

STAFF REPORT: Planning & Building Services Department



REPORT TO: Planning & Building Committee
MEETING DATE: January 16, 2012
REPORT NO.: PL.12.10
SUBJECT: Millpond Homes – Draft Plan Approval Extension Request
PREPARED BY: David Finbow, Director, Planning & Building Services

A. Recommendations

THAT Council receive Staff Report PL.12.10 and that Council authorize Town staff to write a letter to the Ontario Municipal Board supporting the proponent's request for a maximum three year extension of the Draft Plan Approval associated with County of Grey File No. 42-CDM-2004-08 (Millpond Homes).

B. Background

Approval was granted for Draft Plan of Condominium Application No. 42-CDM-2204-08 (Draft Plan) in October 2005. That decision was subsequently appealed to the Ontario Municipal Board by neighbouring property owners, Anne and Gary Bochna (Appellants). The parties ultimately reached an agreement and entered into Minutes of Settlement.

The Ontario Municipal Board approved the draft plan in accordance with the Minutes of Settlement on February 13, 2007, but retained authority for final approval. The Settlement reached involved the Applicant agreeing to purchase certain lands owned by the Appellants, and revisions to the site-specific by-law and Draft Plan of Condominium such that they include these lands.

The Board has dealt with previous requests for Draft Plan Approval Extension and a red-line revision to the Draft Plan. In its Order dated June 29, 2011, the Board provided a summary overview with respect to some of the issues previously raised by the Appellants. A copy of this Board Order is attached for Council's information.

The current request to the Board is for a three year extension to the Draft Plan Approval. The Town's Official Plan at Section 9.8 (2) indicates that "Extension of draft plan approval may be recommended for one (1) year intervals, where the Town is satisfied that the development will proceed." The purpose and intent of a restriction to one (1) year intervals is to ensure that development proceeds in accordance with current approvals. Notwithstanding this, the Town has previously consented to three year extensions where the Ontario Municipal Board is the approval authority due to the complexity and timelines associated with the Board process.

As Town Planning Services staff do not anticipate a change in the land use policies and regulations related to the subject lands, and do not anticipate servicing issues for the subject development, and in light of the complexity of the Board process, Planning Services staff recommends that Council not oppose the applicant's request for a three year extension. It is noted that staff of the Planning & Development Department of the County of Grey, being the approval authority for Plans of Subdivision and Condominium, will not be opposing this request.

C. The Blue Mountains' Strategic Plan

D. Environmental Impacts

N/A

E. Financial Impact

The requisite fee of \$750.00 associated with the Request for Draft Plan Extension has been received.

F. In Consultation With

None

G. Attached

1. Copy of Ontario Municipal Board Oral Decision dated June 29, 2011.

Respectfully submitted,

David Finbow
Director, Planning & Building Services

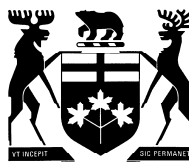
For more information, please contact:

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ISSUE DATE:

Jun. 29, 2011

PL050815



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Anne Bochna and Gary Bochna have appealed to the Ontario Municipal Board under subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the County of Grey to approve a proposed plan of subdivision on lands composed of Lots 118 and 120 and Part Lots 122, 123, 124, 153, Registrar's Complied Plan 1023 (former Town of Thornbury), in the Town of The Blue Mountains
County of Grey File No. 42-CDM-2004-08
OMB File No. S050066

APPEARANCES:

Parties

Counsel*/Representative

D.Q.I Design Quorum Inc. and 1475649
Ontario Ltd.

Colin Travis (Planner)

County of Grey

Randy Scherzer (Planner)

Town of The Blue Mountains

Shawn Postma (Planner)
David Finbow (Director of Planning
Services)

Anne and Gary Bochna

M. Green*

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. SILLS ON
MAY 16, 2011 AND ORDER OF THE BOARD**

This hearing was held by telephone conference call for the purpose of considering proposed red-line revisions to a Plan of Condominium on lands composed of Lots 118 and 120, and Part Lots 122, 123, 124, and 153 in the Town of The Blue Mountains.

Background

Municipal approval was granted for Draft Plan of Condominium Application No. 42-CDM-2204-08 (Draft Plan) in October 2005. That decision was subsequently appealed to the Ontario Municipal Board by neighbouring property owners, Anne and Gary Bochna (Appellants). The parties ultimately reached an agreement and entered into Minutes of Settlement. The Ontario Municipal Board approved the draft plan in accordance with the Minutes of Settlement on February 13, 2007, but retained authority for final approval. The Settlement reached involved the Applicant agreeing to purchase certain lands owned by the Appellants, and revisions to the site-specific by-law and Draft Plan of Condominium such that they include these lands.

The Draft Plan approved a total of 27 townhouse units. Phase 1 of the plan consists of 10 townhouse units which have been constructed and registered. The Board granted final approval to Phase 1 in January 2010.

The Applicant now wishes to proceed with Phase 2 and has circulated proposed redline revisions to all parties involved in the first hearing. These revisions propose to reduce the number of units for Phase 2 from 17 to 12 units, and eliminate the rear access garage, laneway and rear parking garage structure in favour of providing attached garages at the front of the units. The revisions also include reducing the building height by approximately 3 metres by replacing 3-storey townhouse units with bungalow or bungalow with optional loft townhouse units. The proposed revisions will result in the following changes to the overall build out of the development:

1. Reduced overall site density;
2. Reduced site building coverage;
3. Elimination of parking facilities at the water (Millpond) rear yard;
4. Reduced building height by the equivalent of one storey;
5. Exterior living space at grade and not at the second floor patio;
6. Maintain current building setbacks, with an increase in the side yard setback of approximately 0.3 metres on the easterly side and an increase in the westerly side yard setback

The Council of the Town of The Blue Mountains approved the revisions in January 2011, and in February 2011, the County of Grey Planning and Community Development Committee passed a motion supporting the proposed revisions.

Mr. and Mrs. Bochna are opposed to the proposed redline revisions and are seeking a full hearing on this matter. The following is a summary of their concerns (as set out in a letter dated February 2, 2011), and the associated response by the Applicant's planner, Mr. Colin Travis:

Concern 1: The Appellants maintain that the original plan did not meet the Zoning By-law. While the redline revisions have corrected most of the issues, there is still a non-conformity in the northwest corner of the property.

Response: The setbacks do in fact meet the Zoning By-law and the review of the redline plan details by the Town planner did not raise any issues whatsoever with respect to zoning. Also, the proposed building setback in the sideyard adjacent to the Appellant's property (the easterly) is in fact increased by 0.37 metres. Therefore zoning is not an issue raised by the redline revision plan.

Concern 2: While the Appellant does not allege that the lot coverage exceeds that required by the Town's Zoning By-law, he points out that the lot coverage for the redlined plan is greater than the prior lot coverage.

Response: Zoning By-law 2005-62, as amended by the Ontario Municipal Board, zones the lands RM1-40, and permits a lot coverage of 40%. The lot coverage is 26% on the proposed redline revision, substantially below the maximum allowable coverage.

Concern 3: The developer's marketing materials clearly indicate the adjacent commercial block as "future residential expansion". For that reason, the Town Council should be considering it when considering the plan overall.

Response: There are no firm plans for the adjacent northerly commercial block lands. While these lands are owned by the Developer, they are not part of the approved draft plan and do not have any direct influence on the workability or design of the proposed redline changes. As it would be incorrect to include these lands as part of the redline revision, this issue is not relevant.

Concern 4: The Appellants has concerns as to whether or not the Town Council has adequately peer reviewed the environmental reports and properly considered the prior use of these lands for the production, storage and disposal of solid fertilizers.

Response: The development of the subject lands required a Record of Site Condition (RSC) to be undertaken to the satisfaction of the Ministry of the Environment (MOE). This requirement was stipulated as a Condition of Draft Plan Approval. The RSC was carried out by an accredited firm and included preparation and/or review of six clearly identified assessments and reports including soil and water sampling at the site. The RSC concluded that the subject lands are suitable for residential development without the need for remediation measures. The RSC was reviewed by the MOE and was deemed to satisfy the requirements under Draft Plan of Approval.

Concern 5: The Appellants submit that fill has been placed within 15 metres of Mill Pond, in contravention of the required setback from a cold water stream.

Response: There is no evidence or factual support for this assertion. The Grey Sauble Conservation Authority (GSCA) has confirmed there are no outstanding “orders” or issues on file. The previous GSCA permits have expired and will need to be renewed. The GSCA are aware of the proposed redline revisions.

Concern 6: The Appellants submit that a number of trees have been removed from the subject lands and they question whether or not the appropriate permits were obtained.

Response: There is no evidence that what has taken place on the site is contrary to the approved Site Plan, or that there have been any contraventions of GSCA permits and/or conditions therein.

The Appellants further contend that the Applicant has breached terms of the original Settlement.

In a letter to the Board dated March 4, 2011, Mr. Green confirmed that his client made a deputation to Town Council at some point after Council passed the original motion to support the redline revisions (January 24, 2011). This letter purports that in response to his client’s deputation, “Council has suggested that the matter be reviewed further. This review is now ongoing”. Under the circumstances, “we feel it would be inappropriate for the Board to approve the redlining until the matter of the Town’s support is clarified”.

In a letter to Mr. Green dated May 3, 2011, Town planner (Shawn Postma) confirmed that in fact Town Council had not withdrawn or modified their position with respect to this application since the original resolution was approved on January 24, 2011.

In an email dated February 1, 2011, the GSCA indicates they “have no objection to the redline revisions and will deal with any outstanding fill/grading issues through a new permit application and landscape plans”.

Mr. Randy Scherzer provided expert planning opinion on behalf of the County of Grey via affidavit (Exhibit 1), and viva voce evidence. Mr. Shawn Postma provided expert opinion evidence on behalf of the Town of The Blue Mountains via affidavit (Exhibit 2).

Mr. Scherzer opined that the proposed revisions are consistent with the provisions of the Provincial Policy Statement, conform to the purposes and policies of the County and Town Official Plans, and represent good land use planning. Mr. Postma opined that these revisions maintain the general intent and character of the approved Draft Plan, and the proposed changes will reduce the visual impact of the proposed units from surrounding properties and from across the Millpond. Consequently, planning staff have no objections to a recommendation to the Ontario Municipal Board in support of the proposed redline revisions.

Disposition

Mr. Green has requested that the Board convene a full hearing on this matter in order to allow his client an opportunity to seek out evidence in support of his concerns/allegations. The Board will not grant this request for the reasons to follow.

The Board finds that the Appellant has failed to raise any legitimate land use planning reasons which could reasonably be expected to influence a decision on this matter, or which could justify the time and commitment of resources required for a full hearing. Many of the Appellants' concerns are either completely speculative in nature or relate to Phase 1 which has already been granted final approval by the Board. I am satisfied that the Applicant's planner has sufficiently and appropriately responded to the Appellants, and/or their concerns have or will be adequately addressed. The future development of the adjacent lands is not known at this time, and is not a matter that forms part of the Board's deliberations with respect to the proposed redline revisions. The allegations respecting the Applicant having breached the terms of the Settlement Agreement is not a matter for which this Board has the authority to adjudicate.

The Board adopts and relies on the uncontested land use planning evidence of Mr. Scherzer and Mr. Postma to find that the proposed redline revisions are consistent with the intent of the Draft Plan and represent good land use planning.

THE BOARD ORDERS that the revisions to Draft Plan of Condominium CDM-2204-08 as set out in Exhibits 7 and 8, and appended to this Order as Attachments “1” and “2”, are approved.

The Board so Orders.

“M. A. Sills”

M. A. SILLS
MEMBER