limited to no negotiations between the parties with respect to price. Mr. Scott also described at pgs. 99-100 of his evidence, that with respect to sole sourcing of design build projects, "I see it quite frequently, in my particular experience, its common". Accordingly, on the evidence above, the Commission should not conclude that Mr. Houghton failed to negotiate with BLT or to seek the best price for the Town, or that by sole sourcing and foregoing a competitive tender process, that a better price for this design build project could have been obtained. In fact, at page 87 of his evidence, Mr. Scott testifies that Sprung is "very very competitive. We know going in that they'll be more economical than we will be".

98. In his evidence at pgs. 73-75, John Scott describes that he believes that the design build contract with Sprung/BLT was a good choice for Collingwood. He describes the advantages available for saved construction time and saving owner management time in that the owner is not required to deal with the architects and engineers and that many of the problems are solved by the contractor without the involvement of the owner. Additionally, Mr. Scott indicates his belief that the design build contract is a good way of controlling construction costs and the time for the completion of the project.

99. Ron Martin, in his evidence, had expressed concerns with respect to the Town undertaking to complete necessary site servicing after 10 feet out from the building structure. It had been Mr. Martin's concern that two contractors on site had the potential to lead to conflicts with respect to the management of safety issues on the project. At pages 77-90 of his testimony, Mr. Scott describes why he does not see this as a problem and that in his experience, this frequently occurs and occurs successfully. Mr. Scott indicates that it is not unusual that two notices of project "are forwarded to the Ministry and that the two safety reps on site, that this necessitates, is definitely manageable. He also describes that allowing the contractor to site service up to 10 feet from the structure and a separate contractor to complete the site servicing thereafter, is standard. He concludes that the use of the Town Staff to complete site servicing beyond 10 feet from

the structure was a good choice and avoided the potential 15% markup that an outside contractor would charge.

100. At page 66 of his testimony, Mr. Scott described his experience with Leeds projects. He testified that “So lots of times on LEED’s jobs, you’ll say this component meets LEED’s standards, or that component meets LEED’s standards, but it can’t meet the ultimate classification”. It is submitted that, in essence, is the same description used by Staff in paragraph 2, page 4 of the Final Staff Report (TOC0204147), when it describes that “each of the arenas proposed would qualify for a LEED’s Silver accreditation. In order to receive the accreditation, there would be additional commissioning costs for either building system”. Again, it cannot be concluded that the Staff report did not advise that BLT budgets did not incorporate elements sufficient to achieve LEED’s standards. Finally, at page 83 of his evidence, Scott describes that it is standard that the owner would contract with the contractor rather than the structure manufacturer, as was the case in the contract at issue.

### **John Scott’s Expert Report**

101. John Mather, in his cross-examination of John Scott first mentioned the metadata, associated with Mr. Scott’s report. John Mather’s questions revealed that an individual named “Ed” had some involvement in the drafting of the report document (Evidence of John Scott, October 17, pgs. 160 to 162). Mr. Scott was asked if anyone he knew named “Ed” had any involvement in the documentation Mr. Scott prepared. Mr. Scott replied “No, when I sent the report to Fred, maybe my cover page was a bit rough and I didn’t know if that was modified because I lack some computer skills”. Mr. Scott would know that he hadn’t discussed the report with “Ed” but would have no idea who did the secretarial work.

102. In his evidence, Mr. Houghton explained his limited secretarial involvement in the preparation of Mr. Scott’s expert report (Houghton Evidence, October 17, pgs. 48-62). In addition, to the evidence of Mr. Scott and Mr. Houghton and pursuant to the Order of Justice Morracco dated October 18<sup>th</sup>, 2019, all documents relating to either Mr. Chenoweth and/or Mr. Houghton’s interactions with Mr. Scott were produced.

103. It is submitted that a review of the above evidence, clarifies that Mr. Houghton's involvement in the preparation of Mr. Scott's report, was to provide secretarial assistance only and, in essence, to have no contact whatsoever with Mr. Scott with respect to the contents of Mr. Scott's report. Mr. Houghton describes being at the home of his counsel on the evening of October 7<sup>th</sup>, 2019, and that on that evening, his counsel received a copy of an email from Mr. Scott which, in essence, was a draft of Mr. Scott's nine point opinion (EHH188). Mr. Houghton then describes his counsel's discomfort with the email format of Mr. Scott's draft report (EHH188). Mr. Houghton further describes limited computer skills of both Mr. Scott and his counsel and describes how Mr. Houghton had been acting as the "back room" or assistant to his counsel throughout the course of this Inquiry. It is clear that he was then asked by his counsel to reorganize Mr. Scott's draft nine point email into a more formalized form of report. He confirmed that to do so, he looked at the report of the "OEB lady", who had been an earlier witness at the Inquiry. He describes that he was asked by his counsel to call Mr. Scott to obtain a copy of Mr. Scott's CV, and he called Mr. Scott and thereafter Brian Dempsey, and that Mr. Dempsey forwarded a copy of Scott's CV to Houghton. Houghton then describes that he prepared a face page for the report and without changing a word, he cut and paste Mr. Scott's CV and his nine-point report into a more formalized form of report.

104. It is clear that thereafter, Mr. Houghton's counsel had a conversation with Mr. Scott, in which they concluded that the first sentences of paragraph 4 of Mr. Scott's draft report were already referred to in paragraph 3 of Mr. Scott's draft and should therefore be omitted. The evidence discloses that following this call with Mr. Scott, Houghton's counsel, with the agreement of Mr. Scott, called Mr. Houghton and directed him to remove the first two sentences of paragraph 4 from the earlier draft report. It is clear that following this agreed amendment, Mr. Scott's report was then circulated to all counsel (EHH187). The evidence in the documents disclose that Mr. Houghton did not speak to Mr. Scott about the contents of the report and that those discussions were only briefly had between Mr. Houghton's counsel and Mr. Scott.

105. It is submitted that the changes made following Mr. Houghton's counsel's conversation with Mr. Scott on the evening of October 7<sup>th</sup>, were minor in nature and that every other word from Mr. Scott's email form of report were preserved. A review of the case law, *Moore v. Getahun*, 2005, ONCA 55, (Docket C58338) confirms that it is acceptable for counsel to review and discuss draft expert reports with the expert, and that there can be no criticism of counsel for assisting in the preparation of the expert's report or his testimony. It is submitted that there is nothing in the interaction between Houghton's counsel and the expert which, in any way, interfered with the independence and objectivity of either Mr. Scott's expert report or his testimony.

106. Mr. Scott was subject to a detailed examination in chief, and rigorous cross-examination, which allowed the Commissioner every opportunity to assess Mr. Scott's credibility. It is submitted that Mr. Scott was a thoughtful and credible expert witness with respect to design build projects and offered the Commission very useful evidence. For the above reasons, the weight of that evidence should not be affected either by Mr. Scott's interaction with Houghton's counsel, or by the fact that Houghton offered secretarial assistance in formatting the report.

107. Reference is also made to the instructions that were provided to Mr. Scott (EHH192). It is fair to say that this document could have been more carefully prepared. It is of note, however, that the bullet points in both paragraphs 1 and 2 of that document, did not find their way into Mr. Scott's report. Again, it is submitted that an assessment of Mr. Scott's evidence shows him to have been a straightforward independent witness, who provided an unbiased opinion.

### **Other Factual Consideration**

108. It is also important to review one of the principle drivers for Part 2 which was the allocation of the proceeds of the Collus Power transaction for the construction of the recreational facility at Central Park and Heritage Park. It became clear through testimonies and evidence that the Collus Power transaction was not contemplated to allow for the purchase of new recreation facilities. In the testimony of Ms. Sara Almas,

Clerk, she states on September 12 when asked by Mr. John Mather if the Collus transaction funds had been committed to the Sprung structures. Ms. Almas replies, “No”. On October 4<sup>th</sup> in the testimony of Mayor Cooper, Mr. Mather asked her when she first put her mind to the possibility of using the Collus funds to pay for the recreation facilities. Mayor Cooper replied, “that it would be something that we want to engage the public in to where those moneys would be spent or not.” Mather pressed Mayor Cooper by asking, “was one of the areas that moneys could be spent, in your mind, potentially on recreation facilities?” Mayor Cooper replied, Not at the time.” During the testimony of Deputy-Mayor Lloyd, Ms. McGrann questioned him about the use of the Collus funds to pay for the recreation facilities. She asked, “did you consider the use of the Collus funds at any point before the August 27<sup>th</sup> Council Meeting?” Mr. Lloyd responded, “I know we were looking at funding it through our reserves or debenturing it.” Ms. McGrann also pressed Mr. Lloyd and asked, “Did you turn your mind to the possibility of using the Collus funds to pay for the construction of the recreation facilities after you met the people from Sprung?” Mr. Lloyd stated, “Not at that point in time, I didn’t.....The Collus funds at that – at the beginning weren’t even a question. We didn’t – I didn’t, and I don’t think Council went out and sold the hydro to build recreation facilities. They have nothing to do with it at all.” Ms. Leonard was also question whether the sale of Collus Power was intended to pay for recreation facilities. Ms. Leonard states, “No it was never my assumption for that. And I was never asked my opinion either.”

109. Sara Almas

- a. Ms. Almas states that the formation and use of the EMC “did not take away any power from Council and Council still had its ability to make all the decisions it would otherwise make.” (Almas Testimony September 12, page 158)
- b. In a question regarding the Staff Report Recommendations and whether or not Council had the authority to make the final decision. Ms. Almas replies, “Absolutely.” (Almas Testimony September 12, page 167)
- c. In regards to sole sourcing and purchasing from Sprung, Ms. Almas did not object. When questioned on this, her testimony was, “No, I trusted my

colleagues and didn't feel that there was any by-law that was being contravened." It is important to remember that Ms. Almas has already stated that she felt that the Treasurer, Ms. Leonard had care and control of the purchasing portfolio and sole sourcing would be at her decision. (Almas Testimony September 12, page 200)

- d. Ms. Almas was asked by Mr. Breedon if she felt that the process that led to the purchase of the Sprung buildings was appropriate. Ms. Almas replied, "I don't think the process was in contravention of any other policy. I think we followed the rules that we had.....but I still, to this day, don't think that – that any rules were broken." (Almas Testimony September 12, pages 246, 247)
- e. Ms. Almas is questioned about the need to hire a consultant to advise on what was the best use of the Collus funds from a financial perspective. Ms. Almas replies, "Ms. Leonard is an extremely competent individual with her accountant designation and she has her MBA that I -- I believe that she probably would have undertaken such a review." (Almas Testimony September 12, page 151)

110. Marjory Leonard

- a. It is interesting to note that the BLG Report (BLG9300001) that was delivered to Council and the emails between Mr. John Brown, Mark Roger and Ms. Leonard stated clearly "the issue for the central driver behind the 50% sale was to get cash for the community centre. You and your colleagues agree with this view. Ms. Leonard in Part 2 has testified that, "it was never my assumption for that. And I was never asked my opinion either." Her testimony is clearly contrary to the above emails.
- b. The Job Description for the Treasurer (TOC0600352) notes that the duties for the procurement of goods falls clearly under Ms. Leonard's purview. It has been stated by many including the Mayor, Deputy Mayor, Sara Almas, Dave McNulty, and the Acting CAO that Ms. Leonard had this duty and the by-laws for purchasing and that she took that duty seriously. In her

testimony she denies and deflects from this very important aspect of her job description.

- c. Ms. Leonard attended most if not all of the Sprung meetings along with other Town of Collingwood staff.
- d. Ms. Leonard was asked by Ms. McGrann, “Was it unusual at this point in time for staff to be receiving directions from a single member of Council, as opposed to being directed by Council as a whole? Ms. Leonard stated, “No.” (Leonard Testimony October 15, page 57)
- e. During Ms. Leonard’s testimony on October 16, page 11, she was asked, “Do you recall having issues -- significant issues with Ms. Wingrove in terms of concerns -- her concerns over how you were doing your job and her bringing those to the attention of Mayor, Deputy Mayor, members of Council?” Ms. Leonard responded, “yes”.

111. Mayor Cooper

- a. As the Head of Council and the CEO of the Community Mayor Cooper took no responsibility for any of her actions, she deflected every question or stated she could not recall. As Mayor, the responsibility lies directly at her feet.
- b. It was clear through the evidence of many that Mr. Bonwick played an advisory role to his sister Mayor Cooper. She was the only one who testified otherwise.

### **Correspondence from the Commission to Ed Houghton**

112. Many of the issues raised in the Commission’s correspondence to Mr. Houghton have been dealt with in depth in the submissions that precede this section. They will not be dealt with again in this section, except to refer to the paragraph or paragraphs in which they were dealt with.

113. It is suggested that there was a failure to present Staff's views accurately in Staff Report (EMC2012-01). This is incorrect. The process of preparing the Staff Report was an iterative one. Each draft of the report was circulated to the EMC and to Dave McNulty and to Marta Proctor. This approach was utilized in order to allow maximum input from each member of the EMC and involved Staff members. There was more than ample opportunity for each Staff member to express their view and/or alter the views of the then current draft being circulated. Additionally, at 8:30 on the morning of August 24<sup>th</sup>, the EMC and Dave McNulty met for the purpose of reviewing the latest draft of the report and finalizing same. The evidence of Mr. Houghton had been that the decisions made by the EMC were at all times made on a consensus basis and there is no evidence to suggest that anything in the Staff report was other than a consensus conclusion reached by the EMC and the attending Staff. Mr. Houghton, in the body of his submissions, sets out that there was consensus reached on the morning of the 24<sup>th</sup>, with respect to the procurement submissions, the resolution submissions and the numbers that were to be included in the Staff report. Marjorie Leonard chose to draft the procurement submissions and the evidence discloses that these were amended by Mr. McNulty. Sara Almas chose to draft the resolutions, and again, the evidence shows that Ms. Almas' draft resolutions were amended by Dave McNulty. It was not until this iterative process, in which all were involved was concluded, that Mr. Houghton utilized a "cut and paste" approach to enter the consensus view of Staff in the Final Staff Report. Even then, at 12:05 on that day, Mr. Houghton circulated the final draft that he had prepared to all members of the EMC and Dave McNulty, suggesting that they review the document and advise of any errors or inaccuracies that it contained. It is hard to conceive that there might be a process other than the one followed, which would allow the view of Staff to be more accurately reflected in the final report.

114. It is unclear what decisions made by Mr. Houghton for which he was responsible, were redirected to Staff. There were a number of decisions made at the Sprung/BLT meeting of July 27<sup>th</sup> with respect to the Sprung shield and other issues. It was the evidence of Mr. Houghton that the decisions taken at that meeting were a consensus view of the councillors and Staff in attendance at that meeting. There is no evidence to the



contrary. It cannot be said that Mr. Houghton redirected responsibility for decisions made to Staff.

115. The allegation of agreeing to an unreasonably short time frame for the Staff report is covered in paragraph 57 of the submissions.

116. A review of the minutes of the July 16<sup>th</sup> Council meeting (CJI0008083) reveal a resolution pursuant to which Council directed Staff to pursue the option of enclosing the outdoor pool with a fabric building and to develop a projected timeline and detailed estimates. The direction to Staff was quite prescriptive with respect to the pool and declared that it shall be enclosed with a fabric building. The only task that Staff was to accomplish was to develop a projected timeline and detailed estimates to accomplish Council's chosen objective with respect to the pool. The Staff did what they were requested to do and the results of their efforts are detailed at page 2 of the Final Staff Report (TOC0204147). They were not asked to consult on the feasibility of covering the outdoor pool with a fabric structure, but were directed to develop a timeline and detailed estimates for doing so. Staff accomplished what they were directed to do.

117. The allegations related to Deputy Mayor Rick Lloyd are spoken to in paragraphs 13, 14, 15, 16, 17, 19, 20, 29, 31, 33, 62, 63 & 64, of the above submissions.

118. It is submitted that the Staff report was fair, accurate and complete. It cannot be said the Staff report failed to disclose that the Town was purchasing the Sprung building envelope from BLT, not Sprung. Nor can it be said that the Staff report failed to disclose that BLT was constructing the arena, not Sprung. The Staff report did not speak of "Sprung" building envelopes, nor their construction partner BLT. There was no deception or inaccuracy in the report in that respect. The actual parties to the contract was not a detail required in order for the Town Council to make their decision. As set out in the submissions, staff believed them to be Sprung/BLT and in essence one in the same.

119. The option of taking construction of the buildings to an RFP, was not a recommended option, in that the consensus of the EMC and Staff, including the treasurer in charge of procurement (Marjorie Leonard) and the purchasing manager (Dave

McNulty) was that the insulated architectural membrane structures be sole sourced. The option to purchase the building envelope directly from Sprung was turned down by a consensus of the councillors and Staff at the Sprung/BLT meeting of July 27, 2012. The reasons for doing so were appropriate and are explained in detail at paragraphs 36 & 37 of the above submissions.

120. It is submitted that Staff adjusted WGD's estimates, particularly with respect to the cost of the pre-engineered steel arena, in an effort to make a fair, accurate and complete, apples to apples comparison between the option of a pre-engineered steel building and an architectural membrane structure. The efforts of Dave McNulty, with respect to those adjustments, were reviewed and approved by the remaining members of the EMC and involved Staff, including Mr. Houghton. Staff concluded that WGD's difference in cost of approximately \$550,000 did not fairly, accurately and completely represent the difference in the two competing products costs and that adjustments were necessary. There was no obligation on Staff to do other than utilize the information obtained from WGD to create the most fair and instructive comparisons possible, i.e. the apples to apples comparison designed by Dave McNulty. There was no obligation on Staff to have WGD review or approve the Town's adjustments, particularly when Houghton and McNulty had rightly, concluded that WGD had done an unsatisfactory job.

121. The Staff report acknowledged that the site servicing costs for both the pre-engineered steel structure and the architectural membrane structure were the same. As set out in paragraph 77 of the above submissions, the last sentence in paragraph 4, page 4 of the Final Report, was included by inadvertence and should have been excluded. This error was not noticed or corrected by either Mr. Houghton or the EMC and Staff members to which the Final Report was circulated prior to delivery to Council.

122. The fact that Sprung structures do not automatically meet LEED standards are spoken to in paragraph 88 of the above submissions.

123. The assertion that WGD understood that it was preparing a competitive bid, was an assertion originally made by Marjorie Leonard, the Town treasurer, in charge of

procurement in an email to Dave McNulty at 8:27 p.m. on August 23<sup>rd</sup> (TOC0517069). It was again repeated by Marjorie Leonard on August 24<sup>th</sup>, 2012 at 10:46 a.m., in her first draft of the “procurement section”, which was forwarded to the EMC and Dave McNulty (TOC0204034). Regrettably, the inappropriateness of Ms. Leonard’s statement was not addressed by the remainder of the EMC or Staff members prior to the publication of the Final Staff Report. It must also be said that Sprung/BLT knew of the Central Park Steering Committee report and chose to approach the Town on or about April 13<sup>th</sup>, because of the existence of the report. They were obviously fully aware that they were in competition with a multi-use recreational facility proposed by the Central Park Steering Committee.

124. Issues with respect to the purchasing by-laws are spoken to in paragraphs 65, 66, 67, 80 & 83 of the above submissions.

125. With respect to the issue of not disclosing conversations had with Sprung/BLT to Town Staff or Town Council, it is important to take note of the attendees at the contacts that Mr. Houghton had with Sprung and BLT. The first significant contact is a June 21<sup>st</sup> telephone call had between Pat Mills of Sprung, Deputy Mayor Rick Lloyd and Ed Houghton, all with respect to the June 12<sup>th</sup> and June 14<sup>th</sup> letters of direction that the Deputy Mayor gave to the EMC and involved Staff. The purpose of the meeting was to provide Mills with some initial particularity with respect to the nature of the facilities that the Town was considering in order that Sprung might provide budget estimates. Clearly, on this call, Mr. Houghton was the Staff representative, while Mr. Lloyd was the Deputy Mayor of council. The next meeting was the July 11<sup>th</sup>, 2012 meeting with Sprung representatives, Deputy Mayor Lloyd, Mayor Sandra Cooper and Staff members being Dave McNulty, Dennis Seymour and Ed Houghton. The purpose of the meeting was specifically to introduce senior members of Town Council and Staff to this potential project and to keep both Council and Staff fully advised. The next meeting of July 27<sup>th</sup>, 2012 was between Sprung and BLT, Dave McNulty, Marjorie Leonard, Sarah Almas, Rick Lloyd, Dennis Seymour and Ed Houghton, and therefore involved senior councillors and five Staff. The next meeting of significance was August 3<sup>rd</sup>, 2012, and involved Sprung representatives, Dave McNulty, Dennis Seymour, Marjorie Leonard, Larry Irwin and Ed Houghton. BLT was not in attendance. The purpose of these meetings, among other

purposes, was to discuss the scope of work and choice of options to be included in the project. Again, in the meetings of July 27<sup>th</sup> and August 3<sup>rd</sup>, all senior members of Staff and the EMC were in the main, in attendance, along with the Deputy Mayor Rick Lloyd for the meeting of July 27<sup>th</sup>. Given the attendees set out above, it cannot be said that conversations that Ed Houghton had with Sprung/BLT were not disclosed to Council and Staff in that senior members of Council and all of the involved Staff were participants in the meetings.

126. As described in the submissions above, the evidence of both Marjorie Leonard and Ed Houghton with respect to the meeting of July 27<sup>th</sup>, was that BLT and Sprung were partnered in this venture and that BLT would be the contractor. Neither Ms. Leonard nor Mr. Houghton understood that other contractors were an option, and accordingly, the option of other contractors or an RFP among the contractors, was not put to the Town. It is also interesting to note, the evidence of John Scott, who suggested that selecting the contractor recommended by the structure's manufacturer was the normal and usual course of activity. This choice is obviously appropriate given the expertise of the manufacturer's chosen contractor in erecting their particular product. Again, with respect to the choice of BLT as the contractor, the evidence is nothing but positive with respect to the relationship had by the Town with BLT and their respective representatives, Ron Martin and Paul Waddell. The choice of BLT was not an issue. The issue of potentially buying the Sprung structure directly from Sprung is dealt with in detail in the above submissions. However, suffice it to say, for reasons detailed above, there was a consensus decision made at the July 27<sup>th</sup> meeting that practicalities required the structure to be purchased from Sprung. Involved in this consensus were both senior councillors and the Staff involved in the process.

127. The issue of failing to protect the Town financially, in particular, with respect to the negotiation of price and the potential performance bonds, is dealt with in detail at paragraph 84 of the above submissions in the evidence of John Scott, reviewed at paragraphs 97, 98 & 99 of these submissions.

128. With respect to impairing the Town's ability to do an RFP for recreational facilities by meeting with BLT, this did not become an issue as Staff recommended, and the Town Council chose, to sole source the recreational facilities. Again, the evidence of John Scott is helpful with respect to this issue, in that he confirms the limited utility of performance bonds and the negligible amount of negotiations frequently involved in design build projects, as occurred in this project, and the more fulsome scope of work meetings that take the place of price negotiations in design build projects, which occurred between these parties. The above issues are detailed in paragraphs 95, 96 & 97 of these submissions.

129. With respect to providing Sprung and BLT with an unfair advantage, and in particular, not providing Council with WGD's unadjusted numbers and/or WGD's report and with respect to directing or overseeing adjustments to WGD's estimates, BLT's budgets and site work costs, these matters are dealt with at paragraphs 70, 75, 76 & 77 in the above submissions.

130. With respect to providing Sprung/BLT with access to Town councillors and Town Staff in advance of Sprung/BLT's proposals, a number of factual realities must be taken into consideration. The first arises from the evidence of John Scott who, in essence, told us that in a design build project, the scope of work, meetings, in essence, take the place of price negotiations. Clearly, as detailed above, there were a number of Sprung/BLT meetings that included the Mayor, the Deputy Mayor, EMC and senior Staff of the Town. One of the main reasons for the meetings being ongoing discussions as to what a detailed scope of work would entail, in order that a proposal might be provided. The second reality is that to the knowledge of the Mayor and all of Council, the Deputy Mayor Rick Lloyd, on June 12<sup>th</sup> and 14<sup>th</sup>, requested that Staff obtain pricing for "Sprung building products ... that would enclose the complete Centennial pool" and "get a price as well for one of their structures to cover the outdoor rink". It was in response to the Deputy Mayor's direct request, made with the full knowledge and support of Council, as evidenced by councillors emails, that the requested interaction with Sprung/BLT commenced and the necessary meetings were held in order to provide budget numbers and thereafter more exacting numbers. The third reality is, in essence, the wishes of Council demonstrated

throughout this process. They came through to Staff in the comments made at the June 11<sup>th</sup> council strategic planning session and its flip chart (TOC0173022). They came through in the emails exchanged among the Mayor, Deputy Mayor and councillors leading to the July 16<sup>th</sup> Council meeting, said emails being set out in the submissions above. They came through in the remarks of councillors at the July 16<sup>th</sup> Council meeting, who in dramatic terms, expressed a wish for “ice and water” on an “urgent” basis, using a fabric structure akin to Sprung (CJI0008083), and the emails prior to the August 27<sup>th</sup> Council meeting detailed in the submissions above, in which the Mayor encourages the public to visit the Sprung website. The wish of Council was abundantly clear as demonstrated by the above, including resolutions passed at the Council meeting of July 16<sup>th</sup>. It would be highly disingenuous to criticize Staff for developing a plan consistent with the stated wishes of Council. Not only does this explain providing Sprung and BLT with access to members of the Town Council and the Town Staff, in essence, at Council’s request, but it also explains the eventual insulated architectural membrane recommendation, the sole sourcing recommendation and the reason why Sprung, the recommended sole source, were invited to the August 27<sup>th</sup>, 2012 Council meeting.

131. The issue of preferring the interest of Paul Bonwick and Greenleaf over the interest of the Town, the issue of failing to disclose BLT’s retainer of Greenleaf and Greenleaf’s fee impacting the Town, are dealt with in paragraphs 41 and 44 of the above submissions. However, in this respect, it must also be noted that there is no evidence to suggest that Mr. Houghton was provided with or knew the structure of Greenleaf’s fees, or that their fee might be regarded as a success fee. Therefore, it cannot be said that Mr. Houghton failed to disclose an alleged Greenleaf success fee to Town Staff or Council.

132. With respect to agreeing to a payment schedule that allowed Bonwick’s fees to be paid from the initial payment, this matter is dealt with in paragraph 83 of the above submissions.

133. With respect to allegedly failing to disclose conversations had with Paul Bonwick and Abbey Stec, the conversations relating to the potential construction of recreational

facilities were, in fact, very limited. The discussions of August 1<sup>st</sup>, August 6<sup>th</sup>, August 21<sup>st</sup> and August 29<sup>th</sup> with Stec and Bonwick, are detailed in the above submissions at paragraph 38 to 46 and confirm the limited nature of the discussions about the recreational project. Any discussions between Houghton and Bonwick and Houghton and Stec relating to the recreational project were, in fact, authorized by the resolutions passed by Council at the July 16<sup>th</sup> Council meeting, which necessitated interaction between Houghton and Houghton's Staff and the representatives of BLT, who were in fact, Paul Bonwick and Abbey Stec.

134. Mr. Houghton denies that confidential information was disclosed to Bonwick and/or Stec with respect to the Town's investigation and assessment of recreational facilities, including the involvement of WGD Architects and the payment schedule. Specifically, it was Ms. Stec who first raised the issue of a payment schedule for the recreational project with Mr. Houghton. Thereafter, Houghton obtained legal advice with respect to the contract and the payment schedule and consulted with Deputy Mayor Rick Lloyd with respect to same. Mr. Houghton denies that he consulted with Paul Bonwick or Abbey Stec about the procurement process for the recreational facility and/or the sole sourcing of Sprung/BLT.

135. The suggestion that after August 27<sup>th</sup>, 2012, Ed Houghton took steps to conceal Bonwick's relationship with BLT and Sprung from Town Council, Staff and citizens, is unsupportable. The only interaction that Mr. Houghton had with respect to Bonwick's involvement was in email correspondence with Joe Gardhouse, which is set out in paragraphs 892 to 895 of Foundation Document No. 2. It is important to note that this email exchange took place in May 2013, after Mr. Houghton had stepped down from the role of Acting CAO for the Town of Collingwood on April 15, 2013. Accordingly, the email correspondence are had at a time when Houghton had no obligation to the Town. In any event, the email chain of May 30<sup>th</sup> makes it clear that Gardhouse is sending Houghton a copy of a letter from Don Gallinger, in which Gallinger is suggesting that he met with Bonwick regarding Sprung structures for the PRA in June of 2012. The emails disclose the evidence that we learned in the evidence of Abbey Stec, i.e. that with respect to the Pretty River Academy, Abby Stec's only involvement was before her involvement in

Greenleaf, at a time when her contact with Sprung was as an employee and representative of the PRA. Mr. Houghton attempted to tell Gardhouse his understanding of this reality in the emails. Mr. Houghton replied “Bonwick is not involved”. This is in keeping with the evidence heard at the Inquiry, i.e. that Bonwick was not involved in the Pretty River Academy’s interaction with Sprung in June of 2012, rather only Abby Stec was involved, as a representative of the PRA”. Houghton goes on to say that “Abby is Greenleaf”, which again is in keeping with his understanding that, in fact, Abby was Greenleaf in August 2012. Thereafter, and in an effort to have Mr. Gardhouse understand what Houghton was telling him, Houghton says “Talk to her, she can tell you the facts”. In other words, Houghton confirms that he knows little about the facts and is suggesting to Gardhouse that Abbey Stec knows the facts about the PRA’s interaction with Sprung in June of 2012, and that she is the person to ask, not him. There is clearly no concealment or attempt to conceal by Mr. Houghton in this exchange. His answers are in keeping with the evidence of Abbey Stec at the Commission, whereby she indicated that she, on behalf of the PRA, was the contact with Sprung in August of 2012.

136. With respect to allegedly misrepresenting the research done by Staff on the fabric membranes, the allegation is unspecific and in response, we are left to assume that the Commission is referring to correspondence referred to at paragraphs 628 to 642 of Foundation Document No. 2. With respect to this correspondence, it does not support a conclusion that Mr. Houghton was misrepresenting the research done into fabric membranes by Staff. The quoted paragraphs disclose that Sarah Almas, with others assistance, is attempting to respond to inquiries made by Paul Cadieux, a member of the PRCAC, i.e. a public committee. Mr. Houghton is fully aware that Sarah Almas, Marjorie Leonard and Dave McNulty all researched potential competitors to the Sprung fabric roof structure only to find, as stated by Dave McNulty, in paragraph 634 “I never made anything (either a matrix or notes) for this comparison, because I never found anything to compare to”. This confirms Mr. Houghton’s understanding that neither Sarah or Marjorie or Dave McNulty had made any notes with respect to competitors because they found no competitors who were comparable. Accordingly, in order to attempt to answer Mr. Cadieux’s question, Mr. Houghton asked Tom Lloyd of Sprung, to send him any



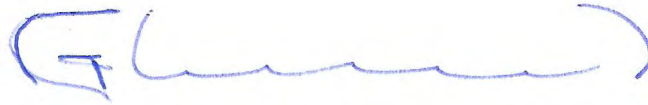
information he may have on local membrane competitors, in that Tom Lloyd was the only individual who had written notes or a “matrix” with respect to the competitors. This was eventually circulated to Mr. Cadieux. There was no attempt at concealment with respect to the research done by Staff, into fabric membrane competitors. The same was simply an effort on Mr. Houghton’s behalf to attempt to give Mr. Cadieux the best answer to his queries.

137. Mr. Houghton denies that there was any ongoing attempt by him to conceal that the Town had the option of taking the construction of the Sprung building to RFP, in that, as explained at earlier times, both he and Marjorie Leonard’s understanding was that BLT and Sprung were partners and the opportunity to use another contractor was not available.

138. Mr. Houghton denies that he sought to discredit WGD’s report. Again, the allegation here is unspecific and we are left to assume that it refers to correspondence exchanged as evidenced in paragraphs 678 and 679 of Foundation Document No. 2. This documentation discloses that Ed Houghton learned on or about October 5<sup>th</sup>, 2012, that a copy of WGD’s report had been sent to other members of the PRCAC, including Councillors West, Hull and also Marta Proctor. With this knowledge and in an effort to allow a balanced analysis of WGD’s report, Mr. Houghton sent Dave McNulty excerpts of the WGD report and asking “can you help with the errors in their comments”. The Commissioner will recall from the evidence of Mr. McNulty and from the evidence of Mr. Houghton, that both of those individuals found the reporting of WGD to be inadequate and in error, and that WGD failed to deal in a fulsome way, with the characteristics of Sprung structures to which they were referred, not only in their terms of reference, but also in Sprung materials forwarded by Dave McNulty to WGD. Mr. Houghton was simply asking McNulty to particularize an opinion that he and Dave McNulty shared with respect to the utility of the WGD report, with the inquiring parties. Dave McNulty then prepared such a memo which was circulated to the inquiring parties. This is not a clandestine effort to discredit the WGD report, but is an honest effort to share views honestly held by Houghton and McNulty with respect to the utility of the WGD report.

139. The matter of influencing Dave Barrow's response to the Town is dealt with in paragraph 88 of the above submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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Frederick Chenoweth

Counsel to Edwin Houghton