



ATTACHMENT 1

DATE: Monday, June 8, 2020
TO: Honourable Mayor and Members of Council
FROM: Suzanne Craig, Integrity Commissioner and Lobbyist Registrar
RE: Formal Code of Conduct Complaint Investigation Report #101619

Summary

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct for Members of Council and Local Boards (the “Code”) relating to the conduct of Regional Councillor Linda Jackson (the “Respondent”) in connection to a complaint raising four issues:

1. the Respondent’s actions, in particular having “insisted that the assumed Phase 1 and Phase II of the Humberplex Project be investigated”, were carried out with a view to using the influence of her office for the purpose of insisting that Council reject staff recommendations in favour of the Humberplex Project and approve the Cooper Creek Project in contravention of Rules 1, 7 and 9 of the Code;
2. the allegation that Council decided to move into Closed Session to receive legal advice and that this action was in contravention of Open Meetings rules;
3. that the Respondent’s actions contravened Rule 16; and
4. that there was conduct on the part of a senior staff member directly linked to the alleged actions of the Respondent.

I find that the allegations raised in Issue #1 and #3 were not borne out.

On Issue #2, I find that the Office of the Integrity Commissioner and Lobbyist Registrar has no authority to investigate allegations of Open Meeting rules. The receipt and investigation of complaints regarding Closed Meetings fall within the ambit of the City’s Closed Meeting investigator. As a result, I did not investigate the issue and make no findings in that regard.

With reference to Issue #4, I find that this Office does not have authority to receive or investigate complaints against allegations of actions, omissions or decisions of municipal staff. To the extent that this issue alleges that the Respondent directed the conduct of the staff member, this is addressed as part of issue #1.

The Complaint

Based on my preliminary classification, I had determined that Rules 1, 7, 9 and 16 of the Code had been triggered by the Complaint but that there were insufficient grounds to pursue the complaint investigation in respect of Rule 16.

The Complainant's allegations in respect of Rule 16 appeared to be based on the suspicion that there was wrongdoing at certain meetings with staff and/or at Committee and Council. The complaint asserts that the Respondent directed a named senior staff person to carry out actions in favour of certain developers. The allegations in the complaint made relating to Rule 16 did not contain details of how staff members were purportedly intimidated, influenced, commanded or threatened. On the basis of these speculative allegations I initially decided not to proceed regarding Rule 16 and I initially made the determination that I would only pursue the investigation in respect of Rules 1, 7 and 9.

However, after having conducted initial discussions with some staff, including some of whom were present at the meetings in respect of the allegations of conduct in contravention of Rule 1, 7 and 9, I was satisfied that there were sufficient grounds to also investigate whether the Respondent had commanded or influenced the senior member of staff with the intent of interfering in staff's duties, in breach of Rule 16.

The Complaint was received on October 16, 2019, alleging that the Respondent acted with hostility towards the opposition leveled against another Redevelopment Program and emphatically supported the experts' opinions in support of this Program. The Complaint alleged that the Respondent was "more bent on promoting the interests of [a named developer] than fulfilling her duty as a councillor to consider different perspectives brought by the City's constituents". The Complaint alleged that:

At approximately the same time that Humberplex first began making its opposition to the [other Redevelopment Program] applications known, Humberplex brought an application to the City to have City Council enact the necessary by-law assuming the roads and municipal services of the second phase of the Humberplex Project.

Humberplex constructed and installed the necessary public services relating to the second phase of the Humberplex Project in accordance with the Subdivision Agreement and the City's specifications. Humberplex has also been working closely with the residents of the Humberplex Project and City staff to ensure that any remaining tasks, including those related to fencing and landscaping, as identified by the Humberplex Project residents, be properly addressed.

Nevertheless, [the Respondent] sought to block Humberplex's attempt to have the second phase of the Humberplex Project assumed, notwithstanding City staff's recommendation to assume same and staff comments including comments from both [...] the Director of Development/Transportation Engineering and [...] the Deputy City Manager, Planning and Growth Management for the City, supporting

the assumption.

In particular, during the City Council meeting of March 19, 2019, [the Respondent] urged City Council to have the assumption of the second phase of the Humberplex Project deferred. She also requested that a report addressing alleged deficiencies relating to the second phase of the Humberplex Project be provided to the April 2, 2019 Committee of the Whole meeting. [The Respondent's] motion failed to carry.

During that same City Council meeting, the City Council ultimately approved the assumption of the second phase of the Humberplex Project pursuant to a 7-1 vote. [The Respondent] was the only member of the City Council to vote against the assumption of the second phase of the Humberplex Project. [The Respondent] appeared to have been scripted.

[...]

Despite the City Council making the assumption of the second phase of the Humberplex Project official, [the Respondent] continued to raise concerns and voice sharp criticism of the Humberplex Project.

[...]

Despite Humberplex (i) not being advised by the City of any deficiencies, (ii) being in compliance with the executed Subdivision Agreement and necessary City regulations, (iii) providing services and workmanship of the highest quality, (iv) continuing to work with the City and all governmental authorities to complete the Humberplex Project as intended, and (v) addressing the concerns raised by the residents of the Humberplex Project, [the Respondent] insisted that the assumed phase I and phase II of the Humberplex Project be investigated.

The Complainant went on to set out allegations of conduct of a senior staff person that, in the Complainant's view, was at the behest of the Respondent. The Complaint stated that:

In or about May 2019, [the senior staff person] contacted me by telephone. Our conversation lasted approximately twenty (20) minutes. [The senior staff person] informed me, among other things, that if I ceased opposing [two Developers] with regards to [the other Redevelopment Program] [two Developers] would have City Council, through [the Respondent], "back off" its review of the Humberplex Project assumption issues. I did not understand [the senior staff person]'s comment to be a threat but rather an assessment of [the two Developers] influence over City Council and City Staff.

I believe that the investigation was not undertaken in good faith but rather was initiated to respond to pressure from [the Respondent] in response to [a Developer] to pressure me into ending my opposition to the [other Redevelopment Program].

The Complainant provided further information in their supporting documentation related to the allegations of improper use of influence by the Respondent. The supporting documentation evidenced deputations made at the May 7, 2019 Committee of the Whole meeting, at which two deputants referred to a petition signed by 55 individuals who wanted City Council to address concerns relating to the Humberplex Project. The supporting documentation suggested that several of the petitioners were not properly informed of the nature of the petition and signed the petition not having seen or reviewed the relevant petition materials. My investigation confirmed that some of the petitioners advised that they “were misled into executing” the petition or “misinformed of” the contents of the petition.

Specifically, the Complaint includes the allegation that the Respondent has used or attempted to use her “authority for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff’s duties” in the context of the Humberplex subdivision assumption.

The Complainant’s sworn affidavit stated that he believed that the reason that the assumption of Phase II of the Humberplex Project, (located east of Highway No. 27 and north of Nashville Road) had been opposed by the Respondent, was to improperly influence the decision of Council in support of the [the other Redevelopment Program], through inappropriate pressure on Staff to further the Developers’ business interests.

The Process

On October 16, 2019, the Office received the formal complaint.

On October 31, 2019, I notified the Complainant of the receipt of the Complaint and that the process of the preliminary classification of the Complaint was underway.

On November 28, 2019, I advised the Complainant that my Office has no authority to receive or investigate complaints against allegations of actions, omissions or decisions of municipal staff or Council as a Whole and that the investigation of complaints regarding Closed Meetings fall within the ambit of the City’s Closed Meeting investigator.

I also determined that I would only review the allegations of the Respondent’s contravention of Rules 1, 7 and 9 in respect of insisting that the assumed Phase I and Phase II of the Humberplex Project be investigated, despite staff not advising that this project had deficiencies and was in compliance with the necessary City regulations.

I also sought clarification from the Complainant about certain aspects of the Complaint.

On December 2, 2019, the Respondent requested a time extension to respond to the Complaint until January 13, 2020.

On December 3, 2019, I received the clarification that I had requested from the Complainant.

On December 19, 2019, I received correspondence from the Respondent advising that she had retained a lawyer and was requesting a time extension until January 31, 2020 to provide a response through her lawyer.

On December 27, 2019, I received correspondence from the Complainant requesting clarification on my request for information.

On January 27, 2020, I received a reply from the Respondent in response to the Complaint.

On February 6, 2020, I provided the Complainant with a copy of the Respondent's reply.

After several attempts to secure an interview with the senior staff person named in the Complaint, I sent a final request for a meeting. Correspondence sent on behalf of the senior staff person stated their agreement to meet with me the following week and that scheduling details would be confirmed with my Office. However, that meeting was cancelled by the staff person. To date, I have not had a meeting.

On February 13, 2020, the Complainant requested a time extension until February 21st to provide comments on the Respondent's reply to the Complaint.

Between February 10, 2020 and March 20, 2020, I conducted interviews with 10 individuals, 4 of whom I also requested provide me with documentary evidence. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily under the exercise of the Code Protocol Investigations powers. Section 7 of the Code Protocol states:

(2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

I reviewed public and confidential City documents, emails, audiovisual recordings of Committee and Council meetings.

I am unable to provide excerpts from the interviews that I conducted or the documents collected as I am required by the provisions of the *Municipal Act*, to maintain the confidentiality of individuals with whom I speak. Section 223.5 of the *Municipal Act* contains the statutory provision outlining the Integrity Commissioner's duty of confidentiality. It states that "[t]he Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part."

It is the position of this Office that I was obligated to avoid the disclosure of some information received during the course of my investigation where I believed that this information will clearly identify individuals.

On March 5, 2020, I provided the Respondent with Notice that the investigation would include allegations relating to Rule 16 contravention.

On March 11, 2020, I received correspondence from the Respondent.

On March 19, 2020, I forwarded clarification to the Respondent.

On March 27, 2020, I received a supplementary reply from the Respondent.

On March 31, 2020, I forwarded correspondence to the Complainant in respect of the investigation of rule 16.

On April 7, 2020, I received correspondence from the Complainant requesting a time extension.

On April 21, 2020, I received correspondence from the Complainant providing requested clarification.

The Witnesses

While this investigation did not include the review of matters relating to staff actions, there was a need to ascertain whether the senior staff person, was influenced by the Respondent in contravention of Rule 16 of the Code. I determined that it was necessary to speak to the individuals who worked for the senior staff person to understand whether they felt that their conduct was being improperly influenced by the Respondent Councillor.

Through interviews, I learned that several employees felt that they had been bullied and intimidated by the senior staff person. However, none of the employees had been pressured by the Respondent or believed that the Respondent had in any way directed their stated mistreatment. A number of witnesses advised that staff were berated for alleged unnecessary delays in planning approvals and that complaints received from developers would be accepted at face value by the senior staff person who would then criticize staff for their failure to meet their professional duties. To be clear, these are allegations only as I do not have the authority to review the matter.

The Office of the Integrity Commissioner and Lobbyist Registrar does not have jurisdiction in respect of the actions, omissions and decisions of staff of the municipality, so I did not investigate the conduct of staff and make no further comment on those allegations.

The Respondent's Position

With respect to the allegations of the Complaint, the Respondent set out in her reply that:

When the matter came before City Council on March 19, 2019, I did indeed question City staff with respect to Humberplex's demand that the City assume Humberplex's second phase because I was concerned, based on the ratepayers' complaints, that City staff and City Council may not have the complete picture. I knew that the City would be responsible if the City assumed incomplete or substandard construction.

Based on the concerns expressed by or on behalf of those ratepayers before the March 19, 2019 meeting, I tried, unsuccessfully, to defer the item so that Council could ask staff to see if there was any validity to these concerns. Because of my concerns I voted against passing the bylaw assuming Phase II at that time.

The assumption bylaw 034-2409 was, however, enacted on March 19, 2019 despite my opposition. That was the end of that matter as far as I was concerned. I did not pursue staff or the other councillors to investigate the matter further.

[The Complainant] says that at a subsequent meeting of the Committee of the Whole on May 7, 2019 I took an interest in issues with respect to the state of Humberplex's Phase II which were presented to Council by the two [named] lawyers. I was indeed present as a member of Council and took the same interest as the other councillors did in respect of all matters presented to Council by deputants that day, including the representations made on behalf of residents in the Humberplex project.

[...]

I can advise that I never discussed these issues with either [a named Councillor] or [the senior staff person] and know nothing about the conversations described [in the Complaint].

Analysis

The Code provisions contained in Rules 1, 7 and 9 are in place with a view to ensuring that municipal elected officials do not act in a manner that would cause a reasonable person to think that they would show favour toward someone or that they can be improperly influenced. A Member of Vaughan Council is required to consider whether their relationships and affiliations could prevent them from acting fairly and objectively when performing their duties for the City. If they cannot be fair and objective because of a relationship or affiliation with a group, the Member should refrain from participating in the discussion and decision-making, not insofar as any potential financial gain, but rather in relation to a real or perceived granting of favour towards the group.

The Code recognizes that the decision-making authority for the municipality lies with Council, not an individual Councillor and that it is the role of the officers and employees of the municipality to implement Council's decisions. Members of Council recognize and respect the role of City staff and affirm that only Council as a whole has the capacity to direct staff members. However, this does not mean that an individual Member of Council may take at face value, information about the performance of staff and utilize the unvetted information to make decisions, especially not in the area of procurement or planning where Provincial legislation sets out not only the process municipalities must follow to ensure lawful decision-making, but also the professional standards that professional staff must follow in their designated areas of expertise. At meetings, members are permitted to ask questions, seek clarification, and engage critically with the reports which inform the decisions which they must make. There is no evidence that the Respondent overstepped her role in respect of the subject matter of this complaint.

It is clear from the information that I have received throughout this investigation that the Respondent showed no preferential treatment towards certain developers and did not direct staff in any way, including by favouring one developer or causing delays in respect to projects of another developer.

During the investigation, I received no information which established a nexus between the allegations and the Respondent's conduct. In the Respondent's sworn affidavit, she stated that she did not discuss the matters subject of this complaint with the senior staff person or any other member of staff. After having interviewed over 10 individuals with direct knowledge of the matters subject of this complaint, there was no evidence to support the allegations that the Respondent attempted to secure preferential treatment in respect of the Developers' interests. Further, I was unable to determine if the investigation initiated into the Phase II assumption of the Humberplex Project was linked to any conduct of the senior staff person

There was no evidence to support the Complainant's allegations that the Respondent, in her professional capacity, was acting on behalf of the Developers or that she commanded the senior staff person to meet with, discuss or convince the Complainant to take any action. In the Respondent's reply to the Complaint, she sought an expedited investigation because of the belief that the Complaint was frivolous. I disagreed with this position and made the decision to continue a full investigation of the Complaint. The Complaint is neither frivolous nor vexatious and contained meaningful particulars of the allegations. The allegation that the Respondent was inappropriately directing members of staff is a serious one. The Complaint properly addressed matters within the Code of Ethical Conduct for Members of Council and Local Boards. The Complainant reported that they felt pressured at a meeting with a named senior staff person that they believed was directed by the Respondent. They did not have strong direct evidence of the alleged improper influence, however, I determined that in the interests of accountability, transparency, and protecting staff that I must conduct an investigation. It may have been possible to determine this matter without a full investigation if the senior staff person had met with me. However, that meeting did not occur and I declined to exercise my summons powers in the particular

circumstances of this matter.

I determined that the Complaint was not frivolous, even though it may have been motivated by animus between the Complainant and those involved in the other Redevelopment Program. As Integrity Commissioner and Lobbyist Registrar for the City of Vaughan, I take allegations of bullying against staff very seriously. There were two parts to this complaint: the first part of the Complaint alleged wrongdoing by the Respondent contrary to her Code obligations; the second part of the complaint alleged conduct by a named senior staff person connected to the events of the Complaint (which I did not investigate).

In the Complaint, the Complainant alleged that the entire assumption of the Humberplex Project has been affected by the actions of the Respondent who commanded staff to take certain positions on behalf of two Developers despite that they were often contrary to the recommendations of staff. There was an allegation that the Respondent acted contrary to her Code obligations by bullying staff into actions that would cause unnecessary delays to the Phase II assumption of the Humberplex Project. However, during the course of the investigation, I found that the Respondent did not communicate with staff who had carriage of the Humberplex Project file, nor did she attempt to intimidate staff in any way. Because I could not interview the senior staff person named in the complaint, I had to speak with their staff. In discussions with staff, I received information that the Respondent unequivocally did not pressure or communicate with staff – indeed none of the witnesses had spoken to the Respondent and none believed that their superior had acted at the behest of the Respondent. The complaint is therefore not made out.

The Complainant alleged in their submission that many of the individuals who were believed to have signed the petition against the Humberplex Project, were misled about the contents of the petition. However, the evidence before me did not establish any connection between the alleged irregularities in the understanding by the residents and the actions and behaviour of the Respondent. Further, I declined to investigate any allegations in respect of any developers and make no findings in that regard. However, in finding that the Respondent did not contravene the Code rules, I did consider whether the alleged conduct of the Respondent set out in the Complaint was related to any preferential treatment afforded to those involved in the other Redevelopment Program. I found no such relationship.

Findings and Conclusion

Generally, throughout the investigation, I found that although the Phase II assumption was delayed, there were several reasons, for the most part discretionary, and a number of which were raised relating to questions of adherence to safety requirements, lands abutting the TransCanada Pipeline and the grading and landscaping around the site. These were critical issues raised by staff and municipal councillors. Without having had the opportunity to interview the senior staff person named in the Complaint and based on the information that I did receive from witness interviews, *the facts* alleged by the Complainant are not capable of supporting a “reasonable inference” that the protracted amount of time that it

took to obtain approval of the Phase II assumption was connected to any inappropriate actions of the Respondent. I find that the Respondent did not contravene Rules 7 and 9 of the Code.

With respect of their conduct with City staff, I find that the Respondent has not breached Rule 1 or 16 of the Code. If there was a “culture of fear” within this City department, the Respondent had no part in creating it. The Respondent neither communicated nor directed staff in respect of a delay in the Humberplex Project. Where Staff advised on files, including the Humberplex Project, that there is a process, professional standards and timelines that must be followed to ensure the integrity of the planning process and the reputation of the City of Vaughan, they alleged that they were met with abusive language and intimidating actions from another staff member, but in no way was any such conduct carried out by the Respondent. At the conclusion of this Complaint, I find that the Respondent did not contravene Rules 1, 7, 9 and 16 of the Code and I make no recommendations of remedial action.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner and Lobbyist Registrar