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C H A M B E R S

Integrity Commissioner Office
for the City of Richmond Hill

Final Investigation Report

September 16, 2019

Marvin Huberman, LL.B., LL.M, FCI Arb

E-mail: mhuberman@adr.ca

August 30, 2019

Sent by email to:

Council of the City of Richmond Hill

c/o Stephen M.A. Huycke

Director of Legislative Services, City Clerk

City of Richmond Hill, ON, L4B 3P4

stephen.huycke@richmondhill.ca

Re: Complaint Reference Number IC-102-0719

Dear Mayor and Members of Council:

Delegation of Investigative Powers

Pursuant to a delegation of powers, Deborah Anshell, in her capacity as Integrity Commissioner for the City of Richmond Hill, delegated to me certain of her powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report (subject to her review and approval) with respect to the Complaint (the "Complaint") described herein, pursuant to section 223.3(3) of the *Municipal Act, 2001*.

The Complaint

Carmine Perrelli, Deputy Mayor of the City of Richmond Hill/Regional and Local Councillor (the Complainant), complains that Karen Cilevitz, a Member of the City of Richmond Hill Council (the Member), contravened section 9.2 of the Council Code of Conduct, which requires Members to adhere to all other by-laws, policies, procedures and rules (collectively the "policies") that govern the behaviour of Members.

Specifically, the Complainant alleges that the Member failed to adhere to the Richmond Hill Policy for Councillor-Held Residents Meetings on High Density Development Applications (the “Policy”) by opting to hold and informing residents of a residents meeting by mail on April 11, 2019, on a development application re 8700 and 8710 Yonge Street, File #D01-18007, D02-18033, and D06-18068, which is adjacent to a regional road or is a high density development application which is in close proximity to a regional road, but failed to inform all Members of Council of the date, time and location of the meeting, as well as the name of the development application being represented, at the same time that the residents and businesses were informed of the residents meeting.

The Response

In her Response Statement, the Member responds to the instant Complaint, the fourth complaint made under the Council Code of Conduct (the “Code”) by Carmine Perrelli (“Perrelli”) against her, which is dated July 11, 2019 (the “Fourth Perrelli Code Complaint”), as follows.

“In just over 2 1/2 months, Perrelli has made three other Code complaints against me on:

- 1. April 30, 2019 (the “First Perrelli Code Complaint”) [IC-56-0519];*
- 2. May 23, 2019 (the “Second Perrelli Code Complaint”) [IC-69 -0519]; and*
- 3. May 27, 2019 (the “Third Perrelli Code Complaint”) [IC-70-0519].*

I find the manner in which Perrelli has laid all of these complaints against me to be vexatious and bullying in nature.

I have provided responses to the First Perrelli Code Complaint, the Second Perrelli Code Complaint and Third Perrelli Code Complaint, all of which set out my tumultuous relationship with Perrelli in detail.

The First Perrelli Code Complaint and Second Perrelli Code Complaint are virtually identical to this Fourth Perrelli Code Complaint, save and except for Perrelli’s allegations that:

“Had [Perrelli] not mentioned [his] intention at the April 17th meeting, this residents

meeting would have likely taken place and [he] would not have had the benefit, of which it was [his] legal right to hear those comments made by residents.”

The following facts ought to be considered:

April 11, 2019 - I instructed my clerk, Ava Daneshevar (“Ava”) to send the notice (the “Notice”) for the April 29, 2019 residents meeting re: 8700 and 8710 Yonge Street (the “Meeting”). The Notice is dated April 11, 2019 (Tab 1), which predates the alleged comments made by Perrelli on April 17, 2019;

Residents’ meetings for any and all land use development applications within the City of Richmond Hill are not mandatory and are called/held and cancelled at the discretion of the local councillor, only, not the mayor or regional and local councillors, as Perrelli is;

April 24, 2019 - I instructed Ava to send a cancellation notice of the Meeting (the “Cancellation Notice”) (Tab 2);

The Cancellation Notice was sent at my discretion and I do not have to justify why it was cancelled. Further, Perrelli’s comments are hypothetical and conjecture as to whatever he thinks would have “likely” happened based upon whatever comments he made - respectfully, this argument ought not to be considered; and

No prejudice was suffered by any of my residents or the developer in question as a result of the cancellation of the Meeting.

My not sending the Notice in the first place to all Council Members was an oversight and mistake on my part and was not deliberate. Given the First Perrelli Code Complaint and Second Perrelli Code Complaint, all of which concern notices to resident meetings that pre-date April 17, 2019, I am now mindful to ensure that I carefully review all City by-laws/policies, so as to avoid such a mistake in the future.”

Investigative Process

Having been delegated the powers and duties of the Richmond Hill Integrity Commissioner pursuant to section 223.3(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, as part of my investigation of this formal complaint, I reviewed:

a. The approved Code Complaint Form and Affidavit, with Schedule “A” attached thereto, sworn/affirmed on July 11, 2019, of the Complainant;

b. The Consent and Confidentiality Agreement signed by the Complainant on July 11, 2019; and

c. The Karen Cilevitz Response Statement, with documents attached, dated July 24, 2019.

I interviewed the Complainant and the Member on August 26, 2019. The member's interview was conducted in the presence of her legal counsel, Mr. Jason R. Allingham of MacDonald Associates pc, Lawyers, and the Complainant's interview was via a telephone conference call.

I received full cooperation with my investigation from both the Complainant and the Member, and from their representatives who provided me with the information and documentation I requested.

The Issue

There is one issue for determination:

Did the Member contravene section 9.2 of the Council Code of Conduct? If so, what penalty do I recommend that Council impose?

The Facts – Background

By letter dated April 11, 2019 sent to Residents re: 8700 and 8710 Yonge Street, File # D01-18007, D02-18033, and D06-18068 (the "Notice"), the Member advised as follows:

"A residents' information meeting will be held on:

*Monday, April 29, 2019
7:00 pm-9:00 pm
Richvale Community Centre
Carrville Room
160 Avenue Road
Richmond Hill, ON L4C 5L8*

Please be advised this meeting is hosted by Ward 5 Councillor Cilevitz regarding lands municipally known as 8700 and 8710 Yonge Street.

The purpose of the proposed Official Plan and Zoning By-law Amendment at this

location is to permit the construction of a proposed high-rise, mixed-use development comprised of 336 residential units in two towers (13-storey and 20-storey) and commercial retail space on the ground floor. I, along with staff from the Town's Planning and Regulatory Services Department, will be in attendance when the applicant presents their proposal to the residents at this meeting.

*A Council Public Meeting (CPM) in this regard, in statutory compliance with the Planning Act, is scheduled for Wednesday, May 8, 2019 in Council Chambers. Please be advised **NO** decisions are made at the CPM - This public meeting will be held to enable comments to be referred back to staff for further considerations with regard to the proposal.*

Should you have any further questions please do not hesitate to contact me directly, or you may contact Katherine Faria, Planning and Regulatory Services Department, at 905-771-5543.

*Sincerely,
Karen Cilevitz
Councillor - Ward 5, Rill Hill, Ontario"*

By letter dated April 24, 2019 sent to Residents re: 8700 and 8710 Yonge Street, File #D01-18007, D02-18033, and D06-18068 (the "Cancellation Notice"), the Member advised as follows:

"Please note the residents' information meeting which was to be hosted by Councillor Cilevitz and scheduled for:

*Monday, April 29, 2019
7:00 p.m. - 9:00 p.m.
Richvale Community Centre
Carrville Room
160 Avenue Road
Richmond Hill, ON L4C 5L8*

*has been **CANCELLED.***

*The Council Public Meeting (CPM) in this regard, in statutory compliance with the Planning Act, scheduled for Wednesday, May 8, 2019 in Council Chambers, is **CONFIRMED.** All comments from residents regarding this proposed development application will be heard at the May 8th CPM - If you wish to address Council with any*

comments and/or concerns, please attend this important meeting. No pre-sign up is necessary.

*Please be advised **NO** decisions are made at the CPM - This public meeting will be held to enable comments to be referred back to staff for further considerations with regard to the proposal.*

Should you have any further questions please do not hesitate to contact me directly, or you may contact Katherine Faria, Planning and Regulatory Services Department, at 905 - 771- 5543.

*Sincerely,
Karen Cilevitz
Councillor - Ward 5, Richmond Hill, Ontario”*

On May 8, 2019, a Council Public Meeting was held in Council Chambers at which Staff Report SRPRS.19.084 with respect to the Official Plan and Zoning By-law Amendment applications submitted by Metroview Developments (GARDEN) Inc. for lands known as Part of Lots 1, 2, 3 and 4, Plan 1984 (Municipal Addresses: 8700 and 8710 Yonge Street), City Files D01-18007 and D02-18033 (Related File D06-18068) was received for information purposes only and all comments made were referred back to staff.

On June 28, 2019, the Complainant was informed by Dalvir Passi, Development Manager of Metroview Developments, that the Member sent out the Notice for the residents information meeting to be hosted by the Member and scheduled for April 29, 2019 regarding lands municipally known as 8700 and 8710 Yonge Street, File #D01-18007, D02-18033, and D06-18068, which is a high density development application in close proximity to a regional road. The Member decided to cancel the meeting.

According to the Complainant, the Member only decided to cancel the April 29, 2019 residents information meeting after the Complainant indicated at the Council Public Meeting of April 17, 2019 that he would be filing a complaint under the Code for violation of the Policy for Councillor-Held Residents Meetings on High Density Development Applications (the “Policy”) which sets out the steps to be followed by Councillors when they plan for and hold residents meetings on development applications that are adjacent to a regional road or are a high density application in close proximity to a regional road. The Policy requires any Councillor who opts to hold a residents meeting on these types of development applications to inform all members of Council of the date, time and location of the meeting, as well as the name of the development application being presented, at the same time that the residents and

businesses are being informed of the residents meeting.

The Complainant, in his interview with me, stated that he had no prior knowledge/notice of the scheduled April 29, 2019 residents meeting nor did he receive an invitation to this meeting or the Cancellation Notice for this meeting from the Member. The Complainant received a copy of the Cancellation Notice from Dalvir Passi after June 28, 2019. Had the Complainant not mentioned his intention at the April 17, 2019 CPM to file a complaint against the Member under the Code for her violation of the Policy, the April 29, 2019 residents meeting would have likely taken place and he would not have had the benefit, of which it was his legal right, to hear the comments made by residents.

The Member, in her interview with me, acknowledged that she sent to residents the Notice of the April 29, 2019 residents meeting regarding lands municipally known as 8700 and 8710 Yonge Street, File #D01-18007, D02-18033, and D06-18068, which is a high density development application which is in close proximity to a regional road, and that she mistakenly failed to inform all members of Council, including the Complainant, of the date, time and location of the April 29, 2019 residents meeting, as well as the name of the development application being presented, at the same time that the residents were informed of the residents meeting. Her failure to give the requisite notice of the residents meeting to all members of Council was, in the Member's words, the result of an oversight or accident, and not achieved through deliberate planning.

The Member also acknowledged that she sent the Cancellation Notice to residents on April 24, 2019, but did not send that notice to any members of Council.

Relevant Provisions of the Council Code of Conduct and the Policy

Council Code of Conduct (the "Code")

Section 4.2 (b) of the Code provides that "A Member shall observe and comply with every provision of the Code, as well as all other policies and procedures affecting the Member, acting in his or her capacity as a Member."

Section 4.3 (b) of the Code provides that "No Member shall fail to observe and comply with every provision of the Code, as well as all other policies and procedures affecting the Member, in his or her capacity as a Member."

Section 9.2 of the Code provides that "Members are required to adhere to all other by-laws, policies, procedures and rules (collectively "policies") that govern the behaviour of

Members, including, but not limited to, those policies set out in Appendix B.”

Policy for Councillor-Held Residents Meetings on High Density Development Applications (the “Policy”)

The relevant provisions of the Policy are set out below.

Scope:

This policy applies to all members of Council. This policy sets out the process to be followed by Councillors when they plan for and hold residents meetings on development applications that are adjacent to a regional road or are a high density application which is in close proximity to a regional road.

Policy:

Council and Town staff are committed to community engagement and the sharing of information to foster effective communication. One way this is accomplished is through residents meetings on development applications. Typically, a member of Council will hold a residents meeting to provide an opportunity for the community to learn more about a proposed development application and to hear comments from the residents regarding the application. It is not a requirement for a Councillor to hold a residents meeting on a development application.

If a Councillor opts to hold a residents meeting on a development application and it is either adjacent to a regional road or it is a high density development application which is in close proximity to a regional road, the Councillor shall:

...

Inform all members of Council of the date, time and location of the meeting, as well as the name of the development application being presented, at the same time that the residents and businesses are being informed of the residents meeting...

Roles and Responsibilities:

Member of Council Holding the Residents Meeting

...

Inform all members of Council of the date, time and location of the meeting, as well as the name of the development application being presented, at the same time that the residents and businesses are being informed of the residents meeting ...

Findings, Conclusions and Recommendations

Having thoroughly reviewed and carefully considered the information and documentation obtained in the course of my investigation (collectively, “the evidence”), I conclude that the Member contravened section 9.2 of the Council Code of Conduct, which requires Members to adhere to all other by-laws, policies, procedures and rules (collectively “policies”) that govern the behaviour of Members.

Specifically, I find on the preponderance of evidence that the Member failed to adhere to Richmond Hill Policy for Councillor-Held Residents Meetings on High Density Development Applications (the “Policy”) by opting to hold a residents meeting and sending out the Notice for the residents information meeting to be hosted by the Member, scheduled for April 29, 2019 regarding lands municipally known as 8700 and 8710 Yonge Street, File #D01-18007, D02-18033, and D06-18068, which is a high density development application in close proximity to a regional road, but failed to inform all members of Council of the date, time and location of the meeting, as well as the name of the development application being presented, at the same time that the residents and businesses were informed of the residents meeting.

I accept the Member’s acknowledgement, and find, that she mistakenly failed to inform all members of Council, including the Complainant, of the date, time and location of the April 29, 2019 residents meeting, as well as the name of the development application being presented, at the same time that the residents were informed of the residents meeting. Her failure to give the requisite notice of the residents meeting to all members of Council was, in the Member’s words, the result of an oversight or accident, and not achieved through deliberate planning.

I further find that the Member sent the Cancellation Notice to residents on April 24, 2019, but did not send that notice to any members of Council.

I find that the Member decided to cancel the April 29, 2019 residents information meeting after the Complainant indicated at the Council Public Meeting of April 17, 2019 that he would be filing a complaint under the Code for violation of the Policy for Councillor-Held Residents Meetings on High Density Development Applications (the “Policy”) which sets out the steps to be followed by Councillors when they plan for and hold residents meetings on development applications that are adjacent to a regional road or are a high density application which is in close proximity to a regional road. The Policy requires any Councillor who opts to hold a residents meeting on these types of development applications to inform all members of Council of the date, time and location of the meeting, as well as the name of the development application being

presented, at the same time that the residents and businesses are being informed of the residents meeting.

I accept the Complainant's evidence, and find, that he had no prior knowledge/notice of the scheduled April 29, 2019 residents meeting nor did he receive an invitation to this meeting or the Cancellation Notice for this meeting from the Member. The Complainant received a copy of the Cancellation Notice from Dalvir Passi after June 28, 2019.

I find on the balance of probabilities that had the Complainant not mentioned his intention at the April 17, 2019 CPM to file a complaint against the Member under the Code for her violation of the Policy, the April 29, 2019 residents meeting would have likely taken place and he would not have had the benefit, of which it was his legal right, to hear the comments made by residents at that meeting.

I reject the Member's argument that the manner in which the Complainant has laid the First Perrelli Code Complaint (IC-56-0519), the Second Perrelli Complaint (IC-69-0519), the Third Perrelli Complaint (IC-70-0519), and the instant Complaint (the Fourth Perrelli Code Complaint), against the Member is vexatious and bullying in nature, because this argument is not supported by the applicable law or the preponderance of the evidence which deserves weight.

Under the Richmond Hill Integrity Commissioner Procedures, which applies to the instant Complaint, a "vexatious" complaint is defined to mean an alleged contravention of the Council Code of Conduct through the filing of a formal written complaint "without reasonable or probable cause or excuse."

The evidence does not support a finding that the instant Complaint against the Member was made without reasonable or probable cause or excuse, as contended by the Member. To the contrary, the weight of the evidence supports the conclusion, and I find, that the instant Complaint was made with reasonable or probable cause or excuse, and it is therefore not vexatious.

I am mindful of the historical background, the context, the relationship between the Member and the Complainant, and the challenges that each faced from 2011 to date, as described in my Final Reports in respect of the First Perrelli Code Complaint and the Second Perrelli Code Complaint.

The Penalty

Section 12.8 of the Richmond Hill Council Code of Conduct provides that:

“If the Integrity Commissioner finds that a Member has contravened the Code, the Integrity Commissioner may recommend and Council may impose one of the following penalties on the Member:

(a) A reprimand; or

(b) The suspension of the remuneration paid to that Member for a period of up to 90 days.”

Having found that the Member has contravened section 9.2 of the Council Code of Conduct, I must now decide if I should make a recommendation on whether Council should impose one of the penalties listed above.

In determining to exercise my discretion in recommending a penalty, I have adopted a flexible, principled and contextual approach, giving careful consideration to a complex of considerations, including the preamble, principles and purpose of the Council Code of Conduct, the purpose and policy principles of the Policy for Councillor-Held Residents Meetings on High Density Development Applications (the “Policy”), the goals/objectives of penalties that apply to this context, including general and specific deterrence, proportionality, parity, totality, mitigating factors, and aggravating factors. These goals/objectives of penalties apply to regulatory or statutory offences where, as in the present case, penalties, including a monetary penalty, may be imposed.

Council Code of Conduct

The Preamble, Principles and Purpose of the Richmond Hill Code of Conduct provides, in part, as follows:

“1.0

Preamble and Principles

1.1 The Council of the Town of Richmond Hill is committed to achieving the highest standards of conduct by its Members which is essential to maintaining and ensuring public trust and confidence in Council and Richmond Hill’s decision making and operations.

1.2 The principles of this Code are:

(a) Members will act in an accountable and responsible manner with integrity and fairness in the performance of their duties;

(b) Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;

(c) Members are expected to perform their duties and arrange their private affairs in a manner that promotes public confidence and which will bear close public scrutiny; and

(d) Members shall seek to serve the public interest by upholding both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and Council of the Town.

2.0 Purpose

2.1 The purpose of this Code is:

(a) to set out clear expectations of the behaviour of Members in accordance with the principles of the Code;

(b) to provide information to the public as to the behaviour they can expect from their Members;

(c) to provide guidance to Members in the conduct of their duties as elected officials; and

(d) to provide a mechanism for responding to alleged breaches of the Code.

2.2 The clear statement of these standards and expectations should serve to enhance the public's confidence that the elected officials of the Town of Richmond Hill will operate with integrity and fairness to ensure responsible and accountable conduct by the Member."

Richmond Hill Policy for Councillor-Held Residents Meetings on High Density Development Applications (the "Policy")

The purpose and guiding principles of the Policy are as follows:

"PURPOSE:

The purpose of this policy is to set out the steps to be followed by Councillors when they plan for and hold residents meetings on development applications that are adjacent to a regional road or are a high density application which is in close proximity to a regional

road.

This Policy is guided by the following principles:

Community engagement - Council and staff are committed to high levels of community engagement to allow opportunities for a range of views to be heard on issues of importance to the community.

Openness and transparency - The sharing of information in an open and transparent manner is key to ensuring that all information is available during the decision making process.

General Deterrence

General deterrence refers to deterring the public generally from committing the Code violation.

Specific Deterrence

Specific deterrence is an important goal/objective in the present circumstances. It involves deterring the Member from again committing this or a similar Code violation.

Proportionality

A penalty must be proportionate to the gravity of the Code violation and the degree of responsibility of the violator.

Parity

The principle of parity requires that similar penalties be imposed on similar offenders for similar Code violations in similar circumstances.

Totality

The Member has been found to have contravened section 9.2 of the Code on two other occasions: the First Perrelli Code Complaint (IC-56-0519) and the Second Perrelli Code Complaint (IC-69-0519). I must be mindful and careful in recommending the imposition of a penalty which is appropriate and not excessive or inappropriately duplicative.

Mitigating and Aggravating Factors

Mitigating factors justify a lower/less severe penalty, while aggravating factors lead to a higher penalty. Both relate to the Member or the present circumstances of the Code violation that, when considered in light of the goals/objectives of imposing a penalty, necessitates an increased or decreased penalty.

I have given careful consideration to submissions on penalty from both the Complainant and the Member.

I accept the Member's evidence, and find, that her not sending the Notice in the first place to all Council Members was an oversight and mistake on her part and was not deliberate; and that given the First Perrelli Code Complaint and Second Perrelli Code Complaint, which concern notices to resident meetings that pre-date April 17, 2019, she is now mindful to ensure that she carefully reviews all City by-laws/policies, so as to avoid such a mistake in the future. I consider this conduct to be a mitigating factor in the present case.

I do not, however, consider it a mitigating factor that the Member sent to residents the Cancellation Notice regarding the scheduled April 29, 2019 residents information meeting, and then proceeded to the May 8, 2019 Council Public Meeting (CPM), in statutory compliance with the Planning Act, at which comments/concerns expressed by residents were referred back to staff concerning the proposed development application re: 8700 and 8710 Yonge Street, File #D01-18007, D02-18033, and D06-18068.

In my view, by cancelling the April 29, 2019 residents information meeting, and not holding the meeting after informing all members of Council of the date, time and location of the meeting, as required, the Member caused the loss of a valuable opportunity initiated by the Member for a range of views to be heard by residents, Council and staff on issues of importance to the community, and the sharing of information in an open and transparent manner (as opposed to at a more formal, intimidating and live streamed and audio/video recorded CPM where less people may attend and/or may be willing to express their comments/concerns), a key to ensuring that all information is available during the decision making process, contrary to the guiding principles of the Policy.

I would not, however, give effect to the Complainant's submission that the Member's conduct in the present circumstances justifies my recommending the suspension of the remuneration paid to the Member for a period of up to 90 days, "in the hope that the behavior changes, which is the **only** goal" [emphasis added by the complainant].

Having carefully considered the evidence and the relevant factors, goals/objectives of penalties, the pertinent provisions of the Code and Policy described above, and the submissions of the Complainant and the Member, I have decided that the appropriate penalty in all the circumstances of the instant Complaint is a reprimand. In my view, a reprimand will promote compliance with the Code and the Policy and further their purposes and principles, and the goals/objectives of penalties that apply to the context of this Complaint.

The Recommendations

To address the matters that I have identified in my investigation, specifically that the Member has contravened through inadvertence, that is mistakenly, by accident or oversight, section 9.2 of the Council Code of Conduct, I make the following recommendations to assist the Council of the City of Richmond Hill to achieve “the highest standards of conduct by its Members which is essential to maintaining and ensuring public trust and confidence in Council and Richmond Hill’s decision and operations” as set out in the Preamble of the Council Code of Conduct:

a. The Member, and, as a matter of best practice, all members of Council, should be vigilant in adhering to their individual and collective obligations to ensure that members of Council comply with their responsibilities under the *Municipal Act, 2001*, the Council Code of Conduct, and the Policy for Councillor-Held Residents Meetings on High Density Development Applications; and

b. Council impose a reprimand on the Member for having contravened section 9.2 of the Council Code of Conduct in the circumstances of the instant Complaint.

Dated at Toronto, this 16th day of September, 2019.

Respectfully submitted by,



Marvin J. Huberman, LL.B., LL.M., FCI Arb
Investigator
c/o ADR Chambers Inc.
Office of the Integrity Commissioner

Approved by



Deborah Anschell,
Integrity Commissioner of the City of Richmond Hill
c/o ADR Chambers Inc.
Office of the Integrity Commissioner