

**Solicitor – Client Privileged**

September 15, 2021

*Via Email: [DFO@townhvgb.com](mailto:DFO@townhvgb.com)*

Town of Happy Valley-Goose Bay  
212 Hamilton River Rd  
Happy Valley-Goose Bay, NL A0P 1E0  
**Attention: Nadine MacAulay, Acting Town Manager**

Dear Ms. MacAulay:

**Re: independent review of job competitions**

As you are aware, I was retained by the Town of Happy Valley-Goose Bay (the "Town") to conduct an independent review of the hiring process for three (3) recent Job Competitions carried out by Town Management. The request for an independent review arose because of queries from members of the Town Council and the general public as to whether Town Management followed the requirements in an appropriate manner.

**Town Hiring Process**

Based on discussions with the acting Town Manager and based on my review of the documents provided to me by the Town, my understanding of the Town's hiring process generally, and how the hiring process was carried out in relation to each of the three positions, is set out below.

All non-union / non-bargaining unit positions are described as "management" positions regardless of whether the position carries supervisory responsibilities. While the Town's Hiring Policy applies to both non-bargaining unit and bargaining unit positions (subject to the collective agreement), there are certain different practices/processes applied depending on whether it is a bargaining unit or non-bargaining unit position.

There is no requirement to post management positions internally before recruiting externally. Pursuant to section 53 of the *Municipalities Act*, SNL 1999, M-24 (the "*Municipalities Act*"), a

town council *may* establish the position of town manager and may, by a vote of 2/3 of the councillors in office, appoint a person to the position of town manager. There is no requirement in the *Municipalities Act* for Town Council to approve appointment to other management positions. However, section 63 of the *Municipalities Act* states that a town council may establish departments and may appoint for those departments the department heads necessary for the effective operation of the town council. Section 55 of the *Municipalities Act* does require a town manager to obey Town Council:

### **Overall power of council**

55. (1) A manager shall not disobey, disregard or overrule a decision of the council.

(2) A manager may advise or make a recommendation to the council which shall receive, consider and make a record of the advice or recommendation in its minutes but is not bound to follow that advice or recommendation, nor is the advice or recommendation of the manager required before an action of the council.

When a management position is vacant, to recruit for the vacant position, in addition to an internal posting, the Town posts externally on Career Beacon, Facebook and the Town's website.

Once applications are received, there is an initial screening of applications (cover letter and resume), which is carried out by the Director of Human Resources to determine which applicants will be interviewed. A list of interview questions is developed for the position for which candidates are to be interviewed. Candidates are contacted and interviews are scheduled. The interviews are generally carried out by three people: the Director of Human Resources and two managers with knowledge of the position, one of whom is usually in a supervisory role for the position being hired. The Director of Human Resources is also the individual who carries out reference checks.

Briefing notes are prepared by the hiring committee for management positions, but not for bargaining unit positions.

The current practice with respect to management positions is not entirely consistent with the Town's Hiring Policy. Once the hiring committee decides on a recommended candidate for a management position, a briefing note is prepared for Town Council. The briefing note does not identify the candidates by name, but it does provide a ranking of (usually) the top three candidates. A summary of each candidate's qualifications is included in the briefing note provided to Town Council. The briefing note usually (but not always) contains a recommendation from management that an offer should be made to candidate #1, but that if candidate #1 does not accept the offer, an offer should be made to candidate #2, and so on. If a majority of Town Council

approves, a conditional offer is sent to the recommended candidate for the management position. The offer is conditional because Town policy requires that if the candidate accepts the conditional offer, Town Council must still approve before the candidate is ultimately hired.

If the recommended candidate accepts the conditional offer, then at the next scheduled regular council meeting or at a special meeting of council, a vote is taken to ascertain whether Town Council approves the hiring of the candidate who has accepted the conditional offer. If a majority of Town Council approves the recommendation, the candidate is advised that the conditional offer is official. Town Council does not always approve management's recommended candidates. During privileged meetings, there have been times when certain councillors have indicated a desire not to hire non-Happy Valley-Goose Bay residents.

The Town Policy Statement regarding the Hiring of Employees states as follows:

1. *All hiring of unionized employees are subject to the terms of the Collective Agreement CUPE 2019.*
2. *All positions will be advertised and appropriate job description available for applicants.*
3. *The Hiring Committee for unionized employees will consist of the Director/Supervisor of the Department, and the Director of Human Resources;*
4. *All hiring of management positions are subject to the terms of the Municipalities Act, 1999 Part III Administration and Staff.*
5. *The Hiring Committee for management positions will consist of the Town Manager, the Director of Human Resources and one other senior manager. If necessary, additional expertise may be obtained to assist in the process. Direction from a professional recruitment company may also be utilized where needed. Management positions must be approved by a Motion in Council.*
6. *The Hiring Committee is responsible to review the applications, develop the interview questions, conduct the interviews and recommend the successful applications. The Confidential Secretary [note: while this policy has not been updated, as of January 2018, the Confidential Secretary is known as the Executive Assistant] is responsible for setting up interviews as per the Hiring Committee recommendations.*
7. *Every effort will be made to have interviews done in person or through computer video options.*
8. *Successful applicants will be provided a letter of offer which must be signed by both the employee and the Town Manager.*
9. *After successfully filling the position/s all other applications who received an interview will receive written notification that they were unsuccessful.*


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The three positions which were recently hired and for which I have been asked to perform an independent assessment of the hiring process are as follows:

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- 1) Community Constable;
- 2) Animal Control Officer; and
- 3) Director of Economic Development.

In assessing the hiring process for these positions, I was provided with an extensive package of documents via the Town's legal counsel, Stewart McKelvey, compiled by (former) Director of Human Resources. The information and analysis set out below is based on my review of the document package compiled by the (former) Director of Human Resources, including the Town's Hiring Policy, the contents of which are set out above.

### **Community Constable**

This is a non-bargaining unit position. The hiring process for the Community Constable position appears to have followed the hiring processes set out above. In particular, the documents provided by the (former) Director of Human Resources reveal the following:

1. The job vacancy for the Community Constable position closed September 23, 2019;
2. There were 16 applicants;
3. Applicants were screened and five people were invited to be interviewed;
4. The (former) Director of Human Resources prepared a list of 20 interview questions, which questions appear to have been posed to all candidates who were interviewed;
5. Interviews took place in October 2019;
6. Each interviewer made notes to document each candidate's answers to the interview questions;
7. A Question Score sheet was used for each of the five candidates interviewed with a score assigned to each question;
8. Each interviewer scored each interviewed candidate using this Question Score sheet;
9. The references of three candidates were checked by the (former) Director of Human Resources (using a list of 10 questions);
10. On November 6, 2019, a briefing note was prepared for Town Council by the (former) Director of Human Resources (approved by the (former) Town Manager) outlining background information, key considerations, a summary of the credentials and qualifications of each of the top three candidates (without naming those candidates), options, and finally the hiring committees' recommendations;
11. In the briefing note, the hiring committee made a recommendation to council that an offer be made to candidate #1, but that if candidate #1 did not accept or was not available, that an offer be made to candidate #2, but that if candidate #2 did not accept or was not available, that an offer be made to candidate #3;
12. Town Council approved the hiring committee's recommended course of action;

13. As part of the job competition process, each candidate was also assessed using a Question Scoresheet, with a certain maximum attainable "score" attached to each question, ranging from 4 to 20;
14. On November 27, 2019 a meeting was held between staff and councillors to discuss the November 6, 2019 briefing note for the Community Constable job vacancy;
15. The (former) Director of Human Resources recorded a note from this meeting indicating a councillor was aware of who the three candidates were. The (former) Director of Human Resources was of the view that the councillors should not have known the identity of the three candidates as only the hiring committee should have known the identities of candidates and the order of ranking;
16. Following the meeting, on November 27, 2019, the (former) Director of Human Resources emailed the councillors providing a summary of the meeting (i.e., that 3 councillors approved candidate #1, that one councillor was happy to recommend candidate #2, and that two councillors did not endorse either of the three presented candidates);
17. In that same email, the (former) Director of Human Resources indicated a letter of offer would be presented to candidate #1 and it would be explained to candidate #1 that accepting the offer would not guarantee employment as there was still a requirement for a motion to be brought forward at the next council meeting, confirming his appointment;
18. On November 27, 2019 a conditional offer letter was emailed to candidate #1, which was accepted by candidate #1 the same day;
19. On December 2, 2019, councillors were advised that candidate #1 had accepted the conditional offer;
20. On December 12, 2019, at a council meeting, the motion to approve the conditional offer made to candidate #1 was defeated;
  - a. Three councillors agreed with the hiring committee's recommendation of candidate #1;
  - b. One councillor wished to recommend candidate #2; and
  - c. Two councillors did not endorse the recommendation of either of the three candidates.
21. In a December 13, 2019 email to the (former) Town Manager, the (former) Director of Human Resources advised that in his view, the competition was closed and a new competition was required. In the (former) Director of Human Resources' view, it would not be proper to make an offer to candidate #2 as the November 6, 2019 briefing note indicated that an offer would be made to candidate #2 if candidate #1 *was not available or did not accept the offer*, neither of which occurred (i.e. candidate #1 accepted the offer, but ultimately the motion to approve candidate #1's hiring was defeated in the December 12, 2019 council meeting);
22. In a December 18, 2019 council meeting the motion to approve the hiring of candidate #1 was presented again, but was defeated;

23. Notes from the December 18, 2019 council meeting indicate that two councillors expressed dissatisfaction with the process, but none of them appeared to offer specific criticisms or details as to what it was they took issue with or what they felt should have been done differently;
24. On February 11, 2020, the (former) Director of Human Resources emailed the applicants for the Community Constable position to advise them they were not successful;
25. In June 2020, candidate #2 began emailing the (former) Director of Human Resources inquiring whether they had been the second ranked candidate from the job competition;
26. The (former) Director of Human Resources replied to explain that information could not be provided;
27. In July 2020, CBC Labrador Morning Show did an interview with candidate #2 regarding "Hiring Practices at Town Hall";
28. During the CBC interview, candidate #2 stated "I spoke to a couple of Councillors, one told me not to give up, we are trying to get you in, and hang tight."

## Analysis

The recruitment and hiring process for the Community Constable position, which resulted in a conditional offer being made to candidate #1, appears to have been carried out by the Hiring Committee in accordance with accepted recruitment and hiring processes. Based on the documents I reviewed, I saw no indication of a violation of the Town's Hiring Policy by the Hiring Committee.

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In her July 2020 CBC Labrador Morning Show interview, candidate #2 described the hiring process as "unfair" and "corrupt". Notes from the December 18, 2019 council meeting indicate that one councillor questioned the fairness of the process and that another councillor indicated they "had a problem with the process the first time around". But neither candidate #2 or these other councillors offered specific criticisms or identified why they felt the process was unfair or otherwise flawed. Except for two potential concerns which I will outline below, the hiring process carried out by the Hiring Committee appears to have been carried out fairly and in accordance with sound recruitment and human resources practices, including the following: advertising on publicly available platforms; initial screening of candidates for interviews; establishment of a multi-person hiring committee, standardized interview questions, a scoring system, and reference checks.

While section 55(2) of the *Municipalities Act* is clear that council is not bound to follow the advice or recommendation of a manager, it is not apparent in the documents provided to me by the (former) Director of Human Resources why the recommendation to hire candidate #1 was rejected. No reasons were given at the public Council meeting, but in a privileged meeting, some counsellors expressed concern that candidate #1 was not a local and expressed the view that a

local (i.e., Happy Valley-Goose Bay) applicant should be offered the job. In saying this, I acknowledge that Council has the authority to reject a staff hiring recommendation, but presumably good reasons would have to be provided as to why a staff recommendation would be rejected if the recommendation was based on a thorough recruitment and assessment process.

### **Animal Control Officer**

This is a bargaining unit (i.e., union) position. The hiring process for the Animal Control Officer position appears to have followed the hiring processes set out above. In particular, the documents provided by the (former) Director of Human Resources reveal the following:

1. The job advertisement for the Animal Control Officer position was posted in late April 2020;
2. The position is a bargaining unit position with CUPE Local 2019, which means no briefing note was prepared for Town Council and Town Council approval was not sought;
3. The (former) Director of Human Resources requested that the job advertisement be emailed to the bargaining unit membership so any unionized employees could apply if interested;
4. No applications were received from unionized employees;
5. The posting closed May 8, 2020;
6. There were 22 applicants;
7. Applicants were screened and six people were invited to be interviewed;
8. On April 28, 2020, the (former) Director of Human Resources emailed the (former) Town Manager suggesting that the Municipal Enforcement Officer be disqualified from the interview selection committee because their participation could be construed as a conflict of interest (in relation to one particular candidate) arising from their friendship and shared living accommodations;
9. On May 11, 2020, the (former) Director of Human Resources sought recommendations from management and council as to who should be on the interview panel;
10. On May 12, 2020, the (former) Director of Human Resources emailed a number of councillors as well as the (former) Town Manager and the Municipal Enforcement Officer, to advise he had received a communication from the Municipal Enforcement Officer requesting to not be included on the interview panel so as to be removed from any actual or perceived conflict of interest (in relation to one of the candidates);
11. Later, on May 12, 2020, the (former) Director of Human Resources sent another email to the same recipients indicating that the (former) Town Manager felt the Municipal Enforcement Officer should remain on the interview panel because of familiarity with the position, including the fact this individual would be the supervisor for the position;
12. One councillor sent a reply email the same day, saying “sounds good”;

13. The Municipal Enforcement Officer did ultimately participate as a member of the interview panel;
14. The (former) Director of Human Resources prepared a list of 12 interview questions, which questions appear to have been posed to all candidates who were interviewed;
15. Interviews took place in late May 2020;
16. The hiring committee consisted of the (former) Director of Human Resources, the Municipal Enforcement Officer, and a third manager;
17. Notes were taken by each member of the interview panel to document each candidate's answers to the interview questions;
18. A Question Scoresheet was used for each of the five candidates interviewed;
19. Each member of the interview panel scored each of the five candidates interviewed;
20. An offer was made to candidate #1, but candidate #1 declined the offer. Note that there were several communications between candidate #1 and the (former) Director of Human Resources in an apparent effort to entice candidate #1 to accept the offer, but ultimately, on June 2, 2020 candidate #1 confirmed the offer was declined;
21. According to a summary of the Scoresheet, the (former) Director of Human Resources and the third member of the hiring committee both had candidate #1 identified as the highest ranked candidate, whereas the Municipal Enforcement Officer ranked candidate #2 as the highest ranked candidate (candidate #2 was the same candidate who had been conditionally offered the Community Constable position in November 2019, which offer was ultimately rejected by Council in December 2019);
22. After candidate #1 declined the offer, on or about June 5, 2020, an offer was made to candidate #2;
23. After candidate #1 turned down the offer, because this was a union position, the Hiring Committee did not go to Town Council to seek separate approval to make an offer to candidate #2;
24. The (former) Director of Human Resources confirmed with the other two members of the hiring committee that they were comfortable with him contacting the candidate #2 to offer the animal control officer position;
25. Candidate #2 accepted the offer;
26. On June 4, 2020, the (former) Director of Human Resources advised Council via email that candidate #2 had accepted the offer and would commence employment June 15, 2020;
27. On June 4, 2020, one councillor replied to the email from the (former) Director of Human Resources: "I can't believe that I'm reading this, yes, wait I can. I already heard it on the street. This should be interesting when the public gets ahold of this. We may not have any input as council but the public will certainly speak out. Unbelievable!";
28. On June 8, 2020, the unsuccessful candidates were advised they were not successful;
29. On June 24, 2020, the same councillor sent an email questioning why the Municipal Enforcement Officer was permitted to be on the hiring committee and interview candidate #2, because of the conflict of interest issue that had been raised previously.



This councillor also referred to the public being upset and that management had “failed the community” with the hiring practice [note: the offer was first made to candidate #1].  
30. In a July 21, 2020 email to management and Councillors, the (former) Director of Human Resources referred to “abuse, slander and defamatory information that has been published on social media and the conjecture and ‘speculative’ comments made that surrounds the hiring practices that were engaged by the Hiring Committee...”.

## **Analysis**

The recruitment and hiring process for the Animal Control Officer position appears to have been carried out in accordance with accepted recruitment and hiring processes. Based on the documents I reviewed, I saw no indication of a violation of the Town’s Hiring Policy by the Hiring Committee.

The recruitment and hiring process for the Animal Control Officer position resulted in an offer being made to candidate #1, who ultimately declined the offer even after multiple communications between the (former) Director of Human Resources and candidate #1 in an apparent attempt to convince candidate #1 to accept the offer. Ultimately, candidate #1 declined the offer following which an offer was made to candidate #2. It is unclear whether the Hiring Committee checked references for candidate #2 or whether it relied on the reference checks carried out when candidate #2 applied for the Community Constable position.

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Other than as noted above, the hiring process appears to have been carried out fairly and in accordance with sound recruitment and human resources practices, including the following: advertising on publicly available platforms, including notifying the bargaining unit of the position; initial screening of candidates for interviews; establishment of a multi-person hiring committee, standardized interview questions, a scoring system.

## **Director of Economic Development**

This is a non-bargaining unit (i.e. management) position. The hiring process for the Director of Economic Development position appears to have followed the hiring processes set out above. In particular, the documents provided by the (former) Director of Human Resources reveal the following:

1. The job advertisement for the Director of Economic Development position was posted in November 2019;
2. The posting closed on or about December 9, 2019;
3. There were 8 applicants;

4. One of the applicants was a maternity leave replacement, occupying the Director of Economic Development position, but she had provided a written resignation, which prompted the position to be advertised;
5. Applicants were screened and four people were identified to be interviewed, but ultimately only three were interviewed;
6. The interview panel consisted of the (former) Director of Human Resources, acting Town Manager and the (former) Town Manager;
7. The (former) Director of Human Resources prepared a list of interview questions, which were sent to the (former) Town Manager for review and edits on December 6, 2019 and January 14, 2020;
8. Interviews took place in between January 27 and February 11, 2020;
9. The list of interview questions compiled by the (former) Director of Human Resources was used for all interviews;
10. Notes were taken by the (former) Director of Human Resources and acting Town Manager to document each candidate's answers to the interview questions;
11. A Question Scoresheet does not appear to have been used for the hiring process for this position;
12. The (former) Director of Human Resources checked references for two of the candidates;
13. Based on the reference checks, the (former) Director of Human Resources indicated that candidate #1 "stood out" compared to candidate #2, and wanted the hiring committee to meet to discuss candidates in order to prepare a briefing note to council;
14. It is unclear from the documents whether the Hiring Committee did meet;
15. On or about February 19, 2020, the (former) Director of Human Resources prepared a briefing note for council, which contained the following recommendation: "Management recommends that Council make an offer to candidate #1 for the position of Director of Economic Development with the Town of Happy Valley-Goose Bay...If candidate #1 does not accept, management to proceed with offer to candidate #2, on the same terms." The briefing note was approved by the (former) Town Manager.
16. On March 3, 2020, a council meeting was held where the briefing note was presented to Council. Four councillors supported recommendation and one councillor did not support the recommendation;
17. Following the March 3, 2020 meeting, the (former) Director of Human Resources recorded handwritten notes wherein he expressed what he felt was "repetitive and continuous disrespect and contempt shown by one councillor towards Management", including comments that the Animal Control Officer job description was changed so that candidate #2 would get the job. This councillor also did not support the recommendation for Economic Development Officer because the names of candidates were not disclosed [in the briefing note];
18. On March 4, 2020, the councillor sent an email to senior managers and council advising that the councillor did not support the candidate "or the process that was changed by

someone and never discussed with council as a whole". This councillor did not explain how the process was changed;

19. On March 5, 2020, an offer was made to candidate #1, but this candidate #1 declined the offer based on the level of compensation;
20. On March 9, 2020, the (former) Director of Human Resources emailed the (former) Town Manager with two options: i) request an approval for a salary increase (presumably so that a better offer could be made to candidate #1); or ii) offer the position to candidate #2;
21. The (former) Town Manager replied to the (former) Director of Human Resources seeking to discuss the matter;
22. On March 10, 2020, an offer was made to candidate #2 (consistent with the recommendation in the briefing note that had been approved by council on March 3, 2020);
23. On March 11, 2020, candidate #2 declined the offer, citing the level of remuneration;
24. On March 11, 2020, the (former) Director of Human Resources emailed the (former) Town Manager with three options: i) interview applicants who had not been initially screened for interviews; ii) re-advertise for a new competition; or iii) request that council review the pay scale and then re-present an offer to candidate #1;
25. On March 17, 2020, the (former) Director of Human Resources updated council that candidate #2 had also declined the offer and advised that options had been presented to the (former) Town Manager for consideration;
26. Documentation showing what occurred subsequent to March 17, 2020 was not included in what was provided to me by the Town via Stewart McKelvey.

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## Analysis

The recruitment and hiring process for the Economic Development Officer position appears to have been carried out in accordance with accepted recruitment and hiring processes. Based on the documents I reviewed, I saw no indication of a violation of the Town's Hiring Policy.

While one councillor sent an email to senior managers and council advising that the councillor did not support the candidate "or the process that was changed by someone and never discussed with council as a whole", this councillor did not explain how the process was changed or offer specific criticisms. The hiring process appears to have been carried out fairly and in accordance with sound recruitment and human resources practices, including the following: advertising on publicly available platforms; initial screening of candidates for interviews; establishment of a multi-person hiring committee, standardized interview questions, a scoring system, and reference checks.

## Recommendations

What follows is not intended to be a complete list of recommendations to improve the Town's hiring practices, but it is a list of issues I have identified as areas for consideration:

- 1) Pursuant to the Town's Hiring Policy, the Hiring Committee is tasked with identifying the best candidate(s) for hire. To this end, in accordance with the Town's Hiring Policy, it is the Hiring Committee who carries out the assessment of candidates, including review of applications/resumes, interview screening, developing interview questions, conducting interviews, scoring and ranking candidates, reference checks, etc. While not a requirement of the current Hiring Policy, once the Hiring Committee identifies a preferred candidate, the current practice is that Town Council has final decision-making power with respect to an offer insofar as an accepted conditional offer still requires Town Council approval.

If Town Council ultimately reject a hiring recommendation of the Hiring Committee, consideration should be given to requiring Councillors who reject the recommendation to provide reasons to the Hiring Committee;

- 2) Consideration should be given to whether it is consistent with best hiring practices to provide Town Council, rather than the Hiring Committee, with final say with respect to hiring decisions and/or whether it would be consistent with best hiring practices to place that responsibility with the Hiring Committee and/or place limits on Town Council's ability to reject a Hiring Committee recommendation;
- 3) If Town Council does decide to retain final say with respect hiring/job offers, briefing notes should be prepared by the Hiring Committee for Town Council for all job competitions (briefing notes are not currently prepared for Town Council with respect bargaining unit positions, nor is Town Council approval required for bargaining unit positions) so that any Councillors rejecting the Hiring Committee's recommended candidate(s) can refer to the briefing note when providing reasons for rejection;
- 4) The Town may wish to consider whether the same practice should be followed for every job competition in terms of whether candidate #2 is automatically offered the position if candidate #1 rejects the offer, whether candidate #3 is automatically offered the position if candidate #2 rejects the offer, etc. (albeit with some flexibility built into the practice to not make an offer to candidate #2 or #3 if valid reasons arise);
- 5) Consideration should be given to creating two Hiring Policies (i.e., one for bargaining unit positions and one for non-bargaining unit positions) or to maintaining one overall Hiring

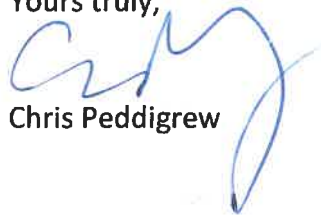
Policy, but identifying within it any aspects that apply only to bargaining unit positions or that do not apply to bargaining unit positions;

- 6) To the extent possible, both staff and Council should refrain from public disagreements regarding particular job competitions and hiring practices generally;
- 7) Except for legitimate inquiries to human resources personnel through the established channels, both staff and Councillors should refrain from discussing the hiring process for particular job competitions with candidates for those positions;
- 8) Town Councillors should avoid informal inquiries and discussions with human resources employees regarding job competitions;
- 9) Staff and Town Council should endeavour to present a united front to the public in terms of hiring decisions and practices;
- 10) Overall, consideration should be given to involving Town Council in the hiring process only to the extent reasonably required; and
- 11) Consideration should be given to including conflict of interest guidelines in the Hiring Policy, to clarify when there is and is not a conflict of interest, so as to minimize the potential for disagreement about whether a conflict of interest exists.

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I can be available to discuss the above should any questions arise.

Yours truly,



Chris Peddigrew