

Cannabis Control Committee  
Town of Pelham

Meeting Agenda  
Wednesday, June 26th, 2019  
5:00 p.m.

Fire Station #1 - 177 Highway 20 W, Fonthill

**PRESENT:** Mike Cioffi, Councillor - Town of Pelham  
Tim Nohara (**Chair**)  
Carla Baxter  
Jim Jeffs  
Jim Steele  
Bill Heska  
Louis Damm  
Barbara Wiens, Director, Community Planning & Development - Town of Pelham  
Shannon Larocque, Senior Planner, Community Planning & Development - Town of Pelham  
Teresa Quinlin, Interim CAO, Treasurer and Director of Corporate Services - Town of Pelham  
Jodi Legros, Administrative Assistant, Community Planning & Development - Town of Pelham (**Secretary**)

**OTHER:** Callum Shedden, External Legal Counsel - Daniel & Partners  
Interested Citizens

**REGRETS:** John Langendoen

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1. **Declaration of Quorum**

Chair declared quorum at 5:10 pm.

2. **Approve Agenda**

Members were in agreement to the agenda.

Carried.

3. **Approve Meeting Minutes of June 19, 2019**

Discussion on the minutes of meeting of June 19, 2019. Members requested amendments and same were agreed to by all members.

Moved by C. Baxter, seconded by J. Jeffs that the minutes of June 19, 2019 be approved, as amended.

Carried.

#### 4. Discussion with Callum Shedden, Solicitor

The meeting focused on the discussion with Callum Shedden. Members were given the opportunity to ask legal counsel questions during this meeting.

While there was plenty of discussion and comments from all parties around the questions and answers, for clarity, the minutes attempt to capture the key questions and answers provided directly from our Solicitor.

##### Question 1

We are planning to ask you some legal questions concerning planning which would be of a general nature at this time and therefore speaking in camera would not be necessary; however, should we wish to discuss particular amendments to our zoning by-laws or official plan, we would go in camera at that time. Are you comfortable with this approach?

Answer 1 C. Shedden: Yes

##### Question 2 :

The time may come when the committee will need to ask for legal advice concerning particular proposed amendments to our zoning by-laws or official plan. If the committee sought that advice from you, would there be any conflicts of interest with you also being the Town's lawyer?

Answer 2 C. Shedden: No

##### Question 3 :

Is there case law in which a cannabis production facility has sued a municipality and won, because the municipality passed bylaws that would essentially prohibit large scale cannabis production outdoors or in greenhouses in the municipality?

Answer 3 C. Shedden:

No. There is not a lot out there.

The precedent Court of Appeal case dealt with the prohibition of adult entertainment (Hookah Bars) in Toronto which was overturned because Hookah Bars were legal and Toronto did not provide adequate planning justification for the prohibition. (T. Nohara asked for a copy of the decision which will be provided through B. Wiens.)

An Ottawa cannabis setback case was brought before the Normal Farm Practices and Protection Board (NFPPB). A recent decision is not a lot of help. It is being appealed to the Courts. It will be two years before we get any guidance from the Court on this. (T. Nohara asked for a copy of the NFPPB decision which will be provided through B. Wiens.)

As a general principle, official plans and zoning by-laws by their nature limit or restrict legal land uses. The key to withstanding a legal challenge to the Courts is that you have to have good planning justification for the restrictions. You can't just restrict because you don't want someone there. You should expect that restrictions on Cannabis use will be challenged.

Question 4 :

Will existing cannabis producers be allowed to expand through a minor variance permitted by a Committee of Adjustment?

Answer 4 C. Shedden:

Council can require any proposed cannabis expansion to come before Council by way of a zoning by-law amendment, however there are also provisions in the Planning Act that allow Committee of Adjustments to deal with expansions of legal non-conforming uses.

Question 5 :

If a cannabis producer wanted to sue the Town in response to Council passing or not passing a proposed by-law amendment, does the producer have to first appeal the decision to the Local Planning and Appeal Tribunal (LPAT) before filing a suit against the Town with the Ontario Court?

- a. On what basis can the developer by-pass LPAT?
- b. Have any cannabis producers appealed any such Council decision to LPAT yet?
- c. Have any cannabis producers filed a law suit against the Town for any action taken by the Town or Council with respect to existing or proposed cannabis operations in the Town?

Answer 5 C. Shedden:

- a. Invalid by-laws
- b. No
- c. No

Question 6

Are you aware of any cannabis odour or light by-laws or fines applied by a municipality to a cannabis producer which have been appealed to the NFPPB?

Answer 6 C. Shedden: Yes. The Township of Beckwith.

(T. Nohara asked for a copy of the NFPPB decision/documents which will be provided through B. Wiens.)

Question 7

With reference to a regulatory framework being developed by the committee to guide our work, could you review the chart and comment on which items might be applicable to existing cannabis production facilities (CPFs) and which ones are only applicable to new cannabis production facilities?

Answer 7 C. Shedden:

The water and environmental impacts are not within the mandate of the NFPPB and could be used to increase pressure on existing CPFs.

Requiring a business licence is problematic because the federal government already has extensive licencing requirements that impose two direct requirements on the CPF to obtain municipal approval (the second being the issuance of a permit to build the facility on the lands) and further requirements to not emit obnoxious odours and to comply with all municipal by-laws.



Question 8

Can you please confirm that an appeal of an odour by-law or an enforcement under such a by-law to the NFPPB is heard on a case by case basis, and is specific to a particular farmer at a particular location?

Answer 8 C. Shedden

That is correct. NFPPB decisions do not set precedent like those provided by the Courts however decisions are informative and are used to test against similar applications, inform the development of standards and by-laws and are relied upon in case law.

NFPPB and LPAT decisions can be appealed to the Courts on a question of law.

Question 9

Aren't all by-laws, other than an interim control by-law appealable?

Answer 9 C. Shedden

Yes.

An extension to interim control by-law is also appealable to LPAT. However, LPAT is currently running approximately 1 year behind in scheduling hearings.

Question 10

If the Town puts a site plan agreement in place with a CPF, can they then appeal the agreement's enforcement provisions to the NFPPB, or will the site plan agreement take precedence?

Answer 10 C. Shedden

The site plan agreement will take precedence. It is a contract. By agreeing to it, the CPF is agreeing that the underlying by-laws are valid.

Additional Information:

The following additional information was provided by C. Shedden in response to a variety of discussion topics:

- Smaller municipalities often require peer review of site plans proposed by applicants seeking a building permit. Peer review could be considered for odour, noise, traffic and light mitigation measures. Costs associated with peer review could be paid for by the applicant.
- With regards to limiting future cannabis production facilities to industrial areas only, good planning justification would need to be provided.

5. **Adjournment:**

Moved by C. Baxter, seconded by J. Steele that the meeting be adjourned.

Carried.

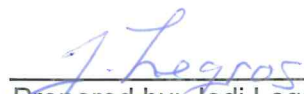
The meeting adjourned at approximately 7:20 p.m.

Next meeting: July 3, 2019 at 5:00 p.m. at Fire Station #1, 177 Highway 20 W.

Signed by:



*Edited By* \_\_\_\_\_  
Tim Nohara (Chair)



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Prepared by: Jodi Legros, Administrative Assistant  
Community Planning & Development-Town of Pelham