

Speaking Notes for Delegation to Burlington City Council re Integrity Commissioner
Report-CL-09-03-April 18. 2023

1. Outline of Facts

- COA Meeting-December 12, 2022-last meeting year; 14 matters; over 1000 pages of material to review; meeting lasted over 8 hours.
- The last application related to proposed conversion of garage in a Historical home into a secondary dwelling unit.
- Material reviewed included a Planning Justification Report prepared by Applicant's planner, a report of Planning Staff and a Heritage Impact Assessment prepared for application for approval of Heritage Committee for the conversion. The Heritage Impact Study was referenced extensively in the Staff Report.
- I noted an inconsistency between the Site Plans included in the Planning Justification Report and the commentary in the Heritage Impact Assessment concerning the basement of the main house-specifically the Site Plans showed only a laundry room and general basement area while the Heritage Impact Study stated that the basement included a bedroom, a bathroom and a sitting room.
- I was concerned with this discrepancy as one of the key factors in a minor variance application is the potential negative impact on the neighbourhood and lack of adequate parking space for the occupants.
- The Applicant's representative was a junior planner at Urban in Mind. I pointed out the discrepancy and asked that she resolve the discrepancy. She indicated that she was not familiar with the Heritage Impact Study even though a representative of Urban in Mind had represented the Applicant before the Heritage Committee.
- She then suggested several alternative reasons for the discrepancy none of which made any sense.
- I then suggested that she request a deferral or adjournment of the hearing in order to address the discrepancy, which she declined.
- When it was time to make a decision, I stated that the Applicant's representative was not adequately prepared for the hearing and that her suggested rationale for the discrepancy was not credible. I also noted that I was advised by neighbours of the Applicant of the existence of the living space in the Applicant's basement.

2. Overreach and Errors by IC

- IC does not have authority to determine the rules and procedures of the COA; however, under the guise of enforcing the code of conduct, this is in fact what he has done.

- He determined that my referencing the Heritage Impact Study was improper. I submit that the Study was extensively referenced in the Staff Report and so it was appropriate and relevant to the hearing.
- He determined that hearsay evidence cannot be introduced at a COA hearing. No authority cited for that finding and wrong at law. Refer to section 15(1) of the SPPA.

What is admissible in evidence at a hearing

15.(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

- (a) any oral testimony; and
- (b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

Reference Article *Evidence in Administrative Proceedings*

Reference confirmatory legal opinion from Guy Giorno.

- He determined that it was improper for me to introduce evidence that I had obtained separately from the hearing. He ignores or isn't aware of the site visit process recommended or mandated by all Ontario COAs and that COA members regularly introduce evidence obtained from site visits.
- He determined that the Applicant had an unqualified legal right to a secondary dwelling unit in her home. This is incorrect as the Burlington Zoning By-law contains preconditions to such rights. It is the obligation of the COA to determine if these preconditions had been met. A copy of the applicable Zoning bylaw provisions is enclosed with these speaking notes.
- Worst of all he determines that breach of these rules of procedure or evidence automatically translates into breaches of the code of conduct.
- This approach by the IC is not limited to the COA but should be read as applying to proceedings of all City Committees as well as those of City Council itself.

3. No Interview with IC

Notwithstanding the comments in the IC Report about his process being governed by procedural fairness and attempting to find a resolution to the issue, I found the whole approach by the IG to be hostile and adversarial. The best example of this is that at no time did he offer me the opportunity for an interview and required all communications to be in writing.