

This is Exhibit..... A .....referred to in the  
 affidavit of..... Paul Kraehling .....  
 sworn before me, this..... 9th .....  
 day of..... July .....20...13.....  
KGH  
 A COMMISSIONER FOR TAKING AFFIDAVITS

June 28, 2013

Mr. Kent Elson  
 Klippensteins Barristers and Solicitors  
 160 John Street, Suite 300  
 Toronto, Ontario M5V 2E5

Dear Mr. Elson,

**Re Opinion Letter Respecting the Prohibition of Shelters within Residential Districts – Ontario Superior Court of Justice – City of Sarnia & River City Vineyard Christian Fellowship of Sarnia (Court File No. 6946/13)**

Thank you for the opportunity to provide an opinion on the matter of appropriate locations for homeless shelters within a community. I am a practicing professional planner with a Registered Professional Planning designation, and I am a member in good standing with the Ontario Professional Planners Institute. I have provided my resume under separate cover, and for the purposes of this opinion letter I have also provided a synopsis of my planning qualifications in **Appendix A**.

In terms of background to the issue, I have been advised that the City of Sarnia has filed an application in Superior Court requesting an injunction to prohibit a church from operating a shelter in its church basement. The church argues that this prohibition would infringe upon its freedom of religion under the *Charter of Rights and Freedoms* because it would prevent them from caring for the homeless and needy, which they feel they are obliged to do as Christians. In other words, they argue that it would interfere with one of their core religious practices.

In being retained for my expert planning opinion by River City Vineyard Christian Fellowship, I have turned my attention to the following specific questions:

1. In your professional opinion, from a perspective of good planning, good government policy, and the public interest, should shelters be prohibited in residential districts of a community and therefore only be allowed in non-residential areas, i.e. industrial, commercial, or downtown zones?

2. Seeing as women's shelters are permitted in some residential zones of Sarnia's Zoning By-law whereas men's shelters are not, should *men's* shelters in particular be prohibited in residential zones and therefore only be allowed in non-residential areas, i.e. industrial, commercial, or downtown zones?

For the purposes of the discussion at hand, I have adopted the following land use definition of a 'homeless shelter': a supervised temporary residence for persons experiencing homelessness and in need of temporary housing.

#### Summary Answers to Specific Questions:

1. I am of the opinion that shelters can be permitted in a variety of land use categories in a community, and that their preclusion from the residential land use classification is neither reasonable nor appropriate. It is from my planning perspective and experience that in fact shelters can be accommodated in residential districts in a compatible land use planning manner where residential amenities exist.
2. With respect to question number 2, I am not aware of a planning rationale that would differentiate the land use impact and compatibility considerations that would arise from locating a men's shelter versus a women's shelter within a residential precinct of a community. The basic needs of a human being – being shelter (especially warmth from cold winter conditions), adequate clean air (ventilation), food and water – are the same whether you are male or female. I do not see a distinction between the sexes for shelter in a temporary housing need situation. The Sarnia Zoning By-law making allowance for one sex but not the other within residential zones does not make sense from the perspective of good planning, good government policy, or the public interest. This type of By-law provision could also be construed to be 'people planning' and not 'land use planning.' In addition, it is my opinion that men's homeless shelters should not be prohibited from locating in residential areas.

## General Discussion

I have reflected on the questions put before me through my professional planning experience of over 30 years. I have also given consideration to:

- 1) The Ontario Planning Act RSO 1990 (as amended) as the provincial planning legislation and the 2005 Provincial Policy Statement as Ontario's guiding document on land use planning; and
- 2) The Sarnia Official Plan and Zoning By-law, the guiding planning documents for the local planning context.

The above described documents are the principal tools that are of relevance to the appropriate placement of homeless shelters within the land use planning system of the City of Sarnia. The above identified planning tools are discussed in turn in the following.

### 1) Provincial Planning Requirements for Affordable Housing (including Homeless Shelter Facilities)

Municipalities are required to plan within the framework of legislation and planning policy formulated at the Provincial level. The Ontario Planning Act and Provincial Policy Statement direct that municipalities should plan to meet the needs of all residents within the Province. More specifically, the Planning Act (Section 2) stipulates that municipalities should plan their communities in consideration of the "adequate provision of a full range of housing including affordable housing" (Subsection j). The Provincial Policy Statement includes an entire sub-section on the provision of affordable housing (Subsection 1.4.3). To paraphrase here, the Statement requires municipalities to "provide for an appropriate range of housing types . . ." and more specifically under Sub-policy (b), to permit and facilitate "all forms of housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements." The provision of homeless shelters is a component of the continuum of affordable housing that is required in a community.

### 2) City of Sarnia Municipal Planning Provisions for Homeless Shelters

The City of Sarnia's principal planning documents, the Official Plan and Zoning By-law, contain various provisions respecting homeless shelters. The Official Plan (2001 City of Sarnia Official Plan as amended), provides for special residential uses within the residential districts of the municipality (Policy 2.3.2.1.3). Although definitions are not provided in the Plan respecting accommodation types within this category (except

for Group Homes), it appears that this is the category wherein housing for special need residents would be provided for, i.e. homeless shelters. It is relevant to this report that the City's Zoning By-law, which needs to conform to the Official Plan, permits women's shelters within residential districts of the community. It is also noteworthy to indicate that churches are recognized as an appropriate use within the Urban Residential land use planning category for the municipality (Policy 2.3.2.1.3).

In terms of the City's Zoning By-law provisions respecting homeless shelters and churches (Zoning By-law Number 85 of 2002, as amended), the following is noted. The By-law permits Women's Shelters within Urban Residential land use zones of the community but is silent on men's facilities. In terms of zoning category provisions for Churches, this use is provided for in a variety of residential and non-residential zones of the community i.e. Urban Residential zones (UR), as well as other zones (SR1, D1, CC1, GC1, GC2, GC3, HC1, I1, LI1, LI2, HI1, HI2, MT1). In the definition of 'Church', the provision for a homeless facility would be provided for under the clause "and church-sponsored community activities and projects."

#### General Observations on Appropriate Locations for Homeless Shelters

Based on my professional planning experience, it is my opinion that homeless shelters may be located within a variety of locales within a municipality. These locales may consist of residential precincts or mixed use activity zones such as in a downtown setting. It is my opinion that these shelters are best located in areas that have 'residential amenities' associated with them in order to permit the inhabitants to have some semblance of 'normal life' when they are already being subjected to significant personal stresses, e.g. personal life challenges, mental/physical health difficulties. In terms of defining what I mean by 'residential amenities' these are land use features that are associated with 'normal' residential conditions for mid-sized Ontario cities in southern Ontario such as tree lined streets, locales associated with neighbouring park facilities and in proximity to local convenience stores.

In my opinion homeless shelters would be poorly suited for non-residential districts of a city such as in industrial or major commercial areas. These areas are usually situated in outlying areas of a community and are not readily accessible to a walking/transit dependant homeless population. Residential areas in and around the traditional downtown areas of southern Ontario municipalities, on the other hand, are well positioned for walking and transit service availability for homeless personnel that require support services for income and training centres, educational, government and hospital support services that are often found within the older parts of the community.

It is important to note that land use planning is associated with the allotment of land use activities in a municipality, and not to planning for various classes of people. This aspect of planning has been debated through the courts, and planners must be diligent in the drafting of policies/by-laws that are not construed to be discriminatory to certain types of persons, e.g. people that are employed/unemployed, personal characteristics such as by sex, age, relatedness. It could be argued that allowing for women's shelters but not men's facilities as in the case of the City of Sarnia Zoning By-law is a form of 'people zoning' and is therefore discriminatory.

In my previous planning position with the City of Guelph, I was responsible for the preparation of Official Plan policy respecting various types of land uses for the municipality. With my specific interest and knowledge base concerning affordable housing and homelessness issues for the municipality, I worked on new planning policy in 2010 respecting the accommodation of special needs housing (including homeless shelters) within that municipality. This policy work manifested itself in Official Plan Amendment 48 which indicated that special needs housing should be located in all areas of the City "within land use designations where residential uses are permitted" (Policy 9.2.2). This policy is very much reflective of my professional planning opinion on where homeless shelters are most appropriately located.

It is my opinion that Sarnia has many similar land use planning circumstances as Guelph, being a mid-sized municipality within a southern Ontario context. Therefore it is reasonable to support the position that homeless shelters are an appropriate use to be provided within residential districts of the municipality.

Through my continuing interest in affordable housing and homelessness issues, I can attest to the fact that homeless shelters are provided in various residential districts of Guelph and Kitchener-Waterloo. In Guelph, homeless shelters are provided by a number of non-profit organizations in various residential locales of the community, i.e. Wyndham House, Elizabeth House, Michael House and through various other facilities provided by Sister Christine Leyser (Welcome In Drop-in Centre). In the Kitchener-Waterloo area, I am aware of homeless facilities being provided in temporary facilities with the "Out of the Cold" program put on by various churches in and around the twin cities' downtown areas.

### **Concluding Comments**

In going back to the initial questions for this opinion letter, I cannot identify any reasonable grounds for a prohibition of homeless shelters within residential settings of a community. On the contrary, I am of the opinion that homeless shelters are an

appropriate use in residential areas for a variety of reasons: provisions for the use under Ontario planning legislation and provincial planning guidelines, provisions for the use in municipal planning documents, the actual provision of homeless facilities in various municipalities of Ontario, (with similar planning contexts as the City of Sarnia) and from my own personal professional planning experience. In addition, the City of Sarnia permits women's shelters to be situated in urban residential portions of the community, and I am not aware of any justifiable planning stance to argue that men's shelters should not be treated in the same way.

Thank you for the opportunity to comment on this important subject. I am available for further discussion on this matter as required.

Yours truly,

A handwritten signature in black ink that reads "Paul Kraehling". The signature is written in a cursive, flowing style.

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## **Appendix A – Synopsis of Professional Planning Qualifications for Paul Kraehling**

Paul Kraehling is a member of the Canadian Institute of Planners and a member of the Ontario Professional Planners Institute of Ontario. He has been a practicing municipal planner for over 30 years working in municipalities as varied as Kitchener, Stratford, Thunder Bay, St. Catharines and Guelph. He has a Planning Degree from the School of Urban and Regional Planning, University of Waterloo.

During his many years of municipal planning work, Mr. Kraehling has been involved with housing issues focussed at the local City planning level – from the formulation of 'Municipal Housing Statements', Affordable Housing Policy Position Papers/Action Plans, and the formulation of Official Plan policy. For many years in his planning role with the City of Guelph, he sat on a multi-stakeholder affordable housing committee with local government, third sector non-profit, academic and community representatives, i.e. Wellington and Guelph Housing Committee.

Mr. Kraehling is currently pursuing his PhD. in Rural Studies at the School of Environmental Design and Rural Development at the University of Guelph. During his time of studies, Mr. Kraehling has also been a sessional instructor (e.g. Introduction to Urban and Regional Planning in Canada), and also a Graduate Tutorial Assistant in a number of courses in the Planning and Landscape Architecture Programs, (e.g. Advanced Planning Practice, Landscape Design, Ecological Landscapes). He has also assisted his advisor, Dr. Wayne Caldwell as a Graduate Research Assistant in a number of projects underway at the School (e.g. Stewardship Guide for Rural Landowners in Ontario, Climate Change and Peak Oil Municipal Tool Kit(s), Green Jobs for Midwestern Ontario, Healthy Rural Communities in Ontario).

Mr. Kraehling is well versed in the planning profession, having been sworn in as an expert witness at OMB hearings in the past, as well as making presentations on various planning subjects at provincial, national and international conferences.