



Staff Report

Enforcement Services – By-law Division

Report To: Committee of the Whole
Meeting Date: August 21, 2017
Report Number: FAF.17.104
Subject: Changing the Scope of Authority of the Short Term Accommodation (STA) Licensing Committee
Prepared by: Rob Collins, Director of Enforcement Services

A. Recommendation

THAT Council receive Staff Report FAF.17.104 entitled “Changing the Scope of Authority of the Short Term Accommodation (STA) Licensing Committee”;

AND THAT Council adopt one of the following 3 options with respect to the powers of the Short Term Accommodation (STA) Licensing Committee:

1. That Council amend the STA Licensing By-law to allow the STA Licensing Committee to consider a “Due Diligence” defence when hearing appeals. This option is currently prescribed under the By-law however the STA Licensing Committee has chosen not to exercise this option. To overrule this precedent requires an amendment of the STA By-law to explicitly allow for the defence.
2. That Council amend the STA licensing By-law to preclude the STA Licensing Committee to consider a due diligence defence when hearing appeals.
3. That Council amend the table containing the list of infractions found under section 6.1(4) of the STA Licensing By-law as follows to include a third column prescribing whether a due diligence defence is applicable for certain infractions contained in the By-law.

B. Overview

The purpose of this report is intended to provide Council with various options for their consideration which could change the scope of authority of the STA Licensing Committee when hearing appeals made in regard to the Short Term Accommodation (STA) Licensing Officer’s decision to impose penalties further to a contravention of the STA Licensing By-law.

C. Background

The STA Licensing By-law, By-law 2013-50 as amended, contains a list of violations which can be found under sec. 6 of the By-law whereby Demerit Points and Administrative Penalties may be imposed in cases of their violation. The STA Licensing Officer

has imposed a number of such penalties and four (4), dealing with Noise By-law infractions at licenced STA premises, have been appealed to the STA Licensing Committee.

At 3 of the 4 appeals heard by the STA Licensing Committee, the Committee affirmed the decision of the Licensing Officer to impose the prescribed penalties citing the following reasons for their decisions:

“Under the By-law, the owner is responsible for noise infractions. The infractions are confirmed by the court decision and the Committee relies on the Provincial Offences Act conviction. The Committee accepts the evidence put forward as to the owner’s practices and diligence, however, the By-law is clear that where there is a Noise By-law the owner is also responsible. The owner’s actions do not absolve him from that responsibility.

The Committee noted that it is not relevant that the owner is not involved in the Provincial Offences Act charge, and it is not for this Committee to determine. The Committee noted that if the owner has concerns with the By-law that the owner should direct those concerns to Council to consider through the normal process.”

It is to be noted in the last sentence of their decisions that the Committee suggested to the appellants that should the owners have concerns with the STA Licensing By-law that they should “direct those concerns to Council to consider through the normal process.”

On September 21, 2016 Town Council received a letter from Denis Martinek and Stu Frith on behalf of The Blue Mountain Short Term Accommodation Owners Association proposing certain amendments to the STA By-law.

The Association alleges that appeals to the STA Licensing Committee are futile, as the Committee is only concerned with whether a noise violation occurred and does not seem to consider the actions taken by the owner of the property. The Association is seeking an amendment to the STA Licensing By-Law requiring the Committee to consider the actions of the property owner and a “due diligence defence”.

On November 21 2016, PDS.16.128 – “STA Licensing Program: Responsible Person Overview” was presented at a Special Meeting of Council. The report contained a number of recommendations including;

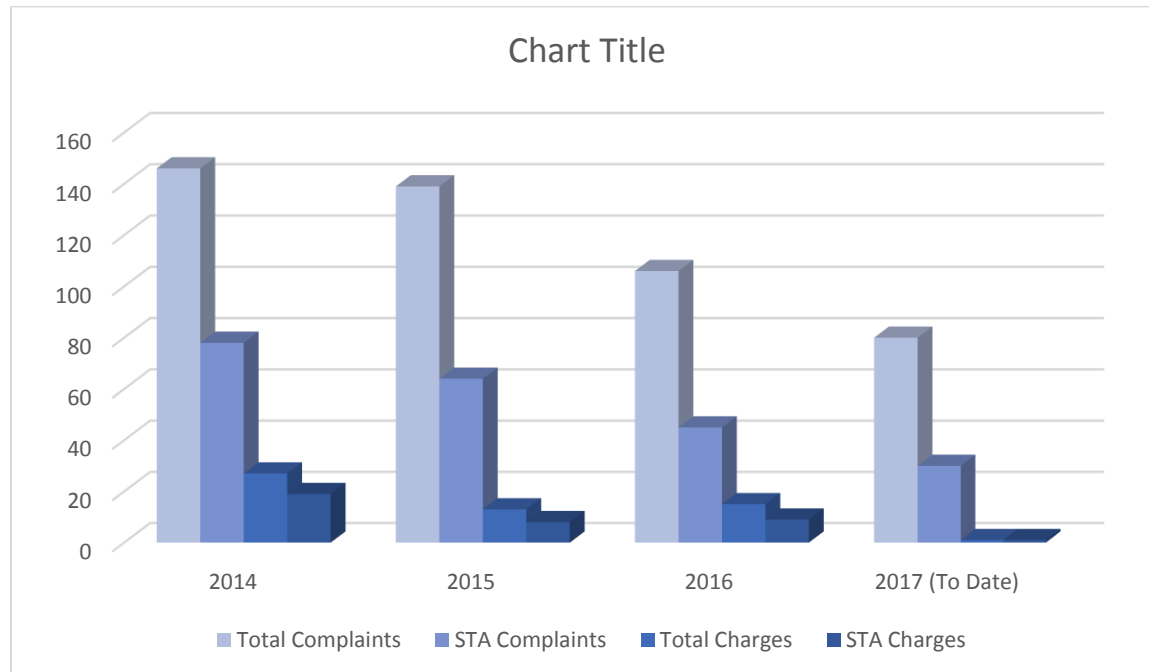
THAT Council receive Denis Martinek’s letter to Staff dated September 21, 2016;

AND THAT Staff be directed to provide Council a report to review the recommendations contained in Denis Martinek’s letter regarding the STA Licensing Committee.

In the preparation of this report Staff requested a legal opinion on the matter from the Town's solicitors, Middlebro' & Stevens LLP and same was received on October 21, 2016.

Noise Statistics:

The chart below shows the trends for noise complaints and noise charges laid, for both STA and Non-STA properties.



The statistics show a decline in total occurrences, as well as a reduction in the percentage of these complaints which originate with STA properties. STA complaints fell from a high of 53% of all noise complaints in 2014 to only 37% of the occurrences in 2017 (to date). The rate of STA noise charges as a percentage of all noise charges has also declined, from 70% in 2014 to 60% in 2016. So far in 2017 there has only been one noise charge, and it occurred at an STA property. While this is a small sample size, it appears to show a trend of a reduction in noise complaints and noise charges since the STA program began. It would seem to be a fair assumption (and anecdotal comments from some STA operators support this) that the demerit point system has been effective in helping to reduce the incidence of noise complaints.

D. Analysis

Due to the nature of the content of the opinion letter and that it contained legal advice to Council the author, Nicholas Lovell, recommended that it be read in a closed session. The key aspect of the opinion, for the purposes of this report, concerns the function and scope of

authority of the STA Licensing Committee. For the reasons outlined in the letter, three (3) options are provided for Council’s consideration and these are summarized below.

Options for Council to Consider:

- Option 1:** That Council amend the STA Licensing By-law to allow the STA Licensing Committee to consider a “Due Diligence” defence when hearing appeals. This option is currently prescribed under the By-law however the STA Licensing Committee has chosen not to exercise this option. To overrule this precedent requires an amendment of the STA By-law to explicitly allow for the defence.
- Option 2:** That Council amend the STA licensing By-law to preclude the STA Licensing Committee to consider a due diligence defence when hearing appeals.
- Option 3:** That Council amend the table containing the list of infractions found under section 6.1(4) of the STA Licensing By-law as follows to include a third column prescribing whether a due diligence defence is applicable for certain infractions contained in the By-law.

Table 1			
Column 1	Column 2	Column 3	Column 4
Infraction	Reference	Demerit Points	Type of Offence
<i>Fire Protection & Prevention Act/Fire Code</i>	FPPA	15(1)	Absolute Liability
Operating without a licence	3.1	7	Absolute Liability
<i>Building Code Act</i> (construction w/o a permit)	BCA	7 (2)	Strict Liability
Sleeping in excess of maximum permitted	5.4(1) & 5.9	5	Strict Liability
Non-availability of Responsible Person	5.14	5	Strict Liability
Noise By-law Infraction	N/A	5	Absolute Liability
Not providing updated information	4.4	3	Absolute Liability
Contrary to Parking Management Plan	5.10	3	Strict Liability
Contrary to Property Management Plan	5.10	3	Strict Liability
Not posting licence	5.12	3	Strict Liability
Property Standards	N/A (2)	3	Strict Liability
Long Grass	N/A (2)	2	Strict Liability
Waste/Garbage Collection	N/A (2)	2	Strict Liability

In the above table all infractions listed as strict liability require a consideration of due diligence whereas all infractions listed as absolute liability do not. This proposal has the advantage of allowing flexibility between various infractions and provides certainty and clarity to STA owners.

It should be noted that the designations in the above table are for reference only and are for Council’s consideration.

Staff Recommendation

Staff recommend that Council choose **Option 3**. This option ensures that the STA Licensing Committee takes all facts being provided into consideration when rendering their decision and further ensures that the STA Licensing By-law is being applied in a fair and equitable manner.

E. The Blue Mountains Strategic Plan

Goal #4: Promote a Culture of Organizational & Operational Excellence

F. Environmental Impacts

N/A

G. Financial Impact

None

H. In consultation with

Nick Lovell, Middlebro' & Stevens LLP

I. Attached

Respectfully submitted,

Rob Collins, CMM III
Director of Enforcement Services

For more information, please contact:
Rob Collins, Director of Enforcement Services
rcollins@thebluemountains.ca
519-599-3131 extension 258