

Deputation

ON BEHALF OF ADVOCATES FOR CIVIL SOCIETY

BY GENE BALFOUR & DR. KERSTIN KELLY

5 MARCH 2024

Letter submitted to Jonathan Derworiz MCIP, RPP (Planning Consultant, City of Kawartha Lakes)

To: CKL City Council

Date: October 10, 2023

From: Gene Balfour, 44 Fells Point Road, Kawartha Lakes K0M 1N0

Topic: Objections to PLAN2023-039.

Summary: Supports COW-08.4.3 to explain concerns about the Final Draft Rural Zoning By-law ("Final Draft") document released publicly in July 2023. Final Draft defines the results of the City's 4-year project to amalgamate 14 rural zoning by-laws into one Rural Zoning By-law.

Introduction:

The Final Draft has been described as "*consolidated*", "*harmonized*", and "*modernized*". This seems like a worthy cause, but "*the devil is in the details*".

In speaking with other concerned constituents of Kawartha Lakes who, *like me, are rural property owners, it's these details that we have wanted time to understand.* On August 29, Council granted a 2-week extension from the initial cutoff date of September 1 for citizen feedback. This was insufficient time to gather inputs from the broader community of CKL property owners. *The 380-page Final Draft contains far too many rules, charts, tables and policies for an average property owner to study, digest and weigh its implications.*

My Purpose.

I am making this deputation to **defend and protect the property rights of all CKL property owners from the unintended consequences to which they will be exposed should this Final Draft pass into By-Law**

Yes, this is a property rights issue.

Before going further, I will state some facts.

First, I am a Canadian citizen as I assume are all nine members of Council.

Second, Canadian citizens are governed according to a *Federal Constitution* which represents the highest laws of this nation. It includes the *Bill of Rights* and the *Charter of Rights and Freedoms*.

Third, *Common Law* has been practiced in Canada since it was founded as a nation, and even before when it was a British colony. *Property rights*, particularly in common cases such as divorce and the dissolution of other partnership arrangements, are well-established and widely acknowledged by all Canadians as *part of Common Law*.

Two specific objections

The Final Draft contains a *questionable and suspicious Definition*, and it *fails to acknowledge the Propert Rights* of CKL's landowners. Specifically:

- Person** is defined on page 33 as "*an individual, association, firm, partnership, corporation, trust, incorporated company, corporation as created under the Condominium Act, as amended, organization, trustee of agent, and the heirs, executors or other legal representatives of a person to whom the context can be applied according to law.*" The Oxford English Dictionary defined person as "*an individual human being*". The Canadian Charter of Rights and Freedoms is clear in its application of that law to *individual human beings*.
The problem: The Final Draft's definition of **person** is inconsistent with the common understanding of the word. It creates implications which will create confusion and may abridge the Constitutional rights and freedoms of CKL property owners whenever they find themselves in a legal zoning dispute in which Common Law and Propert Rights apply.
- Individual Property Rights** pertain to every farmer, homeowner, cottage owner, small business owners like my brother and sister-in-law who operate a dog kennel on their land, and others.
The problem: The Final Draft does not acknowledge, define or delineate these rights within its pages. This is **a serious omission** and Council must NOT approve it as written. As a By-Law, it will pose too many risks of other unforeseen shortcomings and/or omissions that affect CKL property owners. As it stands, *the Final Draft proposes a one-sided, autocratic instrument of controls that awards all zoning authority and powers to the City and virtually none to our property owners.* Furthermore, all zoning disputes that may arise can only be settled through the strict, slow and bureaucratic processes, procedures and policies that have also been defined, controlled and executed by municipal departments and the authorities therein. *Institutional bias is built into all public dispute mechanisms* making the situation too lop-sided against any chance that a property owner will arrive at a prompt, fair and reasonable dispute settlement if a By-law is created by Council based on this **undemocratic Final Draft**.

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Recommendations: “democratize” the Final Draft

1. **AMEND** the Final Draft to define **person** as the Oxford English Dictionary does. Create another definition ‘**legal representatives of person(s)**’ to include the other entities to which the Final Draft refers in its current **person** definition. *This will remove unnecessary and expensive legal wrangling, obfuscation, confusion and frustration that may arise in the case of future zoning disputes.*
2. **CREATE a Rural Zoning Compendium of Best Practices** **INSTEAD OF** a one-sided By-law of autocratic, strictly enforceable rules. The City has already invested time and money on this Consolidation project. The *Final Draft includes valuable content* including the legacy bylaw provisions that were applied with some success over many generations. *This legacy content provides an ideal foundation* upon which to create a **Compendium of Best Practices for Rural Zoning**. Current City staff can become **Rural Zoning Advisors** to *guide property owners’s plans and decisions* based on these **Zoning Best Practices**. Today, too many property owners distrust by-law enforcement officers and have stories of frustration dealing with *inflexible and impersonal City “rules enforcers”*. Many, like me, encountered one who exercised his authority in an over-zealous manner (Note: I personally suffered the consequences of this in 2016 during the building of my home which Mayor Elsmilie knows well)
3. **DEFINE Individual Property Rights as an integral component of the Rural Zoning Compendium of Best Practices**. These rights must be clearly and prominently acknowledged, and unambiguously defined and delineated. By making this change, *our elected City Council members will signal to the public that they are prepared to defend and protect those rights as their top priority in all property-related matters*. This will also enable them to hold City staff and workforce accountable to those objectives while building a better reputation with constituents.

Final comments

By transforming the Final Draft from a strictly enforceable book of rules, policies, standards and charts to a **compendium of best rural zoning practices**, future discussions and negotiations between property owners

and City officials can be conducted as **equals**. Yes “**negotiations**”, *just like those between public sector labour unions and government employers. Zoning dispute deadlocks can be resolved by professional arbitration specialists*. Said arbitrators must NOT be employed or engaged by government institutions so as to avoid endemic “institutional bias”.

The City has an **excellent opportunity to establish a reputation for defending and protecting the Constitutional and property rights of all constituents under its authority**.

I understand that it will take courage to enact measures like a **compendium of best rural zoning practices** when other Ontario municipal governments have not yet seen the wisdom in creating a **society of equals** between Canadian citizens and their governing institutions.

Will this Council be the first to establish this as a trend within Ontario?

Individual Property Rights, clearly and comprehensively defined within a Rural Zoning Compendium of Best Practices, is essential if a truly democratic relationship between the City and its constituents will ever be achieved.

Canada, and its hierarchy of governing authorities, can never be described as a “civil society” until these individual property rights are finally given their due powers for all Canadians in their relationship with every level of government. *Can City Council that the first step towards building a lasting mutual respect and trust between our citizens and the City?*

Thanks you for hearing my carefully consider objections to the Final Draft. I hope you seriously consider them and the recommendations herein. Reference Sources follow....

Reference Sources.

Individual property rights are the legal rights of individuals to own, use and enjoy property. My personal understanding of **property** is my **person** (body, mind and efforts) plus the **assets** that my **person** has created, earned or acquired by legal means. On a moral level, I consider the use of force, coercion or deceit to take property from its legitimate owner as a form of theft.

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The Letters Patent issued by King Charles II in 1670 to the Hudson Bay Company, the Constitution of 1792 which created Upper and Lower Canada, and the British North America Act of 1867 (BNA Act) that formed the Dominion of Canada. All of these documents protected the property rights of individuals⁴.

Individual property rights are supposed to be defended and protected by various mechanisms, but these often fail to do so in practice. These mechanisms are mostly government-owned and operated processes:

- The **rule of law**, which requires that any interference with property rights must be authorized by a valid statute or by a legal principle relating to the defence of the realm⁵.
- The **due process** clause, which requires that any deprivation of property rights must be fair, reasonable and proportionate to a legitimate public interest¹².
- The **judicial review**, which allows individuals to challenge any legislation or action that infringes their property rights in court²⁵.
- The **private security** industry, which provides services such as security guards, alarm systems and insurance to protect individuals' property from theft, vandalism or other threats⁵.

The Charter

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

Democratic Rights

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members. (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly as the case may be. (3) There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

Every citizen of Canada has the right to enter, remain in and leave Canada. (1) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province. (2) The rights specified in subsection (1) are subject to (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services. (3) Subsections (2) and (1) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. (1) Everyone has the right to be secure against unreasonable search or seizure. (2) Everyone has the right not to be arbitrarily detained or imprisoned. (3) Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful. (4) Any person charged with an offence has the right (a) to be informed without unreasonable delay of the specific offence; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of the offence; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (e) not to be denied reasonable bail without just cause; (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is



CANADIAN CHARTER OF RIGHTS AND FREEDOMS



imprisonment for five years or a more severe punishment; (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; (h) if finally acquitted of the offence, not to be tried for it again; and (i) if found guilty of the offence, and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment. (5) Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. (6) A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence. (7) A party to a proceeding who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French. (4) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (5) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick. (6) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. (7) The statutes, records and journals of the

legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative. (8) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament. (9) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick. (10) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where (a) there is a significant demand for communications with and services from that office in such language; or (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French. (11) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French. (12) Nothing in sections 10 to 12 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. (13) Nothing in sections 10 to 12 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Minority Language Educational Rights

Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province. (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language. (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1960; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. (2) The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. (3) This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. (4) Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons. (5) Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissenting schools. (6) A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be. (7) Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament, including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province. (2) Notwithstanding subsection (1), section 1 shall not have effect until three years after this section comes into force. (3) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 1 or sections 2 to 15 of this Charter. (4) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration. (5) A declaration made under subsection (3) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (6) Parliament or a legislature of a province may re-enact a declaration made under subsection (3). (7) Subsection (3) applies in respect of a re-enactment made under subsection (6).

Citation

This Part may be cited as the Canadian Charter of Rights and Freedoms.

"We must now establish the basic principles, the basic values and beliefs which hold us together as Canadians and that beyond our regional loyalties there is a way of life and a common identity."



Bill of Rights

“the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof”



Canadian Bill of Rights

1960, c. 44

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

Assented to 10th August 1960



THE Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Billirning also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

Bill of Rights

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely:

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the

Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
 - (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
 - (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly of the reason for his arrest or detention,
 - (ii) of the right to retain and instruct counsel without delay, or
 - (iii) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;
 - (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self incrimination or other constitutional safeguards;
 - (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
 - (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or
 - (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.
3. (1) Subject to subsection (2), the Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy

Council for registration pursuant to the *Statutory Instruments Act* and every Bill introduced in or presented to the House of Commons by a Minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

(2) A regulation need not be examined in accordance with subsection (1) if prior to being made it was examined as a proposed regulation in accordance with section 3 of the *Statutory Instruments Act* to ensure that it was not inconsistent with the purposes and provisions of this Part.

1960, c. 44, s. 3; 1970-71-72, c. 38, s. 29; 1985, c. 26, s. 105; 1992, c. 1, s. 144(F).

4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.

PART II

5. (1) Nothing in Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.

(3) The provisions of Part I shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada.



Roger Duhamel, P.R.S.C., Queen's Printer, Ottawa, Canada.

"I am a Canadian, a free Canadian, free to speak without fear, free to worship God in my own way, free to stand for what I think right, free to oppose what I believe wrong, free to choose those who shall govern my country. This heritage of freedom I pledge to uphold for myself and all mankind."

The Right Honourable John G. Diefenbaker, Prime Minister of Canada, House of Commons Debates, July 1, 1960.