To Tanya Taraba

Subject: Committee of Adjustment Meeting

Tanya

I have just rewatched twice last weeks committee of Adjustment Meeting. The reason for this note is I was deeply disturbed by the number of serious factual inaccuracies presented before the Committee of Adjustment. Normally I would have addressed them at the meeting however, I had spent all day at Hamilton General visiting my sister and while waiting for the meeting to start, was informed by text she had passed. I really cannot remember much of the meeting nor was in any shape to present. In hindsight I should have asked for it to be adjourned, but to start clearing trees for the septic, I must start prior to birds beginning to nest.

All that being said, I have known for ten years I owned property with lots already in the city masterplan and I have an excellent understanding of non conforming lots.

I want to be assured that the members of the Committee of Adjustment have knowledge of and understanding of the following:

The Planning Act of Ontario legislates that changes in municipal zoning bylaws cannot be applied **retroactively**. Instead, if the property was legal under the previous zoning, it will now be deemed ‘legal non-complying’ or ‘legal non-conforming’ and be allowed to carry on.

In essence, grandfather property rights allow owners and tenants to operate under the previous set of laws and regulations.

Legal nonconforming rights are one of the most powerful protections afforded to landowners under land use planning law. The concept provides that, simply put, zoning by-laws cannot apply retroactively. If a use of land, a building, or a structure was legal on Monday, a zoning by-law passed that day cannot render it illegal by Tuesday.

The concept is codified in s. 34(9) of the *Planning Act*, which explicitly provides that a zoning by-law cannot prohibit the use of land, a building, or a structure that was lawfully commenced on the date the by-law was passed. Under the common law, the protections for legally nonconforming rights are even stronger. A series of decisions dating back to the 1950s, including from the Supreme Court, have established that owners also have a right to evolve or reasonably expand or intensify a legally nonconforming use, provided that the evolution, expansion, or intensification does not cause undue adverse impacts on the surrounding neighbourhood or area.

For clarification, "legally" and "lawfully" has nothing to do with building permits. It is simply a measurement of whether the use was allowed by zoning bylaws. Indeed, if a structure predates zoning bylaws on the property, then it is permitted to continue.

Despite their importance to landowners, the full scope of legal nonconforming rights is often not well understood, either by the property owners that benefit from them, their lawyers, land-use planners, or the municipal decision-makers that must respect them. Legal nonconforming rights are also a frequent source of tension between landowners and municipalities. Too often, municipal decision-makers intentionally seek to curtail property owners' legally nonconforming rights, viewing those rights as mere impediments to municipal policy, rather than important and established legal protections. It is a truism that "planners like to plan".

To refuse the application, the undue adverse impacts of the proposed expansion must be demonstrated by objective evidence and must be sufficient to override the property owner's right to reasonable flexibility, evolution, and expansion. I have approval from our own planning department and the blessing of Phil Lambert Director Infrastructure Planning and Development Engineering at the Regional Municipality Of Niagara. Both of which I am sure understand ‘legal non-complying’ or ‘legal non-conforming’.

The planning department was obligated to ask for a minor variance for this application, In essence this committee of adjustment must adhere to the Ontario Planning Act and has no option other than approve the application.

There was absolutely no objective evidence presented to disallow my application. Furthermore, I not only have an approved septic application for two lots but have another approved design for three existing lots which if I applied for building permit would require no public consultation. There is already one 50’ lot with a newer home on the laneway.

I am more upset with neighbour’s who feel they get to decide what is built on the Firelane. The comment if he wants a smaller home, he should buy land in the city was ridiculously elitist. I can only assume that the reason Mr. Simo’s house footprint was approved because it was considered a nonconforming lot. His home takes up over 60% of the lot. It is outrageously out of place; I also have photographic proof that more than just one tree was taken down as per his presentation.

Can I be assured that the planning department will publicly correct all inaccuracies which were presented.

I am truly sorry that I must bring this to your attention, however to me this is no longer about the application, it is about my neighbour’s elitist belief that they are the ones who decide what other people do with there land.

I wonder if I can build a tiny home community.

Thankyou Taya, please get back to me regarding how the public inaccuracies will be dealt with.

Peter