



## OFFICE OF THE INTEGRITY COMMISSIONER

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April 22, 2015

City Council  
City of Hamilton

**File #2014-03**

### **RE: Complaints of Misconduct against Councillor Maria Pearson**

#### **Complaint**

The Office of the Integrity Commissioner received a complaint alleging that Councillor Pearson violated sections 2a, 2b, 2c, 2d, 11, 14, 22, 26, 27, 45a and 45b)i) of the City of Hamilton Code of Conduct.

These sections state as follows:

#### Section 2

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.

#### Section 11

No member of Council shall use confidential information for financial or other gain, or for the financial or other gain of a family member or any person or corporation. For

example, no member of Council should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

#### Section 14

Members of Council shall not access or attempt to gain access to confidential information in the possession of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

#### Section 22

Under its Accountability and Transparency Policy, the City supports ensuring accountability and transparency in all its actions. Accordingly, in addition to disclosing a pecuniary interest under the *Municipal Conflict of Interest Act* members of Council shall disclose non-pecuniary interests they have in a matter, either on their own behalf or while acting for, by, with or through another, prior to consideration of that matter at Council or a Committee of Council.

#### Section 26

No member of Council shall use the influence of their office for any purpose other than for the exercise of their official duties.

#### Section 27

Examples of types of prohibited conduct under this section include but are not limited to:

- a. the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one family members, City employees, friends, or associates business or otherwise, including attempts to secure preferential treatment beyond activities in which members of Council normally engage on behalf of their constituents as part of their official duties;
- b. the holding out of the prospect or promise of future advantage through a member of Council's supposed influence within Council in return for present actions or inaction.

#### Section 45

It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment. Accordingly:

- a. no member of Council shall harass another member of Council, City employees or any member of the public; and
- b. all members of Council shall:

- i. treat one another, City employees and members of the public appropriately and without abuse, bullying or intimidation; and
- ii. make all reasonable efforts to ensure that their work environment is free from discrimination and harassment.

The Complainant alleges that Councillor Pearson has violated the Code of Conduct by:

1. Refusing to provide sufficient information pertaining to a conflict of interest and thereby disabling the public from assessing whether there may be a conflict of interest;
2. Inappropriately referencing the Integrity Commissioner as a mechanism for skirting her obligations under the Code of Conduct to provide diligent representation including honesty and transparency;
3. Proceeding to cast her vote as a Council Member and Member of the Planning Committee on a matter that she knew or ought to have known must be sufficiently cleared up from a potential conflict of interest perspective;
4. Influencing a select group of constituents in her ward and deliberately pitting people against each other on a significant development matter where millions of dollars are at stake. She failed to properly disclose all the facts misleading constituents.

## Investigation

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

The Complainant was interviewed to gather additional specific information. City of Hamilton documents and records along with a number of video screenings of the City of Hamilton Planning Committee meetings were reviewed and where appropriate City of Hamilton Staff were interviewed. Councillor Pearson was also interviewed.

This complaint stems from the Fruitland-Winona Secondary Plan (FWSP) which had been developed over a number of years. The FWSP was ultimately passed through Planning Committee and Council in 2014. For the most part, this plan covered the area in Ward 11, east of Fruitland Road, north of Highway 8, south of Barton Street and west of Fifty Road. Councillor Pearson represents Ward 10, the eastern boundary of which is Fruitland Road.

The FWSP was initially developed in 1992 as the Stoney Creek Urban Boundary Extension (SCUBE). SCUBE expired in 1997 resulting in the eventual development of the FWSP. SCUBE called for the City to build a by-pass of Fruitland Road up the mountain and to close the north end of Fruitland Road by building a cul-de-sac at the north end of Fruitland Road. However, with the expiry of the SCUBE in 1997, a new plan had to be developed. That plan was the FWSP.

The FWSP removed the by-pass from the FWSP and re-routed the traffic through a Collector Road between Fruitland Rd and Jones Rd. Fruitland Road would remain open and no cul-de-sac would be built. This was an issue for the Complainant.

Prior to being passed by Council and in the normal course of developing the FWSP, it went through a number of discussions at Planning Committee as well as at Public Open Houses. As a member of the Planning Committee, Councillor Pearson was in attendance at the Planning Committee Meetings and voted on the FWSP.

Allegations #1, #2 and #3 above relate to an allegation of conflict of interest by Councillor Pearson and are being reported herein.

According to the Complainant, Councillor Pearson's son is employed by a company in the area affected by the FWSP. As a result, Councillor Pearson is in a conflict of interest position as described by the Code of Conduct and should declare such a conflict and recuse herself from voting on the matter.

The issue of Conflict of Interest has two heads. One is under the City of Hamilton Code of Conduct for Members of Council. This is for the City of Hamilton Integrity Commissioner to rule as it relates directly to the City of Hamilton Code of Conduct only.

The other relates to a pecuniary interest under the Municipal Conflict of Interest Act which is heard by the courts. The Integrity Commissioner has no jurisdiction relative to the Municipal Conflict of Interest Act.

On March 30, 2014, the Complainant corresponded with Councillor Pearson asking for the Councillor to advise if she had any conflict of interest related to property or any other aspect of the FWSP.

Notwithstanding that Councillor Pearson's son is employed by a company in the area affected by the FWSP, Councillor Pearson did not believe she was in a conflict of interest position. However, to provide some comfort to her position, she engaged a solicitor with considerable municipal experience, independent of the City of Hamilton, for an opinion on the matter.

This solicitor advised Councillor Pearson that in his opinion she is not in a Conflict of Interest position as her son's interest is not distinct from the interest in common with electors generally and that her son's interest is remote or insignificant in its nature.

This was communicated to the Complainant. However, the Complainant continued to question Councillor Pearson's position and insisted Councillor Pearson provide the Complainant with the information she discussed with her solicitor so the Complainant could make his own determination as to whether Councillor Pearson was in a conflict of interest position.

Councillor Pearson then consulted with the City of Hamilton Integrity Commissioner to garner the Integrity Commissioner's advice on the matter. An integral function of the City of Hamilton Integrity Commissioner is to provide advice and guidance to Council on matters relating to the Code of Conduct. Councillor Pearson requested the Integrity Commissioner's advice as it relates to the issue of Councillor Pearson's potential conflict of interest in relation to the FWSP.

After discussing the matter with Councillor Pearson and reviewing documentation provided, the Integrity Commissioner advised Councillor Pearson that in the view of the Integrity Commissioner she was not in a conflict of interest position as outlined in the City of Hamilton Code of Conduct for Members of Council.

On April 13, 2014, the Complainant sent an email to members of the Planning Committee again questioning the position that Councillor Pearson has taken i.e. she is not in a conflict of interest. In the email, the Complainant alleges that Councillor Pearson may have a conflict of interest in relation to the FWSP. As a result, at the Planning Committee meeting of April 15, 2014, Councillor Pearson took the opportunity to provide the Planning Committee with the following report:

Madam Chair I wish the opportunity this morning to clarify to my colleagues on this committee and the public a conflict of interest query that has been posed to me and responded to. Unfortunately, the citizen has not accepted my independent lawyers 'opinion' and has continued to request further information from me to the point of sending all of you an e-mail on Monday April 13<sup>th</sup> regarding this matter. He continues to ask the same question in the public interest.

For the record I wish to confirm to you that

- 1) I DO NOT HAVE A CONFLICT OF INTEREST TO DECLARE with regards to this Secondary Planning process nor have I ever in the past
- 2) On March 22<sup>nd</sup> this resident did request confirmation from me as to whether or not I had a conflict of interest with respect to the SCUBE planning process or with respect to any other aspect of the Fruitland Winona secondary planning area
- 3) I have in the past received verbal confirmation that I did not, but in the interest of transparency and having documentation in my possession providing this confirmation, I pursued the services of an independent lawyer with many years of municipal law experience and outside of the City of Hamilton to provide me with his opinion. I provided my solicitor with all the facts in which to base his review and opinion

- 4) I received my solicitor's opinion and provided this resident with the pertinent information from the opinion letter – and I will read it off for all of my colleagues' information and for the public record (in the interest of time I will read off the pertinent section) '...In my opinion, your son's interest cannot be described as distinct from the interest in common with electors generally and subsection (j) applies. In addition, I would advise that your son's interest is also exempted as being so remote or insignificant in its nature that subsection (k) of Section 4 also applies.

Accordingly, it is my clear and confident legal opinion that you may participate in the debate and vote on the SCUBE Secondary Plan whenever it is considered by Council or any of its committees."

- 5) Unfortunately, this was not satisfactory to the resident and he continued to ask me to provide information that I have provided to my solicitor and to which his decision was based and I believe to be confidential between solicitor/client. He was also not satisfied that my solicitor provided an 'opinion' and not a 'confirmation'.
- 6) I thought on his continuing pursuit of information and provided a follow up response to his latest query on April 8<sup>th</sup>.
- 7) The resident continues to not accept the information that I have provided to him and it has now lead to his most recent e-mail to all of you.
- 8) I have as of yesterday, April 14, 2014 communicated with Mr. Earl Basse, our Integrity Commissioner and provide him with the details of the issue, the material I provided to my solicitor along with my solicitor's advice. On our initial conversation Mr. Basse indicated he saw no conflict of interest in this matter. After reviewing all of the documentation I provided he confirmed to me verbally that there is no conflict of interest and I am in receipt of his response in writing – for my records.

Mr. Basse advised as follows

Councillor Pearson:

This is in response to your inquiry regarding a potential conflict of interest that you may have in relation to the Stoney Creek Urban Boundary Expansion (SCUBE) Secondary Plan.

I have reviewed both the information you provided as well as the legal opinion provided by (my solicitor named). I am very

familiar with (my solicitor named) and his knowledge of municipal law.

From the information you have provided, as well as the opinion provided by (my solicitor named), I agree with (my solicitor named) the opinion and in my view you are not in a conflict of interest position regarding the SCUBE Secondary Plan....

In the interest of transparency and protecting my own interests I believe that I have gone above and beyond the requirement to address this query.

I wish this to be entered into the public record.

The Complainant was informed that Councillor Pearson's son is employed in the FWSP area. However, Councillor Pearson has not provided the Complainant with the additional details she discussed with her solicitor. The Complainant believes that Councillor Pearson has the duty to be transparent and forthright in this matter and must disclose the details of the matter she discussed with her solicitor so that the Complainant and the public can determine if Councillor Pearson is in a conflict of interest position.

However, Councillor Pearson's discussions with her solicitor fall under Solicitor/Client privilege and Councillor Pearson is not required to divulge that information.

It is normal procedure to engage a solicitor for an opinion and it is accepted that a solicitor only provides an opinion. The Complainant believes that the issue of conflict of interest is something the Complainant and the public can determine. The only lawful jurisdiction that can determine if a person is in a conflict of interest position is the court.

On April 21, 2014, in a separate email communication with the Complainant, the Integrity Commissioner informed the Complainant that a function of the Integrity Commissioner is to provide advice and guidance to Councillors and that Councillor Pearson had consulted with the Integrity Commissioner who had provided advice to Councillor Pearson on the conflict of interest issue. No complaint had been received at that time.

Councillor Pearson has been forthcoming in her dealings with the Complainant. Councillor Pearson has gone so far as to consult with an independent solicitor as well as the Integrity Commissioner and then provide the Planning Committee with the above report in an effort to satisfy the Committee, the Complainant and the public of her position. She has kept the Complainant informed of the results. However, the Complainant was still not satisfied with these steps and on May 8, 2014 the Complainant registered a complaint with the Integrity Commissioner.

Councillor Pearson has taken all reasonable steps to address the conflict of interest issue in relation to the FWSP. Should the Complainant wish to contest the position taken by Councillor Pearson that she is not in a conflict, the Complainant must do so through the courts under the Municipal Conflict of Interest Act.

Allegation #4 above relates to a letter dated January 30, 2014 and sent out to more than 1700 residents in Councillor Pearson's Ward 10 and is being reported herein. .

An open-house information forum was scheduled for February 6, 2014 at the Winona Vine Estates. This public meeting was a venue utilized by the City of Hamilton Planning Department and Ward Councillors to inform the public of the status of the FWSP. As noted previously, the FWSP area was in Ward 11.

However, there were some aspects of the FWSP that would affect residents in Ward 10 and Councillor Pearson believed she had a duty to inform her Ward of this meeting. Thus, Councillor Pearson sent out a letter to inform her constituents of the public meeting.

The following is an excerpt from this letter:

I am, once again, writing to all residents from Dewitt Road East to Fruitland Road and from the plateau to Barton Street in an effort to keep you informed as to the progress to date with regards to the Fruitland Road EA and SCUBE.

One proposal would keep Fruitland Road 'as is' with a new alternative route east of Fruitland Road. **The other would see the existing Fruitland Road closed (cul de sac) with a new realigned roadway swinging east of the current road from Barton Street.**

As we are coming to **very crucial decisions** regarding this issue and SCUBE, I feel it is imperative that the residents **especially those who will be affected** should be part of the information process as your traffic patterns and some neighbourhoods may be impacted by such changes.

The closure of Fruitland Road was not the only issue being discussed at this open forum. It was but one of a number of planning issues being addressed. For example, density in the area was an issue that many were concerned about. Councillor Pearson did not include the other planning issues in her letter to her constituents. Councillor Pearson only included the Fruitland Road closure issue. However, because Councillor Pearson failed to include the other issues in the



letter, the Complainant believes she deliberately pitted people against each other on a significant development matter where millions of dollars are at stake.

The FWSP area was not in Ward 10. It was in Ward 11 and the impact of density and other planning issues were most felt by residents in Ward 11. Since Fruitland Road is the easterly boundary of Ward 10, Councillor Pearson informed her constituents of the item she believed had the most impact on her Ward which is the closure of Fruitland Road the easterly boundary.

Councillor Pearson did not maliciously omit information from this letter to deliberately pit people against each other. This was a public forum that was advertised by the Planning Department in the normal course through such media as the newspapers, postcards to residents, street signs and the website etc. Councillor Pearson had sent the letter as she believed it was in the best interests of her constituents that they be aware of the meeting.

## 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 is not in a conflict of interest position in relation to the Fruitland-Winona Secondary Plan as alleged in #1, #2 and #3.
2. The discussions between Councillor Pearson and her solicitor are covered by the rules of Solicitor/Client privilege and need not be further disclosed to the Complainant.
3. Councillor Pearson acted in the best interests of her constituents in drafting and sending out the letter of January 30, 2014 and did not deliberately pit one group of people against another as alleged in #4.

## 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 is not in violation of the Code of Conduct.
2. The complaint regarding the conduct of Councillor Pearson's alleged conflict of interest is vexatious. As per Section 12 of By-Law 08-154, the fee for registering the complaint shall not be refunded to the Complainant.



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**Earl D. Basse, Integrity Commissioner**

cc: Councillor Pearson  
Complainant