

Good evening, Mayor Ferguson & Members of Council.

On February 22, 2022, Councillor St. Jean asked Council to reconsider its decision of January 11, 2022 to reject a staff recommendation to pay Tenacity Capital up to \$250,000 for completing a section of boardwalk along Picton Harbour. The Councillor expressed two concerns about Council's original decision:

1. Council had placed itself and taxpayers in potential legal jeopardy, as referenced in Staff Report CSP-01-2022; and
2. Council had harmed its reputation as a business partner.

Council agreed to revisit the issue – and here we are.

\$250,000 is a lot of money. Arguably it could do a lot more good for everyday people living across the County.

I respectfully submit that Council should resist pressure from private interests and stand by its original decision.

Of course, none of Councillor St. Jean's concerns should be dismissed lightly, but both need to be taken in a broader context and weighed against the public interest.

Regarding the bases for legal concerns, I would make four points.

First, I've been given to understand that the nature and extent of these sorts of potential difficulties are already described in the Staff Report. So, I'll quote from the relevant passage:

"Staff explored the possibility of withholding the benefit or refusing to change the currency since the MOU does not address turnover in property owners and legally the obligation to provide these funds to the new property owner could be questioned. Further the municipality has already received the easement or access to the boardwalk on title.... [However, this] could result in subsequent and ongoing legal proceedings." [Council Meeting of January 11, 2022, Agenda Package, p 209/262.]

That's it. No legal opinion or analysis on this point.

Second, the legal effect of 2011 MOU between the County and Sandbank Homes to present day circumstances seems negligible:

- The MOU was clearly understood by all signatories to be a memorandum only – and was not intended to create binding legal relations nor binding legal obligations between them; and, most importantly,
- the conditions that would create binding legal relations and obligations between the County and the owners of the property were never met.

Third, the draft MOU between the County and Tenacity Capital seems to muddy the legal waters further. The January 2022 version reads:

“... the Municipality has received an easement across a portion of the shoreline for the purposes of allowing for public access to Picton Harbour; [and] as a condition of the easement’s creation, Council for the Municipality required the owner to enter into an agreement with the Municipality...”

In fact, the Municipality received the easement on this property, not from Tenacity Capital that purchased the property in 2017, but from the property’s former owners, in March 2012.

Finally, when all is said and done, there seems to be no record of any binding legal relations or obligations between the County and Tenacity Capital with respect to this boardwalk.

Regarding the bases for concerns about the County’s reputation as a business partner, I admit that this is a subtler matter.

I first learned about this whole business from the video-recording of an extraordinary meeting of the Community and Economic Development Commission (CEDC), held on August 23, 2021. The main item on the agenda was a CEDC Task Team’s presentation on their long-awaited proposal for *The Harbour Trail* – which included Tenacity Capital’s boardwalk (Report CSP-51-2021 and accompanying slide deck).

As a member of the Task Team, Councillor St. Jean was asked to address *The Harbour Trail*’s funding requirements and opportunities. There was no hint of the County being committed to pay up to \$250,000 to Tenacity Capital for a part of *The Harbour Trail*. Indeed, the Task Team’s breakdown of costs and timelines indicated \$0 capital cost for a boardwalk between the harbour mouth and Picton Marina:

	Proposed Timeframe	Proposed Activities	Estimated Initial Cost	Estimated Ongoing Costs
Phase 1	Summer 2021	Boardwalk between harbour mouth and Picton Marina	\$0 - this section of boardwalk is being installed by private property owners.	Staff cost for garbage collection (existing Operations budget - no increase in staff planned)
Phase 2	Summer / Fall 2022	-Install Lookouts (x7) -Work with Port Picton to install new section of boardwalk	\$350,000 - lookout costs (x7) \$TBC - estimated cost for this section of boardwalk (developer to contribute \$735,000 and the municipality is responsible for the remaining \$TBC)	Staff cost for garbage collection / disposal and upkeep and maintenance of new Port Picton parks.
Phase 3	Summer 2023	-Branding of Harbour Trail -Crosswalk to Delhi Park and sidewalk improvements for AODA compliance	\$10,000 - Trail Webpage / branding \$100,000 - crosswalk on Bridge St. to Delhi Park and sidewalk improvements	These costs will be incorporated into the existing Operations budget - no increase in staff planned.
Phase 4	Summer 2024	-Connect boardwalk to remaining two private property stakeholders, if feasible.	\$50,000 - Foot bridge across harbour mouth (if feasible)	

The prospect of the County paying Tenacity Capital for its boardwalk came out only after a community representative on the CEDC raised the possibility. Imagine nearly everyone’s surprise to hear a senior staff member suggest that the County “was on the hook” for \$250,000.

Given how this discussion unfolded and the timing of boardwalk’s construction, I can’t help but wonder:

Prior to Council's first considering this business openly on January 11, 2022, did any elected official and/or senior staff member give Tenacity Capital reason to believe that the County would be paying up to \$250,000 toward the cost of a boardwalk?

If so, it wouldn't be the worst thing. Mistakes happen. But it wouldn't be a good thing either.

The County is forever negotiating with private enterprises, including – can you believe it, even as we speak– with Picton Homes about how taxpayers will contribute toward the cost of their boardwalk.

Council can only preserve its reputation as a business partner – and, more importantly, meet its primary responsibilities to the public – by conducting its own business fairly and transparently.

Accordingly, I respectfully submit that Council should stand by its original decision of January 11, 2022 – and reject the notion of paying Tenacity Capital this kind of money for its boardwalk.

Thank you.