

September 17, 2014

rec'd Sept 18/14
JM

City of Barrie
70 Collier St.
Barrie, ON
L4M 4T5

Attention : Dawn McApline, City Clerk

Reference : Notice of Violation, By-Law 2004-142 Nuisance

Dear Dawn,

We are writing this letter to request an exemption from council from By-Law 2004-142.

While we understand that you, as city clerk, cannot grant such an exemption, the council is in fact empowered to do so, and as such we would ask that our request be placed on the docket for consideration at an upcoming council meeting.

Our request for the exemption concerns, a "Notice of Violation" issued pursuant to By-Law 2001-142 surrounding a gate that was installed on an existing fence which separates our property from EPA land. And to that end, we offer the following ...

We are Kelly and Rick Barnes and we live at _____ in the south end of Barrie along with our two children. Our property backs on to City of Barrie owned property including a pond, and a forested area within which, runs Lover's Creek, an environmental breeding stream that has been designated as protected.

Approximately 14 years ago when in the process of erecting a fence around our property, we had a gate installed in the existing fence that divides our property from the City of Barrie land. The purpose truly was to gain access in the event our kids hit a ball or a toy landed on the other side, and to maintain (cut) the grass and weeds growing close to our property line with the hope that they would not spread further to reduce the insect population migrating to our property. When we had the gate installed we were not aware that this was in contravention of City by-laws. Additionally, it should be noted that our neighbours, Kevin and Christine Bell _____, also installed a gate at the same time and we bring this to your attention and on their behalf as well.

For the past 14 years, the land behind our property has been serviced and inspected by multiple City of Barrie employees, including by-law enforcement officers. Not once over the past 14 years were we advised that the gate was a problem, nor were we issued a Notice of Violation. We understand that perhaps the violation was initiated by an employee working in conjunction with the EPA with respect to the upkeep and maintenance of the pond in the area. To that end, I would suggest that this the same

office likely would have visited this pond site numerous times over the course of the those same 14 years.

We understand the need to have by-laws such as these which cover the defacing of public property however in this particular case we wonder what purpose correcting the fence would have at this time. As you can see by the enclosed picture, the fence and gate are well maintained, and certainly not an eyesore. Given the fact that the property behind our house is not for public use, logically there is no other party to "offend" from the sight of the gate from that side.

Certainly there is no issue of safety and security as a result of the gate, given the fact that it remains locked. We have not once granted access to members of the general public as a flow through. In fact, over the past 14 years, the opposite can be said. As we are sure you can imagine there have been "incidents" in the City property (including the forest) behind our house over the years. The gate has been used several times by both the police and fire departments of Barrie to access to area, and both Departments have been quite appreciative.

We do realize that the by-laws exist for a reason and it is the best interest of the community at large to wholly abide by these same rules in order secure peaceful co-existence. That said, sometimes there are exceptions to the rules. We were issued a Notice of Violation for "nuisance". The term "nuisance" in relation to the law is defined by Webster's as "something offensive or annoying to individuals or the community". Our gate is neither annoying or offensive to either individuals or the community. I am certain if there was, we would have received a violation sooner than 14 years after the gate was erected. There are also not any safety or security concerns, given that the gate is locked continually and resides on our private property with no access by other individuals. And certainly there is no concern that granting us an exemption would set any precedence within the City given that the gate was installed five (5) years prior to the passage of By-Law 2004-142, hence we may be entitled a grandfather exemption, and of course, these types of situations are reviewed individually..

We ask you to please review the specifics of the by-law and consider an exemption given the circumstances noted above.

If you need to speak with us directly please feel free to contact us at home or Rick by cell phone

Thank you for your time.

Kelly and Rick Barnes

cc. C Smith, Municipal Law Enforcement

