A DISCUSSION REGARDING THE NEED FOR LAND USE PLANNING IN ASSESSING THE STRENGTHS & WEAKNESSES OF A PROPOSED CONSERVATION EASEMENT OVER THE OPEN LANDS OF THE MADAWASKA CLUB AT GO HOME BAY

To: All Members of The Madawaska Club at Go Home Bay

PROTECTING OUR OPEN LANDS.... ANOTHER SOLUTION.

Over the past number of months, the Land Stewardship Committee has been moving forward with their recommendations to involve a Land Trust in the management of the Club's open lands by way of a "servitude instrument" called a conservation easement. They have stated their case in several documents which the Board has sent to all Members. We hope you have read them.

At the AGM in 2019/2020 several Club Members, including myself, expressed serious reservations about the idea of using a Conservation Easement to protect our lands. Since then, we have formed a working group comprised of several concerned Club Members with backgrounds in Finance, Risk, Governance and Legal with extensive experience in Land Use planning Issues

We have fully analyzed the situation and our recommendations are now ready to share with you. We are totally in favour of protecting our open lands, but we believe there is a simpler and more effective solution available to us.

Attached is the "First Chapter" in our case favouring another Approach and Solution. Please read the attached.

The next chapter will be coming your way soon. In the meantime, please let me know if you have any questions, comments, or would like to discuss.

You can contact me at c.sattich@rogers.com

Regards

Collin Sattich

647-588-1857

On behalf of the "**Protect Our Lands**" working group – June 13, 2021.

On the Importance of a Community of Families

W.J. Loudon (1903)

From: A short history of the founding of the Madawaska Club and its early settlement at Go Home Bay, on Georgian Bay (1898-1903)

"In the background I had a vision of a summer home for families. I had seen many sporting clubs go to the dogs, even amongst wealthy men, because of dissension. But I thought that if I could only introduce the idea of a family home into the minds of our members and especially get a few houses built for permanent dwellings in which members would take pride and interest the Club could never go to pieces. There might be dissension and trouble and all sorts of vexatious incidents; but, where a home was at stake, such trifles would be of small account. I am glad to say that when I finally came out in the open and said what I thought about the family idea I got support from unexpected quarters. In the end the family idea prevailed, and amidst all the future troubles and quarrels, there never was any thought of dismemberment of our Club."

CONSERVATION EASEMENTS AND LAND USE PLANNING CONSIDERATIONS

Introduction and Statement of Purpose

Good land use planning by any organization considering changes in how it owns, controls, and uses its lands, requires that the organization identify the overall goals and objectives of the proposed changes. That is one reason that professional land use planning starts with the identification of the goals and objectives of any proposed change in land use policies before the planning process turns to an assessment of the various land control instruments that are available for implementing the stated goals and objectives of the proposed land use plan. That is, the identification of land use goals and objectives must come before consideration of implementation strategies. We must know where we want to go and the reasons for going there before we decide how to get there. "Why" must be answered before "how".

For us, in this context of the question of whether the Club should register a conservation easement over its open lands, we can recognize that some members may feel a conservation easement may be a worthwhile instrument for imposing land use controls over our open lands, but we should first identify what problem we are trying to solve before turning to assess whether a conservation easement is the best solution to the "problem". Again, we must answer "why" before "how".

It can be safely said that the question of whether a conservation easement should be registered over the Club's open lands has resulted in substantial disagreement and disharmony among Members of the Club. Perhaps one reason for this is because some members of the Club feel that the preliminary question of "why" the Club should grant an easement over its open lands has not been given sufficient consideration. Other Members clearly disagree with this view. However, for the sake of the harmony of the community, it makes reasonable sense for those that believe they haven't been given a full opportunity to canvas the reasons "why" be given an opportunity to discuss the substance of this first principle of land use planning with the Membership before any implementation plans are commenced.

Perhaps it can also be said that the assessment of the various ways to own and control the open lands (fee simple vs. conservation easement vs. donation of land to a land trust) was framed in an unsatisfactory way from the beginning in that the option of retaining full, unencumbered ownership and control of the open lands was described as "do nothing" rather than "retain full and complete ownership and control of the open lands". Sometimes the manner in which an issue is framed lends support to one outcome over another.

It seems to be the appropriate time for a reset of this frame of reference. The default position should be that the Club not take steps towards implementing a transfer of control of its open lands to any third party unless at least two-thirds of site members have expressed confidence that the registration of an easement solves a current problem. It has been stated in this community debate that once a conversation easement is registered, it can't be "undone". All we need to do is look to the Supreme Court of Canada decision in the case of *Galbraith v.*

Madawaska Club Ltd., 1961 CanLII 16 (SCC)1[1] to know that the Court retains jurisdiction to alter, amend or delete restrictive covenants registered against title to lands. Regardless of that, if we assume that it can't be "undone", then we should be very sure that it is the right thing to do before we do it.

Currently, the Club owns its open lands in fee simple without any registered encumbrances. The imposition of a conservation easement, by definition, will impose an encumbrance (i.e., a partial loss of control) over our lands. Although the Club retains ownership of the lands with a conservation easement, it does not retain unencumbered control over the use of the lands. Use will be limited by the terms of the related conservation easement agreement as registered on title to the lands and, presumably, enforced against the Club and its Members if they don't abide by the use restrictions. So, what do we get in exchange for this loss of full control? Well, this question can be answered by considering the following additional questions:

1. Why should the Club grant partial control over its lands to a third party? In other words, what are the real and practical benefits of transferring partial control to another organization when the Club membership is already stewarding its open lands? In other words, what is wrong in this instance with owning land in fee simple?

2. What are the risks and costs of encumbering the open lands relative to the assessed benefits? In other words, is it worth it?

3. Will granting partial control over the use of our lands to a third party negatively impact this community's involvement in stewarding our lands in the future and create a disincentive for members in future generations from supporting the open lands through membership fees and other ways?

In order to answer "why" before "how", we suggest the following course of action:

1. First, a more comprehensive discussion of why there is a suggested need to change our land use policies in Go Home Bay must be undertaken in a collaborative way. Simply stating that the lands "will have greater protection with a conservation easement" is a conclusion, not a full discussion of the benefits and costs of a proposed change;

2. Second, further assessment of the risks of granting a conservation easement over our lands under the *Conservation Land Act, R.S.O.* 1990, c. C.28, must be completed; and

3. Upon the completion of a land use plan for our open lands, and provided that the membership agrees to proceed with a change in land use policy, the community would then be provided with alternative ways to implement the change including the options of

[1] To access this Court decision, click:

https://www.canlii.org/en/ca/scc/doc/1961/1961canlii16/1961canlii16.html?autocompleteStr=galbraith&autoco%20mpletePos=2

granting a conservation easement or by amending our governing by-laws as they relate to the votes required to make future land use policy changes.

The rest of this discussion paper is intended to simply start a more comprehensive discussion on the "why" of the proposed conservation easement (i.e., paragraph #1 above).

"Why" Do we Need a Conservation Easement Over the Open Lands

As referenced above, the starting point for our discussion must first identify the problem that we are trying to solve by imposing a conservation easement. The "problem", at its core, seems to be a fear that future generations will choose to sell open lands for development. We should recognize that developers can't simply force the Club to sell its open lands for development; the Club must choose to do so in accordance with procedures set out in its by-laws. And, further, the registration of a conservation easement does not necessarily stop future Club members from selling or divesting itself of open lands, subject to the registered easement. Future members can still sell their ownership of the open lands subject to a conservation easement.

So, plainly stated, the concern seems to be that we can't trust future generations (as our prior generations did with us) to make the right decision for themselves about the open lands.

If that is the underlying problem, and assuming that we know better than future generations about how to protect their lands over the next 999 years, then does a conservation easement provide the assurance that future generations can't make changes in land use better than requiring a greater level of Membership consensus first authorized by a substantial (say 80%) vote of the Club's members before any change can be made.

Consider our past for a moment. Who would have thought more than 100 years ago that previous restrictive covenants registered against Club lands could be challenged and discharged by a Court on the request of two individual members of the Club? We know that a prior claim was advanced to the Supreme Court of Canada in the case of Galbraith v. Madawaska Club Ltd., 1961 CanLII 16 (SCC), where the Court removed certain restrictive covenants attached to land in the Club area. And we know that a conservation easement does not stop anyone from applying to a Court to request future amendments, changes, or deletions to any registered restrictive covenant. In other words, we can't predict the future and we can't predict whether someone (e.g., a developer, a member, a conservation organization) will make a claim at Court to alter or delete some or all of a conservation easement from title. Our goal should be to minimize the risk that someone will do so. Sometimes, when a third party is granted the right to enforce control over someone else's lands, the risks of future litigation can increase. Each of these considerations must be considered in the assessment of this matter.

The problem that we are aiming to solve isn't related to how the Club is currently using the open lands. The problem seems to be a concern that future generations can't be trusted to use the open lands in the way they are currently being used. Shouldn't the long-range goal be to ensure that future generations learn the significant value there is in maintaining and stewarding the open lands for themselves since it is that very thing that has unified this community since

1898. If the Membership is not collectively committed to maintaining and stewarding the open lands as such in the future then those Members, and others, may find a way to alter land use restrictions in the future just like they did in 1961 and that would result in the loss of an inheritance that we have been given.

Sometimes, in order to have a better understanding of new concepts (in this case, the concept of a conservation easement), it is helpful to use an analogy. Analogies allow people to use their knowledge and understanding of one situation to better understand another, new situation. Let's consider an analogous situation to the granting of a conservation easement to appreciate the line drawn between questions of "why" we may need or want a conservation easement versus "how" the easement would be implemented if accepted.

My wife and I own a home. Our children live with us. We own the home in fee simple in that we can use our home as we choose subject, of course, to municipal zoning restrictions. We can transfer our home to our children when we die.

Then, one day, I decide that I should rent the basement of our house to a tenant. My family is not convinced that is a good idea since a third party outside our family will be able to use and control part of our house. I believe it's a good idea because we may get some funds from rent to upgrade the house and, better still, we can offer a long-term lease to the tenant and register notice of it on title so that we know that the basement will remain a rental unit for a long time. We can arrange to have the tenant help with the grass, gardening, and property maintenance as a term of the lease and give them the right to direct how we maintain our own grounds. The tenant, of course, will be allowed to assign, or transfer, their rights under the lease to other tenants with consent if they can't carry on being a tenant.

So, I tell my family that I'll prepare a lease so they can review it to see what the lease arrangement will look like. My children tell me that I'm getting ahead of myself since we should decide why we need or want a tenant before we look at the proposed lease agreement. My children also say to me that even if the lease looks acceptable, future disputes can arise between us and the future tenants if we disagree on the terms of the lease. So, the children, who are the ones who will inherit the house, tell me that they aren't sure they want to have a third-party in the house when we don't currently need the money and the family should have the right to maintain the home how they wish given that the maintenance needs for the home may change in the future. For the sake of family harmony, I decide that I should really talk to my family about the reasons "why" I may want a lease agreement registered on title before we start talking about the terms of the lease itself. Furthermore, I shouldn't expect that the written lease will operate perfectly because disputes can arise that will damage family relationships and may adversely affect our ownership interest.

A long-term lease is a significant commitment just like a 999-year conservation easement is a significant commitment. The community should have a full discussion about why we need or want a conservation easement before we get into how it can be done. Sometimes, a written legal agreement (like a conservation easement) does not reflect the real-world risks and problems that can arise later.

In conclusion, to reiterate, we must know where we want to go and the reasons for going there before we decide how to get there. “Why” must be answered before “how”.

AN EVIDENCE-BASED APPROACH TO ASSESSING THE BENEFITS AND RISKS OF A CONSERVATION EASEMENT

Introduction

Last June 2021, we circulated Chapter 1 of our proposed framework for considering and assessing the possible value of registering a restrictive covenant (conservation easement) over the Club's Open Lands. We began the discussion by identifying the importance of defining the reason (the "why") the Club may want to register a conservation easement over its Open Lands. We also acknowledged that the subject of the proposed conservation easement had created disharmony and tension in our community and, for this reason, we suggested that it was an appropriate time to reset the frame of reference for discussion. Now, in this Chapter 2, we intend to move to the next issues identified in Chapter 1, namely:

1. What are the real (i.e., evidence-based, and not speculative) benefits expected from the registration of a proposed conservation easement?

2. What are the risks and costs (probable and potential) of encumbering the Open Lands with a conservation easement?

On the issue of risk, we understand that we all live with a certain amount of risk in our lives. Usually, people take risk at work or in business if the probable benefits of taking such risks outweigh their potential losses or harm. That is, risk defines the measure of probable gains and losses.

Having said this, however, most people may be prepared to take calculated risks in work or business but be risk averse in matters involving their family and their family property. In matters involving family and family property, most people are more cautious before taking risks when the possible benefit from taking such risks are small or speculative. In other words, in matters that directly effect one's family and family property, we should ask whether we are prepared to give up what we already have in exchange for speculative future benefits.

Therefore, for this discussion, let's undertake a risk-benefit assessment of two of the benefits that conservation easement proponents have advanced as the basis, or reason, for accepting the registration of a conservation easement over the Club's Open Lands and do so by weighing the evidence available regarding these expected benefits, risks, and costs as a framework for determining the expected value presumed to come from the registration of a conservation easement over the Open Lands.

Property Taxes

Two potential benefits from registering a conservation easement (and implied risks for not doing so) have been described by easement proponents this way:

"The agreement would provide long term protection from tax and rezoning risks."

The question must then be: What is the evidence to support this statement?

In order to assess the validity of this statement, we must first describe the current tax and zoning status of the Open Lands based on real evidence. In other words, in order to measure the benefits and risks of a proposed change, we must understand where to start the measuring tape. Let's start this process with the property tax concern.

According to the Club's Financial Statements for the year ended December 31st, 2020, the Club paid property taxes of $15,887 for 2019 and $16,362 for 2020 (in total). This represented a year-over-year increase of approximately 3%.

The Caretaker's Inspection Reports for November 2021 and February 2022 identified 159 Club sites that were receiving inspection services. Using this site membership number, we

can calculate that each of these site owners paid $102.91 each in 2020 for their share of the Club's property taxes from their total yearly site dues paid in 2020 in the amount of $595.

Let's restate that again for clarity: Each Club site member paid a total of $102.91 towards the Club's property tax expenses for the entire 2021 year.

Next, what are the potential risks that these property taxes may increase and require us to change the nature of our property ownership from fee simple to encumbered lands?

Well, the Open Lands are part of the "Managed Forest Tax Incentive Program" which reduces our Club's property taxes by 75%. Even though there is no evidence (just expressed speculation) that this Program may end in the future, the financial risk, if this materializes, would amount to an additional $308.73 per year per site member in increased contributions to Club property taxes. This possible risk, however, is simply speculation because no evidence has been tendered to demonstrate that the Managed Forest Tax Incentive Program will be withdrawn or ended any time soon.

Further, what evidence has been offered that supports the possibility that property taxes for the Open Lands will be increased substantially in the near future? We aren't aware of any such evidence; it's speculation. As mentioned earlier, we should be cautious in our assessment of the risks and benefits of placing a 999-year long restrictive covenant on our Open Lands that cannot be "undone". In this context, a cautious approach requires that such a step be based on objective evidence, not speculation.

In fact, if we wanted to speculate, we could foresee a remote possibility that if the municipality begins receiving less property taxes from our Open Lands, the municipality may conclude that each member's cottage site has increased in value as a result of the placement of a conservation easement on the Open Lands because the amenity value for each cottage has increased. This would suggest that each site member's personal cottage property taxes will increase in the future to make up the difference. However, again, this conclusion is not evidence based and, accordingly, should not be placed in the calculated balancing of risks versus benefits in our assessment.

At this point we can safely say that each site member is contributing $102.91 each year towards the Club's property taxes and there is no clear evidence that this contribution will substantially increase in the near future.

Furthermore, we can also safely say that no one can predict future changes in the amounts and allocation of property taxes to be levied in the future across various forms of property holdings. We know what property taxes we are currently paying with certainty, and we have a relatively long history of tax information to demonstrate that property taxes over the recent past have not jumped substantially. A cautious approach, on this purported issue that property taxes will increase substantially in the future, would recommend a "wait and see" approach before placing a 999-year long restrictive covenant on our Open Lands that can't be "undone" when we have no persuasive evidence that such an act would maintain or reduce our current Club property taxes.

Rezoning

As many in this community know, the Club and its members spent a great deal of time providing stakeholder input to the Township of Georgian Bay regarding its Official Plan provisions that were approved on March 17th, 2014, and to its related Zoning By-Law. Specific provisions contained in both these planning instruments relate specifically to the Go Home Bay Coastal Waterfront Community. The enactment of these provisions took time, but we now have specific Official Plan and Zoning By-Law provisions that are tailored to the needs of this community. That is, we know, with certainty, what Official Plan and Zoning By-Law provisions directly govern the Club area currently.

It is, much like the issue of taxes, speculative to say that the Township would propose to amend or alter these provisions in the near future. Clearly, we would receive advance notice, in

accordance with the governing *Planning Act*, if any such amendments or revisions were proposed.

Once again, let's be cautious and not take steps that can't be undone based on speculative future events.

Conclusion

In Chapter 1, we ended the chapter (with reference to an analogy to a long-term lease) as follows:

"A long-term lease is a significant commitment just like a 999-year conservation easement is a significant commitment. The community should have a full discussion about why we need or want a conservation easement before we get into how it can be done. Sometimes, a written legal agreement (like a conservation easement) doesn't reflect the real-world risks and problems that can arise later."

This conclusion also applies to the issues discussed here. Let's make sure that if the community chooses to place a 999-year long restrictive covenant on the Open Lands that the decision is based on objective evidence of the risks and benefits of taking such action and not on speculation.

Six reasons why an amendment to the Club's by laws is the better way to protect our open lands.

Much has been written about the idea of using a conservation easement to protect the Club's open lands over the long term. Unfortunately, it has become quite a divisive issue within the community and the suggestion has been made that those against the conservation easement are against the idea of better protecting our open lands.

This is simply not the case. We stand united in wanting to do more to protect the legacy of the open lands.

The only question is, **"What is the best way to achieve our common goal?"**

The Land Use Committee has done a considerable amount of work on this file and is strongly in favour of a conservation easement.

Another sub-group of concerned members (the Protect Our Lands Group) has worked independently. We dug deep into the disadvantages of a conservation easement and are firmly against this strategy.

This leads to an obvious question… "What is the best way to provide long term protection for our open lands ***if we don t approve a conservation easement*****?"**

The Protect Our Lands Group strongly recommends we amend our by-laws so as to provide long term protection for our open lands while still retaining complete ownership and control.

Under the Club's current by-laws the Club can make major land use changes by way of a simple vote which receives the support of at least 2/3 of the participating members. This voting is open to all members in good standing. They can cast their vote in person or by proxy. For example, if 90 members cast their vote the motion will carry if it receives 60 YES votes.

We see this as an unacceptably low threshold for important land use decisions to be made.

We favour raising the approval threshold to 100% of votes cast so that any major land use change is supported by full consensus from all voting members.

Our Club's by-laws can be amended to reflect this requirement so that the open lands owned by the Club shall not be sold, leased, mortgaged or otherwise encumbered (by, for

example, grant of right of way or easement) without the unanimous approval of all those who cast their votes at a meeting of the Members of the Club called for that purpose.

Under this formula, if 90 Members cast their vote on a major land use matter, it will be necessary for all of those votes to be cast as YES in order for the motion to be carried.

Six reasons why this makes good sense:

1. The open lands are protected from development or unwelcome exploitation.
2. The Club remains fully in control with no future interference in its affairs.
3. This solution is simple to implement.
4. It is less costly to implement.
5. There are no recurring costs for outside inspections or audits.
6. We demonstrate a confidence in our successors and their ability to manage the open lands in a manner consistent with the wishes of the Club's founders.

We urge you vote NO against any future motion brought to install a conservation easement over our open lands.

Throw your support behind our initiative to introduce major changes to the Club's by-laws governing land use.

Protect Our Lands Group.

From: Barb bsgoogie@hotmail.com
Subject: Fwd: Members risk
Date: Aug 13, 2023 at 9:54:27 AM
To: Collin Sattich c.sattich@rogers.com

Sent from my iPad

Begin forwarded message:

> **From:** Barb <bsgoogie@hotmail.com>
> **Date:** August 13, 2023 at 9:52:41 AM EDT
> **To:** Barb <bsgoogie@hotmail.com>
> **Subject: Members risk**
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> Sent from my iPad

Some risks associated with the Director's Easement proposal:

1. Loss of engagement on the part of future generations in the management of the lands because control has been "transferred " to a third party

2. Expensive litigation over the scope of the covenant with a hostile third party (the Club has no budget for legal disputes)

3. Future transfer of the covenant from the Land Trust to an unknown third party that has different objectives regarding the land- leading to hostility and friction with the Club (see item 2 above).

4. Increased trespassing and unauthorized use of Club lands by third parties who argue that the covenant makes the lands "public".

5. Easement could facilitate a future expropriation of Club lands by a public authority (the provincial or federal government) . The concern here is that the easement effectively destroys the market value of the lands- which makes it much cheaper for an expropriating authority to take the lands and apply them to some other use.

6. Covenant blocks an unforeseen future use that would otherwise be environmentally sound and overwhelmingly popular with the future members of the Club.

Re unforeseen future items- who saw COVID coming when we debated this in 2019?- How can the Directors be so confident that tying the Club member's hands today will not leave us vulnerable to unforeseen future events?