

## **SPECIAL COUNCIL MINUTES**

**Meeting #:** **SC-03/2021 - Muzzle Order Appeal - Special Council**  
**Date:** **Wednesday, February 24, 2021, 5:30 pm**  
**Location:** **Town of Pelham Municipal Office - Council Chambers  
20 Pelham Town Square, Fonthill**

**Members Present** **Marvin Junkin**  
**Lisa Haun**  
**Ron Kore**  
**Wayne Olson**  
**Marianne Stewart**  
**John Wink**

**Regrets** **Bob Hildebrandt**

**Staff Present** **David Cribbs**  
**Nancy Bozzato**  
**Holly Willford**  
**Sarah Leach**  
**Jennifer Stirton**

### **1. Call to Order and Declaration of Quorum**

Noting that a quorum was present, the Mayor called the meeting to order at approximately 5:30 pm.

Ms. Jennifer Stirton, Town Solicitor, read opening remarks regarding the Zoom Webinar meeting and procedures for public participation.

### **2. Approval of the Agenda**

**Moved By** Wayne Olson  
**Seconded By** Marianne Stewart

**BE IT RESOLVED THAT the agenda for the February 24, 2021, Muzzle Order Appeal Special Meeting of Council be adopted as circulated.**

	<b>For</b>	<b>Against</b>
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	

Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>
		<b>Carried (6 to 0)</b>

### **3. Disclosure of Pecuniary Interest and General Nature Thereof**

There were no pecuniary interests disclosed by any of the members present.

### **4. Purpose of the Meeting**

Ms. Holly Willford, Deputy Clerk advised all Members of the Appeal Committee had been previously circulated the Occurrence Report, Notice to Muzzle and Request for Appeal

### **5. Statement of Evidence of Animal Control Officers**

Prior hearing statements of evidence, Ms. Willford administered the required oath or affirmation to both Ms. Carly Koll and Mr. Ryan Huurman, Officers from the SPCA.

Ms. Koll stated on December 8, 2020 she received a complaint from Ms. Monique Charette indicating she had been walking her dog along Maple Avenue when her dog was attacked by another dog from 1191 Maple Street.

Ms. Koll stated as a result of her investigation and the witness statement provided she issued a Muzzle Order on Oakley, being the dog that lives at 1191 Maple Avenue.

The Irwin's legal representative, Mr. Frank Alfano questioned Ms. Koll with regards to her investigation. From the questions, Ms. Koll described the SPCAs investigation process and stated she did not view the dog which was alleged to be attacked.

A Member of the Appeal Committee requested clarification with regards to the size difference between the two dogs. In response, Ms. Koll advised Oakley is a medium sized dog whereas Phoebe (victim dog) is a small dog.

### **6. Statement and Evidence of Owners**

Ms. Holly Willford stated all Character Letters and Videos of Oakley had been previously circulated to all Members of the Appeal Committee and form part of the official record.

Prior hearing statements of evidence, Ms. Willford administered the required oath or affirmation to both Mr. Paul Irwin and Ms. Jennifer Irwin.

The Irwin's legal representative, Mr. Frank Alfano and Ms. Jody Gutoski questioned the Irwin's with regards to their: family life; dog ownership history; purpose of purchasing Oakley; history of Oakley's training; events that occurred on and after the alleged incident; and, how the muzzle order has negatively affected their lives.

In addition to verbal statements, Ms. Irwin narrated the events of several videos of Oakley's behaviors in different situations.

A Member of the Appeal Committee asked Ms. Irwin why she believed the witness had a conflict of interest. In response, Ms. Irwin stated she believes the victim and witness should not be the same person and stated he believes this to be a conflict of interest.

A Member of the Appeal Committee asked Ms. Irwin questions with regards to why the victim's husband would have a conversation with her husband if there was no attack. In response, Ms. Irwin indicated she is not sure and stated perhaps the victim was scared or startled by Oakley barking.

A Member of the Appeal Committee asked Ms. Irwin if Oakley always wears her electric fence collar outside. In response, Ms. Irwin indicated yes.

A Member of the Appeal Committee asked Ms. Irwin if Oakley has completed her training to be a diabetic indicator dog. In response, Ms. Irwin indicated Oakley has not and stated the training for this is a long process. She detailed the training that Oakley has received.

A Member of the Appeal Committee asked for clarification as to the boundaries of the electric fence and asked if it is only on the Irwin's property. In response, Ms. Irwin stated the electric fence is within their property and confirmed the electric fence stops before the sidewalk.

A Member of the Appeal Committee asked when Oakley must wear the muzzle. In response, Ms. Irwin indicated to her understanding Oakley must wear a muzzle around any other dogs or people, other than their own dogs and immediate family.

Ms. Koll indicated she had no questions for Ms. Irwin.

## **7. Statement and Evidence of Victim**

Ms. Holly Willford stated the recorded conversation has been previously circulated to all Members of the Appeal Committee and forms part of the official record.

Prior to hearing statements of evidence, Ms. Willford administered the required oath or affirmation to Ms. Monique Charette.

Ms. Charette stated she had provided a written statement with regards to the events which occurred and stated she had nothing more to add.

A Member of the Appeal Committee asked Ms. Charette if there was any damage to the dog's coat and asked what the coat material was made of. In response, she indicated there was no damage; however, stated there was a broken buckle. Ms. Charette stated she is not

aware if the buckle was broken during the incident. She furthermore advised she believes the coat material was nylon.

A Member of the Appeal Committee asked Ms. Charette if she walks her dog regularly and if they have seen Oakley before. In response, Ms. Charette stated she does walk her dog regularly and has not, to her knowledge seen Oakley before.

A Member of the Appeal Committee asked Ms. Charette if there were any warning signs from Oakley the alleged attack was going to occur. In response, Ms. Charette stated there were no warning signs and that Oakley came from behind a large vehicle. Ms. Charette briefly described the events which she stated occurred.

A Member of the Appeal Committee asked Ms. Charette if Oakley was wearing a collar. In response, Ms. Charette stated she did not recall.

Ms. Koll indicated she had no questions for Ms. Charette.

The Irwin's legal representative, Mr. Frank Alfano asked Ms. Charette questions with regards to the condition of her dog's coat, if she took pictures of the coat or dog and requested clarification to where Ms. Charette walked her dog. In response, Ms. Charette reiterated the coat was not damaged however, stated a buckle is broken. Ms. Charette stated she did not take pictures of the coat or dog, however did check her dog and determined there was no physical harm to the animal. She described the direction she was walking on Maple Avenue.

## **8. Witness Statements, If Any**

Ms. Willford stated all verbal witness statements will form part of the official record.

Prior hearing statements of evidence, Ms. Willford administered the required oath or affirmation to: Nancy Rushford; Catherine and John Griff; Phil and Nicole Hayes; and, Sarah Servos.

Each of the witnesses spoke as character witnesses on behalf of Oakley and/or the Irwins.

A Member of the Appeal Committee asked Mr. Hayes if his dog wears a coat and if Oakley would recognize a dog coat. In response, Mr. Hayes indicated many dogs walk along Maple Avenue wearing coats and suspected Oakley would recognize a coat.

A Member of the Appeal Committee asked Ms. Servos if any dog is surprised, could the dog react out of character and be aggressive? He asked if she believed this is a true statement. In response, Ms. Servos stated she did not believe that was a true statement and stated it depended on the dogs' temperament. She stated it was unlikely for Oakley to act aggressively.

## **9. Presentation of Summary Arguments**

Mr. Ryan Huirman, SPCA Officer stated when the SPCA receives a complaint they ask the victim to provide a statement. He stated the SPCA then issued an order pursuant to the definition of a vicious or

dangerous dog as defined within the Town of Pelham's Vicious or Dangerous Dog By-Law. Mr. Huirman stated no damage to property has to occur to issue the order. He further clarified the conditions of the order for the Appeal Committee and parties' benefit.

Mr. Alfano, Legal representation for the Irwin's, stated the Appeal Committee does not have to determine if the alleged incident happened or not. Rather he stated an abundance of evidence had been submitted with regards to Oakley's disposition and temperament. Mr. Alfano emphasized the dog's submissive behavior and respectfully requested the Appeal Committee reverse the order.

## **10. Rendering of Decision**

The Appeal Committee discussed the evidence heard and stated there had been overwhelming evidence submitted that Oakley is not a vicious dog. The Appeal Committee further stated they believed the victim and that something transpired, however stated the incident likely was a 'one off' event. The Committee further discussed Oakley's formal training and re-training. The Appeal Committee indicated they believed the extent of the punishment was unfair.

**Moved By** John Wink

**Seconded By** Wayne Olson

**BE IT RESOLVED THAT the evidence submitted by Carly Koll, Investigator, Welland & District SPCA and Officer Ryan Huirman, Welland & District SPCA, be received; and**

**THAT the evidence submitted by the victim, Ms. Charette, be received; and**

**THAT the evidence submitted by Mr. Al Gacnik, be received.**

	<b>For</b>	<b>Against</b>
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	
Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>

**Carried (6 to 0)**

**Moved By** Marianne Stewart

**Seconded By** John Wink

**BE IT RESOLVED THAT the evidence submitted by Mr. and Mrs. Irwin, Owners, be received for information.**

	<b>For</b>	<b>Against</b>
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	
Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>

**Carried (6 to 0)**

**Moved By** Ron Kore  
**Seconded By** Lisa Haun

**BE IT RESOLVED THAT the verbal witness statements, be received for information.**

	<b>For</b>	<b>Against</b>
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	
Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>

**Carried (6 to 0)**

**Moved By** John Wink  
**Seconded By** Lisa Haun

**BE IT RESOLVED THAT the following Muzzle Order Appeal Hearing Decision be and is hereby rendered:**

**THAT the Notice to Muzzle Order dated December 10, 2020 to "Oakley", Mr. and Mrs. Irwin, be and is hereby: Exempt**

1. ~~Every owner shall not permit the dog to be on any streets or in any public place or any other place that is not owned or controlled by the owner unless the dog is on a substantial chain or leash not exceeding 1.5m in length and muzzled in a manner that will not cause injury to the dog or interfere with its vision or respiration, but will prevent the dog from biting another animal or human Sec. 8 (d)(1);~~

2. ~~At indoors all times or in while an the enclosed dog is pen on or the other premises structure, owned of or minimum controlled size by five such feet by person, ten feet, keep the capable dog of securely preventing confined the entry of children and other animals and adequately constructed to prevent the dog from escaping Sec. 8 (d)(2);~~
3. ~~Conspicuously display a sign on his/her premises warning that there is a dangerous dog on the property Sec. 8 (d)(3);~~
4. ~~So confine said dog that allows persons who have lawful entry onto the premises of the dog owner to have such entry without fear of attack by said dog Sec. 8 (d)(4);~~
5. ~~Allow an officer to inspect such pen or other structure or to make whatever inquiry is deemed necessary to ensure compliance with the provisions of this by law Sec. 8 (d)(5); and~~
6. ~~Notify the poundkeeper immediately if a dangerous dog is loose, unconfined, has attacked another animal or human or has died or has been sold or given away. If the dog has been sold or given away the owner or harbourer shall provide the poundkeeper with the name, address, and telephone number of the new owner Sec. 8 (d)(6)~~

	For	Against
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	
Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>

**Carried (6 to 0)**

## **11. Confirming By-law**

**Moved By** Ron Kore

**Seconded By** Wayne Olson

**BE IT RESOLVED THAT the following By-law be read a first, second and third time and passed:**

**Being a By-law No. 4324(2021) to Adopt, Ratify and Confirm the proceedings of Council of the Town of Pelham at its Special Meeting held on the 24th day of February, 2021.**

	<b>For</b>	<b>Against</b>
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	
Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>

**Carried (6 to 0)**

## **12. Adjournment**

**Moved By** John Wink

**Seconded By** Marianne Stewart

**BE IT RESOLVED THAT this Special Meeting of February 24, 2021 be adjourned.**

	<b>For</b>	<b>Against</b>
Marvin Junkin	X	
Lisa Haun	X	
Ron Kore	X	
Wayne Olson	X	
Marianne Stewart	X	
John Wink	X	
<b>Results</b>	<b>6</b>	<b>0</b>

**Carried (6 to 0)**

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Mayor Marvin Junkin

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Deputy Clerk, Holly Willford