



OFFICE OF THE INTEGRITY COMMISSIONER

February 25, 2015

City Council
City of Hamilton

File #2013-03

RE: Complaint of Misconduct against Councillor Maria Pearson

Complaint

An application to amend the City of Stoney Creek Zoning By-Law No 3692-92 for lands located at 2 Oceanic Drive, Stoney Creek, ON had been presented to the City of Hamilton Planning Committee for approval on February 5, 2013 and it is alleged that during the process of compiling information and presenting it to the Planning Committee, Councillor Pearson had violated the Code of Conduct, namely Section 2 which states:

2.1 *The key statements of principle that underlie the Code of Conduct are as follows:*

- (a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
- (b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;*
- (c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and*
- (d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.*

It is alleged that Councillor Pearson had failed in her duty to serve her constituents in a conscientious and diligent manner by:

1. Failing to conduct a complete and accurate survey of her constituents' views of the Re-zoning application; and
2. Misleading the Planning Committee by providing a false account of what her constituents actually said to her during the telephone survey conducted by Councillor Pearson in relation to the re-zoning application.

Investigation

An inquiry into the allegations was commenced and the results of that inquiry are being reported herein.

An initial interview was conducted with the Complainant where documentation and notes relating to the Re-Zoning Application was obtained along with a list of witnesses and other interested parties from the area affected by the Re-Zoning application was also obtained.

The investigation included interviewing more than 40 residents in the area to determine their recollection of the conversation(s) they had with Councillor Pearson.

At the heart of this inquiry is the application to change the zoning of #2 Oceanic Drive, Stoney Creek (the Property), from a Local Commercial Zone (LC) to a Multi Residential Zone (RM2). This application was filed with the City of Hamilton on April 13, 2012.

The Property is a vacant lot located in a neighbourhood comprised of single family dwellings. Its current local commercial zoning allows for a light commercial building to be constructed on the site. This would allow such commercial enterprises as a convenience store with offices on the second floor to be developed on the Property.

The initial proposal for the zone change was to construct ten (10) maisonettes on the Property. On April 27, 2012, in compliance with the Planning Act, Ninety-four (94) letters were sent to households within 120 metres of the Property advising the residents of the application to re-zone the Property. In response to this advice, the City received fifty (50) letters from the public opposing the re-zoning application. These letters of opposition included thirty-one (31) individual letters and nineteen (19) form letters.

A public meeting was held on May 28, 2012. Fifty-three (53) persons from thirty-nine (39) households attended the meeting to hear presentations from the developer and to provide their comments regarding the proposed re-zoning. The attendees were extremely vocal in their opposition to the proposed re-zoning. The day after the meeting, Councillor Pearson sent out a letter thanking those persons for attending the public meeting.

In light of the opposition expressed in writing to the City as well as the opposition raised by those in attendance at the public meeting, Councillor Pearson approached the owner of the property to re-consider his proposed zoning amendment of ten (10) maisonettes and reduce the density. As a result, on June 8, 2012 the property owner submitted to the

City an amendment to the original re-zoning application. This amendment revised the initial re-zoning application by lowering the density of the proposed amendment from ten (10) maisonettes to six (6) townhouses.

On June 25, 2012, in compliance with the Planning Act, Notice of the revised application was circulated to households within 120 metres of the Property. In response to this Notice, the City received a total of ten (10) letters from the public opposing any changes to the zoning of the Property.

On January 18, 2013 Notice was sent out advising of the meeting of the Planning Committee on February 5, 2013 at which time the amended re-zoning application would be presented to the Planning Committee. This meeting is held in Council Chambers and is open to the public.

The Planning Committee met as scheduled on February 5, 2013 at which time the Planning and Economic Development Department of the City presented the amended re-zoning application lowering the density from ten (1) maisonettes to six (6) townhouses, along with a report supporting the amended application and outlining the rationale for this support as follows:

1. It is consistent with Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe, as it represents an opportunity for growth in the Settlement Areas,
2. It conforms to the policies of the Hamilton Wentworth Official Plan,
3. It conforms to the "Residential" policies of the City of Stoney Creek Official Plan,
4. It conforms to the intent and purpose of the "Neighbourhoods" policies of the new Urban Hamilton Official Plan.
5. The proposed development would be subject to a Site Plan Control application prior to any development occurring on the Property.

An integral element of the Planning and Economic Development Department report for consideration by the Planning Committee were copies of the fifty (50) letters received from the public opposing the original application for ten (10) maisonettes to be constructed on the property, along with the ten (10) letters received from the public opposing the amended application downsizing the development to six (6) townhouses.

In addition to the aforementioned concerns expressed by the public in writing, four (4) residents of the community around #2 Oceanic Drive that personally attended the Planning Committee meeting and provided oral presentations to the Committee expressing their concerns and opposition to re-zoning the property.

In addition to reports there were discussions, questions and dialogue by individual Planning Committee members to become more fully informed of the re-zoning application before them. As part of those discussions, Councillor Pearson informed the Committee that she had made a diligent attempt to follow up with all residents that had attended the

public meeting in May 2012 to determine their stance on the new amendment to the re-zoning application, which was the lowering of the density from ten (10) maisonettes to six (6) townhouses.

This follow up by Councillor Pearson was in the form of canvassing by telephone more than 40 residents who had attended the public meeting in May 2012. This informal telephone survey was conducted in June 2012 after the re-zoning amendment had been submitted.

This was a very informal and unscientific survey. Councillor Pearson did not develop a standard script for the survey but had explained to the residents that had attended the public meeting that the re-zoning application that was coming before the Planning Committee February 5, 2013 had been amended to downsize the density from ten (10) maisonettes to six (6) townhouses. Councillor Pearson then asked the person answering the phone their opinion of this change. Councillor Pearson did not record the full conversations she had with the residents during the survey, nor did she make extensive notes. However, she did make notes of the responses at the time she made the calls.

The responses to her survey varied and words such as “better”, “sounds good”, “terrific”, “still opposed” and “more comfortable with” were expressed. However, as noted, full conversations were not recorded and only brief handwritten notes were recorded. The notes only listed the family surname, address and a short comment relating to the respondent’s reaction to the downsizing of the development from ten (10) maisonettes to six (6) townhouses. In her notes, Councillor Pearson did not specify nor identify the person with whom she spoke. Many residences had more than one occupant and during our interviews we found that within the same household there were opposing views.

We interviewed all the residents that had been contacted by Councillor Pearson. From our more than forty (40) interviews, we found that phrases such as “very pleased” or “excellent” and for the most part, any phrase that supported the development were from residents who indicated that they were pleased that the density of the development was downsized from ten (10) maisonettes to six (6) townhouses. However, we also learned from our interviews, that those same residents were opposed to any development on the Property that exceeded a single family dwelling which fits the neighbourhood surrounding the Property.

The Councilor’s phone canvas was informal and did not provide a true picture of what the residents contacted wanted regarding the development of #2 Oceanic Drive. But, the issue before Planning Committee was not about whether the residents were in favour of developing #2 Oceanic Drive. It was about amending the current zoning from a Local Commercial Zone (LC) to a Multi Residential Zone (RM2) to allow for six (6) townhouses to be built on the property. Councillor Pearson recorded the residents’ comments at the time of her conversations with them. These comments related to the amendment before Planning Committee and the information she passed on to the Committee was the information she recorded in her conversations with the residents.

The amended re-zoning application was passed by the Planning Committee.

Conclusions

Based on the interviews conducted, the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's conclusions that:

1. Councillor Pearson and the City, in compliance with the Planning Act, held a Public Information Meeting on May 28, 2012, regarding the proposed re-zoning by the owner of #2 Oceanic Drive, Stoney Creek, ON from Local Commercial Zone (LC) to a Multi Residential Zone (RM2) to develop ten (10) maisonettes on the property;
2. The City received fifty (50) letters opposing the re-zoning application of ten (10) maisonettes and residents that attended the Public Information Meeting verbally expressed their opposition to the proposed development;
3. As a result of the opposition to the re-zoning, at the request of Councillor Pearson, the owner amended his original application and reduced the density of the development from ten (10) maisonettes down to six (6) townhouses;
4. In an effort to judge the opinion of the residents of this new amended re-zoning application in which the density was reduced from ten (10) maisonettes down to six (6) townhouses, Councillor Pearson contacted the residences of those that had attended the Public Information Meeting on May 28, 2012 and spoke with the occupant or left a message for a return call. In all, Councillor Pearson spoke with 39 residents to obtain their opinion of the amended re-zoning application;
5. Councillor Pearson did not conduct a formal survey. Councillor Pearson did not have a written script to ensure that all residents were provided with the same information, nor did she ask the person if they were in favour of the amended re-zoning application or not. Councillor Pearson's survey consisted of explaining the new amended re-zoning application and asking the opinion of the person with whom she spoke;
6. The City received ten (10) letters opposing the amended re-zoning;
7. This amended re-zoning application was brought before the Planning Committee on February 5, 2013 where all correspondence relating to the application was

provided to the Planning Committee, including the fifty (50) letters of opposition to the original re-zoning application for ten (10) maisonettes, as well as the ten (10) letters of opposition for the amended re-zoning application for six (6) townhouses;

8. During the hearing by the Planning Committee, Councilor Pearson advised the Committee of the comments she had compiled during her informal survey;
9. If a telephone survey of a community is to be utilized, it should include:
 - a. A standard script to ensure each individual canvased is provided with the same information;
 - b. The name and resident address of each person surveyed including the stipulation that this person has attained the age of majority;
 - c. Wording that elicits a “For” or “Against” response only. Opinion responses should be avoided.
10. Informal telephone surveys are not recommended.

Findings

Based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner’s findings that:

1. Councillor Pearson should not have used an informal survey to elicit the opinions of the community. This should have been accomplished either through a formal survey or by way of a Public Information Meeting. There is no evidence to indicate that Councillor Pearson was not acting in good faith in conducting the informal survey nor was there evidence of malicious intent. Her use of an informal survey is ill-advised but is not in violation of the Code of Conduct.
2. All documentation, including all letters in opposition of the amended re-zoning, staff reports as well as public presentations opposing the re-zoning, staff presentations Councillor Pearson’s comments and other discussions were presented to the Planning Committee. The information Councillor Pearson provided came directly from her notes in completing the informal survey. The Commissioner could not find evidence to indicate that the information Councillor Pearson presented to the Planning Committee was done with the intent of misleading or confusing the Planning Committee. Councillor Pearson was not in violation of the Code of Conduct.
3. The complaint regarding the conduct of Councillor Pearson was neither vexatious nor frivolous. As per Section 12(2) of By-Law 08-154, the fee for registering the complaint shall be refunded to the Complainant.



Earl D. Basse, Integrity Commissioner

cc: Councillor Pearson
Complainant