

Audio recording nixed for closed session meetings

By Brock Weir

Council has nixed a suggestion to audio record their closed session meetings, despite support from members of Council who believe it's a move that would avoid trouble down the road.

The suggestion to audio record closed session meetings was made in the last term of Council following the controversy and several court trials that arose from decisions stemming from one particular closed session meeting in September 2010.

Spurring forward the suggestion was a report from the Ontario Ombudsman calling on audio and video recording to assist him in closed meeting investigations. But, according to Warren Mar, Aurora's Town Solicitor, the necessary legal protections in place in the United States do not have an equivalent in Ontario, and recording such meetings could pose their own risks.

'The Ombudsman is [in favour of this] but what I think he fails to notice or recommend is the legislation in American jurisdictions,' said Mr. Mar at last week's General Committee meeting. 'Right now there is nothing stopping an opposing side in the middle of potential litigation asking for those recordings and we would have to defend that. We might not be able to prevent the entire recording from being disclosed.'

'One of the concerns we do have is without that protection, it does not put the Town at risk and the Province did have an opportunity in enacting [legislation] to move forward in that direction to require municipalities to do so and provide the proper legal protections and they didn't do any of those things. The biggest reward [we see with this] is it makes the Ombudsman's life easier. It doesn't make the Town's life easier. It allows him to go and review the audio-video recordings so that way he doesn't have to talk [to everyone] individually, then he can go about his business. In this case, we're not here to do the ombudsman's job for him.'

Council typically goes into closed session to discuss sensitive matters, including litigation, potential land deals, and matters relating to 'an identifiable individual.'

For the majority of Council, Mr. Mar's legal opinion was reason enough to vote against Councillor Tom Mrakas' motion to go forward with the recordings, and a subsequent move floated Monday night by Councillor Michael Thompson to move forward with the recordings, along with recommended protocols that could be put in place for the 'access, retention and destruction' of the records.

'I will follow the good advice of our solicitor,' said Mayor Geoff Dawe.

This was a view supported by Councillor John Abel.

'We're going to put our Town at risk,' he said. 'Why would we go and be frontiersman and put the Town at risk when no one else is doing it, the Province isn't supporting you, and we have practices that are working perfectly well for us just as they do in 442 other municipalities.'

12 municipalities doing so was not good enough reason for him to move forward.

'I can't put our residents at risk because I want to see a higher standard,' he concluded. 'It is not the right thing [to put them at risk], to cost them money.'

Had the legislative supports been available from the Province, Councillor Paul Pirri said he would have voted to move in this direction.

'I think at this point in time, until we have the proper policies in place from the provincial government, to me it is irresponsible if we

move forward in this manner," he said. "It is important the second the Province comes forward with the regulations, we should jump on this right away."

Among the most vocal proponents of moving forward with the recording at this point in time were Councillors Wendy Gaertner and Thompson. Councillor Gaertner was on Council during the controversial 2010 closed session meeting which ultimately resulted in then-mayor Phyllis Morris launching a lawsuit against three local bloggers who she said she felt defamed her.

Having a recording of that meeting could have avoided many questions, said Councillor Gaertner.

"The notes that are taken in closed session are very circumspect and it all depends on who is taking the notes," she said at the Committee level. "They really only tell a little part of the story. Had we had closed session recordings and it is a long time coming, I think it would protect the town. I think this is important for accessibility, transparency, and to get the real story on something."

A similar view was offered by Councillor Thompson.

"I remember back in 2010 and 2011, comments from current Councillors at that time wanting to know what really happened in closed session that night when the Town agreed to sue residents," he said. "There was considerable cost and damage to the Town as a result of not having a clear and concise record of what transpired, in my opinion. We have a responsibility to be a leader. There is a lot of things we're waiting for the Province [on, but] we can be an agent for change."

"I have the utmost respect for the solicitor and I always weighed his advice. In this case, I am weighing what I believe to be in the public's best interest versus what is in the Town's best interest and I weigh the two. We do that all the time. A lot has been made about risk, but we deal with risk every day. There are residents that say, why do we have a skate board park? The Town is at risk of someone hurting themselves. If we are going to manage the Town based on risk alone, then there's an issue."

Although the motion was ultimately defeated, Council voted in favour of a motion from Councillor Pirri calling on Mayor Dawe to write to Premier Kathleen Wynne and MPP Chris Ballard urging for the development of this legislative framework.