

**CITY OF VAUGHAN
COUNCIL MINUTES
NOVEMBER 10, 2008**

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CITY OF VAUGHAN

COUNCIL MEETING

MONDAY, NOVEMBER 10, 2008

MINUTES

1:00 P.M.

Council convened in the Municipal Council Chambers in Vaughan, Ontario, at 1:03 p.m.

The following members were present:

Mayor Linda D. Jackson, Chair
Regional Councillor Joyce Frustaglio
Regional Councillor Mario F. Ferri
Regional Councillor Gino Rosati
Councillor Tony Carella
Councillor Peter Meffe
Councillor Alan Shefman
Councillor Sandra Yeung Racco

Also present: Vaughan Youth Councillor Sabrina Bruno

233. CONFIRMATION OF AGENDA

MOVED by Councillor Carella
seconded by Councillor Meffe

THAT the agenda be confirmed.

CARRIED

234. DISCLOSURE OF INTEREST

Mayor Jackson declared an interest with respect to the following matters:

- i) Item 19, Committee of the Whole Report 53, COMPLIANCE AUDIT DECISION, 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES, BERNIE DI VONA, as she is the subject of an audit which has similar implications;
- ii) Item 6, Committee of the Whole (Closed Session) Report 54, RUFFOLO LITIGATION, as she may be called as a witness;
- iii) Item 8, Committee of the Whole (Closed Session) Report No. 54, COMPLIANCE AUDIT DECISION, 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES, BERNIE DI VONA, as she is the subject of an audit which has similar implications; and
- iv) Supplementary Report No. 1, Council November 10, 2008, LEGAL ADVICE, COMPLIANCE AUDIT REPORT, JOYCE FRUSTAGLIO, as she is the subject of an audit which has similar implications.

Regional Councillor Frustaglio declared an interest with respect to the following matters:

- i) Item 19, Committee of the Whole Report 53, COMPLIANCE AUDIT DECISION, 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES, BERNIE DI VONA, as she is

the subject of an audit which has similar implications;

- ii) Item 8, Committee of the Whole (Closed Session) Report No. 54, COMPLIANCE AUDIT DECISION, 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES, BERNIE DI VONA, as she is the subject of an audit which has similar implications; and
- iii) Supplementary Report No. 1, Council November 10, 2008, LEGAL ADVICE, COMPLIANCE AUDIT REPORT, JOYCE FRUSTAGLIO, as the matter deals with her compliance audit.

235. ADOPTION OR CORRECTION OF MINUTES

MOVED by Councillor Carella
seconded by Councillor Meffe

THAT the minutes of the meeting of October 27, 2008 and Special Council meeting minutes of November 3, 2008 be adopted as presented.

CARRIED

236. DETERMINATION OF ITEMS REQUIRING SEPARATE DISCUSSION

The following items were identified for separate discussion:

Committee of the Whole (Working Session) Report No. 52

Item 4

Committee of the Whole Report No. 53

Items 4, 13, 19, 25, 31(reconsidered, refer to Minute No. 241) and 34

Committee of the Whole (Closed Session) Report No. 54

Items 4, 5, 6, and 8

Supplementary Report

1

MOVED by Councillor Carella
seconded by Regional Councillor Ferri

THAT Items 1 to 4 of the Committee of the Whole (Working Session) Report No. 52, with the exception of the item identified for separate discussion, BE APPROVED and the recommendations therein be adopted;

THAT Items 1 to 35 of the Committee of the Whole Report No. 53, with the exception of the items identified for separate discussion, BE APPROVED and the recommendations therein be adopted;

THAT Items 1 to 8 of the Committee of the Whole (Closed Session) Report No. 54, with the exception of the items identified for separate discussion, BE APPROVED and the recommendations therein be adopted; and

THAT Items 1 to 4 of the Committee of the Whole (Public Hearing) Report No. 55, BE APPROVED

and the recommendations therein be adopted.

CARRIED

237. CONSIDERATION OF ITEMS REQUIRING SEPARATE DISCUSSION

COMMITTEE OF THE WHOLE REPORT NO. 53

(Refer to Committee Report for complete recommendations and documentation on all Committee items.)

ITEM - 25 VAUGHAN CORPORATE CENTRE UPDATE
RFP AWARD – RFP08-163
FILE #25.5

MOVED by Councillor Yeung Racco
seconded by Regional Councillor Frustaglio

THAT Item 25, Committee of the Whole Report No. 53 be adopted and amended, as follows:

By approving the following:

That the Commissioner of Planning be requested to prepare a report for the Committee of the Whole meeting of December 1, 2008, which outlines the advantages and disadvantages of implementing an interim control by-law for the Vaughan Corporate Centre;

That the report identify if there are other planning tools which may be used to effect control over undesirable applications; and

That potential boundaries of the area affected by the implementation of an interim control by-law or other planning tools be identified.

CARRIED

238. BY-LAW 282-2008 FIRST, SECOND AND THIRD READINGS

MOVED by Regional Councillor Frustaglio
seconded by Regional Councillor Ferri

That the following be approved in accordance with the memorandum from the Commissioner of Planning, dated November 4, 2008, regarding By-Law 282-2008:

- 1) That Zoning By-law Amendment File Z.08.057 (Andridge Homes Ltd. Et Al) be approved and that a by-law be enacted to remove the Holding Symbol “(H)” from the subject lands in the manner shown on Attachment #2.
- 2) That Council adopts the following resolution with respect to the allocation of sewage capacity from the York-Durham Servicing Scheme and water supply capacity from the York Water Supply System for the Phase 2A development applications listed below:

“It is hereby resolved that the approved development applications 19T-99V08 (29 units), 19T-03V17 (7 units), 19T-89124 (4 units), 19T-00V02 (5 units), 19T-03V16 (3 units), and 19T-03V12 (2 units), are allocated sewage capacity from the York-Durham Servicing Scheme and water supply capacity from the York Water Supply System for a total of 50 residential units.”; and

THAT the following by-law be read a First, Second and Third time and enacted:

By-Law Number 282-2008 A By-law to amend City of Vaughan By-law 1-88 as amended by By-laws 241-2004, 239-2004, 228-2004, 227-2004, 230-2004, and 240, 2004. (Z.08.057, related files: Z.99.063, Z.07.012, 19T-99V08, Z.03.080, Z.07.028, 19T-03V17, Z.05.013, Z.07.014, 19T-89124, Z.07.026, 19T-00V02, Z.03.079, Z.07.027, 19T-03V16, Z.03.075, Z.05.020, Z.07.030, 19T-03V12(R), Andridge Homes Ltd., et al, located within Planning Block 12, in Part of Lots 21 to 25, Concession 2, City of Vaughan, on Draft Plans of Subdivision Files 19T-99V08 (Andridge Homes Limited Et Al), 19T-03V17 (Fernbrook Homes McNair Creek Ltd.), 19T-89124 (Major Bob Farms Inc.), 19T-00V02 (E. Manson Investments Ltd. Et Al), 19T-03V16 (Midvale Estates Inc.), and 19T-03V12 (Royal Gardens Homes Ltd.). (Removing the Holding Symbol “(H)”) (Council, May 25, 2004, Item 23, Committee of the Whole, Report No. 46)

CARRIED

239. CONSIDERATION OF ITEMS REQUIRING SEPARATE DISCUSSION

COMMITTEE OF THE WHOLE (WORKING SESSION) REPORT NO. 52

(Refer to Committee Report for complete recommendations and documentation on all Committee items.)

ITEM - 4 2009 SCHEDULE OF MEETINGS

MOVED by Councillor Carella
seconded by Councillor Meffe

THAT Item 4, Committee of the Whole (Working Session) Report No. 52 be adopted and amended, as follows:

By approving the following in accordance with the memorandum from the City Clerk, dated November 7, 2008:

- 1) That the revised 2009 Schedule of Meetings be adopted in accordance with the calendar set out as Schedule “A” of this memorandum; and
- 2) That By-law No. 400-2002, as amended (the Procedural By-Law), be further amended accordingly, and that the required notice be provided.

CARRIED

COMMITTEE OF THE WHOLE REPORT NO. 53

(Refer to Committee Report for complete recommendations and documentation on all Committee items.)

ITEM - 4 RFP AWARD – RFP08-201
EMPLOYMENT SECTORS STRATEGY STUDY

MOVED by Regional Councillor Frustaglio
seconded by Councillor Yeung Racco

COUNCIL MEETING MINUTES – NOVEMBER 10, 2008

THAT Item 4, Committee of the Whole Report No. 53 be adopted and amended, as follows:

By receiving the confidential memorandum from the Manager of Economic Development, dated November 5, 2008.

CARRIED

ITEM - 13 TRAFFIC STUDY REVIEW OF CLARENCE STREET
BETWEEN MEETING HOUSE ROAD AND RUTHERFORD ROAD

MOVED by Councillor Carella
seconded by Regional Councillor Ferri

THAT Item 13, Committee of the Whole Report No. 53 be adopted and amended, as follows:

By receiving the memorandum from the Commissioner of Engineering and Public Works, dated November 7, 2008.

CARRIED

ITEM - 34 DEPUTATION – MR. FRED SANTINI WITH RESPECT TO RETAIL
BUSINESS HOLIDAY ACT EXEMPTIONS, VAUGHAN MILLS
SHOPPING CENTRE

MOVED by Councillor Carella
seconded by Councillor Meffe

THAT Item 34, Committee of the Whole Report No. 53 be adopted without amendment.

CARRIED

COMMITTEE OF THE WHOLE (CLOSED SESSION) REPORT NO. 54

(Refer to Committee Report for complete recommendations and documentation on all Committee items.)

ITEM - 4 HERITAGE VAUGHAN VACANCY

MOVED by Councillor Carella
seconded by Councillor Meffe

THAT Item 4, Committee of the Whole (Closed Session) Report No. 54 be adopted and amended, as follows:

By approving the following recommendation of the Committee of the Whole (Closed Session) meeting of November 3, 2008:

- 1) That the resignation of Ms. Cecilia Nin Hernandez from Heritage Vaughan for the 2006 – 2010 term, be received and the position be declared vacant;
- 2) That Simon Di Vincenzo be appointed to Heritage Vaughan for a term ending November 30, 2010, or until a successor is appointed; and
- 3) That the confidential report of the City Clerk, dated November 3, 2008, be received; and

By receiving the confidential memorandum from the City Clerk, dated November 6, 2008.

CARRIED

ITEM - 5 ARTS ADVISORY COMMITTEE VACANCIES

MOVED by Councillor Yeung Racco
seconded by Regional Councillor Ferri

THAT Item 5, Committee of the Whole (Closed Session) Report No. 54 be adopted and amended, as follows:

By approving the following:

That the Youth Councillor or a representative from the Youth Cabinet, as well, the President of SAVI or a representative from SAVI, be requested to join the Arts Advisory Committee, in an advisory role to the committee, as the committee feels it would be beneficial to have their input and involvement;

By approving the following recommendation of the Committee of the Whole (Closed Session) meeting of November 3, 2008:

- 1) That the positions of Mr. Claudio Cellucci and Mr. Gerry Esposito on the Arts Advisory Committee be declared vacant;
- 2) That no appointments be made to fill the vacancies at this time;
- 3) That the resignation of Ms. Christine Lynette, representative from the McMichael Gallery, be received and that staff be directed to contact the McMichael Gallery to request representation on the committee from the McMichael Gallery;
- 4) That the following recommendation of the Arts Advisory Committee be adopted:

"That in its consideration of this and any future appointments to the Vaughan Arts Advisory Committee during the 2006-2010 term, Council give consideration to the following categories of individuals for appointment to the Vaughan Arts Advisory Committee:
 - i) an individual with fundraising and/or business experience; and
 - ii) an individual representative of any community not currently represented on the Vaughan Arts Advisory Committee.";
- 5) That the confidential report of the City Clerk, dated November 3, 2008, be received; and

By receiving the confidential memorandum from the City Clerk, dated November 7, 2008.

CARRIED

At this point in the meeting, Mayor Jackson relinquished the Chair to Regional Councillor Ferri.

ITEM - 6 RUFFOLO LITIGATION

MOVED by Councillor Carella
seconded by Councillor Meffe

COUNCIL MEETING MINUTES – NOVEMBER 10, 2008

THAT Item 6, Committee of the Whole (Closed Session) Report No. 54 be adopted without amendment.

CARRIED

Having previously declared an interest Mayor Jackson did not take part in the discussion or vote on the foregoing matter.

ITEM - 8 COMPLIANCE AUDIT DECISION
 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES
 BERNIE DI VONA
 (Referred from the Committee of the Whole meeting of November 3, 2008,
 Item 19, Report No. 53)

MOVED by Councillor Carella
seconded by Regional Councillor Rosati

THAT Item 8, Committee of the Whole (Closed Session) Report No. 54 be adopted without amendment.

CARRIED

Having previously declared an interest Regional Councillor Frustaglio did not take part in the discussion or vote on the foregoing matter.

Having previously declared an interest Mayor Jackson did not take part in the discussion or vote on the foregoing matter.

COMMITTEE OF THE WHOLE REPORT NO. 53

(Refer to Committee Report for complete recommendations and documentation on all Committee items.)

ITEM - 19 COMPLIANCE AUDIT DECISION
 2006 MUNICIPAL ELECTION CAMPAIGN FINANCES
 BERNIE DI VONA

MOVED by Councillor Carella
seconded by Councillor Meffe

THAT Item 19, Committee of the Whole Report No. 53 be adopted without amendment.

CARRIED

Refer to Committee of the Whole (Closed Session) Report No. 54, Item 8, November 3, 2008.

Having previously declared an interest Regional Councillor Frustaglio did not take part in the discussion or vote on the foregoing matter.

Having previously declared an interest Mayor Jackson did not take part in the discussion or vote on the foregoing matter.

COUNCIL MEETING MINUTES – NOVEMBER 10, 2008

MOVED by Councillor Carella
seconded by Councillor Shefman

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

- i) Supplementary Report No. 1, LEGAL ADVICE, COMPLIANCE AUDIT REPORT, JOYCE FRUSTAGLIO, (litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board).

CARRIED

Council recessed at 1:28 p.m.

MOVED by Councillor Carella
seconded by Councillor Shefman

THAT Council reconvene at 4:35 p.m.

CARRIED

Council reconvened at 4:35 p.m. with the following members present and Regional Councillor Ferri in the Chair:

Mayor Linda D. Jackson, Chair (4:40 p.m.)
Regional Councillor Joyce Frustaglio (4:40 p.m.)
Regional Councillor Mario F. Ferri
Regional Councillor Gino Rosati
Councillor Tony Carella
Councillor Peter Meffe
Councillor Alan Shefman
Councillor Sandra Yeung Racco

240. LEGAL ADVICE, COMPLIANCE AUDIT REPORT, JOYCE FRUSTAGLIO
(Supplementary Report No. 1)

MOVED by Councillor Carella
seconded by Councillor Meffe

That the following be approved:

- 1) That the memorandum from the Director of Legal Services, dated November 7, 2008, and its attachment (letter of the Compliance Auditor, dated November 6, 2008, addressing further concerns of the applicant for the Compliance Audit for the Joyce Frustaglio Campaign) be received and forwarded to the applicant.

CARRIED

MOVED by Councillor Carella
seconded by Councillor Meffe

That the following be approved:

WHEREAS Council has received the Compliance Audit Report regarding the 2006 campaign finances of candidate Joyce Frustaglio; and

COUNCIL MEETING MINUTES – NOVEMBER 10, 2008

WHEREAS Council has been mindful of the overall public interest by giving due consideration to whether the candidate fulfilled the duties of a candidate under the Municipal Elections Act; and

WHEREAS Council has been mindful of the overall public interest by giving due consideration to the need for general deterrence with respect to campaign finance issues and the need for this candidate to be deterred from possible future contraventions of the Municipal Elections Act, with consideration given to whether this candidate deliberately violated the Act, or whether any contraventions were through inadvertence only; and

WHEREAS Council has considered the overall public interest by giving due consideration to whether the contraventions reported by the Compliance Auditor are substantive or technical in nature; and

WHEREAS Council has considered all of the above matters and assessed whether the overall public interest has been served in relationship to achieving final compliance with the Act and whether the overall public interest aspect of the compliance audit process has been met; and

WHEREAS Council has determined that both the public interest and compliance aspects required by the legislation have been achieved.

NOW THEREFORE, BE IT RESOLVED that:

1. Council take no further action in respect of the Compliance Audit Report regarding the 2006 campaign finances of candidate Joyce Frustaglio;
2. The legal report entitled Legal Advice, Compliance Audit Report, Joyce Frustaglio be made public;
3. Candidate Joyce Frustaglio be requested to donate to a charity serving the citizens of Vaughan the sum identified in the audit as the difference between the rent actually paid for her election office and that sum suggested as more reflective of fair market value; and that
4. Candidate Frustaglio be requested to write an article for publication in local newspapers describing the importance of ensuring that an appropriate level of care be taken during and after an election regarding one's election expenses.

CARRIED UPON A RECORDED VOTE

YEAS

Councillor Carella
Regional Councillor Ferri
Councillor Meffe
Councillor Shefman

NAYS

Regional Councillor Rosati
Councillor Yeung Racco

Report of the Commissioner of Legal and Administrative Services and City Solicitor, dated November 10, 2008

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor in consultation with the City Manager and the Director of Legal Services recommends that this report be received for information as legal advice.

Economic Impact

The economic impact will depend on Council's decision. Should Council choose Option A, the decision may be the subject of an application for judicial review and there will be legal costs incurred in defending Council's decision. If no judicial review is requested, there will be no further economic

impact. Should Council choose Option B, there will be costs incurred to retain a prosecutor to handle any prosecutions. There will be additional costs for the auditors for review of evidence with the prosecutor and possible attendance at trial.

Communications Plan

The candidate and the applicants will be advised of Council's decision. A media release will be issued.

Purpose

The purpose of this report is to provide information requested by Council on October 27, 2008.

Background - Analysis and Options

On October 21, 2008, Council received the Compliance Audit Report for the 2006 campaign finances of Joyce Frustaglio. On October 27, 2008, Council received a report of the City Clerk and requested a report from the City Solicitor to the Council meeting of November 10, 2008 regarding Council's options.

Council has the following options:

Option A: Take no further action

The *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended ("the Act") does not require Council to do anything other than consider the audit report. The Act does not provide guidelines or constraints. The Act does not provide an elector with the right to lay charges in respect of election campaign finance contraventions of a candidate. There is a Court of Appeal decision where the Court held that only the municipality has this authority.

Option B: Commence legal proceedings

Such legal proceedings take the form of a prosecution under the *Provincial Offences Act* ("POA"). Presently, the auditors' report provides the auditors' opinion that there are apparent contraventions. The penalties pursuant to the Act can only be imposed upon conviction. Accordingly, based on the wording of the Act, the penalties do not automatically flow from the auditors' report.

Under the *Municipal Elections Act*, the standard for the auditor to report upon is an "apparent contravention" of the Act. This is not the same basis as necessary for the determination to lay a charge. In addition, under the POA, in order to lay a charge, there must be "reasonable and probable grounds". As well, before proceeding to trial with a charge, the prosecutor must be satisfied that, based on the evidence, there is a "reasonable prospect of conviction".

Typically, POA prosecutions are conducted by regional staff (lay) prosecutors. If a determination were made to commence legal proceedings, it would be inappropriate for regional staff prosecutors to be expected to have carriage of the prosecution of charges against a member of Regional Council. Therefore, Council may wish to obtain the services of an external lawyer to conduct any prosecution.

Judicial Review

Council resolutions are subject to judicial review, as they constitute the exercise of a statutory power or authority within the meaning of s. 1 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1. The standard of review depends on the nature of the decision under review. Where the council is applying principles of statutory interpretation to determine the scope of its authority, the courts have held that municipalities do not possess any greater expertise than the courts so as to warrant a heightened degree of deference. Therefore, the test on jurisdiction and questions of law is correctness, which is whether the decision was right or wrong. A decision will be considered *ultra vires*, and therefore void, where it is beyond the municipality's express or implied powers, where it is contrary to constitutional or

human rights laws, or where the Council endeavors to do indirectly what it does not have the power to do directly.

Where council is not interpreting law, and making a decision within its express or implied powers (an *intra vires* decision), the standard of review is “patent unreasonableness”. An example of an *intra vires* decision would be where Council resolves to revoke a licence, and an applicant alleges bad faith, or where Council passes a resolution about a subject matter within its authority. “Patent unreasonableness” means a decision that on its face is so unreasonable that no decision making body could have made it. The standard of “patent unreasonableness” lies at the most deferential end of the spectrum, meaning that a Court will be loathe to intervene unless a municipality’s errors are obvious and extreme.

The following are circumstances where municipal decisions, even though *intra vires* the powers of the municipality, will be considered patently unreasonable:

- (i) where it results in the fettering of the discretion of Council;
- (ii) where it was made in bad faith, that is, the council acted unreasonably and arbitrarily and without the degree of fairness, openness, and impartiality required of a municipal government, or where it was founded upon improper motives, or for private gain;
- (iii) where it is too vague, and thus is void for ambiguity.

The cases indicate that the onus of proving bad faith is on the party alleging it. The courts have also indicated that they will be slow to find bad faith in the conduct of democratically elected officials, unless there is no other rational conclusion.

In the present circumstances, the *Municipal Elections Act* provides that once Council receives an audit report, it *may* commence legal proceedings. There is no case law dealing with a judicial review of a council decision pursuant to this section. However, based on the reasoning in other cases dealing with judicial review of discipline committees having legislative authority to impose a penalty, it is clear that the penalty must be one which the committee in question has the jurisdiction to impose. Further, there can be no consideration of irrelevant factors in the decision-making process.

In staff’s opinion, without specific authority, Council cannot usurp the power of the Provincial Court, and impose a penalty that would only be imposed if legal proceedings were commenced, and a verdict of guilty were found, such as community service or payment of a fine. Such an action could be the basis for judicial review of Council’s decision.

There is no requirement for Council to provide reasons for its decision, however, the provision of some reasons shows that Council gave consideration to proper factors in making its decision. This would support a more defensible position on an Application for judicial review.

Existing Audit and Court Decisions

There are few audit decisions and very few cases on compliance audits. There are four court decisions where audits were ordered on appeal from a Council refusal: Hamilton, Niagara Falls, and two in Vaughan. In Hamilton, all three audit reports disclosed apparent contraventions. After receiving a legal opinion, which was subsequently made public, Council directed the laying of charges against all three candidates. Also in Hamilton, private charges were laid against a number of contributors, however the City was not involved. In Niagara Falls, the audit report disclosed apparent contraventions related to contributions and the Council received the report and took no further action.

There have been two appeals of decisions where compliance audit requests were refused by a Compliance Audit Committee (one Toronto District School Board Trustee and one Toronto Councillor). In both appeals, the Court gave deference to the expertise of the Committee and upheld the refusal of the audit requests.

The Minutes of the Toronto Compliance Audit Committee, established in 2006, for the meetings held

from May 2007 to May 2008 indicate five requests for audits: David Miller, Georgio Mammoliti, Adrian Heaps, Keith Sweeney, and Donald Blair. Three were refused and two were ordered (Sweeney, and Blair, who are not presently councilors). One of the three refused was the subject of the above appeal (Heaps). Upon receipt of the two audit reports, the Committee directed the commencement of legal proceedings against the two candidates.

In Mississauga, an audit request was ordered after the 2003 election on Clifford Gyles. The report identified apparent contraventions and Mississauga appointed George Rust D'Eye to handle the

prosecution. In Ottawa, an audit was ordered after the 2003 election on a Councillor, and Council ordered the commencement of legal proceedings based on the auditor's report. Mr. Wilkin was appointed Prosecutor and the resulting nine day trial was dismissed after a Charter challenge regarding incomplete disclosure.

Considerations Regarding the Options

There are a number of factors which would be legitimate considerations for Council in deliberating on this matter including the following:

1. Whether, in Council's opinion, the candidate has failed to fulfill the duties of a candidate under the Act. In making this determination, Council can look to Section 69 of the Act, attached as Attachment #1. The section requires that a campaign bank account be opened, that all contributions of money be deposited into the account and that all payments for expenses are made from the account. Proper records must be kept of contributions and expenses and the records must be retained. Financial reports must be prepared and filed. A contribution of money in contravention of the Act must be returned as soon as possible after the candidate becomes aware of the contravention. Council may decide that, in Council's opinion, the candidate has or has not fulfilled these duties.
2. Whether, in Council's opinion, there is a need for general deterrence with respect to campaign finance issues. That is, whether, in Council's view, the laying of charges is necessary to deter unknown future candidates from possible future contraventions of the Act. General deterrence may be achieved by raising public awareness. There has been significant media attention given to the various audit requests and resulting Court applications, which has already contributed significantly to raising public awareness.
3. Whether, in Council's opinion, there is a need for specific deterrence with respect to campaign finance issues. That is, whether the specific candidate need be deterred from possible future contraventions of the Act. Council may consider whether there is reason to believe that the candidate deliberately violated the Act, or whether any contraventions were through inadvertence only. The candidate's conduct is judged against the standard of a reasonable person in similar circumstances.
4. Whether, in Council's opinion, the public policy to be applied is the desirability of obtaining final compliance with the Act; whether compliance has been obtained with respect to the candidate, and, if so, whether or not public policy requires the laying of charges. If Council determines that compliance has been achieved, Council may consider whether it is in the public interest to proceed further.
5. Whether, in Council's opinion, the apparent contraventions represent substantive contraventions, compared to contraventions which are more technical in nature. The most serious contraventions are those for which the Act provides the most severe penalty: Failure to file a Financial Statement by the required date, Filing a Financial Statement which on its face shows a surplus and failing to pay that amount to the Clerk, and Filing a Financial statement which on its face shows the candidate incurred expenses exceeding the permitted amount (Section 80). In addition, the penalties in Section 80 may also be imposed if a candidate files a Financial Statement that is incorrect or otherwise does not comply, or if a candidate incurs expenses that exceed what is permitted (Section 92).

Depending on the circumstances, exceeding the expense limit, failing to refund excess contributions as soon as possible after becoming aware of the contravention, and failing to give proper direction to persons accepting contributions and incurring expenses represent a potentially greater threat to the integrity of the electoral process than the incorrect recording of a style name for an otherwise eligible contributor. Failing to retain financial records may compromise the ability to maintain transparency and accountability. Failing to deposit all contribution money into the campaign account, failure to pay all campaign expenses out of the campaign account, and failure to report expenses are arguably more serious than financial reporting contraventions such as failure to complete contributor addresses and listing the contact name. Consideration may be given to the number and nature of any contraventions identified in the report.

6. Whether, in Council's opinion, having regard to all of the circumstances with respect to the matter, it is in the public interest to commence legal proceedings against the candidate or take no further action. The two cases in Vaughan have determined that the threshold for ordering an audit is low, being whether the applicant has reasonable grounds to believe the candidate has contravened the Act. In this matter, Council ordered the audit, and may take the position that in so doing has maintained the accountability and transparency of the election process. One consideration may be an acknowledgement of responsibility. Another consideration may be whether particular issues raised by the applicant seeking the audit resulted in findings by the auditors that there was actually no apparent contravention of the Act for the issues in question.

Relationship to Vaughan Vision 2020

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

Regional Implications

None

Conclusion

Council may refer to the Auditors' Report when considering the factors set out above. It is suggested that Council's resolution commence as follows:

“WHEREAS Council has received and considered the Compliance Audit Report regarding the 2006 campaign finances of Joyce Frustaglio,

AND WHEREAS Council has considered the overall public interest...”

Attachments

Attachment #1- Section 69, *Municipal Elections Act*

Report prepared by:

Heather A. Wilson
Director of Legal Services

(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.)

Having previously declared an interest Regional Councillor Frustaglio was not present during the discussion or vote on the foregoing matter.

Having previously declared an interest Mayor Jackson was not present during the discussion or vote on the foregoing matter.

At this point in the meeting, Mayor Jackson resumed the Chair.

241. CONSIDERATION OF ITEMS REQUIRING SEPARATE DISCUSSION

COMMITTEE OF THE WHOLE REPORT NO. 53

(Refer to Committee Report for complete recommendations and documentation on all Committee items.)

ITEM - 31 OFF LEASH WORKING COMMITTEE – UPDATE REPORT

MOVED by Councillor Carella
seconded by Regional Councillor Frustaglio

That this matter be reconsidered.

CARRIED

MOVED by Councillor Carella
seconded by Regional Councillor Frustaglio

THAT Item 31, Committee of the Whole Report No. 53 be adopted and amended, as follows:

By receiving the written submission from Mr. Brian Brown, President, Beverley Glen Ratepayers Association, dated November 3, 2008.

CARRIED

242. BY-LAWS FIRST, SECOND AND THIRD READINGS

MOVED by Councillor Yeung Racco
seconded by Councillor Meffe

That the memorandum from the Commissioner of Planning, dated November 7, 2008, regarding By-Law 285-2008, be received.

CARRIED

MOVED by Regional Councillor Ferri
seconded by Regional Councillor Rosati

THAT the following by-laws be read a First, Second and Third time and enacted:

- | | |
|------------------------|--|
| By-Law Number 278-2008 | A By-law to rescind By-law 168-95, a by-law providing for the making of a loan from the City of Vaughan Community Heritage Fund Program and authorizing the execution of the agreement between the Corporation of the City of Vaughan and Linda Hartman, in Trust, 46 Centre Street, Thornhill. (Council, September 22, 2008, Item 6, Committee of the Whole, Report No. 44) |
| By-Law Number 279-2008 | A By-law to exempt parts of Plan 65M-4057 from the provisions of Part Lot Control. (PLC.08.027, Spallacci Construction, located south of Marc Santi Boulevard north of Littleriver Court and on the east side of Ilan Ramon Boulevard being Blocks 64 and 65 on Registered Plan 65M-4057, in Part of Lots 16 and 17, Concession 2) (Delegation By-law 333-98) |

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- By-Law Number 280-2008 A By-law to repeal By-law 279-2008. (PLC.08.027, Spallacci Construction, located south of Marc Santi Boulevard north of Littleriver Court and on the east side of Ilan Ramon Boulevard being Blocks 64 and 65 on Registered Plan 65M-4057, in Part of Lots 16 and 17, Concession 2) (Delegation By-law 333-98)
- By-Law Number 281-2008 A By-law to appoint a replacement Committee of Adjustment member. (Sása Krcmar) (Council, October 27, 2008, Item 2, Committee of the Whole (Closed Session), Report No. 50)
- By-Law Number 283-2008 A By-law to designate an additional Regional Councillor as a signing authority for City corporate bank accounts. (Item 5, Committee of the Whole, Report No. 53)
- By-Law Number 284-2008 A By-law to dedicate certain lands as part of the public highway. (Vaughan West II & North Business Park) (Delegation By-law 333-98)
- By-Law Number 285-2008 A By-law to amend City of Vaughan By-law 1-88. (Z.05.041 (19T-05V06), Rutherford Contwo Investments Ltd., located on the south side of Rutherford Road between Dufferin Street and Bathurst Street, within Draft Plan of Subdivision 19T-95V06, being Part of Lot 15 , Concession 2, - Planning Block 10) (Administrative Correction) (Council, June 26, 2006, Item 103, Committee of the Whole, Report No. 37)

CARRIED

243. **CONFIRMING BY-LAW**

MOVED by Councillor Meffe
seconded by Councillor Carella

THAT By-law Number 286-2008, being a by-law to confirm the proceedings of Council at its meeting on November 10, 2008, be read a First, Second and Third time and enacted.

CARRIED

244. **ADJOURNMENT**

MOVED by Councillor Carella
seconded by Regional Councillor Ferri

THAT the meeting adjourn at 4:49 p.m.

CARRIED

Linda D. Jackson, Mayor

Jeffrey A. Abrams, City Clerk