



## memorandum

TO: HONOURABLE MAYOR AND MEMBERS OF COUNCIL

FROM: SUZANNE CRAIG, INTEGRITY COMMISSIONER

DATE: JUNE 27, 2017

SUBJECT: CODE OF CONDUCT COMPLAINT #110116(f) INVESTIGATION REPORT IN RESPECT OF FORMER REGIONAL COUNCILLOR / DEPUTY MAYOR MICHAEL DI BIASE

C	1
COMMUNICATION	
SP.	CW - JUNE 27 / 17
ITEM -	1

### Recommendation

The Integrity Commissioner recommends that:

1. The Code of Conduct Complaint #110116(f) Final Investigation Report in Respect of Former Regional Councillor / Deputy Mayor Michael Di Biase, be received.

### Contribution to Sustainability

Not applicable.

### Economic Impact

Not applicable.

### Communications Plan

### Purpose

To provide a final report to the Mayor and Members of Council regarding the above noted complaint.

### Background

Code of Conduct Complaint Investigation Interim Report – Item 36, submitted to Committee of the Whole Tuesday, June 20, 2017 and deferred to the Special Committee of the Whole meeting of Tuesday, June 27, 2017.

### Relationship to Vaughan Vision 2020/ Strategic Plan

This communication promotes the commitment of the City of Vaughan Mayor and Members of Council to openness and transparency in government decision-making. In addition, this communication promotes Service Excellence through the public reporting of activities of the independent ethics officer in relation to accountability and transparency in municipal government.

### Regional Implications

Not applicable



## memorandum

### Attachments

Appendix 1 – Final Report

Appendix 2 – Respondent's Response to Preliminary Findings dated June 13, 2017- redacted

Appendix 3 – Integrity Commissioner's Response to Respondent's email of June 7, 2017 dated June 7, 2017 – redacted.

A handwritten signature in blue ink, appearing to read "Suzanne Craig", is positioned above a horizontal line.

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Suzanne Craig  
Integrity Commissioner

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## CITY OF VAUGHAN COMPLAINT #110116(f)

### I. Summary

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of former Regional Councillor and Deputy Mayor Michael Di Biase (the “Respondent”) in connection with a complaint raising the following issues:

1. the allegation that the Respondent used the influence of his office as Regional Councillor of the City of Vaughan to affect the position of the Toronto and Region Conservation Authority (“TRCA”) with respect to a development proposed by the current landowners (the “Owner”) of 230 Grand Trunk Avenue (the “Property”).

I find that this allegation has been made out and that the actions of the Respondent constitute an improper use of influence of office through his attempt to interfere with the decision-making of the TRCA. By way of background, the TRCA is an agency responsible for, among other things, advising municipalities on the protection of lands, including by restricting or prohibiting development.

In particular, the Respondent conveyed to the TRCA Board that the City of Vaughan had “dealt with” the issue of reaching an agreement with the Owner regarding the proposed development at 230 Grand Trunk Avenue (the “Development”).

In addition, I find that the Respondent attempted to improperly influence the decision of the Council of the City of Vaughan (“Council”). He did so by inaccurately conveying the position of the TRCA and suggesting that the TRCA had withdrawn its objection to the Development when it had not.

Subsequent to the Respondent’s attempt to improperly influence the TRCA Board, the TRCA planning staff briefed the Board on outstanding issues which substantiated staff’s recommended position, which was that the TRCA should participate in a pending proceeding before the Ontario Municipal Board (“OMB”).

According to the complaint, the Respondent did not cease his misrepresentations, including at meetings. At the City of Vaughan community meeting on May 2, 2016 regarding the Development, the Respondent stated that the City of Vaughan had “their hands tied on this.” This comment led the residents in attendance to conclude that the TRCA would be withdrawing its objections to the ongoing Development matters.

Given that the Respondent is no longer in elected office at the City of Vaughan, I provide in this report with my findings on the allegations contained in the complaint and my reasons for those findings without recommendations on possible sanctions.

### II. The Allegations in the Complaint

In October 2016, I received an informal complaint under the Code. The Complainant sought the

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participation of my office to seek an informal resolution of the complaint. Following a series of meetings with the Complainant, he communicated to me that an informal resolution of the complaint would not be possible.

The Complainant submitted a Formal Complaint on the City's Complaint Form/Affidavit on November 1, 2016. The Complainant wrote that he had reasonable grounds to believe that the Respondent had contravened Rule No. 7 of the Code (Improper Use of Influence). The Complaint Form/Affidavit was accompanied by 3 pages of detailed particulars of his allegations.

The complaint was provided to the Respondent with a request for his written response.

After my review of the supporting documentation to the complaint and my initial discussions with the Complainant, I determined that Rule 1(c) of the Code (which requires a Member to avoid the improper use of the influence of their office) was also engaged by the allegations, in addition to Rule 7 (Improper Use of Influence). Therefore, while the complainant identified the allegations in the complaint as triggering one Code rule (Rule 7), in my view the matters raised were sufficiently distinct that I analyzed them as 2 separate issues.

On May 19, 2017, the Respondent resigned as a Member of Council (a "Member") following the filing of my report in respect of a separate complaint against him.

After the Respondent's resignation, I considered whether the complaint had been rendered moot. For example, courts have the discretion to decide not to hear a matter if there is no longer any live controversy between the parties because of a change in circumstances (*Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342). I find that I have a similar discretion under section 8 of the Code Protocol, which permits me to decline to pursue an investigation if there are insufficient grounds to do so.

In this case, however, the Respondent has provided a response denying the allegations in the complaint and there appears to be a live controversy about the nature of the Respondent's conduct, even if it is unclear that Council can impose any sanction on the Respondent in light of his resignation. Even if there were no live controversy, I would have exercised my discretion in these circumstances to complete my complaint investigation report given the public interest in having these issues come to the attention of the public.

In reaching this conclusion, I have considered my statutory obligation to provide findings to Council in respect of a complaint alleging unethical behavior of a Member. I have further considered the intent of Part V.1 of the *Municipal Act* and the purpose of the Code, which is to shine a light on the actions of elected officials so that they may be held accountable by the public for their actions while in office. Publicly reporting on the results of complaints also encourages individuals to come forward, knowing that any findings in respect of their complaints will be submitted to Council even if the Member subject of the complaint is no longer in office.

### ***A. Issue #1 – Allegations of Improper Use of Influence***

The Complainant alleges improper use of influence by the Respondent at the June 2015 meeting of Council. In particular, in addition to allegations of improper use of influence at the June 2015 meeting, the complaint alleges that the Respondent improperly used his influence as a Member to

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convince other Members of Council that the TRCA had decided to withdraw from a subsequent pending OMB proceeding. According to the complaint, the Respondent did so at a number of meetings, including but not limited to: (i) a Public Hearing meeting in April 2016; (ii) a May 2, 2016 community meeting of the City of Vaughan; and (iii) 2016 meetings of the TRCA Board.

The Complainant alleges that the Respondent made certain representations at meetings, including during a closed session of the June 2015 Council meeting. The Respondent advised that he was aware of the discussions at the TRCA and represented that it had no outstanding concerns about the Development. Further, the Complainant alleges that the Respondent suggested that the TRCA would likely withdraw its objection to the Development.

According to the complaint, following the 2016 settlement, the Respondent attempted to convince the TRCA to withdraw its objection on the basis that the City of Vaughan “had dealt with it”, meaning the issue of the Development.

The Complainant therefore alleged that the Respondent used his influence of office to mislead the Board members and staff of the TRCA and to misrepresent the position of the TRCA to the City of Vaughan Council, in breach of Rule No. 7 of the Code (Improper Use of Influence).

The Respondents’ alleged representations took place within the context of two appeal proceedings before the OMB, which are described below. The first of the appeals settled in March 2016 and the second appeal is ongoing. The allegations and my findings in this matter primarily relate to the issues raised in this second appeal.

Although this investigation describes these proceedings, my findings do not relate to the merits of the two appeals. Rather, they concern the Respondent’s alleged attempts to improperly influence the City and the TRCA’s involvement in those proceedings, particularly the second appeal.

The Complainant puts forward the allegation that the Respondent used his influence to mislead Board members and staff of the TRCA and to misrepresent the position of the TRCA to the City of Vaughan Council, within the context of a very complex planning matter. While the chronological history of this matter dates back well before the actions that are subject of this complaint investigation, the complaint does not pivot on the actions with respect to the first proceeding, at which the Owner appealed to the OMB to re-designate lands, including the Property, under the official plan of the City (the “First Appeal”). This proceeding was resolved by a settlement between the City, the TRCA and the Owner that was approved by the OMB in a decision dated March 9, 2016 (2016 CanLII 13042).

The Respondent’s comments and actions that are alleged in this complaint to be in contravention of the Code of Conduct are in relation to the second appeal in the context of an ongoing process. To be clear, allegations of a Code contravention within the context of City of Vaughan planning matters may often include matters relating to enforcement and decisions by other decision-making agencies. However, the Integrity Commissioner’s jurisdiction is not removed because a matter is *also* subject of an ongoing matter before an external agency. My investigation, while considering the context within which the complaint was filed, has focused on the allegations that the Respondent used his influence to mislead TRCA Board members and to misrepresent the position of the TRCA to the City of Vaughan Council.



## Issue #2 – Allegations of Extending Preferential Treatment

The complaint also alleged that the Respondent's actions were intended to expedite development on 230 Grand Trunk Avenue for a third party or parties who contributed significantly to his election campaigns. The Complainant provided information about comments made by the Respondent after the 2014 election. The Complainant relied upon these comments to substantiate his allegations that the Respondent's actions constituted preferential treatment to an individual or organization in which the Respondent had a pecuniary interest.

### ***B. Rule 7 (Improper Use of Influence)***

Rule 7 of the Code prohibits Members from participating in activities that grant or appear to grant any special consideration, treatment, or advantage to an individual which is not available to every other individual:

#### **Rule No. 7 - Improper Use of Influence:**

1. No Member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Such conduct would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a Member's influence within Council in return for present action or inaction by the beneficiary.

Members are required to be free from bias and prejudgment in respect of the decisions that are part of a Member's political and legislative duties. I find that the test for determining whether there is a reasonable apprehension of bias in respect of a Member is the same as the test established by courts with respect to an administrative tribunal:

... [W]hat would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. (*Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, [2015] 2 SCR 282 at para. 20)

### ***C. Rule 1(c) (Avoiding Improper Use of Influence and Conflicts of Interest)***

Rule 1(c) of the Code requires Members to avoid the improper use of influence and prohibits them from extending preferential treatment to organizations in which they have a pecuniary interest:

1. (c) Members of Council shall avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real. Members of Council shall not extend, in their discharge of their official duties, preferential treatment to family members, organizations or groups in which they or their family member have a pecuniary interest.

**III. Investigation and Submissions of the Respondent*****A. The Respondent's Response to the Complaint***

The Respondent provided a written response to the complaint. In his response, the Respondent expressed his concern that the complaint was an improper “attempt to apply Rule 7 [of the Code] which specifically deals with interactions between Members of Council and the City administration.” In his view, the Code did not apply to interactions with members of the TRCA Board or TRCA staff.

The Respondent went on to express his complete disagreement with the allegations contained in the complaint and his belief that:

[The Complainant] is unhappy with the outcome of the Ontario Municipal Board hearing... This is a decision of an independent body which must be respected despite the fact that there may be some disagreement with the outcome. When I have stated that the City's hands were tied, I was referring to the fact that the OMB decision dictates the land uses on the subject lands.

Part of my role on the Board of the TRCA is to discuss and debate issues that come before the Board. Disagreement between members of the Board may occur on occasion and may be expressed at meetings of the Board, such as the meeting of May 27, 2016 referenced by [the Complainant]. This does not substantiate the allegation that the TRCA Board or staff were misled in any way.'

***B. The Investigation Process***

I conducted interviews with 15 individuals in respect of my investigation. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily pursuant to my exercise of the Code Protocol investigation powers. Section 10 of the Code Protocol states in part:

10. (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

In the course of my investigation, I also reviewed public and confidential City documents, emails, audio and video recordings of meetings and certain other materials.

***C. Respondent's Response to Preliminary Report***

On June 6, 2017, I provided to the Complainant and the Respondent a copy of my Preliminary Report containing my preliminary findings, in which I determined that the Respondent's conduct had breached Rule 7 of the Code.

I advised the parties that they were being provided a copy of my preliminary findings in advance of the issuance of my Final Report pursuant to section 12(1) of the Code Protocol. I invited the

parties to provide comments on any errors or omissions of fact. The parties were also invited to furnish a statement that I would take into consideration in drafting my Final Report to Council. I advised the parties that this request for comments was not to be viewed as an opportunity to provide any additional evidence or responses to allegations contained in the complaint.

On June 13, 2017, the Respondent delivered a response to the Preliminary Report. He indicated that he disagreed with the allegations and my findings. I have appended a redacted copy of his response without attachments to this Report for reasons that I describe below.

The Respondent denied that he had represented to Council that the TRCA had withdrawn its objection to the Development during the meeting of June 2015. The Respondent also provided information to “complete the timeline of events” described in the Preliminary Report. He suggested that including a description of these omitted events was “crucial in proving that [he] had no influence in the outcome” of the matters underlying the Complaint.

The Respondent’s timeline included descriptions of email communications from a City solicitor to Council, as well as the email communications themselves. It is not necessary to describe the content of these communications to address the issues raised in this report. As the City of Vaughan has claimed solicitor-client privilege with respect to these emails, I have redacted the descriptions of these email communications and have not included the attachments to the Respondents’ response.

In substance, the Respondent’s timeline notes that the City and the TRCA had agreed to settle an appeal before the OMB before the Respondent made his comment during the May 2, 2016 public hearing that the City’s “hands were tied” with respect to the Development. Although the Respondent’s observation is correct, I find that his comment nevertheless misrepresented the TRCA’s position in respect of the Development for the reasons described below.

#### **IV. Background**

##### ***A. TRCA***

In a City of Vaughan Committee of the Whole Staff Report (#5.1 - February 7, 2017), City of Vaughan staff provided a description of two OMB appeals involving the Development. I set out below, a portion of that report verbatim:

On March 9, 2016, the Ontario Municipal Board (“OMB”) issued a decision following a Settlement Hearing between the City of Vaughan, the TRCA and the landowner, allowing an appeal by the Owner to re-designate the lands as part of an appeal to the City of Vaughan Official Plan 2010 (VOP 2010). The OMB decision approved the designation of the entire property from “Natural Areas”.

A previous Owner illegally removed/cut down the majority of the woodlot and was successfully prosecuted under the York Region Forest Conservation By-law. Subsequent to the tree removal activity, new trees were planted. The previous Owner appealed the VOP 2010 Natural Areas designation of the site to the OMB on June 6, 2012. The site was



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purchased by a new owner, who assumed the OMB Appeal on April 10, 2015.

The Owner submitted Draft Plan amendments in January 2016 and April 2016. In a memorandum dated June 21, 2016, the TRCA provided comments with respect to the original development application (Phases 1 and 2). The TRCA advised that the property contained environmental heritage/hydrologically sensitive features and significant wildlife habituated and endangered species. In addition, the TRCA advised that the Preliminary Environmental Impact Study submitted in January 2016 in support of the application by the Owner did not complete the required assessment.

In the first proceeding, the Owner appealed to the OMB to re-designate lands, including the Property, under the official plan of the City (the “First Appeal”). This proceeding was resolved by a settlement between the City, the TRCA and the Owner that was approved by the OMB in a decision dated March 9, 2016 (2016 CanLII 13042).

The Complainant alleges that at a Council meeting (in June 2015) prior to the settlement of the First Appeal (in March 2016), the Respondent represented to Council that the TRCA did not have any objections to the Development.

As a result of the First Appeal, the OMB accepted the proposed modification to the official plan. It noted, however, that there might be significant wildlife habitat and woodlands on portions of the Property. As a result, the modified plan required the Owner to complete a number of detailed studies to the satisfaction of the City and the TRCA prior to developing the Property.

The Owner subsequently applied to obtain certain by-law changes and an approval of a draft plan of subdivision that were required for the Development. As described above in the City staff report, the TRCA raised concerns about the Owner’s plan. When the plans were not approved by the City, the Owner subsequently commenced a second appeal to the OMB (the “**Second Appeal**”). This proceeding remains ongoing.

The Respondent’s comments to residents that the “hands of the City were tied” – because of the settlement of the First Appeal – were made in the context of this ongoing process.

At that time, however, the TRCA continued to voice concerns about the Development. In a letter to community residents dated June 8, 2016, the TRCA described its position on the Owner’s plans for the Development. The TRCA letter (portions of which I set out below) indicated that the TRCA had insisted at the First Appeal that the Owner comply with conservation regulations and policies and that it continued to work to ensure that conservation interests were protected:

Thank you for attending Authority Meeting #4/16, of the Toronto and Region Conservation Authority (TRCA), held on May 27, 2016. The matter of development at 230 Grand Trunk Road was addressed by the Authority by the adoption of Resolution #A75/16 in regard to an appeal of the Vaughan Official Plan 2010... which was approved as follows:

THAT the following Resolution #A142/15 approved at Authority Meeting #7/15, held on July 24, 2015, be received and become a public record:

THAT the participation of Toronto and Region Conservation Authority (TRCA) as

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a party before the Ontario Municipal Board (OMB) be re-affirmed as it relates to the subject appeal of the Vaughan Official Plan (VOP 2010) on lands ...;

THAT TRCA staff be directed to appear on behalf of TRCA on the subject appeal before the OMB and to continue to represent TRCA on matters relating to natural heritage and Provincial interest (landform, erosion, water management, hazard lands);

THAT staff be directed to continue to work towards a settlement with the City of Vaughan, the appellant and other parties to ensure that the requirements of the Living City Policies, TRCA's Ontario Regulation 166//06, as amended..., Oak Ridges Moraine Conservation Plan (ORMCP) and Provincial Policy Statement (PPS) are met...

**TRCA was the only Party present at the OMB hearing to ensure the designation of the site considers the requirements of TRCA's The Living City Policies, TRCA's permitting and regulatory requirements, the ORMCP and the PPS. This approach to policy was essential as the proponents had not completed any detailed technical studies necessary to confirm development potential.** The landowner and the Ontario Municipal Board supported this position and the settlement was approved.

**TRCA was placed in the unique situation of attending an OMB hearing in opposition to a proposed land use re-designation without the support of provincial, municipal and regional partners. We managed to ensure that TRCA's interests and environmental mandates, and through the process also components of the mandate of others, were protected and addressed within the Official Plan.**

We can assure you that we will continue to protect TRCA's interests and carry out our regulatory mandate as the development process progresses. **(emphasis added)**

### ***B. Region of York***

I have been advised by senior staff at the Region of York that although Planning Act applications are circulated to the Region of York ("Region") for review, the authority to approve subdivision applications lies with the local municipality (in this case, the City of Vaughan).

Although certain applications are circulated to the Region, it does not usually become involved in specific site disputes unless it determines that there are regional interests at issue. In respect of the Property, the Region concluded, as indicated below in comments I received from Region staff, that the outstanding issues related to "the limits of development with respect to natural versus urban uses on a site specific basis", which was within the mandate of the TRCA:

We knew that the TRCA had an interest in this matter. They possess the appropriate staff to determine the limits of development...The Region ensures that the local official plans contain appropriate policies to protect the natural environment. When boundary issues or the quality and quantity associated with the natural environment, the Region defers the protection of the Regional interest to the technical experts at the TRCA...The TRCA

represents the Region's interests through [a] Memorandum of Understanding.

The situation with the Grand Trunk property is that an application to change/amend the Vaughan Official Plan was not made. The change in land use occurred through the OMB process, outside of a typical public process. Local Councils would have had to endorse any settlement offer, but in in-camera sessions, due to the confidential nature of a Board proceeding.

### **V. Findings of the Integrity Commissioner**

When evaluating the integrity and ethical conduct of a Member of Council, my role is to apply the rules of the Code to the facts gathered throughout the investigation and to make a determination, based on a balance of probabilities, as to whether there has been a breach of the Code.

#### ***A. Issue #1 – Allegations of Improper Use of Influence***

I find that on a balance of probabilities, the Respondent engaged in conduct that constituted improper use of influence and a breach of Rule 7.

In his response, the Respondent explained that when he stated that the "City's hands were tied" at the community meeting of May 2, 2016, he was referring to the fact that the OMB decision dictates the land uses on the subject lands.

In the course of my investigation, I was provided with evidence by individuals, including in respect of relevant TRCA Board meetings and the City of Vaughan meetings. In addition, I had the opportunity to review audio and video recorded meetings including an audio recording of the Respondent's remarks at the May 2, 2016 meeting. The Respondent's recorded remarks contradict his evidence with respect to his comment about the "City's hands being tied". In fact, this comment directly followed his representation that the TRCA had decided to settle with the Owner.

This representation was not accurate. As indicated in its letter of June 8, 2016, the TRCA continued to have concerns about the proposed development. Despite the Respondent's attempts to persuade the TRCA to withdraw from the proceeding, the TRCA Board continued to oppose the Development. As a result, the Respondent's remark that the "City's hands were tied" was inaccurate and misleading and designed to further third-party interests. It should be noted that the TRCA supported, through the settlement agreement with the parties, the principle of development, subject to the Owner's completion of certain studies.

In the course of my investigation, I also interviewed individuals who had attended the relevant TRCA Board meetings and Council meetings and provided evidence of the Respondent's comments at these meetings. Based on this evidence, I find that the Respondent did misrepresent the positions of the respective organizations, for which he held positions of significant authority, being Vice Chair of the TRCA and Deputy Mayor and Regional Councillor of the City of Vaughan.

In addition to the above-noted positions, the Respondent also sat as a Regional Councillor representing the City of Vaughan on York Regional Council in relation to planning matters. The Respondent was in the unique position of being able to vote on a decision to enter into a settlement agreement with the Owner of the Development, and being on the agency that had responsibility

for advising municipalities on what lands should be protected. Although the Respondent provided information to “complete the timeline of events” described in the Preliminary Report, suggesting that including a description of these omitted events was “crucial in proving that [he] had no influence in the outcome” of the matters underlying the Complaint, the findings in this Report are not solely based on the Respondent’s comments during in camera meetings.

In light of this evidence, I find that the Respondent did use the influence of his office as Regional Councillor on Vaughan City Council and Vice Chair on the TRCA Board to interfere with the unfettered discussion of both entities. However, I did not find that the Respondent’s conduct was brought about because of the lobbying of any third party.

Based on all the evidence before me, I have accordingly determined that the Respondent breached Rule 7 of the Code.

### ***B. Issue #2 – Allegations of Extending Preferential Treatment***

The Complainant sets out in the complaint that the Respondent’s actions were intended to expedite the Development for a third party or third parties, who had contributed significantly to the Respondent’s election campaigns. The Complainant provided information confirming comments made by the Respondent after the 2014 election to substantiate the past support for the Respondent.

If a Member seeks to secure a benefit or unfair advantage of any kind for an individual or organization, in return for that individual’s donation to or support for their election campaign, it would clearly constitute an improper use of influence, contrary to the Code. The Complainant relied upon these comments and other information provided to me to substantiate the allegations that the Respondent’s actions constituted preferential treatment to an individual or organization in which the Respondent had a pecuniary interest. Such conduct would also likely amount to evidence of corruption, the enforcement of which would fall outside of the investigative jurisdiction of the Integrity Commissioner. For the purpose of this investigation, I do not make any adverse findings in respect of any third party.

To establish that a Member has improperly extended preferential treatment to an organization in breach of the Code, the following elements must be present:

1. The Member must know the donor who made the campaign donation, and;
2. The Member of Council must also know that the donor made a campaign donation;  
and
3. The Member must have made a promise (or must have acted so that it was reasonable to believe that he or she made a promise) to grant a future unfair advantage or provide a benefit in return for the donor’s support for their election campaign.

Unless all three elements are present, the mere receipt of a campaign donation from an individual or corporation would generally not give rise to a Code conflict and would not trigger the application of Rule 1(c) of the Code.

Although it appears that the Respondent was aware that the Owner made a campaign contribution,

there is insufficient evidence to conclude that the Respondent's actions were carried out with the intent to extend preferential treatment to an organization because it had donated to his election campaign and there was no evidence that the Respondent's conduct was brought about because of the lobbying of any third party.

### VI. Lobbying a Member of Council

Although I had found that the allegations of preferential treatment were not made out in this case, I wish to offer the following observations and guidance about the appropriate manner in which the lobbying of a Member of Council should be carried out.

As I have stated in my City of Vaughan Complaint Investigation Report #0114, lobbying consists of activities that can influence the opinions or actions of a public office holder.

The City of Vaughan has enacted By-law Number 105-2016 to establish a voluntary lobbyist registry (the "Lobbying By-Law"). The Lobbying By-Law defines lobbying as "any communication with a public office holder by an individual who represents a business or financial interest with the goal of trying to influence any legislative action, including... a bylaw, motion, resolution or the outcome of a decision on any matter before Council..." Lobbying typically involves communicating outside of a public forum such as a council meeting or a public hearing. It is often, but not always, done by people who are paid or compensated in other ways for their efforts.

Lobbying is one way stakeholders can help public office holders make informed decisions. When lobbying is transparent to the public and carried out in accordance with the governing by-laws, it is a legitimate and often helpful activity that allows the City to benefit from positive opportunities without the public appearance of self-interest or bias.

Under the current Lobbying By-Law, lobbyists must adhere to a code of conduct and are prohibited from lobbying in certain circumstances. As well, lobbyists may choose to register in a voluntary lobbyist registry that is overseen by the Lobbyist Registrar. Registering lobbying activities in this manner allows both public office holders and the public to know who is attempting to influence municipal government.

Although a lobbyist is not required to be registered, Members should be mindful that dealing with unregistered lobbyists in a manner that lacks transparency risks the *appearance* of an improper use of the influence of their office or the appearance of a conflict of interest, both of which are prohibited by Rule 1(c) of the Code. In certain circumstances, it may also give rise to the appearance of improper activity by the lobbyist, which is prohibited under the code of conduct governing lobbyists.

In this case, the prior owners of the Property had made repeated attempts to develop the Property and obtain the required amendments to do so. Residents opposed such developments and relied upon the current processes in place to determine what properties are designated as protected lands. The Respondent improperly used his office to influence the decisions of an agency whose purpose is to advise municipalities on what lands should remain protected, improperly affording preferential treatment to the Owner over the residents.



Such an outcome upsets the intricate balance struck by the current processes that ensure that development is sustainable, by tilting the scales in favour of larger developers and to the detriment of residents and smaller developers who seek to be afforded the same opportunities and to receive consistent application of the rules to their development applications. If the Respondents' actions were brought about by lobbying (and I have not found that they were), such lobbying would not constitute the legitimate and positive activity that enhances the activities of municipal government.

### VII. Public Reporting Requirement of the Integrity Commissioner

Given that the Respondent is no longer a sitting Member of Council and that no sanction could be imposed by Council, I decided that an abbreviated period within which the parties were required to provide their comments was appropriate.

Section 223.3(1) of the *Municipal Act, 2001* (the "Act") empowers the Integrity Commissioner to report to Council, which are in turn made public. Section 223.6(2) of the Act confirms that the Integrity Commissioner has the discretion to disclose in the report "such matters as in the Commissioner's opinion are necessary for the purposes of the report":

Report to council

223.6.

...

Report about conduct

(2) If the Commissioner reports to the municipality... his or her opinion about whether a member of council... has contravened the applicable code of conduct, the Commissioner may disclose in the report **such matters as in the Commissioner's opinion are necessary for the purposes of the report.**

In addition, section 12 of the Code Protocol explains that where a complaint is sustained, as it has been here, the Integrity Commissioner is required to "outline the findings, the terms of any settlement, or recommended corrective action".

It is apparent from these provisions that my findings and the evidence on which they are based must be disclosed in a public report, whether or not the Respondent remains a sitting Member of City Council. It is also part of the Integrity Commissioner's function to make public any findings that a Member has breached the Code of Conduct, in order to ensure the transparency of municipal government and to denounce and deter misconduct by public officials.

### VIII. Recommendations

Based on the cumulative evidence of the witnesses, my review of the documents, and all of the other information received during the course of this investigation, I have found on the balance of probabilities that the Respondent has contravened Rule 7 of the Code of Conduct. I tender this report of my complaint investigation to the Council of the City of Vaughan for its consideration.

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The conduct demonstrated by the Respondent undermined the public trust placed in him in execution of his public duties. Such conduct compromises the integrity of municipal government and interferes with the institutional safeguards put in place to allow for discussions around the protection of environmentally sensitive lands.

I have brought forward this report in fulfilment of my reporting mandate and my obligation to submit to Council any findings at the conclusion of a Formal Complaint investigation.

Given that a sanction can only be imposed on a sitting Member, the Office of the Integrity Commissioner respectfully submits the above findings without any recommended sanction.

Respectfully submitted by:



Suzanne Craig  
Integrity Commissioner

JUN 13 2017

**Michael Di Biase**  



DATE: June 13, 2017  
TO: Ms. Suzanne Craig  
FROM: Michael Di Biase  
RE: Code of Conduct Complaint Investigation File # 110116(f)

Delivered in person to the: Office of the Integrity Commissioner Suzanne Craig

Dear Ms. Craig:

In your cover Letter sent to me dated June 6, 2017, which accompanied your Interim Report, you invited me to provide a statement that would be appended to your Final Report to Council.

Thank you for taking into consideration my request for a time extension to respond to the Interim Report with comments prior to finalizing your report findings.

I take this opportunity to emphasize again, that I disagree with the allegations made by  and your findings in this matter.

I provide the following comments/information to substantiate my position that I did not contravene Rule #7 of the Code of Conduct.

In reviewing the original letter provided by  to substantiate his claim, he stated the following concerns, none of which had any influence or control:

1. That he called planning staff after he noticed a proposed development sign at 230 Grand Trunk Avenue and was told by staff that "the development was an Ontario Municipal Board decision, and City staff really had their hands tied with the matter."
2. He also expressed frustration that an OMB hearing was held regarding a development in his backyard and the City did not inform residents on his street about it.
3. He expressed frustration that he was confused about the process; more specifically, why have a public meeting after the OMB decision and why the developer went directly to the OMB without approaching the City of Vaughan with a re-zoning application?
4. While he was happy that the City of Vaughan responded quickly after the previous owner illegally cut trees, he was disappointed that no one from the City of Vaughan or the Region of York monitored the replanting or the progress of the rehabilitation.

-2-

In reading your Interim Report you noted the following:

1. That the complainant alleges that during a closed session meeting of the June 16, 2015 Council meeting "I represented that the TRCA had no outstanding concerns about the development and suggested that TRCA would likely withdraw its objections to the development". I could not find that allegation in the letter provided by [REDACTED] to substantiate his claim. In fact, since this was a closed session meeting, I am perplexed as how [REDACTED] would have known what was said in the meeting. For the record, I did not make those comments and I am providing an e-mail dated May 16, 2016 from [REDACTED] to Regional Councillor Ferri (Attachment 6) regarding 230 Grand Trunk Avenue development. The e-mail is in regards to a member's resolution brought forward by Regional Councillor Ferri for the development on Grand Trunk. Since this is a closed session matter, I will refrain from discussing it openly, however, I urge you to obtain a copy and review its content since it has direct bearing on the issues raised by [REDACTED]

I did not suggest or convey that the TRCA had withdrawn its objection to the development. This is a complete falsehood and having read your report I am at a loss as to how you have come to your conclusion.

2. In the background section of your interim report you noted a few dates of specific meetings and decisions. I would like to complete the timeline by adding the meetings and decisions that were omitted from the report. These omissions are crucial in proving that I had no influence in the outcome of this matter.
  - a. June 16, 2015 member Resolution [REDACTED] - (In the City's possession)
  - b. [REDACTED] (Provided attachment #1)
  - c. [REDACTED] - (Provided attachment #2)
  - d. [REDACTED] (Provided attachment #3)
  - e. [REDACTED]
  - f. [REDACTED] (Provided attachment #4)
  - g. [REDACTED] (Attachment #5)
  - h. May 16, 2016 email from [REDACTED] - (Attachment #6)

The information contained in those e-mails (copies provided) clearly show, without any doubt, that a settlement was reached between the City of Vaughan and the TRCA as early as September 30, 2015. Details of both settlements were presented to the Ontario Municipal Board on October 14, 2015 and the Board rendered a decision on March 9, 2016. Therefore, I am very confused as to why you stated in your background that "the TRCA letter dated June 8, 2016 indicated that the TRCA continued to oppose the Owner's OMB appeal but was working towards a settlement to address the outstanding environmental concerns about the development".

Clearly, as evidenced by the OMB decision of March 9, 2016, the decision was to approve the proposed modifications by the developer unamended.

I'm also puzzled that you also noted that TRCA was the only party at the OMB hearing without support from its Municipal partners. **This is incorrect.** [REDACTED]

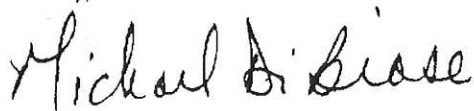
[REDACTED]

[REDACTED] City's legal staff was also in attendance.

The information noted above, which can be also be validated by you obtaining your own copies, will demonstrate that when I stated that "my hands were tied" at the May 2, 2016 meeting, that was indeed referring to the fact that the OMB decision will ultimately dictate the land use of the subject lands. **I could not have changed the OMB decision outcome, so the "City's hands were tied"**. In addition, on May 2, 2016, the hearing was finished and the OMB decision was pending. In addition, the City of Vaughan and the TRCA had already agreed with settlement terms with the developer. Your representation of the TRCA June 8, 2016 letter is incorrect as they could **NOT** continue to oppose the owner appeal since they reached a settlement on September 30, 2015 with the developer/owner, and the OMB rendered a decision on March 9, 2016 in support of the owner/developer.

Your findings are based upon incomplete and inaccurate facts. I, at no time, engaged in conduct that constituted improper use of influence. I, at all material time, acted in the best interest of the City of Vaughan. I would respectfully request that you review the information provided and specifically the complete timeline which completes the entire picture, instead of a few selected dates that skews the truth.

Sincerely,



Michael Di Biase

cc. [Daniel.kostopoulos@vaughan.ca](mailto:Daniel.kostopoulos@vaughan.ca); [Claudia.Storto@vaughan.ca](mailto:Claudia.Storto@vaughan.ca); [John.mackenzie@vaughan.ca](mailto:John.mackenzie@vaughan.ca);





CANADA 150



Wednesday June 7, 2017

Sent by Email Transmission to:



Mr. Michael DiBiase



**Re: Code of Conduct Complaint Investigation File #110116(f)**

I am in receipt of your email correspondence dated June 7, 2017, in which you requested that my office not proceed with delivering a final report until you were provided with an equitable opportunity to reply.

Please be advised that I take this matter very seriously and am mindful of providing you with a reasonable opportunity to put forward any comments regarding my Interim Report.

The Code of Conduct complaint investigation process for the City of Vaughan is prescribed in the Code Complaint Protocol. Section 12(1) of the Code Complaint Protocol states that:

The Integrity Commissioner shall report to the complainant and the member general no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint...

In a recent decision of the, Ontario Superior Court of Justice, Divisional Court, Justice Marrocco stated at paragraph 118:

The Complaint Protocol, which is a City bylaw and therefore also part of the statutory scheme, does not contemplate participation by the [Respondent to the Code Complaint] after responding to the complaint. It does not require that the subject of the investigation receive preliminary findings or get the opportunity to respond to those findings.

In my cover letter to you dated June 6, 2017, which you received today with a copy of my Interim Report, I stated that I was providing you with an abbreviated version of my findings. I invited you to provide a statement that I will append to my Final Report to Council. I concluded by stating that I will be submitting my Final Report to Council to the City Clerk's Office on June 8<sup>th</sup> for consideration at the June 20, 2017 Committee of the Whole meeting.



I have taken into consideration your request for a period of time to respond to the Interim Report. While I am not required under the statutory scheme of this Office to provide you an opportunity to respond to the preliminary findings, I have asked you for comments as is my practice prior to finalizing my report findings and submitting my report to Council for consideration. I will allow you until June 14, 2017 to provide me with any comments that you may have regarding my Interim Report.

Finally, as you are aware, I am required to maintain secrecy with respect to all matters that come to my knowledge in the course of my duties under Part V.1 of the *Municipal Act*, until such time as I submit my final report to Council in open session. I note that in your email forwarded to me today, you have copied the City Manager, the Commissioner of Planning, the Commissioner of Legal Services and the Mayor of the City of Vaughan. Please be advised that the Interim Report that I forwarded to you is not a final report and as such, you should not have disclosed it to any third parties, except for your own legal counsel.

Yours very truly,

Suzanne Craig  
Integrity Commissioner