



**Minutes of June 2, 2010 Special Board Meeting**

<u>Directors in attendance</u>	Chair Vice-Chair Secretary/Treasurer Director Director Council Rep	Cathy Coxhead Tony Vander Baaren Anna Visconti Nikki Henderson Jackie Simkin Louise Parkes
<u>Advisors in attendance</u>	Darryl Sherman Val Foster	Wilson Furniture Historical Society
<u>City officials in attendance</u>	John Henry	City Councilor
<u>Solicitor for the Board</u>	Joe Neal	Neal, Mara & Fraser
<u>Members in attendance</u>	Jay Jegtheeswaran Laura Vaillancourt Mike Gray Bernadette Simms Tim Simms Peter Triacus Diane Cooper Antonella Diachenko Arthur Lovell Rick Mitchell Ian Tweedle Peter McGill	Diamonds Grill Doug Wilsons Men's Wear Singer Worlds Collide Worlds Collide Downtown Property Owner Mountain Beauty Supply Art & Technique Lovell Drugs Rhythm Dynamix Dance Strut Nouveau Murray Johnston Men's Wear
<u>Past Volunteers</u>	Sandy Rakestrow Wil Gonidis Bruce Woods	Downtown Action Committee Regent Theatre Past Board Member
<u>Staff</u>	Vivian Sled Greg Paziuk	Office Administrator (minute keeper) Summer Student
<u>Media</u>	Lindsey Cole	Oshawa Express

The special board meeting was called to order by the Chair at 6:00pm for the purpose of having Joe Neal, Solicitor for the Board, address the Directors and the Members present regarding City Report FA-10-141 dated May 6, 2010, and subsequent resolutions passed by Council May 17, 2010 as a result of allegations submitted to the Finance and Administration Committee for the City of Oshawa by Jackie Simkin and Laura Vaillancourt on March 4, 2010.

**Motion 6:01** to approve the June 2, 2010 meeting agenda was made by Louise Parkes, seconded by Tony Vander Baaren.

### **Carried**

#### Solicitor Neal's Report

Mr. Neal advised he would be sharing his views in an open session for the purpose of providing advice to the Chair (and to the Board of Directors), further stating that he had not yet communicated directly with the City of Oshawa and that anything he said in the open session was not to be deemed as his way of communicating with the City on these matters.

Mr. Neal felt it noteworthy to mention that City Report FA-10-141 had been made public prior to the Downtown Oshawa Board of Management receiving a copy.

He also reflected on why it was raised publicly that the Board had hired a lawyer, commenting that the City Solicitor does not provide legal service to the Board and that the Board has a right to access an independent lawyer when required.

Mr. Neal advised the Board and the Membership that although he had been paid for his services to a point, he was not currently running a legal tab and had made a decision to volunteer as the Board's legal advisor at this point in time, citing that he wanted to see the matter to the end. Mr. Neal indicated that he had become concerned from the very beginning about the lack of fairness being demonstrated by the City.

#### Downtown Oshawa Board of Management ~ Codification of Policy & Procedures

Mr. Neal stated that he felt the current scenario was an excellent case in point why the Board would have a Codification of Policies & Procedures, allowing them to deal with disturbances such as the matters at hand with Jackie Simkin.

He further recapped for the Members present that the Board had advised Council of the document after the membership had voted on it at the April 2008 meeting, noting that Council did not respond to the arrival of the document and that it was "received for information" by the City Clerk's office.

In November 2009 Jackie Simkin violated the rules contained in the codification by contacting the Mayor, Senior Staff, the Ombudsman's office and even the Minister of Municipal Affairs office, on issues that had already been dealt with by the Board. Council did not respond to indicate they felt there was a problem, leaving the Board with the belief that they could (and should) handle the concern(s) internally.

Mr. Neal felt it important to tell the Members present that the Board acted in good faith having not heard from the City or Council that there were issues with the codification document. The Board had consulted with the City while working on the document and had received an email from City at the senior staff level that the Board was free to refer to the document when planning to suspend Jackie Simkin for her breach of conduct.

When Jackie Simkin was officially suspended in January 2010, she wrote to the City of Oshawa Finance and Administration Committee to complain that the actions of the Board were illegal. The complaint should have been a Council matter; however it was the Finance and Administration Committee that took ownership of the grievance filed.

Mr. Neal advises the Chair (and the membership) that he disagrees with the report submitted by City Solicitor David Potts, indicating that Council does not have the authority to remove Jackie Simkin from the Board, also stating that he believes that Mr. Pott's report is silent on the fact that Council can, but will not, remove Jackie Simkin, re Section 77 of the 2006 Legislation Act and the fundamental principles of municipal law.

Mr. Neal went on to suggest that City By-Law 94-74 may not meet the Municipal Act and could therefore be invalid as it stands, also arguing that it should be up to the members of the BIA to decide who stays and who goes. Mr. Neal informed the Chair (and the membership) that perhaps the City by-law should be amended and that it could in fact be open to the Board to test this in a court of law, stating that provinces regulate cities and that the language in the Act regarding democracy should prevail.

#### Fairness of Process ~ Solicitor's Report Continued

##### ➤ **Time Line of Events April 2008 – June 2010**

April 2008	Membership approves the Codification of Policies & Procedures.  The Board sends the codification document along with the new By-Law document that was approved by the membership at the same meeting to the City.  No communication from City is received advising the Board of issues or recommended changes to the above mentioned documents.
November 2009	After several breaches of the Codification of Policies & Procedures throughout 2008 and 2009, including attempts made to discredit the Chair at her place of employment, the Board decides to exercise the rules of the document and suspends Jackie Simkin in January 2010.

March 4, 2010 Jackie Simkin and Laura Vaillancourt are given an audience at the Finance and Administration Committee, presenting a list of allegations against the Board.

The committee meeting agenda did not have Jackie Simkin or Laura Vaillancourt listed as delegates, nor was the Chair of the Board notified of their wish to speak against the Board.

Office Administrator for the Board attends as a last minute request from the Chair when she heard of the meeting from a City source. Notes are taken and filed with the Board that included 26 incorrect and non factual allegations.

Director Nikki Henderson attends the March 4/10 Finance and Administration Committee meeting when she hears about it that afternoon. In spite of Mayor Gray making a motion to hear Nikki speak to the allegations, the request is denied by the committee.

March 25, 2010 Chair Cathy Coxhead and Solicitor Joe Neal request to speak at the Finance and Administration Committee meeting but are denied.

April 15, 2010 Solicitor Joe Neal requests to speak at the Finance and Administration Committee meeting but is denied.

May 6, 2010 Solicitor Joe Neal requests to speak at the Finance and Administration Committee meeting but then withdraws when he is advised a City report we had been waiting for was not going to be in the agenda. Mr. Neal books a trip out of the country leaving the next day, only to find upon his return that the said report was on the agenda.

May 17, 2010 Solicitor Joe Neal requests to speak to Council at the 6pm council Meeting, as does Darryl Sherman from Wilson Furniture. On the Day of the council meeting, the Board is notified that Councillor Nicholson is circulating an internal memo to stop the Board from being allowed to speak. The 6pm meeting time is changed without notice to the Board for 3pm whereby Darryl Sherman was not available to speak, nor were other business owners able to attend as planned.

Joe Neal and Office Administrator Vivian Sled attend the council meeting. Mr. Neal is not given the opportunity to speak despite the outcome of a vote of 5-4 for the Board, re council rules of order.

Mr. Neal contacts the Chair to declare that he feels natural justice is being denied and that a forum for the membership should be made available for discussion. Chair of the Board Cathy Coxhead, calls a special board meeting for June 2, 2010 inviting Solicitor Neal to present his findings to the membership.

## Finance & Administration Committee Meeting scheduled for June 8/10

Mr. Neal discussed the upcoming meeting as scheduled by the Finance & Administration Committee in regards to the committee's motive and whether or not City has the jurisdiction to hold a public meeting to discuss matters of the Board.

Mr. Neal pointed out that the 2009 audit was recently completed by Deloitte & Touche and that there were no issues raised by Deloitte in reference to financial matters of the Board.

Mr. Neal further stated that the demands on the employee (Vivian Sled) and the Chair (Cathy Coxhead) in these matters has been overwhelming and have been detrimental in the efforts of the Board in general to get on with what they should be doing. Mr. Neal referred to an email from Jackie Simkin and Laura Vaillancourt requesting information pertaining to the Board's award winning commercial of 2008, purposefully demonstrating that the requests were a good example of time being wasted since both women had approved the initiative at a Board meeting.

Mr. Neal advised the Board (and the membership) that he had sent Jackie Simkin a private email recommending a mediator to help resolve the issues. Ms Simkin had not responded to Mr. Neal at the time of his report, nor did she offer comment at the Board meeting on the subject.

Councillor John Henry arrived ~

### **Member Peter Triacus**

Asked why a request was made by Jackie Simkin and Laura Vaillancourt for an explanation of expenses for the GO train to Toronto on the day the Board received the commercial award.

### **Member Diane Cooper**

Asked why Jackie Simkin and Laura Vaillancourt would want the information.

### **Secretary/Treasurer Anna Visconti**

Explained to the membership that the expenses would have been reviewed when submitted and approved by the Board.

### **Member Laura Vaillancourt**

Said she did not ask for the expenses.

### **Office Administrator Vivian Sled**

Offered to provide the Board and the membership with the email from Laura Vaillancourt asking for a detailed list of expenses on the day that Tony Vander Baaren and her had attended the awards luncheon.

**Member Antonella Diachenko**

Asked Laura Vaillancourt why she wanted the information. Ms Vaillancourt stated that as a member she had a right to ask for the information.

Mr. Neal advised the membership that due to the copious number of requests for information, the Board had appointed the Chair as their Information Officer. Anyone wanting information from the Board must follow the same policy as the City whereby a freedom of information form is filled out and submitted, a if applicable a fee is paid.

**Member Darryl Sherman**

Filled the membership in on the entire story pertaining to the commercial, advising them that the entire cost of the commercial, including GO train fees, was roughly \$750.00. Mr. Sherman stated that because Laura Vaillancourt refused to say why she wanted the information almost two years later, her request was considered vexatious in nature. He further stated that it was one of many issues brought forward by Laura Vaillancourt and Jackie Simkin for the sole purpose of provoking the Board with the intention of causing annoyance at every turn.

**Director Jackie Simkin**

Indicated that there must have been an electronic submission of the commercial and the application that the Board was withholding, adding that overall the mixed media Campaign was never properly justified with goals, objectives and measurements, and that it was a waste of money.

**Vice-Chair Tony Vander Baaren**

Clarified for the membership that the commercial submission was a hard copy of a one page application, including a hard copy of the written break down as required by the OBIAA pertaining to the logistics of the project and a disc of the actual commercial, that he personally hand delivered.

**Sandy Rakestrow – Past Volunteer & Vice-Chair of the Downtown Action Committee**

Ms Rakestrow acknowledged the membership by letting them know that she had once been a very active volunteer with the Board, and had partnered with them over the years during the Downtown Action Committee years. Her philosophy on the matter was if the Board won the award, the Board did it (the commercial) correctly, suggesting that the reason for the initial inquiry was not in support of the Board.

**Member Peter Triacus**

Mr. Triacus advised the membership that he had held a seat on the Board for six years and as a volunteer did the best he could. He pointed out that if the Board votes on something then the matter should not be up for debate after the fact, nor should attempts to change decisions the Board has made be an option. He further stated that as a downtown property owner he pays for the Board to be a functional entity and not for a group of people that are wasting time on decisions that were voted on and approved.

**Director Nikki Henderson**

Ms Henderson stated that before she was appointed a Director, she attended meetings at the Board and witnessed the antics of Laura Vaillancourt and Jackie Simkin as they tried to derail meetings on more than one occasion with complaints about items that had already been discussed and approved as a whole.

**Wil Gonidis – Past Volunteer**

Mr. Gonidis commented that in the corporate world you must have a very good reason for requesting reports and other information, and that the reason(s) should be clearly stated and agreed upon between the parties before a lot of time and money is spent on providing the documents.

**Member Antonella Diachenko**

Antonella displayed frustration at what she was hearing; stating that for the first time in a very long time downtown Oshawa was poised for success. She referred to the recent audit and the fact that there were no red flags. Ms Diachenko also stated that as a BIA being run by a group of volunteers you took losses and gains together and moved forward at all times. She further stated she was confused as to why the Board was constantly being challenged by Laura Vaillancourt and Jackie Simkin and wanted to know where the money spent on wages could have been better spent in support of the downtown businesses vs. preparing letters and reports in response to the persistent inquiries being received by the Board.

**Member Bernadette Simms**

Ms Simms asked Jackie Simkin if she had a business in the downtown. Ms Simkin explained that she was sponsored by a downtown business through Mr. Larry Yanch. Ms Simms commented that she was uncomfortable with having someone on the Board that did not own or operate a business in the downtown, asking what she had to offer. Ms Simkin stated that she felt she had a lot to offer and that her main focus was to protect the interests of the downtown business people.

**Member Antonella Diachenko**

Asked Ms Simkin if the businesses were at harm to which Ms Simkin answered yes as the budget for the BIA was not being spent wisely and that 60% of the annual budget was being used for office space and salaries. Ms Simkin further stated that the BIA didn't need an office or staff.

**Ian Tweedle – Volunteer and Downtown Employee**

Ian spoke up in reference to the recent membership survey that the Board had done, advising the membership that we had pertinent information from the businesses pertaining to how the money was being spent. He further stated that the review of the responses and the posting of the responses for the membership have been delayed time and time again because the Board was too busy dealing with complaints from Laura Vaillancourt and Jackie Simkin.

**Wil Gonidis – Past Volunteer**

Asked Joe Neal about the attempts to speak at committee and council and what he felt the purpose of the public meeting was. Mr. Neal stated he didn't know what the

rules of engagement were for the June 8<sup>th</sup>. Finance & Administration Committee Meeting at this point in time.

**Bruce Woods –Past Board Member**

Mr. Woods advised the membership that he had been on the Board at one time, but that he was not a downtown property owner. He further stated that he felt the BIA was doing a great job and that their efforts made a difference.

**Member Rick Mitchell**

Mr. Mitchell stated he wants to be part of a positive change in the downtown and that he finds the complaints being discussed as trivial and petty preventing the Board from getting anything constructive done.

Councillor Henry, Member Rick Mitchell and Reporter Lindsey Cole (Oshawa Express) left the meeting ~

**Sandy Rakestrow - Past Volunteer & Vice-Chair of the Downtown Action Committee**

Ms Rakestrow asked Jackie Simkin who her sponsor was, to which Jackie responded Larry Yanch. Sandy further stated that she has seen the good work of the BIA on many occasions and supports their efforts to bring events into the downtown and to market the downtown.

**Councillor Louise Parkes**

Councillor Parkes addressed the membership, advising them that she was the appointed Council rep for the Board, and that she was a business owner as well in the downtown district. Ms Parkes described the Board as a group of interested parties that owned/operated a business in the downtown and that their number one focus was to run their businesses profitably. Councillor Parkes further stated that because Jackie Simkin does not own a business in the downtown, nor does she live or work in the downtown, the overall fit is not as it should be since there are no common interests she shares with the Board. As an example, Councillor Parkes explained an issue that was dealt with by the Board and then later revisited by Jackie Simkin to include the Mayor, Council and senior city staff in spite of the fact that the Board had reached a resolution the evening before. The issue being referred to was the mistake made by the Secretary/Treasurer (Anna Visconti) when she inadvertently signed a cheque made out to her company for \$85.00 for storage of BIA items in her basement. This piece of information ended up on Councillor Brian Nicholson's facebook along with other accusations about Board members.

Councillor Parkes remarked that as a Councillor she is embarrassed by the recent crisis the Board has been experiencing because of the two complainants, stating that the original problem should have been deemed a personnel issue and that it should have been handled in camera by Council (not the Finance & Administration Committee). She closed by saying that the Board is being forced into a public meeting without committee and council having heard both sides before rendering a decision.

**Member Darryl Sherman**

Mr. Sherman addressed the statement Jackie Simkin made about office and salary costs, disagreeing with her analysis. Mr. Sherman said that he recalls that the office costs (including salaries) for 2009 was at about 43% and that historically the percentage costs have been the same from one year to the next.

Mr. Sherman also challenged Jackie regarding her sponsor, asking that the Board have Solicitor Neal contact Larry Yanch and have him withdraw his support.

Mr. Sherman further stated that he too believes there is no common interest being shared by Jackie and the Board and that Jackie's behaviour is abusing his interest as a downtown stakeholder.

Mr. Sherman recommended to the membership that Jackie should resign, asking them who should decide if she stays or goes, stating that it is her intention to overtake the Board.

**Member Bernadette Simms**

Ms Simms asked Jackie Simkin to resign, to which Ms Simkin stated that was not going to happen.

Member Bernadette Simms and her husband Tim left the meeting

**Director Nikki Henderson**

Addressed Jackie Simkin's fear of how the money is being spent, indicating that decisions were made as a group both at a Board level and at a membership level.

**Secretary/Treasurer Anna Visconti**

Ms Visconti shared information pertaining to a phone call she got from City when Jackie Simkin first joined the Board in 2006. As a courtesy, the City tax department called Ms Visconti to ask why Jackie would be asking for the tax role of the BIA and why the Board had not put the request through in an official manner.

**Member Arthur Lovell**

Mr. Lovell thanked the Board for all their hard work as volunteers. Having been on the Board in the position of Chair, he further stated that the BIA need an office and need staff. He reminded the membership that diverse opinions bring debate but that in the end the majority rules and you go forward. In closing he stated that if a Director on the Board is not happy, he/she should move on.

**Member Antonella Diachenko**

Ms Diachenko took the membership back to the April 2008 Annual General Meeting where she felt excited to be attending so that she could see the new logo, hear about the new website and see the commercial for the first time. Ms Diachenko acknowledged the good work of the BIA being overshadowed at that

meeting by the arguments brought forward Laura Vaillancourt and Jackie Simkin in reference to documents being shown to the membership, commenting that many stakeholders left the meeting wondering why there was so much dissention within the Board. She urged the membership to refrain from participating in the June 8/10 Finance and Administration Committee Meeting if it meant more of the same behaviour being displayed for the public.

**Solicitor Joe Neal**

Shared his concerns about the public meeting suggesting that the Board consider a court injunction to stop the meeting.

**Director Jackie Simkin**

Reminded the membership that the Board was not in compliance with the Municipal Act.

**Councillor Parkes**

Reiterated what she felt Jackie's intent was, which was to dissolve the Board. Councillor Parkes went on to say that she felt the BIA was extremely important to the downtown.

**Sandy Rakestrow - Past Volunteer & Vice-Chair of the Downtown Action Committee**

Ms Rakestrow advised the membership that she holds the position of Ontario Horticultural Association District 17 Director and that in her experience with governance issues, the Board would be shut down if it was not in compliance. Ms Rakestrow asked Ms Simkin what the issues of compliance were specifically, to which Ms Simkin remarked "a whole bunch of things".

**Motion 6:02** was made by Nikki Henderson for Solicitor Joe Neal to initiate an application for judicial review pertaining to the decisions made at the May 17/10 council meeting, and to seek an injunction to prevent a public meeting, seconded by Anna Visconti.

**Carried**

**Director Jackie Simkin**

Ms Simkin suggested that there were other alternatives the Board should consider before spending the memberships money on a lawyer, indicating that perhaps Council could have the meeting pulled.

**Solicitor Joe Neal**

Advised the membership that he had been paid for some of his work to date, but that he was now working on behalf of the Board on a pro-bono basis.

**Office Administrator Vivian Sled**

Suggested to the Chair that perhaps Jackie Simkin and Laura Vaillancourt could withdraw their allegations, thereby eliminating a platform for the proposed June 8/10 meeting.

**Councillor Louise Parkes**

Suggested that a letter to the Mayor from Jackie Simkin and Laura Vaillancourt might help, indicating the issues be brought forward at a Board level for resolution.

**Director Jackie Simkin**

Stated that the June 8<sup>th</sup>. meeting was not her agenda and that it was someone else's at the City level. She further stated that if she considered withdrawing the allegations or sending a letter as requested, she wanted to know what the Board would do for her. Laura Vaillancourt did not respond to the suggestion put forward by Councillor Parkes.

**Councillor Louise Parkes**

Suggested to the membership that the Board submit a freedom of information application to the City to get internal correspondence between David Potts and Ron Foster.

**Solicitor Joe Neal**

In closing, Mr. Neal commented that there may be a reason why the City is pushing for a public meeting other than fulfilling their statutory responsibilities, citing that in his opinion it could be very bad for the downtown in general.

**Chair Cathy Coxhead**

Thanked Mr. Neal for his report stating that the Board intended on moving forward in a positive manner making the sidewalk sale and the Autofest events their priorities for the summer. The Chair further stated that the problems that have risen due to the allegations made at the March 4/10 Finance and Administration Committee meeting by Jackie Simkin and Laura Vaillancourt have been detrimental to the Board's reputation and costly to the membership overall.

**Office Administrator Vivian Sled**

Reminded the Chair (and advised the membership) that conversations about Board compliance with Diane Ploss, Municipal Advisor for the Ministry of Municipal Affairs and Housing have been positive and supportive. Ms Sled further stated that Ms Ploss is poised to present Bill 130 the membership at the upcoming September 2010 Annual General Meeting.

**Motion 6:03** to adjourn the meeting was made by Anna Visconti, seconded by Tony Vander Baaren.

**Carried**

Further to the special Board meeting that was held June 2, 2010:

**June 3, 2010**

Larry Yanch was contacted to confirm if he was Jackie Simkin's sponsor. Mr. Yanch provided written confirmation that he has not been Ms Simkin's sponsor since 2007.

**June 3, 2010**

Member Bernadette Simms contacted the Board to ask that a petition to remove Jackie Simkin from the Board be distributed to the membership. A total of 60 signatures were collected.

**June 8, 2010**

On the morning of June 8/10, Solicitor Joe Neal attended a court hearing with Judge Lack presiding re injunction to stop June 8/10 Finance & Administration Committee meeting. Injunction was denied.

**June 8, 2010**

At the Finance and Administration Committee meeting, Darryl Sherman advised the Committee members that when Ms Simkin was appointed to the Board in 2006, she was appointed as a representative for Mr. Yanch, however Mr. Yanch's business is not located inside the boundaries of the BIA.