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Allegations against councillor

Councillor accused of lobbying for land severance

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The Hamilton Spectator

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Hamilton Councillor David Mitchell's job is at risk amid allegations he tried to influence a council decision about his own property.

Councillor Robert Pasuta revealed behind closed doors Tuesday Mitchell "lobbied" him to support a controversial land ruling on his farm, The Spectator has learned.

Mitchell denied the allegation yesterday, saying he has never spoken with Pasuta about his plan to sever part of his Binbrook property.

"I've had no conversations at all about this application with my colleagues," he said. "I don't believe anyone is in a conflict and I don't believe I am either."

Mitchell's statement contradicts several councillors who say he talked to them about the severance -- but did not feel he tried to influence their vote.

By law, councillors aren't allowed to influence a vote when they could be affected financially. If guilty, a councillor is dismissed from office and can be barred from running again for several years.

The city's lawyer will report to council on its options for dealing with the allegation.

"It's certainly dismaying, disappointing and stunning, quite frankly," said Mayor Fred Eisenberger, who commended Pasuta for his "courage."

"I admire his resolve to stand up and speak his piece. He would not have taken something like this lightly."

Pasuta refused to comment, saying he wouldn't reveal the contents of a confidential meeting.

The rookie Flamborough councillor, whom Mitchell openly took under his wing, shocked his colleagues at Tuesday's planning and economic planning meeting.

The committee was considering a staff recommendation to take Mitchell to the Ontario Municipal Board over the land severance. Mitchell was not in the meeting. He left after declaring a conflict.

Mitchell wants to have a house for farm help where his sister and her husband live severed from his property. His request, approved in the fall by the committee of adjustment, violates planning policies, according to city staff.

When the planning committee retreated behind closed doors to seek legal advice on the case, Pasuta raised his hand to say he was concerned he may have a conflict. He paced the floor as he said Mitchell had asked him to present a motion to go against staff advice to take the case to the OMB.

When the committee emerged, they unanimously supported the staff recommendation.

Mitchell denies speaking with any of his colleagues about the matter, but he said he was quoted in the media suggesting they should visit the property.

Mitchell added he may have given some members of council directions to his farm, but couldn't recall if he communicated by phone, fax, e-mail or in person.

The Spectator contacted all members of the planning committee to ask if they had discussed the land severance with Mitchell. Several confirmed they had, but none felt Mitchell tried to sway them.

"He did not lobby me," said Councillor Lloyd Ferguson.

Councillor Bob Bratina, who drove out to see the Guyatt Road property, said he asked Mitchell for directions but he didn't feel the councillor tried to lobby him.

"Honestly no, but I could see how it could be construed that way."

Stoney Creek Councillor Maria Pearson said she chatted with Mitchell about the severance.

"He just explained the situation."

Councillors Terry Whitehead and Scott Duvall said they also had passing chats with Mitchell. Councillor Brad Clark said he didn't talk to Mitchell and objects to him even raising the subject with colleagues.

"He shouldn't be talking to anyone about it. The act is clear."

Eisenberger said he urged Mitchell a few weeks ago to meet with the clerk to review the municipal conflict act.

Toronto lawyer Stephen D'Agostino, an expert in the legislation, said he advises councillors to completely remove themselves from the process after they have declared a conflict.

That includes not having any conversations with colleagues on the matter, he said.

"If that's not offside, it's pretty grey," he said. "I think there's a real risk."

In recent years, D'Agostino said the courts have not kicked any councillors out of office for violating the act. Most of the cases, he added, have dealt with whether a councillor had an interest rather than influencing the vote.

Mitchell was censured by the previous council in 2005 for trying to get out of a speeding ticket by showing his council identification and alleging police corruption.

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What does the law say?

The Municipal Conflict of Interest Act states councillors must declare a conflict when they have a "direct or indirect pecuniary interest" in a matter before council.

Once they have declared a conflict,

councillors are not allowed to take part in the debate or the vote.

If council goes behind closed doors, the councillor must leave.

The act directs councillors to not attempt to influence the vote "in any way whether before, during or after the meeting."

Once a violation of the act has been

alleged, there is only six weeks for a complaint to be filed with the courts. This can be done by a councillor, city official or

citizen.

If found guilty of violating the act, a judge must order the convicted politician's seat vacant and can bar a councillor from running again for up to seven years.

The court can offer a less severe punishment if the judge determines the violation occurred inadvertently or by an error in judgment.

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