

**SECTION 3.29 OF PROPOSED COMPREHENSIVE ZONING BYLAW (C-ZBL-2022) DATED JULY 25, 2022 IS REMOVING SECOND DWELLING UNIT (SDU) RIGHTS – TIM & JANET NOHARA SDU CONCERNS**

9 August 2022

To: Mayor Marvin Junkin  
Councillors: Lisa Haun, Marianne Stewart, Bob Hildebrandt, Ron Kore, Wayne Olson, John Wink

Dear Mayor and Councillors,

**Subject: Comments on the July 25, 2022 draft Comprehensive Zoning Bylaw (the “Revised C-ZBL-2022”)**

Section 3.29 (the “**New Proposed SDU Regulations**”) of the Revised C-ZBL-2022<sup>1</sup> affects my wife and I as residents living in the Specialty Agricultural (SA) Zone, because it removes a right we believed we had to develop a Second Dwelling Unit (SDU) in a detached accessory structure at our home and at our business in Pelham.

Less than a year ago on September 7, 2021, Council completed an extensive review of second dwelling units and approved an official plan amendment no. 12 (“**OPA-12**”) and an amendment to our existing 1136 (1987) Zoning Bylaw as amended, through the adoption of By-law No.4371 (2021) and By-Law No.4368 (2021) (the “**Existing SDU Regulations**”).

The New Proposed SDU Regulations negatively affect everyone in the Greenbelt (a huge part of our Town), making it impossible for them to convert a detached accessory structure such as a barn or garage built after December 16, 2004 into an SDU on their lands. For example, staff have told me that<sup>2</sup>:

*A Second Dwelling Unit is **not** permitted within an accessory structure that was constructed after December 16, 2004 anywhere in the Greenbelt Plan Area.*

No such prohibition is found in the Existing SDU Regulations.

If the Revised C-ZBL-2022 is approved by Council without first amending Section 3.29 as proposed in Attachment 1, I believe there will be many people in the Town who are going to be very upset when they find out that the Existing SDU Regulations changed on them and removed the SDU rights they thought they had without notice.

Residents are going to feel misled because there was no mention of their loss of SDU rights at the Public Meeting held on June 13, 2022. And these changes were not even mentioned in the Recommendation Report<sup>1</sup> that followed in the July 25, 2022 Agenda Package. I have communicated with staff and asked them if the language of Existing SDU Regulations could please be restored in the Revised C-ZBL-2022.

Ms. Barbara Wiens, Director of Community Planning & Development, told Council on July 25, 2022<sup>3</sup> that the Niagara Region called for the changes to the Existing SDU Regulations as reflected in Section 3.29 of the proposed Revised C-ZBL-2022, in order to bring them into compliance with the Greenbelt Plan. She referred to the changes as “tweaks”.

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<sup>1</sup> The Revised C-ZBL-2022 and staff’s Recommendation Report can be found on pages 357-722 of the July 25, 2022 Agenda Package (section 10.2.9). Staff’s response to my concerns found on pages 717-718 of the same Agenda Package.

<sup>2</sup> E-mail correspondence from Lindsay Richardson to Tim Nohara dated 5 August 2022.

<sup>3</sup> See Council Meeting July 25, 2022 Livestream <https://www.youtube.com/watch?v=GGbdKhOZFbA> between 1:07:30 to 1:16:44.

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I requested a copy of the Niagara Region guidance that staff relied on in support of the prohibitions they are now proposing in Section 3.29.

A review of the Niagara Region guidance supplied to me by staff<sup>2</sup> did not provide me with any evidence that the Niagara Region requested the New Proposed SDU Regulations which take away our SDU rights.

The entirety of the Niagara Region guidance on SDUs is as follows:

*3.31 Second Dwelling Units  
- Regional Staff note that the provisions in Section 3.31 do not appear to align with Amendment 12 to the Town's Official Plan. It is recommended that Town staff revisit this section and ensure that conformity is achieved.*

(Note: the numerical reference 3.31 appears to be a typographical error.)

Regional Staff are not telling us to change our Existing SDU Regulations, but rather they are commenting on the newly New Proposed SDU Regulations. This guidance was actually provided on page 691 of the July 25, 2022 Agenda Package<sup>1</sup>. The Niagara Region states above that it is the New Proposed SDU Regulations that are not in conformity with the Town's existing OPA-12. OPA-12 is part of the Town's Existing SDU Regulations and provides Official Plan policies associated with SDUs that Council approved on September 7, 2021. The Niagara Region is drawing attention to our existing OPA-12 policies and clearly continues to be supportive of them.

My recent correspondence with staff includes a series of simple yes/no questions whose purpose is to shed clarity on staff intentions regarding the New Proposed SDU Regulations; I am still waiting on those specific answers. While staff have been generous in providing me with a lot of information, it is still not clear to me that the new proposed prohibitions are actually required by the Greenbelt Plan.

And the aforementioned Niagara Region guidance gives me no reason to believe that the Niagara Region has any conformity concerns with our Existing SDU Regulations. So why rush to change them now, especially if they are just "tweaks"? Why not allow the time to get the clarity needed?

As a result, I continue to recommend that staff restore the language of our Existing SDU Regulations in Section 3.29 of the Revised C-ZBL-2022. I provide proposed revisions to achieve this in Attachment 1, for Council's consideration on August 22, 2022.

Thank you and best regards,



Tim J. Nohara  
(Pelham Resident and President & CEO of Accipiter Radar Technologies Inc.)

Enclosures: Attachment 1 – Proposed Amendments

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**Attachment 1 - Proposed Section 3.29 SDU Amendments to the Revised C-ZBL-2022**

I have used tracked changes to indicate proposed amendments for your consideration. Residents in the Greenbelt were led to believe that the Existing SDU Regulations allowed them to develop SDUs to support themselves and their children with the housing crisis we are facing. The proposed amendments attempt to restore the original bylaw language using the new structure provided in the Revised C-ZBL-2022:

3.29.2 Outside the Urban Area

a) ~~One~~Up to two Second Dwelling Units ~~is~~are permitted in a single detached dwelling unit in the RR, A or SA Zones

c) Within the Greenbelt Plan Area, ~~a second dwelling unit is not permitted in a dwelling or accessory structure on lands located within the Greenbelt Natural Heritage System~~ these units must be located outside of the Greenbelt Natural Heritage System.

~~d) In other areas of the Greenbelt Plan Area that are outside the Greenbelt Natural Heritage System, a second dwelling unit is only allowed within an existing dwelling, an existing accessory structure or a new dwelling authorised for use prior to the effective date of the Greenbelt Plan (December 16, 2004).~~

**Final note:** if Council approves the Comprehensive Zoning By-law, Council may wish to waive the usual two-year moratorium on applications for zoning by-law amendments as allowed under the Planning Act, for all zones in the Town. This would allow concerns around changes to the SDU provisions, or other provisions affecting the Town's agricultural zones to be brought to the next Council for consideration if needed, avoiding an unnecessary appeal to the Ontario Land Tribunal. Presently in the Recommendation Report, staff are only recommending this waiver for lands zoned as Residential Development<sup>4</sup>.

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<sup>4</sup> See page 361 of 777 in the July 25, 2022 Agenda Package where it states: "Section 34(10.0.0.1) of the Planning Act, prohibits applications for Zoning By-law Amendments during the two-year period after the Comprehensive Zoning By-law is passed. A similar moratorium is imposed for minor variance applications. The intent is to prevent changes to newly approved provisions. Council may waive this moratorium via resolution as per Section 34(10.0.0.2) and Planning Staff recommends that this moratorium be waived for lands zoned as Residential Development to ensure they can continue to be developed appropriately and in a timely manner."