

TOWN COUNCIL NEWS

Hidden council meeting not justified: Ombudsman

BY VOICE STAFF

In a report presented at Pelham's June 20 Town Council meeting, the Ontario Ombudsman's office found that council overstepped its boundaries by holding a closed meeting regarding the local airport over a year ago.

The meeting, ostensibly to discuss development opportunities regarding the Niagara Central Dorothy Rungeling Airport, was closed to the public in April 2021, resulting in a citizen complaint.

"Council for the Town of Pelham contravened the requirements of section 239(4)(a) of the Municipal Act, 2001, on April 19, 2021, by failing to state by resolution the general nature of the matters to be considered in camera," the report from the office of Ontario Ombudsman Paul Dube read.

"In camera" is the procedural description for a meeting that is closed to the public, and where electronic recordings of the gathering are not later shared for public consumption. Such meetings are usually convened only for personnel matters, specific real estate negotiations, and a limited list of other legal issues.

Dube recommended that Pelham council "be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the Municipal Act ... and its own procedure by-law."

Ward 1 Councillor Wayne Olson moved a motion to waive all con-



Pelham Town Council meets virtually on Monday, June 20.

TOWN OF PELHAM/YOUTUBE

fidentiality matters surrounding the meeting, and release its content to the public.

"By keeping this as a confidential matter ... it would only lead to more speculation, probably wrongly," Olson said.

However, Ward 3 Councillor Lisa Haun — who is Pelham's representative on the airport commission and who originally insisted that the meeting be held out of public view — did not want the information posted for public access.

"The only net benefit would be to have a 'gotcha' moment, so that's not really good teamwork on behalf of council to try and pick apart other team members," Haun said. "Hopefully that's not the intention."

Haun, joined only by ally Mari-

anne Stewart, voted to deny public access to the information. The motion passed anyway, 5-2.

"I think all of us ran on the premise of transparency," Ward 2 Councillor John Wink said. "It was pointed out by the Ombudsman that we made a mistake."

Video of the meeting was not preserved, but an audio recording and a transcript of the session, plus the Ombudsman's report, are now available for the public to access on the Town's website.

Additionally, last week the Voice filed a Freedom of Information request to obtain documents pertaining to Haun's communications with the Clerk's office over the rationale for keeping the meeting out of public view. Look for further coverage on this topic in next week's issue.

Haun slams the Voice over her lobbying for a developer

After that defeat, Haun launched a blistering attack on the Voice, saying the newspaper created "alarmist false narratives" and engaged in "fear and intimidation" over her handling of a contentious zoning bylaw for a new East Font-hill subdivision, Summersides Village, a \$100 million dollar project that will see 70-plus homes constructed east of Station Street.

At council's previous meeting, Haun led an effort to alter established planning policy in order to allow a developer who did not yet actually own land they wished to build on to speak to council. The developer objected to elements of Summersides Village, a project which followed applicable planning rules for some two years, during

which time the public—including the objecting developer—had been free to register their comments and concerns with Town planning staff.

Given the would-be developer's belated request to make its presentation, a suspension of council's procedural rules would have been required to permit such an appearance. However, such a serious change in procedure requires a super-majority—at least five of seven votes—not just a simple majority, to approve it.

Therefore, when Haun ally Councillor Ron Kore's motion came to a vote to allow a representative from the non-land-owning, would-be developer, SAW Custom Homes, to speak, it was defeated despite the predictable political bloc of Haun, Kore, Stewart and Bob Hildebrandt voting in its favour, as Olson, Junkin, and Wink voted against.

Haun did not address the procedural rules that actually stymied her attempt to get the would-be developer in front of council, instead taking issue with the Voice's reporting, and with changes to the Summersides Village plan.

"Our local tabloid has chosen to create alarmist false narratives, intentionally spreading misinformation, which has sadly become common behaviour, disrespecting the intelligence of our residents in the process," Haun read from a prepared text. "Asking for clarification for a developer to have the opportunity to speak to council

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COUNCIL
continued from Page 3

should be embraced, as the record clearly reflects that the prospective development plan has indeed been altered from what the public was presented. Our Director of Planning has indeed commented twice that there has been a plan change, yet this local tabloid would have you believe that councillors who recognize this change should be ridiculed and harassed. It is indeed the role of a councillor to make sure that the business of the Town is conducted fairly, regardless of the imposed fear and intimidation."

However, Pelham's Director of Community Planning and Development Barb Wiens noted that while the required public notice boards developers place on site before starting construction often deviate somewhat from eventually approved plans, the public was still notified of all changes to the Summersides Village project— in this case to utilize two roadways east and parallel to Station Street, streets which were also contained in the East Fonthill Master Plan, published nearly a decade ago in 2013.

In the Voice's previous reporting, the newspaper reached out for comment from Councillor Haun regarding any personal or professional connections with the would-be developer that may have influenced her lobbying. Haun neither replied to nor acknowledged our request.

In a further twist, another motivation for Haun and Kore's efforts emerged in the form of advocating for a current property owner at the corner of Station and Summersides, on land historically



Councillor Lisa Haun reacts to Councillor Ron Kore's remark regarding filling the Mayor's shoes. TOWN OF PELHAM / YOUTUBE

zoned as agricultural.

"The people that own that land have owned it for 80 years," Kore said. "They have a viable business there. They have brothers who work there every day."

While this parcel of land remains private, the contention appears to come from the possibility that if it is ever sold, the two roadways could join with Summersides at that time. Until this unknown and possibly fictive future, the roadways will loop in the form of a cul-de-sac from Port Robinson Road.

Wiens stressed that the property owner is free to keep their business in place as long as they want, but with the changing nature of the neighbourhood to a medium-density residential area, the business may be impacted over time.

In the end, council eventually affirmed its earlier decision to approve the Summersides Village subdivision, thus averting what would almost certainly have been a losing battle in front of the Ontario Land Tribunal. Haun and Kore were the only no-votes.

MCC parking upgrades unlikely this year

Council finally voted to receive a long-awaited municipal parking study from consultant RV Anderson, but not before discussion over whether there was enough time and money to install auxiliary gravel parking at the community centre before this winter's slate of hockey tournaments. The short answer: No.

While Public Works Director Jason Marr said the work itself could be done in a couple of weeks, a topographical survey is needed first. And this is before the matter of skyrocketing inflation. While an earlier price tag was around \$75,000 for the temporary lot, almost all agreed these costs will be higher now. Treasurer Teresa Quinlin-Murphy said no such funds are budgeted for this year, and the cash would need to come out of reserves.

"We're spending money we don't have," Mayor Marvin Junkin said, adding that such conduct was what got the Town in financial deep water during the previous council's time in office.

While the matter will likely be deferred to the next capital budget, staff still plan to report back with MCC topographical surveys for council's Aug. 22 meeting.

Tensions on display

Microaggressions among members of council were on display for the last item of the meeting, Junkin's motion to have staff look into ways to honour late Pelham Olympian Jane Haist.

Because the motion came from the Mayor, he had to relinquish his meeting chair to the Deputy Mayor, which position rotates and which is currently held by Councillor Ron Kore.

Junkin asked Kore if he was "ready to step in as Deputy Mayor."

Kore replied sardonically, "I don't think the shoes are that big." The comment provoked an instant reaction from Haun, who appeared to understand immediately its insulting nature, and finding it particularly humorous.

Under the Town of Pelham's Code of Conduct, members of council are prohibited from mak-

ing disparaging remarks about each other. Under "General Obligations," Sec. 4.1(h), councillors must "refrain from making disparaging comments about another Member or unfounded accusations about the motives of another Member."

Due to crosstalk in the Zoom session, the Mayor appeared not to hear Kore's remark, something he confirmed when later asked for comment.

"Although I did not hear the councillor's comment," Junkin told the Voice, "I have had a resident who was watching the live-stream contact me by phone to tell me about [Kore's] remarks and how disgusted they were to hear these comments directed to me. I plan on reviewing the recording in the near future to hear the comments myself. The individual didn't mention any reaction from any other councillor. If the remarks were stated with malice, I would be disappointed, to say the least."

By press time, the Voice had been contacted by three residents looking for guidance on how to file a complaint about Kore's comment with the Town's Integrity Commissioner, the official responsible for investigating alleged Code of Conduct violations. In each case the newspaper referred the resident to Pelham Town Hall.

After Junkin presented his motion and Kore had passed leadership of the meeting back to the Mayor, Kore said, "Just make sure [this exchange is] in the paper."

Neither Kore nor Haun responded to Voice requests for comment on Kore's remark, nor whether they planned to extend apologies to the Mayor.

With files from Dave Burket and John Chick.

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Emails reveal Haun cautioned over closed meeting

Councillor's evasiveness leaves Town of Pelham staff, rest of council, in no-win position

BY DAVE BURKET
THE VOICE

After an 11-month investigation, in his report released in June Ontario Ombudsman Paul Dubé concluded that Pelham Town Council violated the Municipal Act by improperly discussing matters in private that should have been open to the public. This is the only such finding against a Pelham council in the Ombudsman Office's nearly 50-year existence, leaving council as a whole with a metaphorical black eye. And it all could have been avoided had Ward 3 Councillor Lisa Haun accepted a pointed suggestion that she not rush council into the private session she insisted upon in April 2021.

The timeline

Emails recently obtained by the Voice through a Freedom of Information (FOI) request reveal the communications sequence between Haun and then-Town Clerk Nancy Bozzato mere days before council's regularly scheduled meeting on April 19, 2021.

Seven days prior to the meeting, on April 12, Haun emails Bozzato, writing: "Please let me know if you have a few minutes to chat today about this motion to not upload airport to region."

Bozzato responds ap-

proximately 20 minutes later, writing, "I am in the office today...I have an appointment with a resident at 11, but other than that my schedule is open."

The Voice understands that this was the first of a handful of conversations between Town staff and Haun pertaining both to the content of her motion concerning the Niagara Central Dorothy Rungeling Airport, which is located on Pelham's southern boundary, as well as to the questionable legality of council debating the motion in closed session.

On the surface, Haun's motion was identical to motions that were to be presented to the municipal councils of Welland, Wainfleet, and Port Colborne, in addition to Pelham. All four municipalities have joint responsibility for running the airfield, a former World War II training facility that is now home to small aircraft flown by private pilots. The motion called on each of the four municipalities to rescind their earlier request that Niagara Region take control of the airport—that it be "uploaded" to the Region—removing oversight and responsibility for it from the four local councils.

However, discussion



Pelham Ward 3 Councillor Lisa Haun.

VOICE FILE

about such a proposal did not qualify for the very limited exemptions provided in the Municipal Act that permit a council to hide debate from public view—to go "in camera," into closed session. (Generally speaking, only negotiations pertaining to a specific contract, or personnel matters regarding identifiable individuals may be shielded from the public.)

By 4 PM that day, after at least one telephone conversation with Haun, Bozzato puts into writing her reservations about council going into closed session.

In an email to Haun, Bozzato writes, "I have been unable to connect with the City Clerk for Welland so that any closed session meetings are aligned in terms of the specific exemptions permitted in the Municipal Act, Section 239(2). While I can appreciate that some of the discussion surrounding the potential uploading of the airport administration is, as you describe 'sensitive,' as a municipal corporation the most important component is whether or not a closed session meeting falls within one of the permitted



exemptions of The Act."

Bozzato writes that ideally she should also be having the same conversation with Wainfleet and Port Colborne, "but you and I did not discuss that so I did not reach out to them."

Bozzato explains that because there are four municipalities involved, it would be best practice to align the resolutions between all

four. Yet Haun's short notice to the Clerk effectively precluded this.

"I do not now know that this will be possible given that our agenda must be published tomorrow," Bozzato writes.

Bozzato also suggests that rather than Haun acting on her own, the better

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A pilot fuels his plane last Sunday at the Niagara Central Dorothy Rungeling Airport, located on River Road in Pelham.

BOB LOBLAW

OBITUARY



PAY, Douglas Ross

Passed away peacefully with his wife by his side on Sunday, July 3, 2022 at the age of 92. Adored husband of 48 years to Janice. Dearest father of Gail (Ken) Davidson and Daniel (Lynne) Pay. Beloved grandfather to Diana Pace and Dana and Curtis Pay. Great-grandfather to Leo Pace. The Pay family will receive visitors at PLEASANTVIEW FUNERAL HOME 2000 Merrittville Highway Thorold on Tuesday, July 26, 2022 from 10:30 a.m. until the Funeral Service at 11:30 a.m. in the chapel. Private interment to take place at a later date. Memorial donations may be made to Hospice Niagara or the Rose Craig Foundation. Please share your condolences, photos and memories at www.pleasantviewcemetery.ca



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route would be that the Airport Commission—the body on which Haun serves as Pelham’s representative, along with councillors from the other three municipalities—make an official request to present to council.

“Ideally, this request should come to Pelham Council in the form of a resolution adopted by the Airport Commission so that it is seen as a unified approach, particularly in light of the fact that the previous motion by Pelham Council was properly adopted and the Region has already taken some action to act on that resolution.”

Bozzato concludes with a suggestion that’s about as pointed as Town staff might be with a council member, namely not to rush into a questionably improper meeting.

“Respectfully, Councillor Haun, might you consider taking a bit more time with this important matter and aligning any presentation to Pelham Council with the other three partner municipalities as part of a duly enacted resolution of the commission?”

The Voice understands

that after additional telephone communication the next morning, during which Haun remained adamant that her motion be discussed in closed session and unwilling to say precisely why, Bozzato had no option but to add Haun’s request to the coming meeting’s agenda. A little after 11 AM on April 13, she emails Haun to ask who will second her motion. At noon Haun replies, “Councillor [Marianne] Stewart will second my motion.”

Staff limitations

In short, municipal staff, whether in Pelham or elsewhere, are obligated to do what their bosses—their town or city councillors—tell them to do. Whether these requests are sufficiently in the public interest, or necessarily follow legal procedure, is of secondary concern.

The Voice reached out to Pelham CAO David Cribbs and current Town Clerk Holly Willford (Bozzato, in fact, retired from the Town later the same month, in April 2021) to understand why council was permitted to continue discussing Haun’s motion during their meeting, when it must have become starkly apparent early on that doing so was

in violation of the Municipal Act.

The short answer is that council can do what council wants to do—staff is on hand to advise, not control.

“Council always has control over the agendas,” responded Willford, “which is why members of council are formally provided with an opportunity to amend the agenda at the start of every meeting.”

Council has the capacity to remove an item, said Willford, add an item (with some legal limitations related to public notice) or amend the agenda order.

“With respect to this specific instance, because there was no written report [provided beforehand], staff were not in a position to assess whether or not the item would properly be in closed session,” said Willford.

Given that both staff and council were informed by Haun that the item complied with the “plans and instructions for negotiations” exemption in the Municipal Act, Willford said there was no reason not to proceed into closed session.

“Unfortunately, as per the Ombudsman, the dialogue never reached a point where it qualified for any of the various closed meeting

exemptions.”

Only a council member could have expressed concern that the discussion was not falling under one of these exemptions, said CAO David Cribbs, or to have requested advice regarding such a concern. This did not occur as Haun, and two other members of the Airport Commission, continued speaking.

“Council and staff try to function as a team,” said Cribbs, “so in most regards we either fail or succeed together. This is entirely appropriate given the shared goal of providing valued services to the community.”

Cribbs said that in a closed session if a councillor believes the discussion should not be held in the absence of the public, he or she may make a motion to terminate the closed session.

“This motion can be brought at any time during the in-camera proceedings. As a general principle, staff do not interrupt council meetings and are present to answer questions of council, when asked. In this instance, those present had reason to believe that the discussion was going to comply with the statutory requirements, un-

fortunately that threshold was never actually reached during the discussion.”

What was actually discussed

In fact, the thrust of Haun’s presentation—the “sensitive” content alluded to in her telephone contact with Clerk Nancy Bozzato—revolved around what by any reasonable assessment appears to be a half-baked scheme to develop certain airport lands into private housing, once again involving the Town of Pelham in real estate development, echoing the Town’s foray into such adventures in East Fonthill during the last years of Mayor David Augustyn’s time in office.

The impracticalities of the notion are too many to cover here, but most come back to the basic principle that while the airport property may lie within the municipality of Pelham, the land is not owned by Pelham nor does the Airport Commission currently have the legal authority to engage in such development—irrespective of whether such residences may be occupied by private pilots in the form of an “air park.”

Furthermore, there are established land use rules, including defined urban

boundaries, which do not extend to the airport lands. Such development could be interpreted as a means by developers to make an end-run around these types of rules.

After the Ombudsman’s ruling was made public last month, Town Council voted to release the audio recording of the closed meeting—with Haun and Marianne Stewart the only councillors voting against doing so—as well as the minutes of the meeting.

In the recording, Councillor Wayne Olson can be heard pushing back against the notion that such a development project was permissible under the Welland-Port Colborne Airport Act of 1976, which created the airport. The Act specifies that if the lands are used for other purposes than an airport, then they are to be turned over to the Crown in return for the sum of \$1 dollar. Any remediation or return of the lands to their original condition—i.e., a 416-acre empty field, sans runways, hangars, and fuel tanks—would be at the expense of the four municipalities.

Councillor John Wink expresses some frustration at

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the hastiness of Haun's motion. "Obviously there was nothing written here," says Wink. "You don't want anything written, so it kind of came out of the blue on me and some of the other councillors, I'm sure."

Wink says he wants sufficient time to review the facts. "I understand that it was last council—that this council didn't have any input [on a previous vote to upload the airport to Niagara Region]. All that I'm saying is that I want to see the staff report from that 2018 decision to upload it, so that I get a better understanding on both sides of the issue, not just one side."

Similarly, Councillor Olson laments a lack of clarity from the Airport Commission related to its financial statements. "I got an income statement, but I didn't get a balance sheet...and I've asked for that, boy, I guess I asked for that in December [2020] or January [2021] for what the budget would look like...I believe some of your own users are looking for a business plan, so I would be looking for at the very least a preliminary-type business plan, starting with justification and understanding of what the costs are [to retain the airfield]. Notwithstanding the fact that I don't think you can do this, I'd like to know where we're going."

Councillor Marianne Stewart then erroneously suggests that Pelham gets more revenue from the airport than the Town pays to maintain it.

"It's a pretty simplistic kind of comment," says Stewart. "The airport is in the Town of Pelham. We contribute \$28,000 dollars a year to its care and maintenance, and we receive approximately \$55,000 dollars a year from the airport in property taxes. So actually it costs us nothing. It nets us about \$27,000 dollars. So I don't understand what the big discussion is. Why would we be willing to give it away and not get the tax money, and then end up having to pay a lot of money to the Region if they take it. Maybe it's a pretty simplistic idea, but that's what it looks like to me."

In fact, Stewart's figures were not correct. At the Mayor's request, Town Treasurer Teresa Quinlin-Murphy provides the accurate numbers. Quinlin says that according to the Airport Commission's own documents, the

airport pays just \$21,150 in property taxes. "But don't forget that only 40 per cent of that would come to the Town," says Quinlin-Murphy. "There's a portion that goes to the Region, and a portion goes to the school boards." Olson later asks if Director of Planning Barb Wiens is present in the virtual meeting, to which CAO Cribbs responds that he was asked to exclude staff other than the Treasurer and complied with this request.

"Obviously there was nothing written here. You don't want anything written, so it kind of came out of the blue on me and some of the other councillors, I'm sure"

Olson then asks Cribbs to clarify whether such a housing development on airport lands would require the same planning and approval process as for other developments in the municipality.

Cribbs pauses, says that he's not intending to advocate for any particular outcome, then goes on to outline several hurdles, not the least of which is that the airport lands are zoned not residential but rather industrial, institutional, agricultural, and environmentally significant.

"I'm not a planner by training but I am a lawyer...I don't think at law any of these lands can be developed into residential lots. I think there are Provincial policy rules against that, I think there are Regional policy rules against that, and I think the Town's zoning bylaw prohibits that."

Cribbs adds that under the Planning Act he doesn't think that an airport authority can subdivide "any portion of itself."

"At any rate...maybe there's room for something creative. But as our current zoning bylaw stands, and planning law stands, I don't think any lots can be created here."

A moment later the meeting ends.

Aftermath

Acting upon a citizen complaint filed soon after the meeting occurred,

the Ombudsman of Ontario's office began its investigation effectively into whether Haun's assertion that the topic and discussion met any of the closed meeting exemptions. The Voice reported in our June 29, 2022 edition on the Ombudsman's finding that no exemption was met, and that council in fact violated the Municipal Act by going into closed session.

Neither Councillors Lisa Haun nor Marianne Stewart responded to multiple requests for comment for this story.

Former Town Clerk Nancy Bozzato did not respond to a request for comment.

Additionally, the Voice noted that in her communications with Nancy Bozzato, Lisa Haun used a private email address, not her assigned Town email account. Haun did not respond to a Voice request to explain why she used a personal email address, or whether she believed that doing so would somehow exempt her email from being discoverable through an FOI request (it doesn't).

Asked whether personal email usage by councillors is accepted practice, Town Clerk Holly Willford said that all Town Councillors are provided with a Town email account, but that there is no policy stating members of council must use their corporate email accounts to contact Town staff.

"Accordingly, there are times members of council do communicate with staff via personal accounts," said Willford. "Please note that this policy is currently the subject of an administrative/legal review."

One of the Ombudsman's four recommendations in his report pertained to staff practices, specifically that more descriptive reasons be used on future meeting agendas to identify to the public the nature of closed session discussions.

In the fall of 2021, said Willford, the Clerk's Department conducted a review of its own practices and at that time voluntarily adopted a new operational approach which resulted in more information being provided to the public regarding closed sessions.

"Accordingly, the Town both accepts and agrees with the Ombudsman's recommendation," said the Clerk, "although Pelham had already been compliant with the approach for more than six months at the time that the Town received [his] official report."

Voice **RECIPE OF THE WEEK**

Zesty Watermelon Chicken Salad Tortilla Cups



Few things are as delicious and refreshing as watermelon on a warm day. Watermelon grows quite readily in summer and is often ready to pick after three months of growing time. Harvesters look for a pale buttery yellow spot on the bottom of watermelon (the ground spot), indicating ripeness. However, shoppers can do their part and pick perfect watermelon at the store. The fruit should be firm, symmetrical and free from bruises, cuts or dents. The melon also should be heavy, as it is comprised of 92 percent water.

Most people immediately think of watermelon as a sweet snack or as a palate cleanser after an evening meal, but watermelon is equally at home in savory dishes as it is in sweet offerings. You may enjoy this recipe for "Zesty Watermelon Chicken Salad Tortilla Cups" courtesy of The National Watermelon Promotion Board and recipe author Shannon Kohn. This is a great warm weather meal that looks impressive and is both cool and filling for summer entertaining.

Zesty Watermelon Chicken Salad Tortilla Cups
Makes 12 servings

- 4 8-inch flour tortillas
- 1/4 cup softened cream cheese
- 2 tablespoons mayonnaise
- 1 tablespoon cayenne pepper sauce
- 2 tablespoons chopped green chiles
- 1 cup cooked, chopped chicken
- 1-1/2 cups chopped watermelon
- 1/4 cup roasted, salted pumpkin seeds (pepitas)
- 1/4 cup sliced green onions

1. Preheat oven to 375 F.
2. Using a 4-inch cookie cutter or cup, cut rounds out of each tortilla. Press one tortilla round down into each cup of a 12-cup muffin pan.
3. Bake for 8 to 10 minutes or until tortilla cups are light brown and crispy. Remove from oven; allow to cool.
4. In the bottom of a large bowl, combine cream cheese, mayonnaise and pepper sauce until smooth.
5. Stir in chicken and green chiles. Fold in watermelon.
6. Divide and fill each tortilla cup with an extra amount of the watermelon-chicken mixture.
7. Divide and garnish with an equal amount of pumpkin seeds and green onion, respectively.

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