

ATTACHMENT B

Public Comments

Memorandum of Objection

Re: Application to Amend the Official Plan and Zoning By-law – 711 Schafer Side Road (File ZNPL2025074) **From:** Gary De Bock **To:** Norfolk County Clerk, CAO, Council Members, Planning Staff
Date: September 15th, 2025

Background on Prior Objection and Lack of Consideration

On **March 14, 2022**, Yours truly submitted an addendum to my original objection to the proposed Temporary Use By-law (TUL). It outlined the Planning Act's **condition precedent**: a zoning by-law may only be passed if it conforms to the Official Plan (OP). This legal point was not new — it was a clarification of my original objection.

Despite being submitted eight days before the vote, the addendum was not substantively addressed. Council proceeded to pass the by-law without engaging with the legal constraint. This failure to consider relevant, timely-submitted information is a **procedural fairness breach**. It also highlights a lack of process to address the email accounts of departed employees. One must question why an email sent to DCS General Planning was not considered.

Norfolk County Council, as a body empowered by the Province of Ontario, **is legally obligated to adhere to the Planning Act and its own Official Plan**. My objection highlights where the proposed amendments fail to meet these mandatory legal requirements.

1. The Condition Precedent

Under *Planning Act* s. 24(1):

“No by-law may be passed that does not conform with the Official Plan.”

Conformity is a **legal prerequisite**, not a policy preference.

2. The Controlling Prohibition – OP 9.4.4

“Temporary use by-laws shall **not** be passed for the purpose of permitting uses that are not in conformity with this Plan.”

This is a **binding prohibition**. The 2022 TUL violated it.

3. Agricultural Designation Prohibition – OP 7.2.2(I)

“Institutional uses shall not be permitted in the Agricultural designation unless an Official Plan Amendment is approved.”

No OPA was approved. The use was prohibited.

4. Statement Against Interest – The Smoking Gun

From the applicant's own agent (Presented in the March 1, 2022 Public Hearing report, p. 31):

“The ZBL does not permit the proposed use.”

This admission confirms that the use was prohibited by zoning.

5. Misrepresentation of OP 9.4.4

The agent stated in their original report from the March 1st, 2022 Public Hearing

“...this policy (9.4.4) allows the County to pass a temporary use by-law to allow a use that is otherwise prohibited.”

This is a **material misstatement**.

The actual policy states that “ Temporary use by-laws **shall not be passed** for the purpose of permitting uses that are **not in conformity with this Plan**.”

6. Misuse of Special Needs Housing Policy – OP 5.3.2

Council relied on OP 5.3.2 to justify the use. But clause (d)(iii) states:

“**The land, buildings and structures for the proposed facility conform** to the provisions of the Zoning By- law...”

This is a **mandatory requirement**. The use did not conform. The policy was misapplied.

7. Procedural Fairness Breach

The stated purpose shifted from “migrant/refugee housing” to “special needs housing” between the public hearing and passage. This **material change** required fresh notice and a new public meeting. That step was skipped.

The procedural fairness breaches identified previously are not mere administrative oversights; they fundamentally undermine the legal validity of the decision-making process for the 2022 TUL, and any attempt to build upon this flawed foundation without rectifying these errors perpetuates that illegality.

8. Precedent Argument Misapplied

Past uses (e.g., fire academy) do not create a permanent right to continue or expand non-conforming uses. The fire academy was temporary and did not amend the OP.

9. Need Is Not a Substitute for Conformity

A county-wide need for the facility does not override the legal requirement for conformity. Need can support an OPA — it cannot justify a non-conforming by-law.

10. Conformity to ZBL Is Pass/Fail

Where the OP says a facility “conform to the provisions of the Zoning By-law,” that is a **binding test**. If zoning doesn’t permit the use, the proposal fails. A TUL cannot bypass this.

11. Precedent Risk – Opening the Door County-Wide

If Council amends the OP to permit this use in Agriculture for one site, the policy change applies county- wide. Other landowners with similar buildings could apply — and Council would have no

policy basis to refuse. Staff and Council are spot zoning

12. No Foundation, No House

The 2022 TUL was passed without the legal foundation of OP conformity. Trying to pass a permanent by-law now is like building a house on bare soil:

- It may stand for a while, but it has no legal integrity.
- Any challenge will topple it because the base never

existed. The only lawful path is to start over:

1. Amend the OP to permit the use.
2. Then pass a zoning by-law to implement it.

13. Mandatory Language: Why “Shall” Means No

The OP uses “**shall**” in multiple key provisions — including OP 9.4.4, and OP 7.2.2(I). Under Canadian law, including Supreme Court precedent:

“Where a policy uses mandatory language such as ‘shall,’ it must be followed. General interpretive flexibility does not permit a municipality to disregard specific prohibitions.”

This is an established legal principle affirmed by Canadian courts, particularly the Supreme Court of Canada. It means that when a municipal by-law or policy contains clear, mandatory language like “shall” or “must,” the municipality has no discretion and must comply with that specific rule.

Courts have emphasized this principle to limit a municipality's interpretive flexibility and uphold the rule of law. It protects individuals by preventing municipal bodies from disregarding their own rules for convenience or other reasons, which would amount to acting in bad faith.

Here is a breakdown of the key elements of this legal principle:

- “Shall” means mandatory. When a policy uses the word “shall” or other imperative terms such as “must” or “will,” it indicates a mandatory requirement or obligation. This contrasts with permissive language, such as “may,” which gives a municipality the flexibility to choose a course of action.
- Limits on discretion. By default, Canadian municipalities have wide discretion in how they enforce by-laws, allowing them to prioritize actions based on resources and public interest. However, this discretion is not unlimited. When a by-law or policy contains clear, mandatory language, it removes this discretionary shield, and the municipality loses its flexibility.
- Binding nature of specific prohibitions. If a municipal policy **explicitly prohibits a certain action using mandatory language, the municipality is bound by that prohibition**. Its general power to interpret or apply policies does not allow it to override or ignore a specific, mandatory rule it has created.

- Protection against arbitrary action. This principle serves as a safeguard against arbitrary or capricious decision-making by municipalities. By enforcing the mandatory language of a policy, courts ensure that municipalities act reasonably and in good faith when carrying out their duties

14. Zoning Comparison: Why One Fits and the Other Doesn't

Converting an **apartment complex** into special needs housing is feasible — the zoning permits residential use. It's a round peg in a round hole.

Converting an **industrial warehouse** or an agricultural bunkhouse into special needs housing is prohibited unless the OP and ZBL are amended. It's a square peg in a round hole. You can't just label it "temporary" and hope it fits.

Conclusion

The 2022 Temporary Use By-law was **void from inception**. Council cannot make permanent what never legally existed. The lawful course is to deny the application and pursue an Official Plan Amendment through proper channels.