

Strengthening property rights hits another snag at Council

By Brock Weir

Efforts to strengthen residential property rights when it comes to bylaw complaints once again hit a snag around Town Hall, amid calls for a stronger warrant system to address complaints.

Council, sitting at the Committee level last week, considered a number of changes to existing bylaw operations proposed by Techa van Leeuwen, Aurora's Director of Corporate Services.

The review into the standard operating guideline (SOG) used by bylaw officers when entering ? or preparing to enter ? onto private property has been in the works for nearly 11 months, spurred by a Council motion to develop a notification process to private property owners where rights of entry will be exercised, along with a list of options bylaw officers might take if they are refused access by a property owner, including the option of requiring a warrant to ensure public health, safety and the environment.

The proposals up for Council's review at General Committee included further outlines of various risks that might require immediate entry onto a property, measures to evaluate and manage ?frivolous and vexatious? complaints, and expanded protocols on how complaints and entries are handled.

These suggestions hit a snag almost immediately out of the gate, however, when Councillor Tom Mrakas said the measures did not go far enough.

He put a motion on the floor calling for an amendment to the proposals which would require a warrant be obtained by a bylaw officer before entering onto any premises.

?Fundamentally, I have issues with us just walking onto someone else's property, especially for some frivolous complaints as far as length of grass, or maybe they smell something,? said Councillor Mrakas. ?I think we can take the time to get a warrant and do it properly. Just because [the Province] grants us those powers doesn't mean we should use them. Sometimes people abuse the power and I think we need to make sure our residents aren't being abused, at the end of the day. I do see there is an improvement, but I just don't think it goes far enough.?

While this amendment was seconded by Councillor Sandra Humfries, it quickly became the focus of Mayor Geoff Dawe who said while he is very much ?in favour of property rights? he had concerns that it would limit how bylaw officers could react in urgent situations.

?There have been flood warnings over the last couple of days and under the watershed guidelines you are not allowed to make any changes to your property that would either effect upstream or downstream,? he said. ?If, in this particular instance, someone had made alterations to their property which was causing serious flooding either upstream or downstream, with Councillor Mrakas' amendment, would we be able to react immediately or would we have to go through the process of getting a warrant??

You would indeed have to go through the process of getting a warrant, said Ms. van Leewen of her interpretation of the motion. This inspired no comfort in Mayor Dawe.

?I am no fan of people coming onto my property but at the same time I am not a fan of people doing things to their property that could potentially affect mine, such as flooding, or we have a bylaw that we potentially now render unenforceable,? he said.

Councillor Jeff Thom also said it was ?extremely important? to respect property rights, but he was hoping last year's motion would bring back a framework that would include more stringent framework as to how and when a bylaw officer could enter onto a property.

?I understand this is an improvement on what is currently the process, but for me, it doesn't go far enough,? he said. ?I am between a rock and a hard place and would probably err on the side of caution every single time. For me, if it is between what we have now and a warrant I would always err on a warrant [but] I was hoping staff would come back with a happy medium.?

Others, however, argued that while the Province gives municipalities responsibility for bylaw enforcement, requiring officers to seek a warrant in each and every case was, in their view, abdicating responsibility back to the Province.

?I don't know why we would give this to a third party where instead we can say let's approve our own policies to make sure we have something in place,? said Councillor Pirri. ?If Councillors around the table think that we need to strengthen this policy, maybe we take a little bit more time to do that but giving away our ability to enforce our bylaws, requiring us to go and get a warrant from a provincial body, I don't think is the right way to be doing this. If more work is required to get it right, we should be doing that.?

Added Councillor Michael Thompson: ?The purpose of this is to balance the town's right to enter and an individual's right to privacy. I would still like us to follow down that path. For me, the warrant is an extreme measure and I would like us to try and find a more stringent or detailed set of procedures to deal with these situations and make every attempt to find that balance before going

this route.

?If we're taking this amendment to address those issues, I don't personally think that is the right step. Who better than us to address those issues? Rather than abdicating that responsibility to the Province, let's work with the policy to address those issues. If that is really at the heart of it, I think we can find a solution that still maintains that balance and addresses those issues without having to go to warrant.?

With these questions still up in the air, and a happy medium still being sought, the matter was deferred for further consideration on March 20.