

Township of Augusta

**Report Regarding
Code of Conduct Complaint**

**Andrew Tremayne
Integrity Commissioner
August 10, 2020**

Introduction

1. On December 2, 2019, Augusta Township Council passed a motion to approve a zoning by-law amendment in connection with a proposed tourist commercial development. This is a report on an investigation into a complaint filed by Mary Peterson, a resident of the Township, about the way that the Mayor and Council handled some of her concerns about the proposed development.
2. Mrs. Peterson filed her complaint on or about April 8, 2020. At that time, the Province of Ontario was in the “COVID-19 period,” where we remain. Provincial regulations, Municipal by-laws, and Public Health guidelines have had a direct impact on whether and how in-person meetings and other business may be conducted. This has also had a direct impact on my ability to conduct, and the parties’ ability to participate in, the investigation into Mrs. Peterson’s complaint. Most notably, there were considerable delays, particularly with respect to the retrieval of relevant documents.
3. The Township of Augusta has adopted a *Code of Conduct* in order to establish broad guidelines and principles of ethical behaviour for Members of Council in connection with their official duties. The *Township of Augusta Council Code of Conduct* (Schedule “A” to by-law # 3356-2018) applies to all Members of Council, including the Mayor. I was re-appointed Integrity Commissioner for the Township on December 11, 2018.¹
4. A very brief history of the proposed development is helpful to provide background and context. Sometime in 2016, a developer announced his intentions to build a waterpark (referred from now on in this report as “Aquaworld”) in Augusta Township. The developer publicized his proposal widely, likely with the intention of gathering support and investment for the project. Mrs. Peterson, who lives near the proposed site of Aquaworld, opposes the project.
5. Eventually, on October 5, 2018, the developer (with the consent of the owner of the property) filed an application with the Township to re-zone lands to permit the development. The application was deemed to be complete on August 21, 2019. The developer, who is required to hold a public meeting about the zoning by-law amendment that it was proposing, did so on September 21, 2019.
6. The Township’s Planning Advisory Committee (referred to from now on in this report as the “PAC”) met on November 28, 2019, to review and discuss the proposed

¹ My authority to provide Integrity Commissioner services is found in the Township of Augusta by-law # 3390-2018, pursuant to Report No. 2018-134.

zoning by-law amendment. On December 2, 2019, as stated above, Augusta Township Council passed a motion to approve the zoning by-law amendment.

7. Mrs. Peterson has filed an appeal of the zoning by-law amendment with the Local Planning Appeal Tribunal. The appeal remains outstanding.

Process and Mandate

8. It is important to note at the outset of this report that the role of an Integrity Commissioner is quite limited. The *Code of Conduct* sets expectations for the behaviour (or conduct) of Members of Council. The *Code* is a by-law to which the principles of statutory interpretation apply. I am required to interpret the by-law as it was enacted, and I cannot add new provisions, even ones that may be in the overall public interest.

9. The *Code* does not give residents a right to a particular outcome with respect to matters that come before Council. It is not my role to examine the merits of the zoning by-law amendment that was passed by the Township on December 2, 2019, nor is it my role to determine whether the Aquaworld proposal is in the best interests of the Township. These are political questions, and they lie entirely outside the *Code*. In short, my jurisdiction as Integrity Commissioner is grounded in the *Code*, and my jurisdiction is therefore limited to determining whether the *Code* was breached.

10. I received a mandate to investigate this complaint on April 6, 2020, and I received a copy of the complaint from Mrs. Peterson on April 9, 2020. I interviewed Mrs. Peterson by telephone on April 24, 2020.

11. I provided a copy of the complaint to Mayor Malanka on April 24, 2020. I interviewed Mayor Malanka on May 1, 2020, and he provided a written response to the complaint on May 8, 2020.

12. I provided a copy of the Mayor's response to Mrs. Peterson on May 20, 2020, and Mrs. Peterson provided written replies on May 21 and 25, 2020.

13. After I reviewed all of these submissions, I requested copies of relevant correspondence between Mrs. Peterson and the Township. This request was completed by the Township on July 22, 2020.

The Complaint

14. Mrs. Peterson's complaint highlights the Purpose clause of the *Code of Conduct*, which reads as follows:

2. PURPOSE

The Council of the Township of Augusta is responsible for and dedicated to providing good and effective government for the public in an open, accountable and transparent manner.

15. It is generally understood that a "purpose" clause is simply a statement of the general intent or purpose of a document, and does not confer any particular rights or obligations upon any party. In other words, the Purpose clause of the *Code* sets the interpretative framework for the provisions which follow, but it does not create any specific duties or requirements for the conduct of Members of Council.

16. Aside from Section 5 of the *Code*, which sets out several general guiding principles, the balance of the *Code* consists of specific provisions which establish the standards expected for Members of Council in the following areas: confidentiality, rules and etiquette at meetings, acceptance of gifts or benefits, discrimination and harassment, use of township property, public communications, conflicts of interest, and roles and responsibilities for Council and staff. A careful review of Mrs. Peterson's complaint gives rise to a concern under only one of these specific areas of the *Code*, namely the section on rules and etiquette at meetings.

17. The balance of the complaint reflects Mrs. Peterson's view that the Township ought to have held public meetings about Aquaworld. She also expresses the opinion that her concerns about Aquaworld were not heard by Members of Council or addressed in the planning report that was prepared as part of the proposal to amend the zoning by-law. It is not my role to determine whether there ought to have been public meetings (or, perhaps more accurately, additional public meetings, because the developer held a public meeting on September 21, 2019); nor is it my role to decide whether Mrs. Peterson's concerns about Aquaworld were addressed in the planning report. As stated above, these are political matters that do not fall within my jurisdiction because they lie entirely outside the *Code of Conduct*.

18. Having carefully reviewed the complaint, I find that certain allegations in the complaint raise concerns with respect to the following sections of the *Code of Conduct*:

5. GENERAL

- This Code does not prohibit members of Council from properly using their influence on behalf of constituents.
- Members are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official
- Members shall at all times serve and be seen to serve the interests of their constituents in a conscientious manner.
- Members are expected to perform their duties of office with integrity, accountability and transparency.

[emphasis added]

....

7. RULES AND ETIQUETTE - MEETINGS

During Council and other meetings where they are representing the Township, Members of Council shall conduct themselves with decorum, in a civil manner and in accordance with the Township's Procedural By-Law.

19. **The first part of Mrs. Peterson's complaint is as follows:**

When the Aquaworld waterpark proposal was presented to the Township in 2016, I requested public meetings for taxpayers to present their concerns. The Mayor referred me to the zoning meeting when all would be revealed. During the next years I sent emails to the Mayor and Council members with these concerns. I sent my information to the previous Council and then the current Council who took office in December 2018. No member of Council or the Mayor responded to me. Despite numerous attempts the public was not granted a meeting nor were our concerns heard.

I have realized just recently that one of the reasons that the project information was kept quiet is because there are so many safety, environmental and traffic issues. If the entire Township had known all the negatives about the project the Mayor would probably have not been reelected. I did not go public to the entire Township because I did not want to

start a war. I projected a respectful, peaceful policy and cautioned local taxpayers to do the same. But we still were not heard by Mayor and Council.

In July of 2018, I presented a petition signed by eighty six local residents opposed to the project. Still no public meetings were offered.

20. It is important to note that the Township did not receive an application to re-zone lands to permit the development until October 5, 2018. Until that time, the Aquaworld proposal was entirely hypothetical, and it was reasonable for the Township to adopt a “wait and see” approach and not expend time or resources on a proposal that might never even reach the application stage.

21. Nevertheless, the minutes of the Township’s regular meeting of July 9, 2018, shows that Council received and acknowledged “the petition regarding Aquaworld from Mary Peterson.” In response to the complaint, I was provided with correspondence between Mayor Malanka and another resident who signed the petition. This correspondence is dated soon after the Council meeting where the petition was received. This correspondence reads in part as follows:

Mary Peterson attended the last three Council meetings and has expressed concern that the Aquaworld project would adversely affect water wells, local traffic and peaceful life for nearby residents. At her last visit to Council she submitted her petition from 81 residents that essentially repeated these concerns. On each occasion I advised her that the Province and the Municipality would not permit the project to go ahead unless the developer demonstrates to the Province’s standards that the project would not adversely affect wells in the area and that septic water will not be routed to the St Lawrence River. In connection with this, I told Ms. Peterson that the Municipality gets officially involved when the developer submits an application to the Municipality for a zoning amendment for the location of the project which has not happened yet. When the developer submits his application, he will submit the result of all pertinent testing required testing by the Province.

....

I told Mary Peterson that Augusta plans to meet with Prescott when the developer submits his application for re-zoning to discuss traffic options.

....

I can't comment on any statements . . . that Aquaworld's draw on water might cause contaminants from the Landfill to migrate towards Aquaworld as no one has raised this as a serious possibility and my understanding is that Aquaworld will recycle a high percent of water that it uses. All these questions will be posed to the developer at the Public Meeting that will take place before Council considers a motion to re-zone the Aquaworld site. As Mayor, I have committed to ensuring the public meeting is sufficient to hear the concerns of the Public and that the developer and Municipality will do everything possible to mitigate any negative impacts raised. When Council meets to consider approving any aspect of the proposed park, it will have to balance the concerns of those who are opposed to the project with the needs and interests of the entire community.

[emphasis added]

22. This correspondence was sent soon after the July 9, 2018, Council meeting, so it is likely an accurate reflection of what Mayor Malanka said to Mrs. Peterson at that meeting and in previous Council meetings, all in response to her concerns about Aquaworld. In my view, Mayor Malanka's comments in response to Mrs. Peterson's are reasonable, and I note in passing that there is nothing in these comments that raises an issue with respect to the *Code of Conduct*.

23. One of Mrs. Peterson's concerns is that she received no response to some of her written communications to the Township regarding Aquaworld. I have been provided with copies of three email messages that Mrs. Peterson sent to the Township's email address around the time she submitted her petition. While these emails make it very clear that Mrs. Peterson is vehemently opposed to the Aquaworld proposal, none of them ask a question or request a response. In fact, two of the emails close by stating, "Please consider this information. Thank you." In one of the emails, Mrs. Peterson, referring to a conversation that she had with the developer, states, "I don't have questions, I have information I want you to hear." In my view, these emails did not warrant a response, and I note, again in passing, that there is nothing in these communications that raises an issue with respect to the *Code of Conduct*.

24. Mrs. Peterson's complaint continues as follows:

The zoning amendment meeting was held on September 21, 2019. We sat through the developer's presentation receiving information we had not heard before. Then each person was given three minutes to ask questions. I had a twelve page presentation but

that was not allowed. We were told we could make a written submission to the Clerk of the Township after the meeting. Many taxpayers sent in submissions including myself.

I attended a Planning Advisory Committee meeting on November 28, 2019. The Committee was to make their recommendation to Council on the Aquaworld project. I asked if I could say something. If the Mayor had been chairing the meeting I would not have been allowed to speak. A Councillor was chairing and she said yes. I asked if my twelve page report had been seen. Two PAC members spoke up and said NO we would like to see it. It was then revealed that the four Council members had not seen it or any other taxpayer's input. The CAO spoke up and said he would get it to Council. I believe the Mayor saw every piece of information that came into the office opposing Aquaworld.

Had I not received a tip that the PAC meeting was taking place it never would have been known that Council members and PAC had not received any input from taxpayers. PAC members were not aware that Council was going to present the zoning amendment by-law on December 2, 2019. The Planning Advisory Committee is just a front to make taxpayers think they are being represented on planning matters in the Township.

All the information from taxpayers was given to the Township Planner, Glenn Tunnock who presented a forty two page report to Council which did not address taxpayer's concerns. The Planning Advisory Committee received the planner's report on November 27, 2019 and the PAC meeting was held the next day. I heard one PAC member say I wish we had received this information sooner so we could have done some research.

25. The developer, who is legally required to hold a public meeting about the zoning by-law amendment that it was proposing, did so on September 21, 2019. In this meeting, the developer is to present the findings of all of the studies that it is legally required to undertake. For example, it is the developer's responsibility to ensure that its proposal complies with the relevant safety, environmental, and traffic laws and regulations.

26. It is important to note that while the Mayor and Members of Council attended the September 21, 2019 meeting as observers, it was not a meeting of Council, nor did they have any official role in organizing or running the meeting. It was nevertheless an open, public meeting.

27. Mrs. Peterson expresses a concern that her time to speak was limited, but it is generally understood that time limits on presentations in meetings of this nature are not unusual, because they allow for participation by a greater number of parties and prevent a few individuals from monopolizing the available time. Nevertheless, as Mrs. Peterson states in her complaint, she was informed that she could submit her comments in writing, which she did.

28. With respect to the PAC meeting, which was held on November 28, 2019, several important points should be made. First, all meetings of Council and Committees of Council are advertised in advance on the Township website and Facebook page, as well as on a large sign next to the Township offices. The meeting was not a secret, and its proceedings were open and transparent. Second, the role of the PAC is advisory in that its members review and discuss proposals that are to come before Council. It is not a decision-making body, nor is its role to hold public meetings or otherwise consult with the public. As a result, while the meetings are open to the public, the procedural by-laws that apply to the PAC do not contemplate questions from the public or other public participation. Mrs. Peterson states in her complaint that the Chair of the PAC recognized her and allowed her to speak, although the Chair was under no obligation to do so.

29. In response to the complaint, I was provided with correspondence between Mrs. Peterson and the Township. As Mrs. Peterson states in her complaint, after she was invited to file a written submission after the September 21, 2019, public meeting, she did so, and her submission was forwarded to Members of Council. Her submission was also forwarded to the municipal planner for his review, analysis, and recommendations. Mrs. Peterson also submitted a request for information, asking for copies of some of the reports that had been prepared as part of the developer's proposal, and these were sent to her in a timely way.

30. In fact, Mrs. Peterson continued to submit written comments to the Township expressing her opposition to Aquaworld up to and including December 2, 2019, the day that Council considered the motion to approve the zoning by-law amendment. All of these written submissions were forwarded to Members of Council and to the municipal planner in a timely way. Mrs. Peterson also directed a number of emails to certain Township officials, including the Fire Chief, the Clerk, the Community Emergency Management Coordinator, and Public Works officials. According to the documents that I have reviewed, in cases where these emails contained questions, Mrs. Peterson received timely responses to her inquiries.

31. As stated above, it is not my role to assess the merits of the zoning by-law amendment that was considered by Council on December 2, 2019, because this is a political matter. The question of whether the Aquaworld proposal is in the best interests of the Township is also a political matter. The *Code of Conduct* does not give residents a right to a particular outcome with respect to matters that come before Council. I nevertheless note in passing that there is no evidence before me that any of these open, public, and transparent proceedings raises an issue with respect to the *Code of Conduct*. I also note that there is no evidence before me that Members of Council made themselves unavailable or that they were somehow unaccountable to all Township residents, including Mrs. Peterson, at any time relevant to the complaint.

32. In her complaint, Mrs. Peterson notes that the municipal planner prepared and presented a report, which went to all members of the PAC and Members of Council. While it is not my role to assess the merits of this report, I note that at page 26, it includes the following statement with respect to public comments that were received:

Public Comments

A statutory public meeting was held under the auspices of Section 34 of the Planning Act on Saturday, September 21, 2019, 10:00 am at the Maitland Education Recreation Centre. The format of the meeting included presentations by the proponent's consultant team with respect to land use planning, traffic, and sewage and water services. The public was then invited to make oral or written presentations.

The scope of the comments varied from those who supported the venture to those who questioned the traffic impacts and responsibility for road upgrades, impact on the CN Rail crossing and needed upgrades to the crossing, the environmental impacts such as contaminant discharge into Bradley's Creek, the potential impact on shallow domestic wells and compensation in the event of contamination of wells and groundwater, need for effective stormwater management, how planning the resort related to climate change concerns, measures that should be undertaken for water conservation, benefits to tax revenues and employment for the area, land use compatibility with adjacent land uses, waste management for garbage generated from the site, impacts on emergency fire and paramedical services, impact on property values, questions of consistency with the provincial policy statement, and the financial viability of the project.

The consultant team and municipal staff responded in providing answers to public concerns.

[emphasis added]

33. In my view, this statement reasonably describes the concerns that Mrs. Peterson and other residents brought forward. In other words, her concerns were "heard" in the sense that the municipal planner reviewed and considered them as part of the planning process. Further evidence that the concerns of Mrs. Peterson and other residents were considered is found in the "Discussion" section of the report, which follows immediately after the "Public Comments" section:

Discussion

The Aquaworld Commercial Resort is the most significant project on Augusta in living history. The estimated annual economic impact is in the order of \$28 million on an

investment in the order of \$115 million. Revenues will accrue to local business, to the Township and to the benefit of those that will be employed at the resort.

The resort will have significant impacts on the natural environment, notably water resources and natural heritage resources. The reports that have been undertaken and peer reviewed indicate that the environmental impacts can be appropriately managed through careful site develop and through sustainable on-site management practices over the long term such as in water conservation, recycling and conservation of vegetative cover. The success of these measures will also depend on obtaining and compliance with approvals such as an Environmental Compliance Approval for the sewage treatment plant, a permit to take water, butternut tree conservation etc. The use of site plan control under Section 41 of the Planning Act will be a key instrument in addressing many of the development details.

[emphasis added]

34. The final part of Mrs. Peterson's complaint reads as follows:

On December 2, 2019 the Mayor and Council gave first, second and third readings of the by-law and it was passed. At one point during the meeting I asked if I could question something and the Mayor gave me a stern NO! I spoke up anyway. When the by-law was officially passed the Mayor looked directly at me and said "any questions?"

I have been a resident of the Township of Augusta for fifty two years and I have never been treated by a public official in such a rude, power over, condescending manner. All the taxpayers in this local area were treated this way and have suffered mental anguish over the four years since this project came to light. This Mayor and Council have WASTED four years of our lives over this ANOMOLY. The proposed project is in the backyards of ten residential homes and these taxpayers were shut out of the entire process.

[Note: the balance of the complaint repeats and summarize the essence of Mrs. Peterson's concerns and does not disclose any additional information that could constitute a breach of the Code of Conduct]

35. As stated above, this part of Mrs. Peterson's complaint gives rise to a concern under the section of the *Code of Conduct* that deals with rules and etiquette at meetings. In response to Mrs. Peterson's allegations about the way she was spoken to by Mayor Malanka during the December 2, 2019, Council meeting, the Mayor states that Mrs. Peterson's attempt to speak came at the time when the municipal planner was presenting

his report to Council. Specifically, says the Mayor, the planner was presenting his report and recommendations to Council and commenting that the hydrological findings in the report had been peer-reviewed and accepted by other planning engineers. Council members had an opportunity to ask questions or request clarification, and when Mrs. Peterson attempted to insert herself into Council's discussion by asking if she could question something, he replied, "no," the Mayor states.

36. The Mayor disagrees that he spoke sternly to Mrs. Peterson, but accepts that she may have felt that he did so. However, the Mayor adds, the procedural by-law that regulates Council meetings provides an opportunity for comments and questions from the public and press at the end of the meeting and not during Council's deliberations. As a result, it would have been inappropriate for him to have allowed Mrs. Peterson to speak during that part of the meeting, and allowing her to do so would have been contrary to the procedural by-law.

37. I turn briefly to the allegation that after the by-law was passed, the Mayor asked Mrs. Peterson, "Any questions?" Mrs. Peterson clarified this exchange as follows: "He specifically asked me that question, I responded to him, 'is the by-law passed 1st 2nd and 3rd reading.' He said, 'YES,' and I said, 'NO questions.'" There is nothing in this exchange that raises an issue with respect to the *Code of Conduct*.

38. In assessing the allegation that Mayor Malanka sternly said, "no" to Mrs. Peterson when she asked if she could say something, the standard to be applied is whether this exchange was conducted with decorum, in a civil manner, and in accordance with the Township's Procedural By-Law.

39. First, I note that it would have been inappropriate for the Mayor to have allowed Mrs. Peterson to speak during this part of the Council meeting and to insert herself into Council's discussion. As Chair of the meeting, it was appropriate for the Mayor to enforce reasonable rules of order and to comply with the procedural by-law. As stated above, the relevant section of the *Code* states that Members are not only to conduct themselves with decorum, and in a civil manner, they are also to do so in accordance with the Township's Procedural By-Law.

40. In order to assess whether the Mayor's response failed to meet the standard of decorum and civility expected in this situation, it is important to see Mrs. Peterson's attempt to interrupt the meeting in the context of her history of vehement opposition to Aquaworld. I have carefully reviewed the many pages of written submissions, emails, and other correspondence that Mrs. Peterson has sent to Members of Council and Township officials, and it is clear that she is frustrated with the planning process and that she views it with great disdain. She has also repeatedly voiced the same concerns about Aquaworld again and again.

41. As a result, it is reasonable to conclude that there may be some degree of frustration on the part of Members of Council, including the Mayor, with Mrs. Peterson's intransigence, whether real or perceived. In other words, it is likely that there could be some amount of friction around her presence at the December 2, 2019 Council meeting. It is, therefore, reasonable to expect that the Mayor, who was chairing the meeting, might respond "sternly" to Mrs. Peterson when she attempted to inappropriately insert herself into Council's deliberations. The *Code* does not require every meeting of Council to be a "love-in," nor does it require every exchange between a Member of Council and a resident to be effusively friendly. The standard required is one of decorum and civility, and in the overall context of the parties' history, saying the word "no" even sternly, in response to an unwanted interruption, is not inappropriate. As a result, this brief exchange between Mrs. Peterson and Mayor Malanka was not contrary to the standards set out in the *Code of Conduct*.

Conclusion

42. For the reasons set out above, I find that there is no contravention of the *Township of Augusta Council Code of Conduct* as alleged in Mrs. Peterson's April 8, 2020 complaint.



Andrew Tremayne
Integrity Commissioner, Township of Augusta
August 10, 2020