



SPECIAL CITY COUNCIL MINUTES 19-005

5:00 p.m.
March 20, 2019
Council Chamber
Hamilton City Hall
71 Main Street West

Present: Mayor F. Eisenberger, Councillor T. Jackson (Deputy Mayor)
Councillors M. Wilson, J. Farr, N. Nann, S. Merulla, C. Collins,
E. Pauls, J. P. Danko, B. Clark, M. Pearson, B. Johnson, L. Ferguson,
A. VanderBeek, T. Whitehead, J. Partridge

Mayor Eisenberger called the meeting to order and recognized that Council is meeting on the traditional territories of the Mississauga and Haudenosaunee nations, and within the lands protected by the “Dish with One Spoon” Wampum Agreement.

APPROVAL OF THE AGENDA

The Clerk advised of the following change to the agenda:

5. PRIVATE AND CONFIDENTIAL

- 5.3 Local Planning Appeal Tribunal Appeals by Television City Hamilton Inc.,
(PL180255) - Settlement Proposal (LS19012) (Ward 2) *(referred to Council at
the March 19, 2019 Planning Committee meeting)*

(Farr/Pearson)

That Item 5.3 be added to the March 20, 2019, Special Council agenda.

Result: Motion CARRIED by a 2/3's majority vote of 15 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Councillor Chad Collins
YES - Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
NOT PRESENT - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek

YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

(Farr/Pearson)

That the agenda for the March 20, 2019 meeting of Council be approved, as amended.

Result: Motion CARRIED by a vote of 15 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Councillor Chad Collins
YES - Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
NOT PRESENT - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

DECLARATIONS OF INTEREST

There were no declarations of interest.

COMMUNICATIONS

3. (Jackson/Pauls)

That Council Communication Items 3.1 and 3.2, be approved, as follows:

- 3.1 Correspondence from the Honourable Andrea Horwath, Ontario NDP Leader respecting the safety of the Red Hill Valley Expressway and urging the City of Hamilton to do the right thing and open the review of these circumstances to a judicial review, be received.
- 3.2 Provincial Media Release - Province must right its wrongs amid Red Hill Valley Parkway safety concerns, be received.

CARRIED

MOTIONS

4.1 Requesting an Apology from the Province of Ontario Respecting the Ministry of Transportation's Friction Testing Results**(Merulla/Collins)**

WHEREAS, City Council and by extension the residents of the City of Hamilton have received an apology from City of Hamilton staff for the manner and the timing to which Council was informed of the friction testing results on the Red Hill Valley Expressway; and,

WHEREAS, City Council and by extension the residents of the City of Hamilton have not received an apology from the Province of Ontario, respecting the Ministry of Transportation's friction testing results, which concurred with the results within the City of Hamilton report during the same period of time and in doing so, compounded the betrayal to City Council and the residents of City of Hamilton.

THEREFORE, BE IT RESOLVED:

That City Council demand an apology from the Province of Ontario respecting the Ministry of Transportation's Friction Testing Results, on behalf of all residents of the City of Hamilton.

Result: Motion CARRIED by a vote of 14 to 2, as follows:

NO - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Councillor Chad Collins
YES - Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
NO - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

PRIVATE & CONFIDENTIAL

(Clark/Ferguson)

That Council move into Closed Session respecting Items 5.1, 5.2 (pursuant to sub-section (f) only); and 5.3, pursuant to Section 8.1, Sub-sections (b), (d), (e) and (f) of the City's Procedural By-law 18-270; and, Section 239(2), Sub-sections (b), (d), (e) and (f), as the subject matters pertain to personal matters about an identifiable individual, including City employees; labour relations or employee negotiations; litigation or potential litigation, including matters before administrative tribunals, affecting the City; and, the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

The motion to move into Closed Session was separated for each of the three items, as follows:

5.3 Local Planning Appeal Tribunal Appeals by Television City Hamilton Inc., (PL180255) - Settlement Proposal (LS19012) (Ward 2) (Item 5.3)

Result: Motion CARRIED by a vote of 16 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Councillor Chad Collins
YES - Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

5.1 City Manager Recruitment - Update

Result: Motion CARRIED by a vote of 16 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Councillor Chad Collins
YES - Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko

YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

5.2 Road Infrastructure Litigation Review and Assessment Follow up (LS19010(b))

Result: Motion CARRIED by a vote of 13 to 3, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
NO - Councillor Sam Merulla
NO - Councillor Chad Collins
YES – Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
NO - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

5.1 City Manager Recruitment - Update

Mayor Eisenberger relinquished the Chair to introduce the Motion respecting the City Manager Recruitment - Update.

(Eisenberger/Pearson)

- (a) That the Executive Director of Human Resources be directed to offer Janette Smith the position of Chief Administrative Officer/City Manager effective May 6, 2019; and,
- (b) That the Clerk be directed to prepare the necessary By-Law to Appoint and Prescribe the Duties and Responsibilities of the Chief Administrative Officer for Council's consideration on March 27, 2019.

Result: Motion CARRIED by a vote of 16 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr

YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Deputy-Mayor Chad Collins
YES - Councillor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

Mayor Eisenberger assumed the Chair.

5.2 Road Infrastructure Litigation Review and Assessment Follow up (LS19010(b))

(Clark/Pearson)

That solicitor-client privilege, respecting Report LS19010(b), Road Infrastructure Litigation Review and Assessment Follow up, be waived and the Appendix to Report LS19010(b) be released to the public.

Result: Motion CARRIED by a vote of 16 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Councillor Chad Collins
YES - Deputy Mayor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

(Clark/Pearson)

That Report LS19010(b), respecting the Road Infrastructure Litigation Review and Assessment Follow up, and its Appendix, respecting the Road Infrastructure Litigation Review and Assessment Follow up, be received.

CARRIED

5.3 Local Planning Appeal Tribunal Appeals by Television City Hamilton Inc., (PL180255) - Settlement Proposal (LS19012) (Ward 2) (Item 5.3)**(Farr/Clark)**

- (a) That the direction provided to staff in Closed Session be approved; and,
- (b) That Report LS19012 and its appendices and recommendations respecting Local Planning Appeal Tribunal appeals by Television City Hamilton Inc. (PL180255) – Settlement Proposal, remain confidential.

Result: Motion CARRIED by a vote of 14 to 1, as follows:

NO - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Deputy-Mayor Chad Collins
YES - Councillor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
NOT PRESENT - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

MOTIONS (Continued)

4.2 Judicial Investigation respecting the Lincoln Alexander & Red Hill Valley Parkways**(Clark/Merulla)**

- (a) That the City's outside legal counsel, in consultation with the Acting City Manager, be directed to prepare the necessary documents to file an application before the Superior Court to initiate a Judicial Investigation, pursuant to *Ontario Municipal Act*, 2001, as amended, Section 274.1.a & b, (Investigation by a Judge), and the *Public Inquiries Act*, Section 33, (Public Inquiries); and,
- (b) That the scope of the Judicial Investigation could include, but not be limited to, the following questions and be referred to outside legal counsel for review and a report back to the General Issues Committee:
 - (i) Who received, was briefed or was advised on the existence of the November 20th, 2013 Tradewind Scientific Friction Testing Survey

Summary Report on the Lincoln Alexander & Red Hill Valley Parkways (the document) in 2013 or subsequent years;

- (ii) Who was the individual or individuals, who decided not to disclose the document in 2013;
- (iii) What was the rationale for not disclosing the document in 2013;
- (iv) Who received a copy, was briefed or was informed about the existence of the document in 2018;
- (v) What was the rationale for not disclosing the document in September 2018;
- (vi) Did the document provide sufficient cause to make safety changes to the roads, or provide cause for further study;
- (vii) What role, if any, did the non-disclosure of the document play in the increase in accidents, injuries or fatalities on the roads;
- (viii) Did anyone in the Public Works Office or Roads Department request, direct or conduct any other friction test, asphalt assessment, or general road safety reviews or assessments on the roads;
- (ix) Did subsequent consultant reports provide additional support or rebuttal to the document's conclusions;
- (x) Did the Ministry of Transportation's (MTO) recently revealed friction tests provide additional support or rebuttals to the document's conclusions;
- (xi) What was the rationale for the Ministry of Transportation to not disclose their findings from the city and the public;
- (xii) Who was briefed within the Ministry or the Minister's Office about the findings of the MTO's friction tests;
- (xiii) Did the MTO friction test provide sufficient cause to make safety changes to the roads, or provide cause for further study;
- (xiv) What role, if any, did the non-disclosure of the MTO friction tests play in the increase in accidents, injuries or fatalities on the roads;
- (xv) Did the MTO conduct any other road assessment, friction tests, or general safety reviews or assessments on the roads;
- (xvi) Was there any malfeasance, wrong doing or misconduct by any person or persons in relations to their role in the non-disclosure of the document;

- (xvii) Review and make recommendations to improve City policy and procedures to prevent such future incidents.

(Ferguson/Clark)

That the Motion regarding a Judicial Investigation respecting the Lincoln Alexander & Red Hill Valley Parkways, be amended by adding new sections (xviii), (xix) and (xx), to read as follows:

(xviii) What is the standard in Ontario for friction;

(xix) Are results for friction for highways across the Province available;

(xx) Is speed, traffic weaving and lighting as big an issue as the friction tests;

Result: Amendment CARRIED by a vote of 16 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Deputy-Mayor Chad Collins
YES - Councillor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

Main Motion, ***as amended*** reads as follows:

- (a) That the City's outside legal counsel, in consultation with the Acting City Manager, be directed to prepare the necessary documents to file an application before the Superior Court to initiate a Judicial Investigation, pursuant to *Ontario Municipal Act*, 2001, as amended, Section 274.1.a & b, (Investigation by a Judge), and the *Public Inquires Act*, Section 33, (Public Inquiries); and,
- (b) That the scope of the Judicial Investigation could include, but not be limited to, the following questions and be referred to outside legal counsel for review and a report back to the General Issues Committee:
- (i) Who received, was briefed or was advised on the existence of the November 20th, 2013 Tradewind Scientific Friction Testing Survey

Summary Report on the Lincoln Alexander & Red Hill Valley Parkways (the document) in 2013 or subsequent years;

- (ii) Who was the individual or individuals, who decided not to disclose the document in 2013;
- (iii) What was the rationale for not disclosing the document in 2013;
- (iv) Who received a copy, was briefed or was informed about the existence of the document in 2018;
- (v) What was the rationale for not disclosing the document in September 2018;
- (vi) Did the document provide sufficient cause to make safety changes to the roads, or provide cause for further study;
- (vii) What role, if any, did the non-disclosure of the document play in the increase in accidents, injuries or fatalities on the roads;
- (viii) Did anyone in the Public Works Office or Roads Department request, direct or conduct any other friction test, asphalt assessment, or general road safety reviews or assessments on the roads;
- (ix) Did subsequent consultant reports provide additional support or rebuttal to the document's conclusions;
- (x) Did the Ministry of Transportation's (MTO) recently revealed friction tests provide additional support or rebuttals to the document's conclusions;
- (xi) What was the rationale for the Ministry of Transportation to not disclose their findings from the city and the public;
- (xii) Who was briefed within the Ministry or the Minister's Office about the findings of the MTO's friction tests;
- (xiii) Did the MTO friction test provide sufficient cause to make safety changes to the roads, or provide cause for further study;
- (xiv) What role, if any, did the non-disclosure of the MTO friction tests play in the increase in accidents, injuries or fatalities on the roads;
- (xv) Did the MTO conduct any other road assessment, friction tests, or general safety reviews or assessments on the roads;
- (xvi) Was there any malfeasance, wrong doing or misconduct by any person or persons in relations to their role in the non-disclosure of the document;

(xvii) Review and make recommendations to improve City policy and procedures to prevent such future incidents;

(xviii) What is the standard in Ontario for friction;

(xix) Are results for friction for highways across the Province available;

(xx) Is speed, traffic weaving and lighting as big an issue as the friction tests;

Result: Main Motion, AS AMENDED, CARRIED by a vote of 14 to 2, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Deputy-Mayor Chad Collins
YES - Councillor Tom Jackson
YES - Councillor Esther Pauls
YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
NO - Councillor Lloyd Ferguson
NO - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

BY-LAWS

(Jackson/Pauls)

That Bill No. 19-043, be passed and that the Corporate Seal be affixed thereto, and that the By-laws, be numbered, be signed by the Mayor and the City Clerk to read as follows:

By-law No.

043 To Confirm the Proceedings of City Council

Result: Motion CARRIED by a vote of 16 to 0, as follows:

YES - Councillor Maureen Wilson
YES - Councillor Jason Farr
YES - Councillor Nrinder Nann
YES - Councillor Sam Merulla
YES - Deputy-Mayor Chad Collins
YES - Councillor Tom Jackson
YES - Councillor Esther Pauls

YES - Councillor John-Paul Danko
YES - Mayor Fred Eisenberger
YES - Councillor Judi Partridge
YES - Councillor Terry Whitehead
YES - Councillor Arlene VanderBeek
YES - Councillor Lloyd Ferguson
YES - Councillor Brenda Johnson
YES - Councillor Maria Pearson
YES - Councillor Brad Clark

(VanderBeek/Pearson)

That, there being no further business, City Council be adjourned at 11:40 p.m.

CARRIED

Respectfully submitted,

Mayor F. Eisenberger

Janet Pilon
Acting City Clerk