

Good day.

I hope this finds you well.

The Rural Zoning By-law Project Team has been working on responses to the comments received on the By-law. Below you will find your comment(s) followed by a response. Should you have any further questions, please respond via email.

We are continuing to advance the Project and determining next steps. A Project Update will follow later this month.

Thank you for your continued interest in the Rural Zoning By-law Project.

Comment:

"This letter serves to express and describe my objections to the recently published "final" version of the Rural Zoning By-law for the City of Kawartha Lake.

To those of you who have not yet seen the document or been able to comment on it, follow these instructions: "Access your copy of Final Rural Zoning By-law Consolidation proposal by visiting <https://jumpinkawarthalakes.ca/> and click on the Rural Zoning By-law Consolidation button "View Project". Select the link <https://jumpinkawarthalakes.ca/21059/widgets/158853/documents/109876>.

After reviewing the proposal's 380 pages of content, email your feedback using ruralzoningbylaw@kawarthalakes.ca and cc your Ward Councillor."

Reason for taking action.

I am currently reviewing the 380 page document that became publicly available as the "final" Rural Zoning By-law Constitution proposal in July 2023.

Many constituents of the City of Kawartha Lakes have only recently become aware of this document and have expressed their concern that insufficient time has been allowed by City Council to assess and offer feedback.

The window for citizen input was established on August 29 by City Council and it will close on September 15.

Some people suspect that City Council intends to pass this proposal into law as early as the next public City Council meeting. It is scheduled for September 29. They rightfully ask "what's the rush?" when they consider that it has taken four years to produce the final version.

What I have learned in the last few weeks.

The document in question represents the culmination of four years of effort by City staff and a consulting company, WSP, that was engaged by the City in 2019.

The purpose of this undertaking was to consolidate 14 sets of legacy by-laws that are still in use and are the county-level land zoning rules. They originated before the sprawling City of Kawartha Lakes was created as a corporation to amalgamate the 17 former unique and diverse counties over two decades ago.

My assessment so far, and my objections.

I object to this proposed Rural Zoning By-Law in its current and “final” version. My objections are both specific and broad in scope. They pertain to omissions and points of definition clarity that have concerning implications which I will address.

Report PLAN2023-039 is the reference name of this document. Its length is 380 pages and it is full of arcane rules, standards and charts designed to be applied to any and all plans that a farmer, cottage-owner, home owner and business owner may have for their rural property.

As it stands, the contents of this document will be the first and primary barrier over which they must pass to fulfill their plans. The gatekeeper and enforcer of the By-law, the City of Kawartha Lakes, has established a reputation with a wide range of property owners and companies in the realty, construction and building services sectors that, shall we say, is not flattering.

So far, my reading of Report PLAN2023-039 suggests that it generally succeeds for what it was intended to do: WSP was given a mandate to use their staff and subject matter expertise to deliver this document according to the instructions given by the City and under the terms and conditions that the engagement contract surely stipulated. It appears well organized, thorough and professionally done.

However, “the devil is in the details” which is where my concerns lay. A “cookie-cutter”, “one-size-fits-all”, “boil the ocean” rule book has become the result.

Typical of most government legislation, Report PLAN2023-039 seeks to provide one rule for every conceivable situation.

The original set of rules was embedded in 14 unwieldy documents that were mutually inconsistent, difficult and expensive to apply, were uniquely created to apply to property owners within the 17 former county regions. Each county had their own book of rules which had evolved over many past decades, rule-makers and county administrations.

Here are some questions that come to mind. What decisions were made by City and WSP staff to determine which legacy rules would survive and be incorporated into the new “consolidated”, “harmonized” and “modernized” Rural Zoning By-law plan? On what basis and criteria were those decisions made? Who were they primarily thinking of when they made those decisions - the property owners, or the City’s administration staff?

Concerning property rights

Property Rights are at the heart of most laws in this country, and perhaps all of them if you define property ownership to include one’s person (body, mind and efforts) and the assets (money, material goods & capital, intellectual property) that are acquired by persons throughout their lifetime.

BingCHAT says: “Common law is still practiced in Canada. Though Canada is now completely independent from Britain, English common law still applies to the country, as it does to the United States and other former British colonies¹. Canada has inherited 2 of the world’s basic law systems: common law (in the 9 provinces and the territories) and civil law (in Québec)².”

... and...

“Yes, common law applies to property rights in Canada. Property law — whether under the common law in most of Canada, or the Civil Code in Quebec — deals with a wide range of rights and obligations owing to individuals and governments, and has evolved enormously, particularly in fairness to women, since the 19th Century¹. The popular notion of property as something owned encourages the idea of property rights as absolute. However, property in the legal sense is more accurately regarded as the combination of the legal rights of individuals with respect to objects, and the obligations owed them by others and guaranteed and protected by government¹. Property is either classified as private property owned by one or more individuals or public property owned by government¹.”

Concerning the definition of ‘person’.

On page 33, Report PLAN2023-039 defines ‘person’ in a way that is not recognized in common use by our constituents.

In law, the use of language is very precise. This explains why legal documents are crafted carefully and employ often arcane terminology and phrasing (referred to in the colloquium as “legalese”) designed to achieve their intended purpose and outcomes.

The fact that ‘person’ is currently defined as it is in this document leads me to be suspicious of the intended purpose. What unexpressed outcomes do City planners and administrative staff wish to achieve by using that definition within the By-law?

Curious, I prompted BingCHAT to answer the question “Where in Ontario or federal law is ‘person’ specifically defined as an individual?”

Reply: “I couldn’t find a specific definition of “person” as an individual in Ontario law. However, the Law Society of Ontario defines “lawyer” as a person licensed by the Law Society to practise law as a barrister and solicitor in Ontario and includes a candidate enrolled in the Law Society’s Licensing Process for lawyers^{Ad1}.”

If the Law Society defines “lawyer” as a single and individual entity, shouldn’t Report PLAN2023-039 do likewise? I propose that the definition of ‘person’ be defined as in common use. A BingCHAT prompt suggested: “A person is a human being regarded as an individual.”

I also propose the addition of new definition, ‘personal representatives’. This is where to define the other parties named in the current ‘person’ definition.

Why is this important?

A clear, precise and widely recognised definition of ‘person’ as an individual will come into play when the property rights of the individual constituent are considered with respect to the application of the new Rural Zoning By-law.

No one can anticipate when and if this will become important in future applications of the rules, but the same can be said about the many and varied rules within Report PLAN2023-039 designed to cover every possible contingency.

Let’s be fair to our constituent property owners and include a specific definition and delineation of individual property rights. Those rights legally exist and their recognition in our bylaws provides both the reminder and respect of this fact. In effect, individual

property owners will be reassured that they also have a say in how the City applies these zoning rules, not just the City.

In practice, the objective must be that property owners can resolve many zoning issues without being forced to go through time-consuming processes, like obtaining a bylaw variance, that are controlled entirely by the City.

Property Rights are legislated rights.

Since I am not trained in law, I rely on online access to information to help me find the sources of my rights and legal options.

As a property owner within the City of Kawartha Lakes, I took an interest on Report PLAN2023-039 because I and my family suffered personally in 2016 due to an error made by a City employee.

My builder received a Building Permit to build my new home on two forested acres in a rural Fenelon Falls. The building was designed for myself, wife and her two aging parents who wanted their own living quarters while knowing their eldest daughter and I were nearby when help it was needed.

The Building Permit was abruptly revoked midway through construction several months after it was granted. Our approved building plan included a ground floor “granny flat” which accommodated the needs of my increasingly feeble father-in-law who was dying of cancer (he passed in 2017).

Needless to say, this mistake by the City was an expensive and frustrating hardship we were all forced to endure under trying personal circumstances. The City bore no additional costs or inconvenience.

I will not bore the reader with the blow-by-blow details of this long and painful episode. Suffice it to say that this experience taught me how one-sided, punishing and impersonal the application of the City’s statutes can be.

I prompted BingCHAT to answer this question: “How are property rights defended and protected in Ontario? Under which documents of legislation will I find my property rights protected?” BingCHAT replied:

“In Ontario, property rights are protected under the Property Rights and Responsibilities Act, 20091. The Bill amends the Expropriations Act and the Human Rights Code to enhance the protection that Ontario law gives to owners of property, whether real or personal1.”

The traditional understanding of ‘bylaw’.

The Merriam-Webster Dictionary defines “bylaw” as “a rule adopted by an organization chiefly for the government of its members and the regulation of its affairs”. From this, I understand that the intended application of government bylaws is to provide a set of enforceable prescriptions that its enforcement officers can apply to citizens when appropriate situations arise. The entire authority rests with the City to which constituents are subject.

Does this authoritarian nature of bylaw applications need to be this way?

Just because past bylaws have never considered or addressed the legitimate rights of individual persons who own affected properties doesn’t mean that the desired

“modernization” of the new Rural Zoning By-laws should not recognize and respect those rights.

No recourse.

Returning to my 2016 story, after the building of my new home was abruptly and unexpected stopped on a sunny August day, I was told that construction could not commence until the building permit issue was resolved to the satisfaction of the City officials, and that this would likely require a “variance” request to be considered by Council at some future, unspecified date.

My point is this. Any time a serious property zoning matter like mine arises, the property owner is at the mercy of the local government for resolution. Those matters must navigate convoluted and arcane processes typically at a snail’s pace.

This level of “customer service” is unacceptable, especially for an institution like the City government which has allocated to itself ultimate authority on all property ownership matters.

Can the City of Kawartha Lakes set higher performance goals?

If the above episode happened to my family, how many other innocent property owners have likewise faced similar challenges which forced them to deal with the City to seek remedies?

This exercise in consolidating rural zoning bylaws presents an ideal opportunity to improve the City’s relationships and reputation within all of the City’s constituent stakeholders. The proposals suggested herein can help meet this objective.

A present threat must be thwarted.

Please allow me to present an issue that currently poses a threat to all CKL residents and property owners which can be mitigated by adding new provisions to the new Rural Zoning By-law.

The threat: A deputation was presented at the August 29 public meeting of City Council by Barry Snider and Ginny Colling, representatives of the Kawartha Lakes Environmental Advisory Committee, (Report PLAN2023-041). The deputation was received by Council.

These Committee reps seek to curtail through legislation the expansion of electricity producing gas plants in Ontario. By inference, this implies that any plants that currently exist within our City limits, or is in planning for future construction, must not be expanded or built.

Below explains why I object to the new Rural Zoning By-law for its inability to protect our residents from threats like the one posed by the authors, promoters and supporters of Report PLAN2023-041.

Energy security is vital to all CKL constituents. If PLAN2023-041 was eventually passed, how will the new Rural Zoning By-law be applied in relation to PLAN2023-041 since it will have zoning implications? What provision will exist to create a firewall to protect property owners from such potential encroachments on their property rights,

both private and public (City lands). Will said “Green” advocates find By-law rules which they can interpret to delay or thwart any possible gas plant expansion within the CKL?

Notwithstanding the lost potential local investment, employment opportunities and supply of reliable and affordable energy that would be provided by gas plant expansions, the Green Energy advocates and activist groups can be expected to seek ways (loopholes) to exploit the new Rural Zoning By-law in order to delay, restrict or stifle our energy options. Every one of our residents depend on reliable and inexpensive gas-fueled energy today and in the foreseeable future. Restricting this supply will harm every resident within the City’s jurisdiction.

Politics being what it is, I am convinced that the inclusion, definition and elaboration of property rights within the Rural Zoning By-law is essential to deter those who will attempt to interpret its rules to their purpose.

The fact that the deputation presented by Mr. Snider and Ms. Colling was received by Council is evidence that Green advocates are politically active and seek to advance their agenda forward to a legislated conclusion in their favour. The CKL City Council must deter any potential threat to the Energy Security of its 78,000 residents and property owners by building safeguards into the Rural Zoning By-law.

For the sake of being clear on this point, a prompt to BingCHAT produced: “ Energy security is the association between national security and the availability of natural resources for energy consumption (as opposed to household energy insecurity)¹. The International Energy Agency (IEA) defines energy security as the uninterrupted availability of energy sources at an affordable price. Energy security has many aspects: long-term energy security mainly deals with timely investments to supply energy in line with economic developments and environmental needs. On the other hand, short-term energy security focuses on the ability of the energy system to react promptly to sudden changes in the supply-demand balance²”

The will of the majority must be served and preserved by City Council.

While nearly everyone wants Energy Security, a small subset of citizens favour “Green Energy” due to their climate change beliefs. This latter group promotes unsightly and expensive wind turbines and land-wasting solar farms for our energy supply. This is a serious infringement to the property rights for everyone who wants Energy Security as well as the desired uses for public and private property.

Ideally, a referendum would resolve the question of whether the majority of our citizens prefer Energy Security over “Green” policies like carbon taxes and restrictions to land use in order to address their alleged threat of future global warming attributed to the burning of fossil fuels. City Council is unlikely to approve such a referendum.

Instead, this threat can be neutered by imbedding protections into the Rural Zoning By-law to lock property rights provisions into the statute. In so doing, overzealous citizens may not easily impose their self-serving goals on our communities using political means.

To explain specially why this is a property rights issue, I argue that reliable and affordable energy is a vital resource (like clean air and water) required to sustain human survival and prosperity in the modern era. We pay for it with the money (an asset, property) we earn with our persons (body, mind and effort) to secure access to the energy that is so essential to us.

This explains why legislative protections must be in place to defend our property (person and assets) from people who threaten to jeopardize our Energy Security. Ideally, such protections must recognize, acknowledge and in be written into all City statutes, including the Rural Zoning By-law, to make very clear how essential Energy Security is to every person and property owner.

My Proposals.

I object to the Final Rural Zoning By-law released in July 2023. As promised at the outset, I have explained my reasons above and trust that all readers understand and will consider them.

Also expressed earlier, The City of Kawartha Lakes has an ideal opportunity to establish a positive reputation with all property owners. This can be achieved by adapting the tone, spirit and content of the proposed “final” Rural Zoning to be less autocratic and more democratically collaborative in a manner that shares responsibility and decision-making authority for many zoning matters with the property owners themselves. The City can simultaneously achieve the efficiencies intended when the Consolation effort began in 2019.

While the “consolidation” and “harmonization” of 14 books of county by-laws is a worthy goal, the “final” result is one large compendium of standards and uniform rules that may, or may not, be appropriate to apply strictly to every unique zoning issue that enforcement personnel may encounter.

Room for discretion must be more generous. Allow the defined property rights of owners to supply a legal base from which they can negotiate (if needed) to reach reasonable zoning compromises. Long, protracted and frustrating “variance” requests will largely become unnecessary thereby saving valuable time and labour resources under the City’s management. Positive outcomes, through good faith negotiation, can be achieved and preserve both the spirit and fact of community interests.

There is no reason that the City’s stated “modernization” objective cannot include the recognition of the property rights of owners too!

What can be more “modern” than a progressive “public-private partnership” between City personnel and constituent landowners? This will surely earn the City of Kawartha Lakes the advantageous reputation as one of the safest and more investment-friendly jurisdictions in Ontario. It starts with City projecting an open, welcoming and accommodating posture to all interested parties and future stakeholders. The City can take steps towards this vision by showcasing a set modern and progressive Rural Zoning By-laws.

DISCRETION means guidelines, not rigid rules.

The progressive vision described above requires further elaboration.

The current proposal contained reams of rules and standards. Why not designate most, if not all of them, as guidelines based on best practices? After all, the City just completed a long and detailed study of its existing bylaws and learned what worked and what was useful from studying their applied history. Also, bylaw lessons learned from

other jurisdictions can also be incorporated and trial-tested in the rural zoning compendium of best practices.

This 'guidelines' approach to zoning allows for the discretion that is required to apply reason and good judgement to a property owner's interests and their unique situation while considering the expressed interests of neighbours and the community at large.

Nimby discussions are bound to be more common between City residents, a positive outcome. This will certainly evolve into a rewarding, engaging and democratic climate for stakeholders' to get more involved in City matters, especially at the grassroots level. It is certainly preferable to the "stone wall" and "run-around" that many property owners encounter when attempting to reason with City staff who are known to abide "by the book" at all times. Professional arbitration can be used as a last resort.

Summary of my proposals:

Create new definitions for 'person', 'personal representatives', 'constituent property rights'.

Revise the allocated authority of bylaw rules from being strictly enforceable to somewhat discretionary 'guidelines' based on established best practices. Encourage good faith negotiations between relevant stakeholders. Employ professional arbitration to resolve intractable disputes funded entirely or partially by the disputing parties.

Define protections within the Rural Zoning By-law to protect property rights and discourage "special interest" lobbyists who possess ideological or anti-democratic objectives and who may try to politically exploit bylaw rules for their self-serving ends at the expense of the majority.

"The will of the majority" is, theoretically, the basis upon which lawmakers are supposed to create policy. If it is unclear, consider using a referendum (commonly used in Switzerland). Note that, if strict 'rules' become discretion 'guidelines based on best practices', and if constituent property rights are clearly defined to be weighted in favour of the most immediate stakeholders over any third parties who possess limited or no direct stake, then concerns of special interest groups like Green Energy advocates will find little (if any) room at the bargaining table.

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I might be otherwise tempted to apologize for such a lengthy submission, but my options to express these objections in detail have been curtailed by a feedback process of the City's design.

I plan to spend more time reviewing all the rules that may have pertained to my situation in 2016 since they are most relevant to my personal experience and property stake.

Thank you for considering my submission. I look forward to your thoughtful reply to my suggestions before the public City Council meeting of September 29 and, ideally



before the September 15 date after which you have declared that no additional feedback will be accepted."

### **Response**

Comment acknowledged. The Rural Zoning By-law Review project began in 2019 to consolidate the City's existing zoning by-laws and bring zone provisions into conformity with the City's Official Plan. In 2019 and 2020, Reports were prepared and made publicly available which document key local issues, options, and a methodology for consolidating the existing zoning by-laws. Public consultation was conducted throughout all phases of the project. The authority to establish a zoning by-law is set out in Ontario's Planning Act, which is the primary land use legislation in the Province. The proposed Rural Zoning By-law has been prepared to conform to the City's Official Plan, which contains a wide range of policies to guide growth and development, and addresses topics related to agriculture, economic development, and natural protections, amongst others. The proposed Rural Zoning By-law broadly permits public uses by the municipality or other public authority in all zones.

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