



# Staff Report

## Planning and Development Services - Planning

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**Report To:** Committee of The Whole  
**Meeting Date:** August 22, 2016  
**Report Number:** PDS.16.105  
**Subject:** Official Plan Five Year Review Update  
**Prepared by:** Shawn Postma, Senior Policy Planner

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### A. Recommendations

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THAT Council receive Staff Report PDS.16.105, "Official Plan Five Year Review Update"; and  
THAT Council direct Staff to explore possible settlement opportunities with the County and the Appellants.

### B. Overview

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The purpose of this report is to update Council on six appeals received against the new Town of The Blue Mountains Official Plan and to seek direction to resolve those appeals.

### C. Background

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The County of Grey approved the new Town of The Blue Mountains Official Plan in June 2016. The final date to receive appeals on the decision was July 20, 2016. Seven appeals received and one appeal has since been withdrawn leaving the following six active appeals:

1. Ivi Xhelili
2. Tomson Xhelili
3. Elisabeth Ecker Vanderploeg
4. Dinaz Dadyburjor
5. Gerar Borean, Parente Borean LLP on behalf of Eden Oak (Trailhead)
6. Quinto M. Annibale, Loopstra Nixon LLP on behalf of MacPherson (Home Farm)

Appeals 1 to 4 are similar in nature and relate to a specific exception located at Blue Mountain Resorts. The exception existed in the 2007 Plan and was not carried forward into the approved Plan. The exception stated that "These lands may only be used for ski trails and lift facilities, parking areas, recreational facilities, outdoor recreational uses and existing approved base lodges and maintenance facilities." The appellants request that the exception be reinstated in order to protect their properties from the possible construction of a new base lodge and/or maintenance facility.

Appeal 5 is from an active development project known as Eden Oak (Trailhead). The appeal letter indicates concerns related to, but not limited to: density, open space, bonusing, and hazard land mapping. Staff are currently working with Eden Oak to define the limits of the appeal and at the same time are preparing for an Ontario Municipal Board Pre-hearing Conference to be held on August 11, 2016.

Appeal 6 also relates to an active development project known as Home Farm. The appeal letter indicates concerns related to significant woodlands mapping, and the Institutional Area Designation on the former schoolboard property. It is noted that the Home Farm development currently has active applications for Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision before the Town and the County.

All appeals received except for appeal 5 appears to be property or policy specific. As such subsection 17(38) of the Planning Act provides:

**Decision final**

(38) If no notice of appeal is filed under subsection (36) in respect of all or part of the decision of the approval authority and the time for filing appeals has expired,

- (a) the decision of the approval authority or the part of the decision that is not the subject of an appeal is final; and
- (b) the plan or part of the plan that was approved and that is not the subject of an appeal comes into effect as an official plan or part of an official plan on the day after the last day for filing a notice of appeal. 1996, c. 4, s. 9.

Based on the above provisions a vast majority of the Official Plan was not appealed and is therefore in effect as of July 21, 2016. However at this time Appeal 5 Eden Oak (Trailhead) must be scoped in order to determine how much of the Plan is now in effect.

In reviewing the appeals received Planning Staff are recommending that Council direct Staff to meet with all appellants to discuss their appeals and possible settlement or partial settlement opportunities. Planning Staff will report back to Council on the status of all settlement discussions.

## **D. The Blue Mountains Strategic Plan**

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Goal #3: Support Healthy Lifestyles

## **E. Environmental Impacts**

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Nil

## **F. Financial Impact**

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Additional legal costs are required to resolve appeals. The Official Plan budget includes funds to cover these legal costs. It is noted that proceeding with settlement discussions if successful will likely minimize required costs. However, if a settlement cannot be reached, a Hearing is likely and will require additional staff and legal resources.

## **G. In consultation with**

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Scott Taylor, County of Grey

## **H. Attached**

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The following appeals are attached for your information:

1. Ivi Xhelili
2. Tomson Xhelili
3. Elisabeth Ecker Vanderploeg
4. Dinaz Dadyburjor
5. Gerar Borean, Parente Borean LLP on behalf of Eden Oak (Trailshead)
6. Quinto M. Annibale, Loopstra Nixon LLP on behalf of MacPherson (Home Farm)

Respectfully Submitted,

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Shawn Postma  
Senior Policy Planner

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Michael Benner  
Director of Planning and Development Services

For more information, please contact:

Shawn Postma  
[spostma@thebluemountain.ca](mailto:spostma@thebluemountain.ca)  
519-599-3131 extension 248

July 18, 2016

Randy Scherzer  
Director of Planning and Development  
595 - 9<sup>th</sup> Avenue East  
Owen Sound, ON N4K 3E3

Dear Mr. Scherzer,

I am the owner of a residential property which is adjacent to a ski zone at the town of The Blue Mountains – 130 Jozo Weider Blvd.

I am writing this letter as I would like to appeal to the amendment on the 2016 Plan, which excludes the existing 2007 Plan agreement on the use of the recreational ski zone land.

I invested in this property because it offered a peaceful lot with a beautiful view my family and I would enjoy, as well as easy access to the skiing areas.

The existing 2007 Plan specified that: “These lands may only be used for ski trail and lift facilities, parking areas, recreational facilities, outdoor recreational uses and Existing Approved base lodges and maintenance facilities.”

The removal of this exception in the 2016 Plan would not only affect my property’s value, but it would also affect my family’s enjoyment of this property. If developments such as lodges and maintenance facilities were to be built beside/adjacent to my property, my view of the mountain would be blocked and noise pollution would be highly increased due to an increase in traffic.

I would like to appeal and respectfully request that the existing original agreement be incorporated onto the new 2016 Plan.

Please find enclosed a certified cheque in the amount of \$300 made payable to the Minister of Finance.

Thank you for your consideration and I look forward to a favorable decision on the appeal.

Best and Kindest Regards,

Sincerely,

Ivi Xhelili

[REDACTED]

JUL 20 2016

4:00 pm  
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July 20, 2016

Randy Scherzer  
Director of Planning and Development  
595 - 9<sup>th</sup> Avenue East  
Owen Sound, ON N4K 3E3

Dear Mr. Scherzer,

My husband and I recently visited your website which indicated a major change to the existing 2007 Plan. We are very concerned about it because we cannot imagine having other properties being built adjacent to our property, when the only reason this property was purchased was to be able to enjoy our privacy in the backyard and the amazing view this property has to offer.

If lodges and maintenance facilities are to be built around my property the value of my property would dramatically decrease. My family would not be able to enjoy the property any longer because these buildings would block our view and we would no longer have privacy and peace in our backyard because of the traffic increase.

I would like to appeal to include the original agreement in the new 2016 plan:

“These lands may only be used for ski trail and lift facilities, parking areas, recreational facilities, outdoor recreational uses and Existing Approved base lodges and maintenance facilities.”

I have enclosed a certified cheque of \$300.00 which is made payable to the Minister of Finance.

If you would like to discuss further, please contact me directly at your earliest convenience.

Thank you and I am looking forward to a favorable decision at the appeal.

Sincerely,



Tomson Xhelili



JUL 20 2016

4:00 pm  
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Randy Scherzer  
Director of Planning and Development  
595 - 9<sup>th</sup> Avenue East  
Owen Sound  
Ontario N4K 3E3

July 16, 2016

Dear Mr. Scherzer,

Recently, it was brought to my attention that the official plan ("2016 Plan") for the Town of Blue Mountains had been updated on your website. In reviewing the 2016 Plan, I noted that there was a change (from the previous official plan i.e. the 2007 Plan) that adversely affects my property, that I would like to appeal.

I am the owner of a residential property at Blue Mountains – 140 Jozo Weider Boulevard, which is adjacent to a "Recreational Ski" zone as defined in section 4.7 of the 2007 Plan. In the 2007 Plan, there was a qualification on the use of the adjacent recreational ski zone (Section 13.2 Exception #43 and Schedule "A" - Map 4 - Lots 16, 17 and 18, Concession 2) that clarified that "These lands may only be used for ski trails and lift facilities, parking areas, recreational facilities, outdoor recreational uses and EXISTING APPROVED base lodges and maintenance facilities."

I understand that this qualification was specifically put into the previous zoning plans to protect the interests of my and other residential properties that were adjacent to the recreational ski area at the time when the adjacent recreational ski zone was developed.

I noticed that the 2016 Plan continues to zone the adjacent area as "Recreational Ski", but has removed the above noted exception, which potentially may result in a base lodge or maintenance facility being built adjacent to my property. This would contradict (i) the agreement on how the recreational ski zone would be used at the time it was being developed, and (ii) the underlying principle on which it was based i.e. to balance the protection and support for tourism with living areas. Removing this exception would potentially be extremely detrimental to the enjoyment and value of my property as it would block the view and access to the ski area, and introduce higher degrees of traffic and noise, should a new base lodge or maintenance facility be developed there in the future.

I wish to appeal the removal of the existing exception in the 2007 Plan, as noted above, and request that it be incorporated into the 2016 Plan i.e. the lands identified in the 2007 Plan - Schedule A - Map 4 - Lots 16, 17, 18 continue to have the restriction that

"These lands may only be used for ski trails and lift facilities, parking areas, recreational facilities, outdoor recreational uses and EXISTING APPROVED base lodges and maintenance facilities."

A certified cheque in the amount of \$125.00 payable to the Minister of Finance, Province of Ontario is attached.

I am available to discuss this matter at your convenience and look forward to a favourable decision on the appeal.

Sincerely,



Elisabeth Ecker Vanderploeg



JUL 20 2016

9:46 a.m.  
mg

Randy Scherzer  
Director of Planning and Development  
595 - 9<sup>th</sup> Avenue East  
Owen Sound  
Ontario N4K 3E3

July 18, 2016

Dear Mr. Scherzer,

I recently noticed that the official plan ("2016 Plan") for the Town of Blue Mountains had been updated on your website. In reviewing the 2016 Plan, I noted that there was a change (from the previous official plan i.e. the "2007 Plan") that adversely affects my property that I would like to appeal.

I am the owner of a residential property at Blue Mountains – 138 Jozo Weider Boulevard, which is adjacent to a "Recreational Ski" zone as defined in section 4.7 of the 2007 Plan. In the 2007 Plan, there was a qualification on the use of the recreational ski zone adjacent to my property (Section 13.2 Exception #43, accompanied by Schedule "A" - Map 4 - Lots 16, 17 and 18, Concession 2) that clarified that

"These lands may only be used for ski trails and lift facilities, parking areas, recreational facilities, outdoor recreational uses and EXISTING APPROVED base lodges and maintenance facilities."

This qualification was specifically put into the previous Blue Mountain Official Plans after extensive discussions with the town and all affected parties at the time when the adjacent recreational ski zone was being developed to protect the interests of my and other residential properties that were adjacent to the recreational ski zone, while achieving the objective of expanding the ski area.

I noticed that the 2016 Plan (section B3.11.1 and accompanying plan schedule A-5) continues to zone the adjacent area as "Recreational Ski", but has removed the above noted exception, which significantly changes the potential use of the property. This would contradict (i) the agreement on how that particular recreational ski zone would be used at the time it was being developed, and (ii) the underlying principle on which it was based i.e. to balance the protection and support for tourism with living areas.

Removing this exception would potentially be extremely detrimental to the enjoyment and value of my property, and that of my neighbours, as it may result in a new base lodge or maintenance facility being built adjacent to my property in the future, which would block the view and access to the ski area, and introduce higher degrees of traffic and noise.

I also want to note that there is no mention of this change on the Official Plan Amendment schedules, so the basis on which the change was made is not evident.

I want to appeal the removal of the existing exception in the 2007 Plan, as noted above, and request that

- a. It be incorporated into the 2016 Plan under section B3.11.6 - Special Site Policies i.e. the lands identified in the 2007 Plan - Schedule A - Map 4 - Lots 16, 17, 18 continue to have the restriction that "These lands may only be used for ski trails and lift facilities, parking areas, recreational

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facilities, outdoor recreational uses and EXISTING APPROVED base lodges and maintenance facilities.”

- b. Schedule A-5 be updated to identify the areas subject to the above restriction.

A certified cheque in the amount of \$125.00 payable to the Minister of Finance, Province of Ontario is attached.

I also wish to note that there was no notification of this change to me, or my neighbours, who are adversely impacted by this change, despite me signing up on the Town of Blue Mountain website to get notifications on developments to the 2016 Plan. Please could I request that I be kept notified on deliberations on the 2016 Plan, specifically the matter noted above, via email.

I am available to discuss this matter at your convenience and look forward to a favourable decision on the appeal.

Respectfully,



Dinaz Dadyburjor





PARENTE • BOREAN  
BARRISTERS AND SOLICITORS

**Lawyer Direct Dial:** (905) 850 -6068  
**E-mail:** [gborean@parenteborean.com](mailto:gborean@parenteborean.com)  
**Law Clerk:** (905) 850 -6066 ext 237  
**Email:** [mmuccilli@parenteborean.com](mailto:mmuccilli@parenteborean.com)

July 20, 2016

✓  
County of Grey Planning and Development Department  
Attn: Randy Scherzer MCIP RPP  
Director of Planning  
595 9<sup>th</sup> Avenue East  
Owen Sound, ON.  
N4K 3E3

The County of Grey  
Attn: Ms. Sharon Vokes – County Clerk  
595 9<sup>th</sup> Avenue East  
Owen Sound, ON  
N4K 3E3

Dear Mr. Scherzer/Ms. Vokes:

**RE: The Town of The Blue Mountains Official Plan**

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Please be advised that we are the lawyers for Eden Oak (Trailshead) Inc. ("Eden Oak").

**Notice of Appeal**

We submit this correspondence and the enclosures as Eden Oak's appeal to the Town of The Blue Mountains Official Plan. Please find enclosed herein the following:

JUL 20 2016

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1. Our firm's certified trust cheque for \$300.00 payable to the Minister of Finance, Province of Ontario; in accordance with the Ontario Municipal Board's most recent Notice of Appeal Fee Change; and
2. Appellant Form A1.

### Summary of Appeal

As you are aware Eden Oak has submitted a site specific Official Plan Amendment (OPA), Zoning Bylaw Amendment (ZBLA) and Draft Plan of Subdivision on lands described as Part of Lot 20, Concession 2, Plan 529, Part Lots 158 and 173, Part 2 RP 16R-1974 & Part 1 RP 16R-4636 and Part 2, Lot 174, Plan 529, Plan 16R-8571, in the Town of Blue Mountains, County of Grey.

To date a decision has not been made on the above noted applications. In fact these applications have been appealed to the OMB and are proceeding to a pre-hearing on August 11, 2016.

Eden Oak's concerns relate to the approved Town of The Blue Mountains Official Plan include, but are not limited to;

- i) Density – increasing from 2.5 units/ha to 10 units/ha in the Recreational Residential designation is a positive step in the right direction towards conformity with the Provincial Policy Statement, however other settlement areas in the Town must achieve a density of 20 units/ha or more;
- ii) Open space – the Recreational Residential designation requires an open space requirement of 40%. We are not aware of another municipality in Ontario that requires open space of this magnitude, it's also not clear how this policy conforms with the smart growth and the Provincial Policy Statement;
- iii) Bonusing – the current Town of The Blue Mountains Official Plan permits bonusing units provided additional public benefits are provided. We understand that staff at the Town provided a number of options to Council that included no bonusing, a cap on bonusing and unlimited bonusing (as in the existing plan); and

- iv) Hazard mapping – the current plan proposed for the property included a review of the environmental features on the property. Under the new plan it is not clear if additional environmental work will be required prior to approval of the site specific Official Plan Amendment, or as part of the draft plan conditions.

These concerns were expressed at the public meeting held on April 25, 2016 in the Council Chambers of the Town of The Blue Mountains by Eden Oak's planner Mr. Andrew Pascuzzo of D.C. Slade Consultants on behalf of Eden Oak (Trailhead) Inc. I enclose here the minutes of the April 25 Council meeting (kindly refer to page 18 of the minutes).

Kindly confirm receipt of this Notice of Appeal package by reply email to the undersigned.

I trust this is satisfactory. However, please do not hesitate to contact me if you have any questions or require any further information.

I look forward to the scheduling of a pre-hearing conference of this appeal at the Board's earliest convenience.

Yours truly,  
PARENTE BOREAN LLP

Per:

  
Gerard C. Borean  
GCB/mmu



**Quinto M. Annibale\***  
**\*Quinto M. Annibale Professional Corporation**  
Tel: (416) 748-4757  
Email: [qannibale@loonix.com](mailto:qannibale@loonix.com)

**BY COURIER**

July 20, 2016

Mr. Randy Scherzer, MCIP, RPP  
Director of Planning & Development  
Grey County  
595 9<sup>th</sup> Avenue East  
Owen Sound, ON N4K 3E3

Dear Mr. Scherzer:

**RE: Notice of Appeal**  
**Town of The Blue Mountains Official Plan**  
**MacPherson Builders (Blue Mountains) Limited**

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We are Solicitors for MacPherson Builders (Blue Mountains) Limited (“MacPherson”).

MacPherson owns land located east of Grey Road 19, south of Highway No. 26 in Craigeleith. These lands are known as the “Home Farm” property and are subject to pending applications to amend the Town of The Blue Mountains Official Plan (“Official Plan”) and Zoning By-law, and for Draft Plan of Subdivision (Town File No. P2067 and County File No. 42T-2015-03).

MacPherson is in receipt of the Notice of Decision issued by Grey County dated June 30, 2016, pursuant to Section 17(35) of the *Planning Act*, advising of the approval of the (new) Official Plan. On behalf of MacPherson, we hereby appeal the decision of the County on a site-specific basis as it relates to the Home Farm property and the adjacent Town owned lands (together, the “Subject Lands”), pursuant to Section 17(36) of the *Planning Act* (the “Appeal”). The Appeal covers two (2) specific areas of concern: 1. the delineation of Significant Woodlands on our client’s lands and the wording of the Significant Woodlands policies in Section B5 of the Official Plan, and, 2. the Institutional Area designation on the Town lands that form part of the Home Farm applications. A brief explanation of the Appeal follows.

**Significant Woodlands**

Appendix 1 to the Official Plan identifies a substantial portion of the Home Farm property as Significant Woodlands. The delineation of Significant Woodlands on Appendix 1 mirrors the County Official Plan (Appendix B). The delineation in both



Official Plans is based on a “desk-top” exercise without any verification in the field. The environmental consultant retained by MacPherson (SLR Consulting) has undertaken substantial field work and prepared an Environmental Impact Study (EIS) in support of the Home Farm applications as anticipated through the Official Plan policy framework. The results of the EIS identify a substantially different delineation of the Significant Woodlands than identified on Appendix 1 to the Official Plan as well as Appendix B of the County Official Plan as these apply to the Subject Lands. It is our position that the Significant Woodlands delineation on Appendix 1 is incorrect and that the delineation should rely on and reflect the recent work conducted by SLR consisting of actual field verification. Thus, on behalf of MacPherson we hereby appeal the delineation shown on Appendix 1 and the associated policy framework contained in Section B5 of the Official Plan. The policies as drafted are overly broad and the mapping inconsistent with the field work conducted by SLR.

### **Institutional Area Designation**

Home Farm and the Town have entered into a Memorandum of Understanding (MOU) dealing with, among other matters, the future development of the Subject Lands. The MOU anticipates the future conveyance of the Town owned lands to my client for development purposes in exchange for the Plater-Martin and other open space lands. The Town lands are no longer being used for municipal purposes and have been declared surplus by Town Council. As noted above, the Home Farm applications include the Town owned lands and propose to redevelop these lands for residential purposes. As such, the proposed Institutional Area designation in the Official Plan as shown on Schedule 'A-4' is inconsistent with the planned redevelopment and future use of these lands. On this basis, we hereby appeal the Institutional Area designation as it relates to these lands.

We would be pleased to meet with Town and County officials in an effort to resolve these appeals with the hope of avoiding a future Ontario Municipal Board hearing. We look forward to further discussions.

Yours truly,  
**LOOPSTRA NIXON LLP**

Per: Quinto M. Annibale

CC: Michael Benner/Shawn Postma/Denise Whaley, Town of the Blue Mountains  
Russell Higgins, MacPherson Builders (Blue Mountains) Limited  
Glenn Wellings, Wellings Planning Consultants