

COMMITTEE OF THE WHOLE – MARCH 26, 2007

PUBLIC INQUIRY REPORT

Recommendation

The City Manager and the Commissioner of Legal and Administrative Services & City Solicitor, based on the extensive review by external legal counsel, recommend:

1. That this report be received, and,
2. That Council not initiate a public (judicial) inquiry, and,
3. That no other review or investigation in relation to the allegations in this matter be undertaken.

Economic Impact

Not applicable.

Communications Plan

Not applicable.

Purpose

This report provides a comprehensive analysis of the various allegations put forward in the request for public inquiry made to Council by way of deputation to Committee of the Whole at its February 19, 2007 meeting, and provides an analysis of whether the subject matters require, or would support, the need for a public inquiry. This report is prepared entirely on the basis on the detailed review by the City's external legal counsel retained in this matter.

Background - Analysis and Options

THE CHARACTERISTICS OF A PUBLIC INQUIRY

- (1) a judicial inquiry is a specific and formal type of proceeding, intended to fulfil particular objectives, involving a public hearing presided over by a judge of the Superior Court of Justice, exercising the powers of a commission under the *Public Inquiries Act*,
- (2) a judicial inquiry may turn out to be an unpredictably expensive proposition, both in terms of time and municipal money; and
- (3) a judicial inquiry is at the extreme end of the list of various alternative ways by which a council may investigate the truth of, or bring light to bear upon, allegations of wrongdoing or suspicious or unexplained conduct, where considered necessary and appropriate to do so.

CRITERIA JUSTIFYING A JUDICIAL INQUIRY

In view of the nature, cost and magnitude of a full-scale judicial inquiry under section 274 of the *Municipal Act, 2001*, and the factors supporting or negating the choice of establishing such an inquiry from among the various alternative means of investigation, the following are suggested as possible criteria against which a proposal for such an inquiry should be assessed:

- (1) whether or not there is sufficient information, supported, where possible, by relevant documentation and records, to enable the Council to decide that there is a problem requiring consideration of the need for a judicial inquiry or other investigation in the interests of the municipality and of the public;
- (2) whether or not there are major issues causing widespread public concern about the conduct of the City's business which such an inquiry could usefully address;
- (3) whether or not the subject-matter of the concerns or allegations involves matters of substantial magnitude and importance to the municipality;
- (4) whether or not the Council concludes that there is a serious problem engaging the public's right and need to know and understand what happened;
- (5) whether or not the circumstances indicate the necessity for a public investigation by a judge, where those involved would be required to attend at a formal hearing, give evidence under oath, and produce documents;
- (6) whether or not there may be some other useful, cost-effective means of obtaining the information required, and enabling the City Council to be in a position to address the situation and take effective action, without requiring a judicial inquiry;
- (7) whether or not there is a consensus of Council that the public interest necessitates the cost and particular means of a judicial inquiry to address the problem and clear the air, and that it is anticipated that the inhabitants of the municipality would generally support such an expenditure.

THE ALLEGATIONS

The analysis herein addresses allegations contained in a document dated February 19, 2007 on the letterhead of Vaughan Watch Inc., including a one-page covering letter signed by Paul De Buono, President, and attaching "proposed terms of reference" for a proposed judicial inquiry, involving a preamble containing 63 paragraphs over seven pages.

In determining whether any allegation involving the conduct of the public business of the City which could warrant becoming the proper subject-matter of a judicial inquiry initiated by the City, a number of the statements made in the deputation fail to provide such proper subject matter for the following reasons:

- a number of the paragraphs are simply statements of context or background fact, containing no suggestion of misconduct or impropriety;
- a number of the paragraphs contain assertions which do not, on their face, suggest misconduct or questionable conduct by any person, and provide no evidence of apparent damage to the administration of the City, or loss or mismanagement of public funds;
- a number of the allegations on their face involve lawful decision-making by the Council within its jurisdiction, and policy choices properly within its purview; and
- some of the allegations on their face involve hearsay opinions of unnamed third parties, or allegations in court proceedings, unsupported by any corroboration and not proven in Court.

With respect to this latter point, a number of statements and assumptions contained in the preamble to the Proposed Terms of Reference for the inquiry rely from time to time on statements made in pleadings and other court proceedings by those in litigation against the City. Aside from being simply allegations left to be corroborated by objective facts, it is noted that litigants may often plead all sorts of serious allegations in support of vindication for their position and money damages, in the expectation that laws of privilege will attach to their pleadings and protect them from defamation and other legal proceedings. In those circumstances, such allegations do not in themselves provide a factual basis for the holding of a judicial inquiry, at least until proven in Court.

In a number of matters referred to in the Proposed Terms of Reference, issues are raised which are within the power of the Council, if it decides fit to do so, to inquire into, and if deemed appropriate as a matter of policy, to take steps to rectify, without the need to conduct a judicial inquiry into issues of fact.

Most of the potentially serious allegations have previously been the subject of formal review by police or other public authorities.

The Proposed Terms of Reference submitted on behalf of Vaughan Watch Inc. contains 63 paragraphs of preamble dealing with a wide range of subject-matters and containing a large number of alleged facts, some of which, if substantiated, could possibly form a basis upon which City Council might decide to investigate further, if the City or other investigative bodies have not already done so.

Many of the paragraphs simply provide context or background circumstances asserted in support of allegations of criminal or otherwise improper conduct of unnamed or named-only-by-title individuals.

Few of the allegations include particulars of the date or time at or within which the alleged activities are said to have occurred, but to the extent that dates are included, it would appear that the majority of the matters relate to the period from 1997 to 2004.

Some of the allegations refer to what appear to be trivial or isolated incidents or matters in respect of which the Council or others were in a position to take effective action at the time as they saw fit. Other paragraphs describe, in extremely vague and general terms, fact situations which have apparently already formed the basis for a police investigation concluding in a decision to take no further action. Facts involved in some of the issues raised have been the subject-matter of legal proceedings, some of which are still continuing.

To the extent that it is possible to identify issues dealt with in the Proposed Terms of Reference, the following would appear to be the principal subject-matters of concern to the writer of that submission:

ISSUES RAISED

PARA. NO(s).	ALLEGATION
• Paras. 8-11	Alegation re: contaminated soil at Melville Park.
• Paras. 12-13	Alegation re: development of the Sports Village.
• Paras. 15-17	Allegation re: late bid opening.
• Paras. 19-21	Allegation re: prequalifications for Vellore Village contract and decisions on technical irregularities.

- Paras. 35-39, 53, 54 Allegation re: altered invoices
- Paras. 40-41 Allegation re: forged documents
- Para. 53 Allegation re: sexual assault
- Para. 54 Allegation re: stolen e-mails.
- Para. 56-57, 59-61 The award of the contract for the construction of the new City Hall.

With respect to the above allegations, the following summarizes information available to the City:

Alleged illegal dumping of soil by unknown individuals at Michael Cranny Elementary School and Melville Park (prior to July, 2000) (paras. 8-10)

The minutes of the meeting of City Council held on June 26, 2006 contain reference to an internal audit report provided by the City Auditor with a covering letter dated September 18, 2005.

Among the statements in the Audit Committee report to the Council with respect to this matter were the following:

- "The audit confirmed that the City incurred the necessary costs in exercising 'due diligence' in the handling of the soil and groundwater conditions of Melville Park and surrounding schools in ensuring that public safety is not at risk";
- "In August/September 1997 and December 1997, there was illegal dumping of soil by unknown individuals at Michael Cranny Elementary School and Melville Park respectively";
- "In July 2000, methane was discovered at Melville Park and adjacent school sites";
- "The City hired consultants McClymont & Rak Engineers Inc in December 1997 to monitor removal of soil and verification that the site was clean";
- "The City hired Terrapex Environmental Ltd to do Phase 2 Environmental Site Assessment and modified Phase 1 Environmental Site Assessment on the Melville Park and surrounding schools";
- "The City also constructed a methane barrier/ventilation trench along the boundary of the park and the elementary school site, and the houses of Falkirk Crescent";
- "The City paid for an independent review of the work of Terrapex Environmental Ltd by a consultant (Decommissioning Consulting Services Limited). who were chosen by the residents of Falkirk Crescent";
- "The City acted on the recommendation of the environmental specialists, Terrapex Environmental Ltd at all times, until the latter was satisfied that the soil and groundwater conditions posed no threat to public safety";
- "Based on the auditor's independent, objective review, it is the auditor's professional opinion that the City of Vaughan exercised due diligence in the handling of the soil and groundwater conditions of Melville Park and surrounding schools of Michael Cranny Elementary School and Divine Mercy Catholic School."

The report of the City Auditor concluded with his following statements of opinion:

1. The City had gone to great lengths and extensive cost, to ensure that there were no health hazards or harmful effects to human lives. The City hired and relied on the "experts" in the field of environmental assessment, namely, Terrapex Environmental Ltd.
2. It is the auditor's opinion that due diligence was exercised by the City in the soil and groundwater conditions of Melville Park and abutting residential lots.
3. The City should not react to every individual's complaint to test areas not selected by the professional consultant. It is impractical, costly, time consuming and not necessary to check every inch of soil; hence the use of statistical sampling by the consultant. Statistical sampling provides a sample of areas to be tested, and provides a certain comfort level that the results of the areas tested, fairly represent that of the whole area. Statistical sampling is an acceptable technique used in auditing.

It should be noted that the land in question is, in fact, owned by the School Board.

The City Council adopted the recommendation of the Audit Committee that the report of the City Auditor be approved, that the deputation of Mr. Paul De Buono, Vaughan Watch Inc., be received, and that the deputant submit his concerns regarding the school site in writing, for the City to forward the submission to the School Board for review.

There is no information available suggesting that Mr. De Buono complied with Council's request to address submissions to the School Board.

In all of the public meetings that were held and discussions with affected residents, no other party ever came forward regarding these allegations, and the City has not been provided with any written submissions in response to its request.

Our external legal counsel advises that this subject-matter would not, therefore, when assessed in light of the criteria set out above, justify a decision by the City Council to establish a judicial inquiry to investigate further, or to take any further steps whatever.

Agreement for the construction of the Sports Village on Rutherford Road (paras. 12-13)

There is a public-private partnership between the City and Mentana Corporation for the construction of the Sports Village on Rutherford Road, a four-pad arena. Mentana contracted with Maystar to build it, not the City.

Our external legal counsel advises that while the City is in possession of a number of documents and agreements relating to the Sports Village, there is an insufficiency of information or any particularized statement of fact contained in the Proposed Terms of Reference that would suggest a need for a judicial inquiry, and an insufficiency of information suggesting any subject-matter which would comply with any of the criteria set out above. Accordingly, there is nothing in this allegation upon which there is reason for the City to investigate further.

The "Vellore Joint Complex" (paras. 15-21) (2002-2003)

This was a joint project of the City of Vaughan and York Catholic District School Board for the construction of a 23,500 square metre multi-use facility. The selection committee was chaired by a School Board representative.

The prequalification documents stated that tenders would be issued to a list of pre-qualified general contractors and selected subcontractors.

Some provisions of the prequalification notice were as follows:

- "only general contractors who have completed similar institutional projects at a value not less than \$30 million 'including GST' will be considered";
- "Prequalification information shall be submitted to the City of Vaughan ... on or before 3:00 p.m. local time September 18, 2002. Submissions received after closing deadline will not be accepted";
- "The City of Vaughan and York Catholic District School Board reserves the right to select and approve only those contractors which they deem suitable to successfully complete the above-mentioned project".

The Prequalification Proposal - General Instructions contains the following:

- "4.1 The City of Vaughan and York Catholic District School Board reserves the right to select and approve only those contractors which they deem suitable to successfully complete the project. The right is reserved to accept or reject any or all submissions without explanation."
- "4.2 The owner reserves the right to select any contractor and restrict the number of contractors to be nominated, consistent with the objective of ensuring competitive and equitable tendering."

It is noted that the allegation with respect to the timing of the prequalification bid did not apply to the tender call which followed. As mentioned above, the process of prequalification was not itself a tender call, but simply an exercise in which the City would select contractors whom it believed to be qualified to bid on the main contract.

The strict laws relating to tender calls do not apply to this process, particularly in a context whereby the City reserves the right to select any contractor, and any or all submissions, without explanation.

With respect to the tender call itself, which followed the prequalification process, Aquicon Construction Company Ltd., whose bid was disqualified, brought legal proceedings in the Ontario Superior Court of Justice, which dismissed its application on the basis that the City was entitled to treat Aquicon's bid as non-compliant.

The Ontario Provincial Police, in April, 2004, following concerns expressed by Vaughan Watch, entered into an investigation of certain matters involving the City of Vaughan, which included issues relating to the Vellore Village project.

With respect to the Vellore Village Contract, the report of the Director, Criminal Investigation Branch, reads as follows:

"Vellore Village is a \$39 million joint City of Vaughan and York Region Catholic School board project that involves the construction of a school, a community centre, swimming pool, park, playground, and other facilities. The project is well under way and Maystar General Contracting is doing the work.

In the summer of 2002, the owners issued a request for interest for the construction of the project. As a result eight general contractors pre-qualified. That means there were eight contractors that were deemed by the owners to be suitable candidates for the project. However, at the time of bid closing on February 18th, 2003 only four pre-qualified contractors submitted bids on the project. They were Aquicon, Maystar, Atlas, and Bondfield.

The controversy surrounding this tender arises from the Aquicon bid that came in at \$38,999,000 ended up being disqualified for non-compliance (unauthorized person editing the bid document) and Maystar obtained the contract with the 2nd lowest bid at \$39,000,000.

In this instance Aquicon Construction filed suit against the City of Vaughan. The Superior Court of Justice dismissed the suit and ruled in favour of the City. The court's reasons for its decision can be found in court file 03-CV-245653CM2 (copy in file) or at www.canlii.org/on/cas/onsc/2003.

Investigators received a copy of Maystar's pre-qualification from the City of Vaughan's building department on November 10th, 2004. The document shows that Maystar does between 50 and 60 million dollars per year in contracts. Their largest single project prior to this one was the Vaughan Sports Centre at 22 million dollars. There was no evidence of an attempt to hide this information from city officials and police had found no evidence of favouritism in granting the contract.

Attached to the pre-qualification document was a letter from Maystar's insurance company, Zurich Insurance, a bonding company. In their letter, Zurich purports Maystar is both technically and financially qualified to complete the project in a timely and satisfactory fashion. This letter assumes the function of a performance bond and it appears that city officials relied on it in their decision to award the contract to Maystar.

Whether or not the City contravened its own policy regarding the qualifying and acceptance of tenders is a separate issue from those under police investigation. However, a review of all of the facts and circumstances by police did not produce any evidence of secret commissions or any other criminal culpability by the persons or companies involved.

Police interviews and related documents have satisfied investigators that the tender process in this case was transparent and no evidence of criminal activity was detected."

The Vellore Village tender material discusses nothing which would lead one to disagree with the conclusions by the Ontario Provincial Police. The decision of the Ontario Superior Court of Justice in the action by Aquicon (*Aquicon Construction Co. v. Vaughan (City)* (2003), 42 M.P.L.R. (3d) 84), in which the City's defence was upheld is a matter of public record.

Following the award of the tender to Maystar General Contractors Inc., which was the low bidder, Maystar performed the contract in a satisfactory manner.

In view of the foregoing, and particularly in view of the fact that this subject-matter has already been the subject of both litigation and a police report, there are no further or new issues raised in the submissions of Vaughan Watch Inc. to justify the holding of a judicial inquiry, especially one with respect to a process which took place over four years ago.

The bid from Maystar General Contractors Inc. that was "officially 17 seconds late", while opened, was not accepted. Staff reported to Council immediately, and the bid was disqualified.

The Ontario Provincial Police, which included this fact situation as a subject-matter of its investigation, concluded as follows:

"In December 2002 pre-qualification for general contractors commenced for this multi-million dollar project. Twenty-five contractors responded and of those nine qualified to bid. The tender went out with a closing date of February 12th, 2003 at 3:00 p.m. At the time of closing four bidders, Maystar, Jasper Construction, Atlas Corporation, and Torcom Construction, were present.

The controversy in this case surrounds the Maystar bid being seventeen seconds late. The Maystar representative submitting the bid claims to have been blocked in a crowded area, which caused her the delay. Purchasing director George Wilson sought advice from Clayton Harris who is the Commissioner of Finance and Corporate Services. According to Wilson he was instructed by Harris to open the Maystar bid anyway and they would rule on its acceptance later. Wilson indicated this was a good decision because the bid would then be opened publicly. The end result was the legal department recommended that the Maystar bid be disqualified. Maystar in this case was the lowest bidder with Atlas Corp. being the second lowest.

However, the contract did not get awarded to Atlas. Following the decision to disqualify the Maystar bid there was a proposal to change the tender and include the addition of an Italian Interpretive Centre in the expansion. Vaughan decided to re-tender the project but only the four previously contractors were invited. Wilson explained the change would cost up to an additional \$500,000 [and] require new drawings and renovations. This was deemed to be significant enough to justify a new tender. Smaller changes can be made with an amendment to the original contract but not for one this large. Council subsequently approved a new tender process for the project.

On May 21st, 2003 Maystar, Jasper, Atlas and Torcom submit[ted] compliant bids. The Maystar bid came in at \$5,601,450.00, which was \$197,950.00 less than the next lowest bidder, Jasper Construction. On June 9th, 2003 council, on the recommendation of the Commissioner of Community Services, awarded the contract to Maystar.

The police investigation of this matter indicates the Maystar disqualification for being seventeen seconds late was irrelevant because the city ultimately made changes to the project that were significant enough to require another tendering submission. Their decision to include only the four contractors that qualified in the original process, on the surface, appears to have been fair.

No evidence of criminal activity was determined. Any grievances by contractors arising from this process would best remain in the domain of a civil proceeding."

Council, at its meeting held on September 22, 2003, established a Task Force to review the City's tender documentation requirements and related policy and procedures.

In 2003 Council established the Tendering Task Force to review the City's tendering policies. In addition to the City Manager the Task Force included the President of the Ontario General Contractors Association, the President of the Toronto Construction Association, the Executive Director of the Greater Toronto Sewer and Watermain Contractors Association, the President and Chairman of the Board of the Vaughan Chamber of Commerce and external legal counsel, Les O'Connor (WeirFoulds). The Task Force review was completed in the spring of 2004 and Council approved the recommendations coming out of the review in June 2004.

In view of the foregoing, our external legal counsel advises that there has been sufficient inquiry and discussion of this tender call, which occurred over four years ago, and that there is no evidence or new information which would justify the establishment of a judicial inquiry at this time.

Allegations with respect to "questionable invoices" and "pressure to forge documents" (paras. 35-41, 53, 55) (2003-2004)

There are no transcripts in the proceedings in question (*Donofrio v. City of Vaughan*) in which Mr. Donofrio alleges that any employees of the City used threats and intimidation to force him to sign off on invoices which "he found questionable".

In pursuance of these allegations, our external counsel interviewed John Campbell, who is acting for the City in the continuing litigation brought by Mr. Donofrio. He was shown copies of transcripts of the examination for discovery of Mr. Boyce, which is, apparently the evidence referred to and relied upon by Vaughan Watch Inc. as supporting this allegation.

A review of the transcripts does not support any suggestion that there was any forgery or uttering of forged documents, under pressure of threats and intimidation, or otherwise.

Mr. Campbell has concluded as follows:

"Mr. Boyce's answers are not an admission of forgery or uttering. He did not say he was under distress from Mr. Kallideen. None of the answers remotely approach such evidence."

Similarly, our external counsel reviewed those portions of the transcript of the evidence of the former Fleet Co-ordinator, Mr. Donofrio, upon which Mr. De Buono apparently relies in his allegation "that more senior officials in Community Services used threats and intimidation to sign off on invoices he found questionable".

A review of the transcript in question shows that, while, in general terms, Mr. Donofrio takes the position that a number of members of the City's staff conspired against him, there is no evidence in the transcript supporting the proposition either that he was forced by threats and intimidation to sign off on any invoices, nor that any such invoices were in fact forged, nor is there any evidence in the transcript suggesting that any invoices were created fraudulently or for a fraudulent purpose.

The City retained independent consultants, KPMG Forensic, to review the circumstances surrounding the particular work to which the invoices relate, a series of repairs to certain snow ploughs carried out by Conti Automotive and Equipment Sales Ltd.

KPMG had full access to available information concerning Mr. Donofrio's allegations and on the process adopted by the City in its internal review of the allegations and circumstances surrounding the services provided by Conti.

- Within the scope of our review, we were unable to validate the legitimacy of Mr. Donofrio's claims with respect to the allegedly excessive value of the Conti invoices or any of the other concerns raised by Mr. Donofrio to City officials, or in the media, regarding the allegedly irregular process that was followed in obtaining the snow plow maintenance and repairs from Conti.
- We found little independent support for most of Mr. Donofrio's criticism with respect to the process that was followed in obtaining the services from Conti particularly in the area of the City's purchasing policies. However, the policy requirement that three quotes be obtained was not followed by the City's Fleet Department for the reason that there are not many specialty automotive repair facilities capable of performing the repairs required, and Conti was capable of completing the repairs on a short turnaround basis.
- We found no evidence of irregularity by the City's Fleet Maintenance Supervisor or any other officials in respect of these matters. Mr. Donofrio's Supervisor has alleged that Mr. Donofrio did not perform his duties in respect of these matters to the expectations set out

in Mr. Donofrio's job description. Our review of the information and documents would tend to support this assertion, however, an interview with Mr. Donofrio would be helpful and assist us in better evaluating the available evidence.

- The information we obtained and the documents we examined suggest that when the City conducted its internal investigation into these matters in mid-October 2003, the actions taken by Mr. Donofrio were designed to distance him from any criticism regarding the process that he had followed. The Toronto Star report of February 7, 2003 based in part on an interview with Mr. Donofrio contains information that in some cases are misleading, inaccurate, and confused.

These matters were also the subject-matter of an investigation by the Criminal Investigation Branch of the Ontario Provincial Police, which commenced in April, 2004, and was completed with a report to the Chief of Police dated November 12, 2004, which concluded, among other things, as follows:

"The team has reviewed each allegation in detail. Digitally recorded audio interviews of each witness and documents relevant to the investigation were obtained.

...

The investigation is now complete and we have determined, based on the evidence examined, that the allegations against the City of Vaughan were unfounded. There is no evidence of any criminal activity or corruption and fraud.

...

We have determined no charges will be laid in this investigation.

...

1. Fleet Vehicle Repairs

...

The police investigation into this allegation has been extensive and is now complete. Numerous witnesses were interviewed and the City of Vaughan provided records as requested. Employees were co-operative with the investigators and consented to digitally recorded interviews. Explanations for a service provider being located in Mississauga have also been reviewed. A KPMG audit report regarding the Conti service work prepared for City solicitor, Robert Swayze, was provided to police. Reports from other maintenance service providers and interviews have been completed.

...

A careful examination of these documents and a comparison to the City's own records failed to show any attempt at fraud. This finding was corroborated by the KPMG report that had been commissioned by the City of Vaughan.

...

No evidence of criminal activity was found."

In view of the fact that these allegations relate to circumstances alleged to have taken place three years ago, and that such have been the subject-matter of both a review by KPMG and an investigation by the Ontario Provincial Police, and are still the subject-matter of litigation between Mr. Donofrio and the City, our external counsel concludes that there is no basis which it would be reasonable or necessary for the City Council to establish a judicial inquiry to conduct yet another review of these allegations.

WeirFoulds LLP acts for the City in the defence of the action brought by Mr. Donofrio. In a letter dated November 30, 2006, Mr. John Campbell, the responsible solicitor in charge of that matter on behalf of the City, reported to the City Solicitor, in a strictly privileged and confidential report, as follows:

"There have been many days of examinations for discovery of all parties.

....

I have found no evidence of any impropriety with respect to the Conte Automotive invoices. The OPP and KPMG both investigated those allegations and found no wrongdoing.

I have found no evidence of any improper conduct by M. Kallideen or Mr. Boyce."

Mr. Campbell concludes as follows:

"In my view Mr. Donofrio's claim has no merit whatsoever. The action is frivolous and vexatious."

Our external legal counsel advises that in view of the foregoing, including the fact that the subject-matter of the allegations is included in ongoing litigation not yet completed, there is no basis for suggesting the need or desirability for a judicial inquiry at this time. However, even if the other litigation was not continuing, our external counsel has advised that the findings of KPMG Forensic and the Ontario Provincial Police should end the matter.

"Alleged sexual assault" (para. 53)

City staff are unaware of any such investigation, and the Proposed Terms of Reference provide no particulars of either the alleged assault or the alleged investigation.

Accordingly, there is no basis for any further action with respect to this allegation.

Allegation that some of the Mayor's e-mails were stolen (para. 54)

Then-City of Vaughan Regional Councillor Linda Jackson alleged that a number of e-mail messages has been printed, without her authority, and provided apparently anonymously to another member of Council. The allegation was brought to the attention of the police in November, 2006 during the municipal election campaign.

In a media release dated March 7, 2007, the York Regional Police, having completed a comprehensive, four-month review of this allegation, determined that this was not a matter warranting a criminal investigation, or a police matter, and that the York Regional Police would not be investigating the matter.

In light of the report from the York Regional Police, the City has secured the firm of Deloitte & Touche to perform a forensic audit regarding e-mail disclosures at City Hall. It is anticipated that the audit will be completed in April, 2007.

At least in the absence of any further information and that produced to date, our external legal counsel advises that there appears to be no basis upon which Council might decide to proceed with a judicial inquiry into this matter.

Award of the contract for the construction of new City Hall (paras. 56-57, 59-61)

City Council voted on December 18, 2006 to award the contract for the construction of the new City Hall.

As in the case of much of the rest of the Proposed Terms of Reference, to the extent there are allegations of "questions" raised, they are non-particularized, not stated, nor any source for them specified. Certainly there is nothing in these paragraphs substantiating the need for a public inquiry to look into them.

It is noted that the City has appointed The Honourable Peter Cory, former Justice of the Supreme Court of Canada, as a Fairness Monitor to ensure that the procedure leading to the award of a contract to a general contractor and major subcontractors for the construction of [the City's] new Civic Centre building is fair, impartial and leads to the construction of the building by qualified contractors at the lowest price to the City.

In this respect, Mr. Cory reported to City Council by letters dated June 8, 2006 and December 11, 2006.

In the latter communication, Mr. Cory noted that the tender process for construction of the City Hall "has now been completed. All that remains to be done is the awarding of the contract."

Mr. Cory continued as follows:

"I confirm that I have had full access to all documentation throughout, and that I have been present at the opening of the bids. I can confirm that tenders closed at the appointed hour. They remained located in the tender box until the time set for their opening. That opening was conducted publicly, the bids were read out and it was apparent to all present which company was the lowest bidder.

I can confirm that in all aspects, this procedure was conducted fairly, openly and properly. The work of the city employees was conducted in an exemplary manner. Their care and scrupulous attention to fairness in every aspect of the process was outstanding."

Our external counsel advises that there is nothing in any of the allegations with respect to this matter which would require or support the need for a public inquiry into this matter at this time.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

Not applicable.

Conclusion

Based on the extensive review by the City's external legal counsel in this matter, there is nothing in any of the allegations which would require or support the need for a public inquiry or any other review or investigation into any of these matters.

Attachments

None

Report prepared by:

Janice Atwood-Petkovski

Respectfully submitted,

Michael DeAngelis
City Manager

Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services
& City Solicitor