Hamilton City Council

Request for legal counsel and planning expertise re: OMB hearing for
10 Houndtrail Drive, Waterdown Committee of Adjustment Decision,
Application FL/A-09:173

October 27, 2009

Dear Mayor Eisenberger and Hamilton City Councillors:

Since our last correspondence to you, matters have unfolded such that we are compelled to write to you once more on the above noted matter.

Since the ED&P committee meeting of October 20, Councillor McCarthy corresponded to us that she is “mitigating” and further that this is an attempt to negotiate a compromise. I had not heard from her since late May 09 when she made a visit to our rear yard. With regard to requests from us to attend the ED&P committee, her Administrative Assistant advised that she does not attend standing committees where she is not a member. At no time did she indicate to us, what her position was.

When respectfully done, negotiation is 2 sided and may be mediated by an impartial party. There has been no negotiation and we have learned that she is not impartial regarding this matter. She led us to believe that she was trying to reach a compromise, but it has been a one way communication and she has not given us the time of day. Is this what is meant by a democratic process?

Several requests were made to Councillor McCarthy for clarification of the negotiation process and to determine what her position is. Up to and including the writing of this correspondence, she has ignored repeated requests to communicate with us. Although, we were all frustrated by this, and against our better judgement, we sent her a list late on October 26 as she demanded. The reason we did so is to show her and Council, that the residents are acting in good faith. We expected the Councillor to do the same. Now that she has our list and has shared it with the Gladiators, she sees no need to communicate with us in return.

The variances are still numerous. The staff report distributed at the Oct 20 ED&P meeting indicates that only variance number 4 of the original 5 is no longer required, that the applicant will conform with regard to variance 5, and that a further variance may be required for the northerly side yard for the covered deck. This means there are still 4 variances outstanding. The report also states that “further variances may be required pending further clarification from the agent”. Staff advised the ED&P members that building permits were required on structures built in the rear property although they can no longer be enforced due to a statute of limitations.

Councillor McCarthy chose not to come to the Standing Committee meetings where the residents had an opportunity to speak. She chose not to disclose to the members of the ED&P Committee what her position was as ward Councillor. Now she will speak at Council. Conveniently for her, the rules do not allow the residents to delegate. We will all be disappointed in the decision making process if her manipulation of this matter allows
people who do not follow city bylaws or apply for Business permits to be rewarded for their behaviour.

Councillor McCarthy’s pattern of behaviour is now consistent with the applicant; withholding information and introducing things (such as the “negotiation”) at the 11th hour, so that we are not able to appropriately respond.

This correspondence is not about reviewing the facts around the variances, since a decision on the facts as they were, was made by the C of A committee to unanimously deny the variances and the ED&P committee voted 6 in favour of 8 present to recommend sending legal counsel to support that decision and the residents.

We know this has been a complex matter. Please vote your conscience and do the right thing to support the recommendation of the ED&P committee to vote in favour of sending legal Council and other professional expertise to the OMB hearing in support of the C of A Decision and the residents.

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