

**CITY OF VAUGHAN
SPECIAL COUNCIL MINUTES
APRIL 23, 2008**

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CITY OF VAUGHAN

SPECIAL COUNCIL MEETING

WEDNESDAY, APRIL 23, 2008

MINUTES

11:00 A.M.

Council convened in the Municipal Council Chambers in Vaughan, Ontario, at 11:28 a.m.

The following members were present:

Regional Councillor Joyce Frustaglio, Chair
Regional Councillor Mario F. Ferri
Councillor Tony Carella
Councillor Alan Shefman
Councillor Sandra Yeung Racco

87. CONFIRMATION OF AGENDA

MOVED by Regional Councillor Ferri
seconded by Councillor Yeung Racco

THAT the agenda be confirmed.

CARRIED

88. DISCLOSURE OF INTEREST

There was no disclosure of interest by any member.

MOVED by Councillor Shefman
seconded by Regional Councillor Ferri

THAT Council resolve into Committee of the Whole (Closed Session) for the purpose of discussing the following matter:

- i) the receiving of advice that is subject to solicitor/client privilege, including communications necessary for that purpose.

CARRIED

Council recessed at 11:30 a.m.

MOVED by Regional Councillor Ferri
seconded by Councillor Carella

THAT Council reconvene at 11:55 a.m.

CARRIED

Council reconvened at 11:55 a.m. with the following members present:

Regional Councillor Joyce Frustaglio, Chair
Regional Councillor Mario F. Ferri
Councillor Tony Carella
Councillor Alan Shefman
Councillor Sandra Yeung Racco

**89. APPLICATION FOR A COMPLIANCE AUDIT
2006 MUNICIPAL ELECTION CAMPAIGN FINANCES
MICHAEL DI BIASE**

(Referred from the Council Meeting of April 14, 2008, Item 12, Report No. 20)

MOVED by Councillor Shefman
seconded by Councillor Carella

- 1) That a Compliance Audit be undertaken on Michael Di Biase's 2006 Municipal Election Campaign Finances;
- 2) That the City retain the auditors currently retained, to conduct this Compliance Audit as well;
- 3) That the report of the Commissioner of Legal and Administrative Services and City Solicitor, dated April 7, 2008, be received;
- 4) That the confidential legal opinion from the City's external solicitor, dated April 22, 2008, be received;
- 5) That the memorandum from the Commissioner of Legal and Administrative Services and City Solicitor, dated April 22, 2008, be received;
- 6) That the further submission from Mr. Michael Di Biase, dated April 18, 2008, be received; and
- 7) That the submission from Mr. Raymond Plouffe, be received.

CARRIED

Council, at its meeting of April 14, 2008, adopted the following:

- 1) That a Special Council meeting be held on April 23, 2008, at 11:00 a.m. to receive any further submissions and to render a decision to the request for a compliance audit on Michael Di Biase's 2006 Municipal Election Campaign Finances;
- 2) That Council request further information from Mr. Michael Di Biase relating to particular issues identified in our review of the information dated April 4 and 11, previously provided by him;
- 3) That the confidential memorandum from the Commissioner of Legal and Administrative Services and City Solicitor, dated April 11, 2008, be received; and
- 4) That the written submission from Mr. Michael Di Biase, 166 Riverview Avenue, Vaughan, L4L 2L6, dated April 11, 2008, be received.

Recommendation of the Committee of the Whole, April 7, 2008:

The Committee of the Whole recommends that this matter be referred to the Council meeting of April 14, 2008, for staff to provide a legal opinion.

Report of the Commissioner of Legal and Administrative Services and City Solicitor, dated April 7, 2008

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor recommends:

That Council consider the Application and make a decision to grant or reject the request for a Compliance Audit of the 2006 Municipal Election Campaign Finances of Michael Di Biase.

Economic Impact

If the Application is granted and a compliance audit ordered, the costs of the audit will be paid by the City.

If the Application is rejected, and the decision is appealed, there will be legal costs related to the appeal to Court.

Communications Plan

The Applicant will be advised of Council's decision.

Purpose

To advise Council of the Application for a Compliance Audit of the 2006 Municipal Election Campaign Finances of Michael Di Biase and seek Council's decision.

Background - Analysis and Options

On March 25, 2008, an Application was filed with the Deputy City Clerk for a Compliance Audit of Michael Di Biase's 2006 election campaign finances (Attachment 1). Pursuant to the *Municipal Elections Act, 1996* (the "Act"), subsection 81(3), Council has 30 days within which to consider the application and decide whether it should be granted or rejected.

THE JURISDICTION OF THE COUNCIL

The proceedings in question are governed by the provisions of s.81 of the Act.

Under section 81(1), an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances, may apply for a compliance audit of the candidate's election campaign finances.

Under section 81(2), the application must be made within 90 days after the candidate's last supplementary filing date, in this case February 29, 2008.

Under section 81(3), the Council is required, within 30 days after receiving an application properly made, to consider the application and decide whether it should be granted or rejected.

If the Council decides to grant the application, the Council is required, by resolution, to appoint an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the candidate's election campaign finances pursuant to section 81(4) of the Act.

In such circumstances, the auditor is required by section 81(6) to conduct promptly an audit of the candidate's election campaign finances to determine whether he/she has complied with the provisions of the Act relating to election campaign finances, and prepare a report outlining any apparent contravention by the candidate.

Under section 81(8), for the purposes of the audit, the auditor is entitled to have access to all relevant books, papers, documents or things in the possession of the candidate and the City, and has the powers of a commission under Part II of the *Public Inquiries Act*.

The City is required to pay the auditor's costs of performing the audit. If the auditor's report indicates no apparent contravention of the Act, and the Council finds that there were no reasonable grounds for the application, the Council is entitled to recover the auditor's costs from the applicant, pursuant to section 81(11).

Pursuant to section 81(7), the auditor must submit the report to the candidate, the Council, the clerk and the applicant(s).

Under section 81(10), the Council is required to consider the report within 30 days after receiving it. The Council may then commence a legal proceeding against the candidate for any apparent contravention of any provision of the Act relating to election campaign finances.

SUMMARY OF SPECIFIC ALLEGATIONS OF BREACH OF THE *MUNICIPAL ELECTIONS ACT, 1996*

In general terms, the applicant alleges that candidate Michael Di Biase contravened various requirements of the *Municipal Elections Act, 1996*, grouped under a number of "issues" contained in the Affidavit of Raymond Plouffe (Attachment 1).

A summary of the allegations specific to this Application (refer to Attachment 1) are as follows:

Issues 1 - 3

The applicant alleges that candidate appears to have contravened section 69(1)(m) of the Act in accepting contributions from corporations that may be associated, constituting over-contributions which at the time of the Financial Statement, had not been returned.

Issue 4

The applicant alleges that the candidate's Financial Statement and Auditor's Report appears to contain incomplete contributor addresses, as required by s.69(1)(f)(iv).

Issue 5

The applicant alleges that the candidate appears to have contravened sections 69(1) (b), (d), (e) and (f) of the Act for failing to provide an explanation for approximately 60 voided receipts.

Issue 6

The applicant alleges that the candidate appears to have contravened sections 67(1), 67(2) and 69(1)(k) of the Act as sufficient details or explanation has not been provided for the reduction in reported office expenses in his most recent Financial Statements.

Issue 7

The applicant alleges that the candidate appears to have contravened sections 66(1), 66(2)(1) & (2), 67(1) and 69(1)(d) and (k) of the Act as the candidate has not provided sufficient details to explain why the inventory of "goods" (\$190.00) are not treated as an expense in the statement of campaign income and expenses.

Issue 8

The applicant alleges that the candidate appears to have contravened section 70(3) of the Act as a number of contributors are not individuals or valid existing corporations and accordingly are not legal contributors pursuant to the Act.

LEGAL AND PRACTICAL CONSIDERATIONS RELEVANT TO DECISION-MAKING BY THE COUNCIL

The provisions of section 81 of the Act impose a specific responsibility upon the City Council, as a form of tribunal functioning as a judge or arbiter over allegations against a candidate for municipal office, potentially leading to City expenditure for the retaining of an auditor, and a further possible duty to decide in such circumstances, based on the auditor's report, whether or not to initiate prosecutorial proceedings against such candidate for alleged breach of the Act.

In this role, the Council functions as a form of decision-making tribunal analogous to quasi-judicial tribunals established by or under various Provincial statutes.

In these circumstances, the Council is exercising a discretionary decision-making role, imposing requirements of fairness, impartiality and objective decision-making discretion, in the exercise of its specific duty under section 81(3) of the Act to decide, after reviewing the application for the compliance audit of a candidate's election campaign finances and supporting material, whether or not it should be granted or rejected.

If the Council decides to grant the application, this will lead to the appointment of the auditor, who will conduct the audit of the candidate's election campaign finances to determine whether he/she has complied with the provisions of the Act, and prepare a report outlining any apparent contravention, following which the Council will then be required to consider the report and decide whether or not to commence a legal proceeding against the candidate for any apparent contravention of one or more provisions of the Act relating to election campaign finances.

In exercising its discretion as to whether or not to grant the Application for a Compliance Audit of candidate Michael Di Biase's election campaign finances. Council should consider the following:

- Council must make its decision within 30 days after receiving an application;
- Council has no discretion to decline or defer dealing with an application, only to decide whether to grant or reject it;
- Council must base its decision upon grounds relevant to the intention of the Act;
- the intent of the Act is that the election finances of candidates for municipal office be open and documented, that candidates ensure that all possible steps be taken to ensure compliance with the Act relating to contributions and expenses, and that limitations on maximum contributions be strictly enforced;
- the purpose of s.81 is to screen out allegations of election campaign finance wrongdoing which are "frivolous, vexatious, or otherwise devoid of merit", and to ensure that applications are dealt with "expeditiously and without undue delay";
- s.81 of the Act is a "complete code" of procedure for any elector who alleges campaign finance wrongdoing by candidates;
- the principal question before Council involves consideration of whether the applicant has established reasonable grounds to believe that the candidate has contravened the Act;
- if the application reveals that the applicant has reasonable grounds to believe that the candidate has committed a contravention of the Act, an audit is the only remedy;
- reasonable grounds is not to be equated with proof beyond a reasonable doubt or a prima facie case. The appropriate standard of reasonable or credibly-based probability envisions a practical, non-technical and common sense probability as to the existence of the facts and inferences asserted.

Relationship to Vaughan Vision 2020

This report is consistent with the priorities previously set by Council.

Regional Implications

Not applicable.

Conclusion

Council is required to make a decision within 30 days of receipt (March 25th) with respect to the Application for a Compliance Audit on candidate Michael Di Biase's 2006 election campaign finances. Mr. Di Biase was advised that this report would be brought forward to the Committee of the Whole meeting of April 7th and that he may submit any additional information for consideration prior to Council making a decision on this matter. It should be noted that in the month of April there is only one Council meeting scheduled on April 14th, 2008.

Attachments

- Attachment 1 Affidavit (Application) of Raymond Plouffe. Note: The full document, with attachments, is available in the Clerk's Department for public view.
- Attachment 2: Financial Statement and Auditor's Report of candidate Michael Di Biase, filed April 2, 2007.
- Attachment 3: Financial Statement and Auditor's Report of candidate Michael Di Biase, filed September 4, 2007.
- Attachment 4: Financial Statement and Auditor's Report of candidate Michael Di Biase filed February 29, 2008.
- Attachment 5: Correspondence from Mr. Michael Di Biase, dated April 4, 2008.
- Attachment 6: Correspondence from Mr. Michael Di Biase, dated April 11, 2008.
- Attachment 7: Confidential memorandum from the Commissioner of Legal and Administrative Services/City Solicitor, dated April 11, 2008 (Members of Council Only).

Report prepared by:

Sybil Fernandes, Deputy City Clerk

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)

90. CONFIRMING BY-LAW

MOVED by Councillor Yeung Racco
seconded by Councillor Shefman

THAT By-law Number 92-2008, being a by-law to confirm the proceedings of Council at its meeting on April 23, 2008, be read a First, Second and Third time and enacted.

CARRIED

91. ADJOURNMENT

MOVED by Councillor Carella
seconded by Councillor Yeung Racco

SPECIAL COUNCIL MEETING MINUTES – APRIL 23, 2008

THAT the meeting adjourn at 11:58 a.m.

CARRIED

Joyce Frustaglio, Acting Mayor

Sybil Fernandes, Deputy City Clerk