



OFFICE OF THE INTEGRITY COMMISSIONER

June 15, 2010

City Council
City of Hamilton

RE: Complaint of Misconduct against Councillor Tom Jackson

Complaint

On February 11, 2010, a signed affidavit under section 9 of the Integrity Commissioner By-Law was received alleging that Councillor Tom Jackson, Ward 6 Mountain, had contravened the Code of Conduct. The allegation was very general in nature and there was no indication as to which section of the Code of Conduct was contravened by the Councillor. However, the affidavit did indicate that there was no “grading certificate” for the complainant’s residential subdivision and that the City of Hamilton and the corrupt By-Law enforcement officers were covering this up.

The complainant was contacted in an attempt to clarify the substance of the complaint and arrange for a meeting. During the telephone conversation, the complainant leveled even more allegations against Councillor Tom Jackson, calling Councillor Jackson and city officials, including the police, as corrupt.

In interviewing the complainant, there was a list of complaints leveled against Councillor Jackson and other City employees. The list of allegations against Councillor Jackson included:

1. Cover up of incompetence by the City on issues relating to massive grading and storm water drainage on the complainant’s property;
2. Corruption by Councillor Jackson and the City engineers and legal department;
3. Threats being made by Councillor Jackson to the complainant’s neighbours;
4. Demands and threats by Councillor Jackson for the complainant to sell the house to the City;
5. Councillor Jackson falsifying an arrest warrant against the complainant;
6. Councillor Jackson encouraging the complainant’s neighbours to force the complainant to move;
7. Councillor Jackson violating privacy laws by divulging personal information about the complainant to the complainant’s neighbours;

8. Councillor Jackson harassing the complainant and paying others to harass the complainant;
9. Councillor Jackson assaulting the complainant.

The complaints against Councillor Tom Jackson were varied and serious. The complaints all stemmed from a grading dispute relating to the residence of the complainant. This dispute has been on-going for more than 20 years. To comprehend the scope of the allegations, it is necessary to understand the history surrounding this on-going situation.

History

The Complainant moved into a new residence in a new sub-division in Hamilton in 1988. At some point, the Complainant experienced problems relating to the drainage of water from his property. He believed that this was as a result of the failure of the City and the developer to properly install drainage systems in the sub-division.

The Complainant contacted his councillor, Councillor Tom Jackson, to complain about the drainage on his property. According to records, Councillor Jackson forwarded the drainage problem complaint to the Engineering department for investigation, which is standard procedure for Councillors when complaints are received from constituents. Councillor Jackson's office was provided copies of correspondence from the various City Departments on action that had been taken or was proposed.

The Complainant had made his own enquiries and learned that a grading certificate had not been issued for the sub-division when it had been developed in 1988. The City of Hamilton did not deny that fact.

In an effort to remedy the situation, the City installed a catch basin in the Complainant's back yard at the developer's expense. The Complainant was not completely satisfied with this solution, and eventually took legal action against the City of Hamilton.

The catch basin was replaced and relocated to the southeast corner of the property. According to information received and photographs, the Complainant had allegedly blocked off this drain after it had been installed, which caused even more flooding. The purpose for blocking the drain is unknown.

Councillor Jackson brought the matter before Council and secured additional funding in an effort to assist the Complainant. An extensive review was conducted by the City of Hamilton and recommendations were made to change the grading to resolve the issue.

The City prepared the necessary documentation and obtained permission from the owners of the homes in the affected sub-division to change the grading changes on the properties concerned to satisfy the Complainant's needs. The Complainant refused to sign this document.

INVESTIGATION INTO THE ALLEGATIONS

1. Cover up of incompetence by the City on issues relating to massive grading and storm water drainage on the complainant's property

Investigation

Investigation revealed that in 1988 the City of Hamilton failed to issue the necessary grading certificate for the development of the sub-division. The City admitted this oversight.

Interviews were conducted and a variety of documents relating to the development of the Complainant's sub-division as well as correspondence between and amongst the City and the Complainant were reviewed.

Investigation revealed that the drainage issue was brought to the attention of Councillor Jackson in December 1991 at which time he forwarded the complaint to the appropriate department for whatever action needed to be taken. Councillor Jackson was not directly involved with the drainage problem. Documents and correspondence was copied to Councillor Jackson's office for his information.

The City admitted its oversight in failing to issue the necessary grading certificate. Investigation revealed that at the time, the City had taken steps to mitigate any problems stemming from this oversight including installing a catch basin on the Complainant's property and relocating the catch basin in an effort to resolve the situation.

It was learned that shortly after moving into his residence in 1988, the Complainant, at his own expense, removed 4-5 truckloads of earth from his backyard. The purpose of this was not clear, nor was it clear if any problems developed as a result of this occurrence but shortly thereafter, the Complainant began to complain about drainage problems.

It was also learned that over time, residents of the surrounding homes to the sides and to the rear of the Complainant's residence had altered their backyards to suit their lifestyle. There is no evidence to substantiate that this exacerbated the drainage problem of the Complainant.

Conclusion

By failing to issue a grading certificate, the City of Hamilton did not comply with its policies and procedures in place in 1988. However, the City took steps to mitigate its oversight. Whether this failure resulted in the drainage problems for the Complainant is a moot point, as the Complainant had removed earth from his property and the neighbours had made alterations to their property. Resolution of the drainage problem is beyond the jurisdiction of the Integrity Commissioner. It is the conduct of Councillor Jackson that is at issue here.

Councillor Jackson had forwarded the complaint from his constituent to the Engineering Department in accordance with policy and there is no evidence to indicate that Councillor Jackson had at any time attempted to cover-up any issue relating to the complaint. Councillor Jackson made sure he was kept informed of the action taken by receiving copies of documents from the Engineering Department. Also, Councillor Jackson presented the matter to Council and obtained additional funding in an effort to resolve the drainage problem.

I find that Councillor Jackson's conduct in this matter is appropriate and there is no evidence to indicate that Councillor Jackson violated the Code of Conduct. This allegation is without merit.

2. Corruption by Councillor Jackson and the City engineers and legal department

Investigation

This is a very serious allegation relating to the conduct of Councillor Jackson and was fully investigated to determine if there is any evidence to support this claim.

From our investigation, we determined that Councillor Jackson had forwarded the Complainant's complaint regarding the drainage problem on his property to the Engineering department in accordance with municipal policy. The Engineering department had responded to the Complainant's complaint regarding the drainage problems on his property and had taken steps to resolve the matter by installing a catch basin on the Complainant's property.

This issue has been ongoing with the Complainant since 1988. Although the Complainant makes this complaint of corruption against Councillor Jackson, the City engineers and legal department, when we interviewed the Complainant he could not provide any evidence to support this, nor was there any evidence found in interviews with neighbours, city employees and documents reviewed.

Conclusion

This allegation is unfounded and vexatious.

3. Threats being made by Councillor Jackson to the Complainant's neighbours;

The Complainant alleges that Councillor Jackson is covering up the grading certificate issue by threatening the neighbors with legal action and the neighbors did not want a lawsuit because it would cost hundreds of thousands of dollars.

Investigation

There was no cover up by the City regarding its failure to issue the grading certificate. That oversight was admitted by the City.

Neighbours were interviewed and none of the neighbours were aware of any potential lawsuit being brought against them by Councillor Jackson nor had Councillor Jackson threatened them in any way.

Councillor Jackson states that he had never taken this action.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

4. Demands and threats by Councillor Jackson for the Complainant to sell the house to the City;

The Complainant alleges that Councillor Jackson had personally put up “For Sale Signs” three (3) times on his front lawn and demanded that he sell the house. Councillor Jackson had members of the Legal department and the Engineering department with him when he attended at the Complainant’s property to place the signs.

In addition to placing the signs, the Complainant alleges that Councillor Jackson and the members of the Legal department and the Engineering department had demanded that he sell the house to the City of Hamilton and had threatened him if he did not do so.

Investigation

After making the allegations, the Complainant could not provide any evidence or documents to substantiate these events.

Interviews of the neighbours did not reveal an evidence to support these alleged events.

Councillor Jackson and city employees were interviewed. They all admit that in the course of their duties with the City of Hamilton, they had been at the property and conversed with the Complainant. However at no time did they demand that he sell the house to the City nor did they in any way threaten the Complainant.

The investigation did not uncover any evidence to support this allegation.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

5. Councillor Jackson falsifying an arrest warrant against the Complainant;

The Complainant alleges that Councillor Jackson had used his influence as a member of the Police Board to sign a false arrest warrant relating to damage allegedly made by the Complainant to the property of his neighbour.

Investigation

Hamilton Police Service had no record of Councillor Jackson making a complaint to the police regarding the Complainant. Also, Councillor Jackson could not sign an arrest warrant against the Complainant. If an arrest warrant is issued, it is not done so on the authority of a Councillor or the Police Board. It is done in accordance with judicial procedure and department policy.

The Complainant could not provide any additional evidence to support this allegation.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

6. Councillor Jackson encouraging the Complainant's neighbours to force the Complainant to move;

The Complainant alleges that Councillor Jackson had told the neighbors not to talk to him and were instructed by the Councillor to try and force the Complainant out of the neighbourhood.

Investigation

This complaint was thoroughly investigated with the neighbours of the Complainant. At no time did Councillor Jackson encourage the neighbours to force the Complainant to move.

Councillor Jackson denies any knowledge of this issue.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

7. Councillor Jackson violating privacy laws by divulging personal information about the Complainant to the Complainant's neighbours;

The Complainant alleges that Councillor Jackson went to all of the neighbors and informed them that the Complainant had a "rap sheet" (criminal record).

Investigation

The neighbours were aware of the Complainant's interaction with the Police and the Justice System as many of the issues that were brought to the attention of

the Police and the Justice System involved the neighbours in the first place. Councillor Jackson did not inform the neighbours of the Complainant's police record.

Councillor Jackson was unaware if the Complainant had a police record.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

8. Councillor Jackson harassing the Complainant and paying others to harass the Complainant

The Complainant alleges that there are approximately nine (9) neighbours that are harassing him and his wife and that Councillor Jackson is behind the neighbours in their harassment activities. This harassment has been taking place over the past 22 years and the Complainant alleges that Councillor Jackson had actually paid one of the neighbours to harass him by giving them an amount of corporate stock.

Investigation

The Complainant could not provide any additional substantive evidence of this allegation.

The neighbour who allegedly received the corporate stock denies that this action occurred. This neighbour also denies receiving any form of payment from Councillor Jackson and at no time did Councillor Jackson counsel them to harass the Complainant.

Interviews of other neighbours did not reveal any evidence to indicate that Councillor Jackson had made attempts to encourage the neighbours to harass the Complainant.

Conclusion

This allegation is unfounded and is frivolous and vexatious

9. Councillor Jackson assaulting the Complainant

The Complainant alleges that Councillor Jackson had assaulted him when he was picking up his mail from his mailbox.

Investigation

This is a serious allegation. However, the Complainant could not provide any evidence of this occurring nor could he provide any details of the assault. He did not report the matter to the police.

Conclusion

This allegation is unfounded and is frivolous and vexatious.

OTHER FACTS

The Complainant believes that in 1988, the developer of the sub-division where he purchased his residence had failed to properly grade the property and that the City of Hamilton had failed to take the proper steps to ensure the grading of the property was in accordance with City By-Laws. Nor had the City taken steps to correct the situation to the satisfaction of the Complainant. Whether this is true or not is not within the mandate of the Integrity Commissioner to determine and I make no judgment on that issue.

The Integrity Commissioner's mandate is the conduct of Councillor Tom Jackson and the allegations made by the Complainant about his conduct.

In addition to the above complaints, the Complainant has also reported nineteen (19) other incidents to the Integrity Commissioner regarding the conduct of Councillor Tom Jackson. However, the Complainant was either unable or unwilling to provide details to merit additional investigation or the allegations were outside the jurisdiction of the Integrity Commissioner. Information relating to those 19 incidents has been reviewed and recorded.

FINDINGS

Based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that Councillor Jackson did not contravene the City of Hamilton Code of Conduct or other procedures, rules or policies governing a member of Council's ethical behaviour.

Also, based on the evidence presented and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that the complaints regarding the conduct of Councillor Jackson are frivolous and vexatious. As per Section 12(3) of By-Law 08-154, the fee for registering the complaint shall not be refunded.



Earl D. Basse, Integrity Commissioner

cc: Councillor Tom Jackson
Complainant