

**STAFF REPORT: PLANNING & BUILDING SERVICES DEPARTMENT**



**REPORT TO:** Planning & Building Committee  
**MEETING DATE:** November 7, 2011  
**REPORT NO.:** PL.11.133  
**SUBJECT:** Short Term Accommodation Zoning By-law Enforcement & Licencing  
**PREPARED BY:** D. Finbow, Director, Planning & Building Services

**A. Recommendations**

**THAT** Council receive Staff Report PL.11.133 respecting Short Term Accommodation Zoning By-law Enforcement & Licencing and that Council refer the matter of required resources and the related implementation respecting Short Term Accommodation Zoning By-law Enforcement & Licencing to the 2012 Budget Review Process.

**B. Background**

Council at its meeting of August 8, 2011 considered and adopted the following recommendation of the Planning & Building Committee respecting short term accommodation (STA):

“THAT Council direct Staff to proceed with a detailed financial analysis, including required staffing and infrastructure, related to zoning by-law enforcement of short term accommodation uses as well as a licencing regime of short term accommodation uses pursuant to the *Municipal Act*.”

With respect to the direction from Council, Town staff has prepared separate summaries related to STA enforcement, a system for STA registrations, STA licencing and has provided a combined financial analysis reflective of STA enforcement, registrations and licencing. In addition, Town staff has provided a summary related to the discussions between Town staff and the Ontario Provincial Police (OPP) respecting the motion of the Police Services Board of February 23, 2011 and subsequent deputation by the OPP to the Finance & Administration Committee on September 21, 2011 and the Committee’s direction.

**SHORT TERM ACCOMMODATION ZONING BY-LAW ENFORCEMENT**

**Ontario Municipal Board (OMB) Order**

The OMB in its Order dated June 22, 2011 approved Official Plan Amendment No. 11 and Zoning By-law Nos. 2009-03, 2009-04 and 2009-05, all as modified, and dismissed the appeals against Interim Control By-law No. 2008-12 as amended by By-law No. 2008-67. This decision was, in the words of the Town’s solicitor, “A 100% victory for the Town”.

In July 2011 the Town's solicitor, Aird & Berlis LLP, advised that they had been served by the solicitor representing a party involved in the OMB Hearing with a Notice of Motion for Leave to Appeal the OMB decision. The Town's solicitor has advised that this matter will be heard in the Superior Court of Justice no sooner than March 2012. Notwithstanding this Notice, the planning documents approved by the OMB continue to be in full force and effect and therefore the Town is in a position to enforce the zoning regulations related to STA's at this time.

### **Municipal By-law Enforcement**

Town Council has the discretion to determine which municipal by-laws to enact and subsequently the level or degree of enforcement desired (by way of service level direction and the provision of resources). Municipal councils typically make these decisions based on what they deem to be the priorities and/or needs of the community as well as those actions necessary to maintain or enhance the quality of life, health and safety of the residents of the community, to protect or safeguard the environment and, the reputation of the community. Council, in making these decisions, must weigh the impacts of non-enforcement to that of the expectations of the community and the level of risk that the municipality is exposed to for non-enforcement versus the benefits of cost saving measures.

The enforcement of zoning regulations related to STA will be somewhat more complicated than the "run-of-the-mill" by-law. For example, some STA uses will be protected by virtue of Section 34(9) of the *Planning Act* so the Town will be required to determine if the evidence submitted by the owner substantiates that the use of the premise pre-dates the enactment of the by-law which prohibited it and if the use of the premises for STA purposes has been continuous since the date that the use became prohibited. How to determine (and prove) that a building is being used as an STA will likely require that different, and varied, investigative measures be used.

### **Required Staffing – STA Enforcement**

Over the years, Town staff has advised Council that to provide for meaningful enforcement of the zoning regulations related to STA's, a minimum of one additional full-time Municipal Law Enforcement Officer (MLEO) with special expertise in zoning investigations and one-half full time equivalent support position is required. This advice has been offered as early as 2008 and as recently as during the Planning & Building Committee's service delivery review of By-law Services in August 2011. Town staff continue to be of this opinion that this is the case and note the following:

1. The Town currently has an inventory of in excess of 150 active STA Zoning By-law Enforcement files that have not been reviewed and/or investigated due to existing service levels and expectations and staffing resources. These files must be reviewed and investigations must occur so as to determine whether these uses are compliant with the zoning regulations and/or protected by virtue of

Section 34(9) of the *Planning Act*. This initial work will be the focus of a new MLEO for many months.

2. Given the uncertainty of the volume of work, a new STA enforcement program, will have to be continuously reviewed to ensure that adequate resources are available to achieve Council's desires as it relates to the program.

**Required Infrastructure - Enforcement**

In addition to the staffing piece, infrastructure required to support the implementation of a short term accommodation enforcement regime would include the following:

- 1 - Vehicle
- 1 - Work Station
- 1 - Computer
- Property Management System (CityView) Enhancements

Many existing enforcement policies and procedures will be transferable to STA enforcement however there are many nuisances associated with the type of investigation necessary so, additional policies and procedures (such as processing/reviewing claims by property owners of uses being protected by virtue of Section 34(9) of the *Planning Act*) will have to be developed to be effective in enforcement

**Financial Analysis – STA Enforcement**

Start-up Costs (Recruitment, Work Station, Computer, Uniforms, CityView Enhancements, Educational/Information Circulars, etc.)	\$40,000.00
Annual Salary & Benefits (1 MLEO and 0.5 Support) – 2011 Costs	\$110,000.00
Annual Operating Costs (Office Supplies, Printing, Adverts, Training, Communication, Legal Advice, etc.)	\$25,000.00
Annual Operating Overhead (Payroll, HR, Communications, etc.)	\$5,000
Total First Year Costs	\$180,000.00
Annual Operating Costs + Capital Depreciation (7 Years)	\$146,000.00

**SHORT TERM ACCOMMODATION (STA) LICENCING**

***Municipal Act***

The *Municipal Act* enables a municipality to provide for a system of licences with respect to a business and authorizes a municipality to impose fees or charges, including fees or charges related to administration and enforcement as well as the establishment, acquisition and replacement of capital costs.

Specifically Part IV Licences Section 151 of the *Municipal Act* indicates “a municipality may provide for a system of licences with respect to a business and may,

- (a) prohibit the carrying on or engaging in the business without a licence;
- (b) refuse to grant a licence or to revoke or suspend a licence;
- (c) impose conditions as a requirement of obtaining, continuing to hold or renewing a licence;
- (d) impose special conditions on a business in a class that have not been imposed on all of the businesses in that class in order to obtain, continue to hold or renew a licence;
- (e) impose conditions, including special conditions, as a requirement of continuing to hold a licence at any time during the term of the licence;
- (f) license, regulate or govern real and personal property used for the business and the persons carrying it on or engaged in it; and
- (g) require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any part of a system of licences established by the municipality. 2006, c. 32, Sched. A, s. 82.

#### **Power to suspend a licence**

(2) Without limiting sections 9, 10 and 11, for the purpose of clause (1) (b), if a municipality is satisfied that the continuation of a business poses an immediate danger to the health or safety of any person or to any property, the municipality may, for the time and on such conditions as it considers appropriate, without a hearing, suspend a licence subject to the following:

1. Before suspending the licence, the municipality shall provide the licensee with the reasons for the suspension, either orally or in writing, and an opportunity to respond to them.
2. The suspension shall not exceed 14 days. 2006, c. 32, Sched. A, s. 82.”

It is noted that the *Municipal Act* defines a licence such that it includes “a permit, an approval, a registration and any other type of permission, and “licensing” has a corresponding meaning”.

With regard to implementation of a licencing program, consideration should be given to bringing same forward in two phases. The first phase would be the establishment of a STA Registry. Registration of an STA would be mandatory and the STA Registry Program would be established by by-law (failure to register would be an offence under the by-law). The conditions for registration could be limited to fulfilling the submission requirements and determining zoning by-law conformity. A STA Registry would be a conducted on the basis of a desk top exercise. This would allow the Town to gain a better understanding of the number of STAs within the community; assist in providing owners with important information related to their responsibilities as it relates to health and life-safety (fire detection, fire suppression, structural sufficiency, etc.); provide a means to have educational information disseminated to renters related to community expectations; ensuring zoning conformity prior to inclusion on the Registry; provide the

Town with contact information so as to follow-up on issues that may arise; provide the property owner with the opportunity to provide information to the Town so as to allow the Town to determine if the use of the premise as an STA is “grandfathered”; assist prospective purchasers/renters of adjacent properties with an opportunity to determine if the neighbouring dwelling was an STA; and, would lay the groundwork for a more detailed licencing program. It is Town staff’s opinion that a STA Registry would be a viable first step.

The second phase would be the establishment of a full Licencing Program. A Licencing Program would involve field inspections and a Licencing Tribunal Process as later described in this report. A full Licencing Program would include, but not be limited to, the following:

1. An STA owner would be required by by-law to apply for and obtain a licence so as to operate.
2. The application would be reviewed to determine whether it satisfies the criteria for licencing (zoning conformity).
3. An initial inspection of the premise would be conducted by staff from:
  - a. Building & By-law Services (confirm information provided on application, conduct an inspection to determine conformity with relevant Town by-laws including the Town’s Property Standards By-law); and,
  - b. The Blue Mountains Fire Department.
4. The premises would be inspected for compliance with the Ontario Fire Code, the Property Standards By-law and other applicable municipal by-laws. In addition, an inspection by the Electrical Safety Authority could be required.
5. The findings of the inspection would be documented and forwarded to the STA owner. The inspection report would identify any required work to be completed prior to the use of the premise as a licenced STA.

## **Municipal Infrastructure**

With any new system of regulation, public education is critical. Ensuring that those affected by the regulation understand the requirements of the regulation and the associated processes are critical to its success. A sound public education program will lead to less time spent on responding to inquiries and potentially lead to less time spent on enforcement.

In reviewing other municipal licencing programs, it became apparent that the broad use and availability of Information Sheets, FAQ Sheets, Checklists and “intelligent” Forms assisted dramatically in the implementation and understanding of the program. In addition, a developed Tracking System and a readily available and transparent Licencing Tribunal Process were a necessity.

An STA Registry Program as contemplated by this Report could be implemented in a more expedient fashion than a formal Licencing Program. Granted, it would not necessarily provide for required inspections in advance of Registration but it would provide a means to get there.

As to a Licencing Tribunal Process, a business licence cannot simply be revoked, suspended, have conditions imposed, refused or not renewed without due process. In this regard, a duly appointed committee, or Tribunal, would have to be constituted to hear these matters (in Kitchener, licencing tribunals were usually comprised of 3 members of Council). The Tribunal would be expected to conduct themselves with the same amount of due process and fairness as any administrative tribunal (meetings would have to be held in accordance with *The Statutory Powers Procedure Act*). This means that the Town will have to have someone to act as a “prosecutor” at the hearing; and, separate legal counsel to advise the Tribunal (someone to advise the Tribunal on matters of process, Charter challenges, etc.). Given the potential consequences associated with a revocation, suspension or refusal of a licence, it is expected that individuals will be represented by legal counsel. As such, the Town may also want to have legal counsel prosecute the matter.

As discussed previously with Council, a licencing program is seen to be the most effective means of addressing problematic “grandfathered” STA’s. Granted the Town’s Noise By-law and Public Nuisance provisions under the Criminal Code in Canada can be utilized to address the majority of these issues, it is the opinion of the OPP, Town By-law Enforcement staff and the public to not be the most effective deterrent to unwelcome disturbances.

### **Required Staffing – STA Registration & Licencing**

Assuming approximately 100 conforming STA’s, Town staff is of the opinion that the one full-time MLEO and the one-half full time equivalent support position previously referenced in this Report, along with the support and assistance of the Manager, Building & By-law Services and the two current MLEO’s on staff, who are both certified property standards officers, can provide the necessary staffing required to support STA Registration & Licencing.

With respect to STA Licencing and inspections to determine conformity with the Fire Code, same will require one full time equivalent Fire Prevention Officer. This pending demand was considered as part of the Fire Services Master Plan and resulted in the hiring of two Fire Prevention Officers/Fire Suppression Firefighters.

It is noted that the initial licencing inspection and related administration work of a STA premise will require substantially more effort so as to determine whether the premises are compliant with the relevant regulations/standards and to populate the Town’s database. Subsequent inspections will be less labour intensive.

With regard to licenced premises, inspections, or attendance at the premises, will be required in the instance of complaints. This may result in recommendations associated with potential suspension or revocation of a licence.

## Required Infrastructure – STA Registration & Licencing

As noted previously, an STA Registry Program could be implemented in a more expedient fashion than a full Licencing Program as detailed inspections and the formation of a Licencing Tribunal will create unique challenges. The development of educational/information packages, appropriate forms, tracking system, Tribunal members (and related remuneration, if applicable), legal support, administrative support, etc., will all entail costs.

## Financial Analysis – STA Registration & Licencing

Assuming approximately 100 conforming STA's, and assuming monthly Licencing Tribunal Meetings, the projected costs associated with STA Licencing are:

Task	Registration	Licencing
Start-up Costs (Educational/Information circulars, forms, tracking system, etc.)	\$5,000.00	\$5,000.00
Annual Salary & Benefits (Assumed Overtime for Hearings)	\$0.00	\$10,000.00
Annual Operating Costs (Office Supplies, Printing, Adverts, Communication, Legal Advice, Licences, etc.)	\$7,000.00	\$32,000.00
Annual Operating Overhead (Payroll, HR, Communications, etc.)	\$2,500.00	\$2,500.00
Total First Year Costs	\$14,500.00	\$49,500.00
Annual Operating Costs	\$7,500.00	\$44,500.00

## SHORT TERM ACCOMMODATION ENFORCEMENT AND REGISTRATION/LICENCING

Based on the previously noted financial analyses, and taking into consideration the noted assumptions, it is estimated that the annual costs associated with STA Enforcement, STA Enforcement and Registration Program and STA Enforcement and Licencing Program would be as follows:

ANNUAL OPERATING COSTS		
STA ENFORCEMENT	STA ENFORCEMENT AND REGISTRATION PROGRAM	STA ENFORCEMENT AND LICENCING PROGRAM
\$146,000.00	\$153,500.00	\$190,500.00

## POTENTIAL REVENUE SOURCES

The *Municipal Act* authorizes a municipality to impose fees or charges, including fees or charges related to administration and enforcement as well as the establishment, acquisition and replacement of capital costs. Given this, potential offsetting revenue does exist for STA enforcement, registration and licencing.

As an example:

<b>POTENTIAL REVENUE SCENERIOS – STA REGISTRATION PROGRAM</b>		
<b>Number of Units</b>	<b>Annual Costs</b>	<b>Annual Registration Fees based on Full Cost Recovery</b>
100	\$153,500.00	\$1,535.00
125	\$153,500.00	\$1,228.00
150	\$153,500.00	\$1,023.33

<b>POTENTIAL REVENUE SCENERIOS – STA LICENCING PROGRAM</b>		
<b>Number of Units</b>	<b>Annual Costs</b>	<b>Annual Registration Fees based on Full Cost Recovery</b>
100	\$190,500.00	\$1,905.00
125	\$190,550.00	\$1,524.40
150	\$190,500.00	\$1,270.00

It is noted that it will take some time before revenues associated with a licencing program will take longer to be realized given the upfront work required to establish the system whereas a registration system may see revenues flowing in short order.

## **OPP**

On February 23, 2011 the Police Services Board adopted the following resolution:

Whereas weekend and after-hours by-law infractions continue to rise in the Town and the Town Ontario Provincial Police Detachment continues to be extremely busy;

BE IT RESOLVED THAT The Blue Mountains Police Services Board recommends to The Blue Mountains Council that the By-law Enforcement Department review hours of operation and weekend hours of work in relation to short term accommodation, parking infractions and noise complaints in the Blue Mountain area during evenings and weekends to assist the OPP in education and enforcement.

In response to this resolution, Town Council requested that By-law Enforcement prepare a report related to this for Council’s consideration. This Report was considered and received by the Planning & Building Committee on April 4, 2011 with such report noting that the types of noise by-law complaints that are addressed by the OPP are limited to those that would be “public nuisance” related and that By-law Enforcement continue to be the lead on construction noise matters, failing/faulty mechanical equipment noises, noises related to industrial operations, etc.; By-law Enforcement currently provides 14 hours of the allocated 70 hours of available time to weekend and evening services; that the overwhelming majority of noise related complaints in the

Craigleith Zone are after dusk, involve excessive consumption of alcoholic beverages, involve a multitude of persons and, sometimes include activities that are more in line with public disturbance, which is a Criminal Code Offence; noted concerns for the personal safety of MLEOs; noted concerns with respect to the efficiencies of deploying By-law Enforcement resources in tandem (due to concerns related to personal safety); noted concerns with respect to what would be a significant operational adjustment given the associated gap created; and, noted that the employment of students during summer months is practical so as to cover potential gaps in regular enforcement however would not solve the issue that exists for eight to nine months of the year.

On September 21, 2011 the OPP appeared before the Finance & Administration Committee and offered the following comments (extracted from the minutes of that meeting):

Charlie (Sgt. Charlie Watts) then spoke to a previous Police Services Board resolution recommending the Town review hours of operation and weekend work of By-law Enforcement as it relates to short term accommodation, parking and noise complaints so as to assist the OPP in education and enforcement. A Board member had asked Mayor Anderson if any further response to the issue had been made by Council and Ellen requested that the OPP come to the Committee meeting.

Charlie recounted some years ago it had been requested that the OPP assist the single, aging By-law Enforcement Officer in responding to noise complaints and it was agreed the OPP would handle all noise complaints in the Craigleith area at that time.

Charlie then noted Larry Hall, Chair of the Community Policing Committee made his annual report to the Board on February 23, 2011, noting at the then recent OMB Hearing regarding short term accommodation, several residents had noted an apparent lack of response by By-law Enforcement Officers during evenings and weekends and this led to the previously mention Board resolution. Charlie then clarified this led to the Board resolution and responding Staff Report from David Finbow.

Charlie then reviewed paragraph 10 of the Executive Summary of the policing contract, noting it stated it is not the intention of the OPP to be the lead agency in by-law enforcement but rather to supplement By-law Enforcement Officers.

Charlie then reported the OPP responded to 44 noise complaints in 2002 and 127 in 2010, almost triple, adding the Town will have to examine By-law Enforcement and the OPP would be happy to work with the Town and provide assistance.

Councillor Halos then questioned if OPP contract hours would be reduced if the Town provided more by-law enforcement, Charlie replying no but officers would be more focused on police situations.

Charlie acknowledged there has been some criticism for not providing a timely response to noise complaints, but if there are three officers on duty and they are busy elsewhere, the Town could initially respond with officers available for assistance if required.

Councillor Ardiel then questioned if there was a written agreement at present regarding parking and by-law enforcement, Charlie replying the OPP also enforce parking under the contract Executive Summary.

Gail then questioned if Charlie thought By-law Enforcement Officers would be able to respond to noise complaints at present, Charlie replying David had prepared a Staff Report on the matter but the OPP could provide additional operational suggestions.

Gail then noted the Report considered whether it would be safe for a By-law Enforcement Officer to attend a noise complaint by themselves, Charlie replying it was not expected a single Officer to attend at a large party but the OPP would provide assistance in such a situation.

Chair Gamble then noted perhaps the CAO and By-law Enforcement Manager could review the situation and discuss the matter with the Police Services Board to consider assistance in such situations, the Committee concurring.

On October 31, 2011 the Town's CAO, Director, Planning & Building Services and Manager, Building & By-law met with Inspector John Trude and Sergeant Charlie Watts of the OPP to discuss the matter. The OPP advised that given the increase in workload experienced by the OPP in The Blue Mountains over the term of the contract, especially in the Craighleith Zone, that their ability to respond in a timely fashion to noise and public disturbance related complaints is challenged. Furthermore they advised that it was their opinion that the use of OPP resources to respond to noise related complaints is perhaps not the most efficient use of the OPP's resources. In short, due to increased service demands in the Craighleith Zone and the OPP's resources, the OPP wish to return to what they believe was the intent of the OPP Contract – to support the Town in the enforcement of the Town's noise by-law and not to be the lead.

With respect to advice, the OPP advised that By-law Enforcement visibility after dusk in the Craighleith Zone on Friday, Saturday and during the holiday season may assist in mitigating the number of noise incidents in the Craighleith Zone.

As to current initiatives underway, the OPP advised that they are in the early stages of exploring the pros and cons of the Town of Collingwood's By-law Enforcement Service being supervised by the OPP. With this, the OPP advised that there is opportunity to look at a broader service including the Town of The Blue Mountains that may afford greater capacity to address after hours responses by By-law Enforcement personnel to noise related complaints. Whether or not this initiative becomes a reality, there is an

opportunity to also explore a shared By-law Enforcement Service with the Town of Collingwood via the Nottawasaga Bay Municipal Services Board.

If it is determined that By-law Enforcement should take the lead and proactively enforce the Town's Noise By-law after dusk, By-law Enforcement service levels will have to be adjusted significantly with certain by-laws and services currently provided falling off the table.

It is important to note that should Council determine that By-law Enforcement should take a greater role in noise by-law enforcement, be it visibility or otherwise, the MLEO and additional one-half support person previously noted in this Report are not adequate to fulfill this service level enhancement. A separate analysis related to By-law Enforcement service delivery would have to be undertaken and should Council decide to maintain the same service level, additional resources would be required.

## **SUMMARY**

Town Council are currently in the process of finalizing a Service Delivery Review and is early in the process of considering and developing priorities for the 2012 Operating and Capital Budgets. Given that the costs associated with STA Enforcement and Registration/Licensing are considerable, Town staff are recommending that this matter be referred to Council for consideration during the 2012 Budget Review Process so as to allow for a comprehensive review as it relates to the impact of implementing the programs identified in this report.

### **C. The Blue Mountains' Strategic Plan**

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

### **D. Environmental Impacts**

N/A

### **E. Financial Impact**

Potentially \$190,500.00 per year with the potential for offsetting revenue over time.

**F. In Consultation With**

This report has been prepared in consultation with Human Resources (Salary & Benefits); Fire Services re Ontario Fire Code Fire Prevention Inspection Program; and the Chief Administrative Officer.

**G. Attached**

N/A

Respectfully submitted,

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