

STAFF REPORT: Planning & Building Services Department



REPORT TO: Planning & Building Committee
MEETING DATE: August 3, 2011
REPORT NO.: PL.11.68
SUBJECT: Deeming By-law Application,
Interesting Ventures Inc., Ian
Milnes, Lots 20 and 21, Plan 634
PREPARED BY: David Finbow, Director,
Planning & Building Services

A. Recommendations

THAT Council receive Staff Report PL.11.68, Deeming By-law Application Interesting Ventures Inc., Ian Milnes, Lots 20 and 21, Plan 634, and that Council enact a deeming by-law related to the subject request.

B. Background

The proponent, via its Agent, Travis & Associates, has made application pursuant to Section 50(4) of the *Planning Act* for a Deeming By-law in order to "merge" Lots 20 and 21, Plan 634. Attached for Council's information is an extract from Plan 634 (Appendix "A").

The purpose of a Deeming By-law is to ensure that the lands cannot be separately conveyed without an approved consent from the Town of The Blue Mountains.

Section 50(4) of the *Planning Act* indicates the following:

Designation of plans of subdivision not deemed registered

(4) The council of a local municipality may by by-law designate any plan of subdivision, or part thereof, that has been registered for eight years or more, which shall be deemed not to be a registered plan of subdivision for the purposes of subsection (3). R.S.O. 1990, c. P.13, s. 50 (4).

Plan 634 was registered on February 16, 1960.

Travis & Associates has provided a detailed Planning Justification Report (PJR) with respect to the proposal (Appendix "B"). Planning Services do not take issue with the overall direction of the PJR in support of this application.

(It is noted that Planning Services continue to be of the opinion that a previous application for minor variance to the Committee of Adjustment did not meet the four tests for same pursuant to the Planning Act.)

Therefore, Planning Services recommends that Council enact a Deeming By-law pursuant to Section 50(4) of the *Planning Act*.

C. The Blue Mountains' Strategic Plan

"Managing growth to ensure the ongoing health and prosperity of the community."

"Preserving and enhancing natural and environmental features, and cultural heritage of the community."

D. Financial Impact

N/A

E. Addendums

- A. Extract from Plan 634
- B. Travis & Associates Planning Justification Report
- C. Draft Deeming By-law

Respectfully submitted by:



David Finbow
Director, Planning & Building Services

planning consultants
 approvals facilitators
 development managers



June 9, 2011

David Finbow
 Director Planning and Building
 Town of the Blue Mountains
 32 Mill Street
 P.O. Box 310
 Thornbury, Ontario
 N0H 2P0

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TOWN OF THE BLUE MOUNTAINS
 PLANNING & BUILDING SERVICES
 PER _____

Dear Mr. Finbow,

RE: Ian Milnes
 Deeming By-law
 Lots 20 and 21 Plan 634

Attached is the completed application form for a Deeming By-law. I had met with Bryan Pearce two weeks ago on this file. The purpose of the application is to enable the merging of Lots 20 and 21 into a larger, singular lot. The reason for seeking this is to enable the construction of a tennis court under provisions of the Zoning By-law permitting "Accessory Uses".

Attached is our completed application form and supporting plans. Mr. Pearce has the application fee in the file. Below is our Planning basis and opinion on the application.

BACKGROUND

We have been retained by Mr. Milnes on this file. Mr. Milnes existing house is on Lot 20, Plan 624, being at the south-west corner of County Road 19 and Craigleith Road. We have been advised directly that Mr. Milnes purchased the adjacent lot, Lot 21, Plan 624, on Craigleith Road in January of this year for the specific intention of constructing a tennis court and, further to a verbal advisory from the municipality that the tennis court was permitted by By-law.

Your files will show that my client originally made application for a Minor Variance based on various consultations with the municipality several months ago. We note that in the application for Variance the proponent specified that the extent of relief applied for was "to allow tennis court on a separate piece of

property from the owners residence". That application, under file number A05-2011, was refused by the Committee on February 17, 2011 on the basis it was not satisfied the application met the four tests required to support a minor variance.

In effect, the application sought to permit a tennis court as an accessory use on a separate lot notwithstanding that there was and could not be, a primary use to be subordinate to. Fundamentally, it is appreciated that such a request and approach is beyond a "minor variance" decision. As noted in the Grey County Planner's response, such a proposal on a separate lot should require a rezoning, or the owner's two lots merged.

I have not recommended the rezoning approach as I believe that is contrary to the intent of the Official Plan and probably sets an undesirable precedent insofar as expanding the range of permitted uses, as opposed to accessory uses, on lots zoned for single detached dwellings.

However, I have suggested to my client that merging the two lots is the preferable approach. In going through the detail of the file, it is apparent that a minor variance would be required should the two lots be merged as it could be interpreted that that the proposed tennis court would need a variance to the By-law provision 5.2 (iii) to By-law 83-40 (see below).

As an aside, we note that there were no objections to the stated intent of the tennis court from the commenting agencies: NEC, Grey County Planning, Grey County TAPS. We also note that through the variance process, the neighbours concerns over lighting was addressed by the applicant as was landscaping.

In report PL.11.20 Planning Staff offered the opinion that the subject proposal does not conflict with either the PPS or the County Official Plan. We share that opinion and see no need to review those matters further in this reporting letter.

The following is offered as planning considerations in reviewing this application. It focuses on the land use matter as it is the proposed land use that is driving this application.

OFFICIAL PLAN

The Official Plan (the Plan) is generally silent on specific policies regarding merging two lots to create one large lot in an existing subdivision. Therefore, consideration of an application for a Deeming By-law to enable the merging of two lots requires a review of broader land use policies to assist with planning policy context.

We respectfully suggest that the historic and existing land use pattern in the Craigeleith-Camperdown area is intimately tied into the recreational nature of the community. Significant proportions of existing accommodations and "residential" subdivisions are based on recreational activities and recreational use of dwellings. The terms "cottage" and "Chalet" are used frequently by owners and visitors alike and speak fundamentally to ongoing use and expectations of the residential land use base.

The Official Plan (the Plan) acknowledges the Town as a somewhat unique community in that tourism and related recreation uses are key considerations forming the Basis of the Plan (Section 1.3.3). At the broader level, the Plan "embraces a wide diversity of urban, rural and recreational amenities" with the town serving as "a four seasons recreational destination". The Plan acknowledges a demand for "access to recreational pursuits" due to proximity to the GTA and demographic pressures (S.3.2.1).

The strategic importance of recreation, recreation facilities, and recreation/tourism communities is reflected in the Plan's high priority on enhancing recreational and tourism related activities (S.3.2.1 (9)).

In speaking to recreational uses and the recreational land use base, the Plan does not provide clear direction on the "scale" of such uses, or, is at least silent on provision of individual, localized recreational amenities. However, the Plan clearly acknowledges tennis courts as accessory uses.

Under the heading "Resort Accommodations" the Plan anticipates accessory uses. Under S. 3.5, "Accessory Uses" the Plan provides that uses that are "naturally and normally incidental to, subordinate to or exclusively devoted to a principal use shall generally be permitted as accessory uses in conjunctions with that primary uses". With respect to residential uses the same section advises that such accessory uses include a "garage, storage shed, swimming pool, tennis court, deck, boat house and similar uses" (S.3.5.1 (1)).

The Plan also provides direction as to the general location and size of accessory uses. The Plan generally encourages accessory uses in rear or side yards. With regards to size, the Plan anticipates that the size will be limited where appropriate. With respect to size, we are suggesting that a tennis court has a universal, historic standard size and we do not see in the Official Plan or the Zoning By-law limitations or deviations from this standard.

With regards to restrictions on accessory uses the Plan directs that accessory "buildings and structures shall generally be restricted to the rear or side yard of a lot and should be limited in size, where appropriate, so they clearly appear secondary to the primary use. The implementing Zoning By-law shall establish

standards based on the nature of the use and compatibility with surrounding areas" (S. 3.5.1 (2)). As illustrated in the attached drawings, in particular "Sheet No. 4" prepared by S. Young Design Inc., the proposed tennis court would be considered to be located in the "rear" yard of the merged lots. In addition, this drawing demonstrates that the tennis court itself will be secondary to the existing house. Your records will show that the existing house underwent extensive renovation several years ago, including substantial grounds landscaping improvements and features.

The subject lands are designated RI "Residential Infill". The purpose of this land use designation is to "recognize existing residential plans of subdivision which have been registered ..." (S.4.12.1). Permitted uses include single detached dwellings, parks and open space. Policies regarding development in RI designations generally relate to "infilling" on vacant lots or, further lot creation (i.e., creating more lots). Merging of lots is not specifically addressed nor, in our opinion, is it generally addressed.

In addition, it is respectfully submitted that S.4.12.1 to the RI policy deals with harmony of buildings and structures only in the specified context of "infilling development upon existing vacant lots" (S.4.12.3 (1)). It is respectfully suggested the intent of this wording is geared toward a traditional and literal "infilling" of vacant lots, and does not address lot merging or, the provision of accessory uses on merged lots.

ADDITIONAL MATTERS

In reviewing the file there were several planning considerations or concerns raised. These same matters may arise again while processing this subject application. These, considerations and concerns along with our planning response, are as follows.

1. Does not meet the general intent of the Official Plan.

We believe based on the above-note policy review the subject application is consistent with the overall intent of the Official Plan. We maintain one of the fundamental Basis to the Official Plan land use policy is encouragement on recreational facilities, an acknowledgement of a recreational lifestyle and, provision of accommodations and related accessory uses in the context of a four-season destination resort area. The merging of two lots in order to enable

provision of a tennis court is entirely consistent with the Official Plan theme and land use direction.

2. The tennis court optically appear to be in the side yard of the dwelling.

This is a subjective observation directed at what is a "corner lot". In terms of zoning By-law application, the tennis court could be considered to be situated in the rear yard. Looking at the lot from the road frontage along County Road 19, the existing dwelling is situated closer to that road, has an access off that road which can be optically justified to represent the front yard. With the merging of the two lots, the rear yard will comprise the existing Lot 21.

3. Accessory uses should not be constructed prior to the main building.

This zoning By-law provision would not be contravened with the merging of the two lots.

4. The proposed tennis court would be located closer to the front lot line or the side lot line than minimum distance required by the By-law.

With the merging of the lots, the front lot line would be along County Road 19 so the tennis court would not conflict with this specific provision. With merging of the lots, the side lot line along Craighleith Road would be considered an "External Side Yard" under the zoning By-law and a setback of 6m would be required. It would appear based on the plans attached that this setback requirement could be met by shifting the use approximately 2m to the south.

5. The proposed tennis court would be built closer to the street than the main building, contrary to the zoning By-law provision.

This is correct. The existing dwelling on lot 20 (corner lot) is set back approximately 19m from Craighleith Road. It would appear that the existing zoning By-law would interpret the Craighleith Road lot line to be the front line for Lot 20 and a setback of 7.5m would be applicable. The existing setback of 19m would

therefore appear to be far greater than required, and is in fact about 250% greater than required. In the R3 zone, the minimum lot requirements are in the order of 21 m frontage and 600 sqm lot area (for corner lots). The lot area for Lot 20 is in the order of 1,379sqm, which is almost 230% greater than the zoning By-law minimum.

Tennis courts are a permitted accessory use in the R3 zone. The existing dwelling is set back a far greater distance than the By-law minimum. This existing situation does not in and of itself indicate or dictate an appropriate scale for an accessory use. Given the substantial size of the existing and retained house, along with its extensive landscaping, the dominant built feature of the merged lot will still be the residence. It is respectfully suggested this provision can be appropriately addressed through a minor variance.

6. Not desirable for the appropriate development or use of the land.

This is a stated opinion that maintains that a tennis court is not in keeping with neighbouring, residential lands and is not consistent with the Official Plan policy. We have addressed our response on Official Plan conformity and maintain a tennis court as an accessory use to a residential use is entirely consistent. On the matter of a tennis court not "in keeping" with an adjacent residential land use we are of the opinion that a tennis court is entirely in keeping with residential uses and this is endorsed in the Official Plan land use policy and, provisions of the zoning By-law. Both land use control instruments anticipate tennis courts as accessory uses to a range of residential uses, including single detached on a variety of lot sizes.

7. Tennis facilities are available through other outlets.

It is implied in Staff Report PL.11.20 that as there are tennis facilities available to the general public in various venues throughout the municipality, that there

may not be a "need" for a tennis court on the subject lands. The implied message is that the Official Plan only encourages centralized or larger tennis facilities. It is respectfully suggested that the Official Plan does not discriminate against or prohibit private tennis courts associated with private residential uses, including single detached uses. It is also respectfully suggested that there is no relationship between the establishment of a private recreational need being negated by the fact that publicly accessible similar uses being available.

8. Merging of the lots will interfere with or detract from neighbourhood land use patterns.

The immediate neighbourhood is characterized as consisting of a wide variety of land uses. To the south is a new residential development built at a medium density with a mix of residential unit types. Associated with this development are open space and significant stormwater management systems (which in fact are adjacent to the subject lands). To the south west is the Craighleith Ski Club parking lot, snowmaking pond and private ski club facilities. To the east are seasonal and permanent residential on lots of various sizes and fronting onto County Road 19. Also to the east are vacant development lands.

The subdivision along Craighleith Road that comprises Registered Plan 624 was approved decades ago and reflects subdivision design and amenities typical of that era. In effect, a long straight road with 100 foot (30m) wide lots. Over the years it is accurate to state that a wide variety of "chalets" and homes have been built. Log homes, stone homes, stucco homes, one storey homes, 1 ½ and two-storey homes. Homes that are in excess of 3000 sqft and homes that are clearly under 800 sqft. Permanent residences and seasonal residences.

Homogeneity or sameness of character is not truly applicable to this neighbourhood. It has a land use pattern and a built form that reflects multiple land uses, multiples styles and multiple needs. The

merging of two lots and provision of a tennis court in our opinion, is not going to disrupt the fabric, utilization or overall efficiency of this neighbourhood.

9. Merging of the lots will have a negative impact on the overall density objectives of the Official Plan.

With regards to the overall density objectives of the Official Plan it is respectfully suggested that the Plan anticipates a range of residential density types and does not specify a goal with regards to minimum or maximum density per se in the RI designation. However, in the context of the municipality the 2010 Housing Needs Study reported that the existing housing stock in the municipality is over 5,600 units. In addition, the same study report that there were over 6,541 units "under Application", in other words at some stage in the planning review and approvals stage.

The merging of the two subject lots into one lot represents a net loss of about 0.02% to the existing housing stock. The net impact on density is respectfully suggested as being negligible if not immeasurable. In context, impact of the subject application on density objectives or on density calculations is not a planning issue.

CONCLUSION

The subject proposal seeks to merge two lots in order to enable provision of a tennis court as an accessory use. This review has taken into account overall Official Plan policy and has determined that there are no specific land use policies that prohibit the merging of two lots. The provision of a tennis court on the subject lands is fully anticipated as an accessory use in the Official Plan.

In reviewing matters further, we have concluded that merging of the two lots does not have a substantive impact on overall municipal density or housing matters, it does not have a negative impact on the neighbourhood and, it does not raise a significant issue with regards to the one side yard setback matter in the zoning By-law.

Nonetheless, with the merged lots, provision of a tennis court does raise a need to seek a variance to the zoning By-law, specifically S. 5.2 (iii) to Township of Collingwood By-law 83-40.

The subject application is a reflection of an existing resident and property owner wishing to further invest in the municipality by providing additional recreational opportunities to his family. This additional investment is a reflection and acknowledgement of the recreational "draw" this community has and, which is fully acknowledged and supported in the municipal Official Plan. Provision of a landscaped tennis court on a lot that will be in excess of 3,370 sqm (36,275 sqft) in area should not have a negative impact in this recreationally oriented neighbourhood and community.

We respectfully have the opinion that the subject application conforms to the general intent and purpose of the Official Plan, will not have a negative impact on the overall neighbourhood and represents good planning.

We look forward to your office processing this application and request we be notified at your earliest convenience of acknowledgement of the application and your anticipated review time.

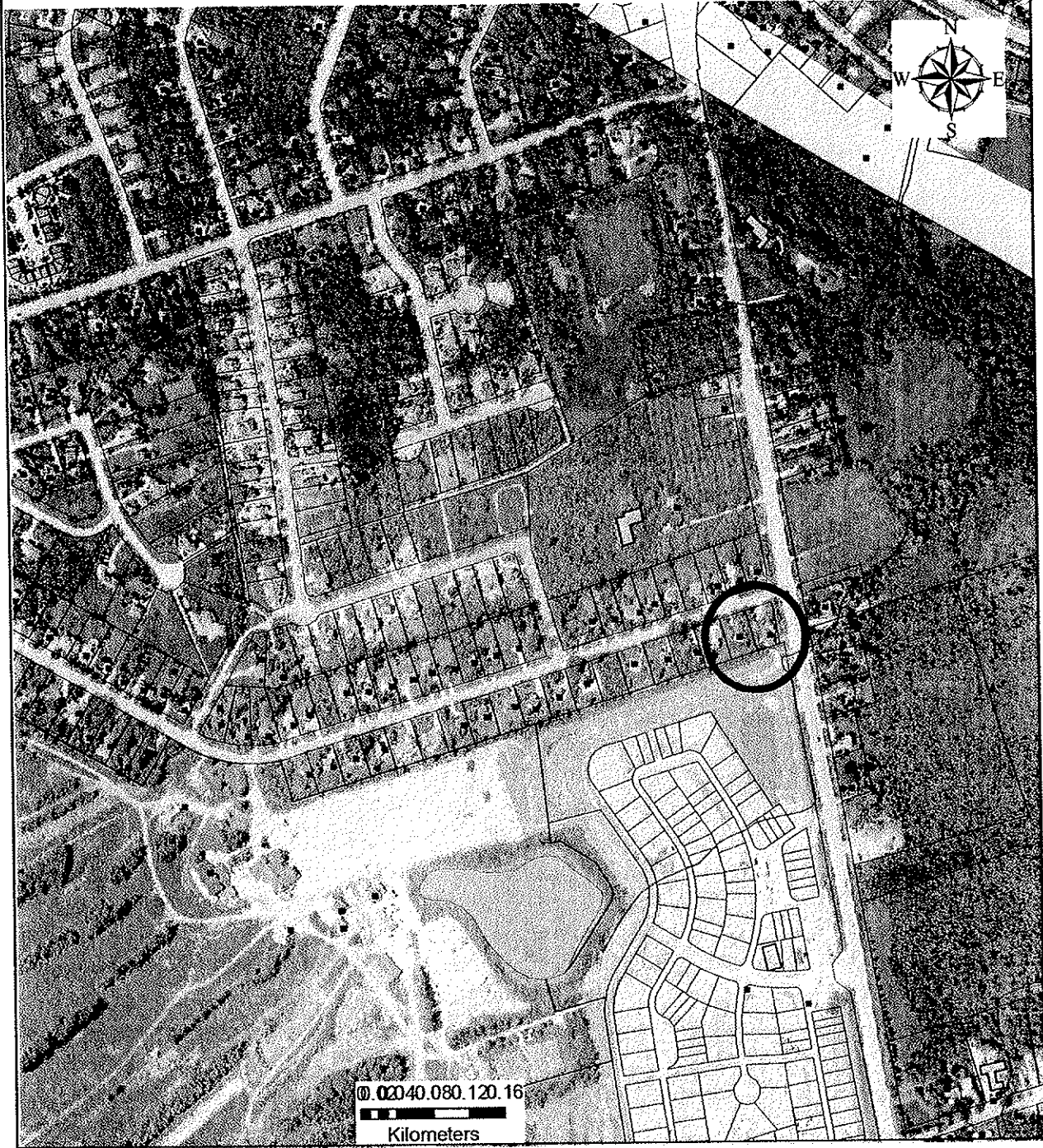
Yours truly,



Travis & Associates Inc.
Colin Travis, MCIP RPP

Cc: Ian Milnes, Client
Bryan Pearce, Town Planner
Steve Young, S Young Design Inc.

Grey County Web Mapping



- Official Plan - Landuse**
- Wetlands
 - Inland Lakes & Shoreline
 - Agricultural
 - Hamlet
 - Escarpment Recreation Area
 - Niagara Escarpment Plan Area
 - Hazard Lands
 - Special Agricultural
 - Urban Fringe
 - Urban
 - Space Extensive Commercial
 - Space Extensive Industrial
 - Mineral Resources Extraction
 - Rural

- Official Plan - Constraints**
- Known Abandoned Land Fill Site
 - Existing Land Fill Site
 - Cold Water Stream
 - Cool/Warm Water Stream
 - Warm Water Stream
 - Cold Water Lake
 - Cool/Warm Water Lake
 - Warm Water Lake
 - Evaluated Wetlands
 - Special Policy (Karst)
 - Earth ANSI
 - Earth Life ANSI
 - Life ANSI
 - Primary Aggregate

Legend

- City of Owen Sound
- Municipality of Grey Highlands
- Municipality of Meaford
- Municipality of West Grey
- Town of Hanover
- Town of The Blue Mountains
- Township of Chatsworth
- Township of Georgian Bluffs
- Township of Southgate
- Settlements
- Parcels
- Lots & Concessions
- Building Footprints
- Blue Highlands Wind Study Area
- Pits & Quarries (MNR)
- Deer Wintering Area
- County Properties
- County Forest Trails

- County Facilities**
- Administration
 - Housing and Long Term Care
 - Social Services
 - Transportation and Public Safety
 - Sand and Gravel Deposits (AIMP)**
 - Primary
 - Secondary
 - Tertiary
 - Highways
 - Regional Roads
 - Local Roads
 - Open Road Allowance
 - Unopened Road Allowance
 - County Forest Stands
 - Wooded Areas

This map is for illustrative purposes only. Do not rely on this map as being a precise indicator of routes, location of features, nor as a guide to navigation. It has not been designated or certified for planning or surveying purposes. This map may contain cartographical errors or omissions.

C.

**THE CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**

BY-LAW NO. 2011 -

Being a By-law to designate a Plan of Subdivision, or part thereof, not to be a Registered Plan of Subdivision for the purposes of Subsection 50(3) of *The Planning Act*

WHEREAS the Council of The Corporation of The Town of The Blue Mountains has authority pursuant to subsection 50(4) of *The Planning Act*, R.S.O. 1990, c. P. 13, as amended, to designate a Plan of Subdivision, or part thereof, that has been registered for eight years or more, to be deemed not to be a registered Plan of Subdivision for the purpose of subsection 50(3) of *The Planning Act*;

AND WHEREAS Lots 20 and 21 within Registered Plan 634 are currently separate Lots within the Registered Plan;

AND WHEREAS Registered Plan No. 634 has been registered in the Registry Office for the Registry Division of the County of Grey for eight years or more;

NOW THEREFORE Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. The lands described on Schedule "A" attached hereto and forming part of this By-law are hereby deemed not to be separate lots within a registered Plan of Subdivision for the purposes of Subsection 50(3) of *The Planning Act*.
2. This By-law shall come into full force and take effect on the date it is enacted by the Council of The Corporation of The Town of The Blue Mountains, subject to the provisions of subsection 50(27) of *The Planning Act*.
3. This By-law shall be registered in the Registry Office for the Registry Division (16) of the County of Grey.

Enacted and passed this ____ day of August, 2011

.....
Mayor Ellen Anderson

.....
Corrina Giles, Town Clerk

Schedule "A"

Lands deemed not to be a registered Plan of Subdivision for the purposes of Section 50(3) of *The Planning Act*:

106 Craikleith Road, Town of The Blue Mountains, County of Grey
Lot 20, Registered Plan 634
PIN 37144-0377

796530 Grey Road 19, Town of The Blue Mountains, County of Grey
Lot 21, Registered Plan 634
PIN 37144-0378