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November 19, 2014

Mayor & Members of Council
 c/o Corrina Giles, Clerk
 Town of the Blue Mountains
 32 Mill Street, Box 310
 Thornbury, Ontario
 N0H 2P0

Dear Madam Mayor and Members of Council,

RE: Official Plan Amendment No. 11 and Implementation Matters

Travis & Associates was retained by Blue Mountain Resort (BMR) to provide expert planning evidence at the Ontario Municipal Board (OMB) Hearing dealing with Short Term Accommodation (STA). Our evidence was accepted by the OMB and was a critical component in Board approval of Official Plan Amendment No. 11 (OPA 11) and Zoning By-Law 2009-03. BMR has participated in subsequent municipal processes related to STAs. Its position has consistently been rooted in the planning principles accepted by the OMB and reflected in OPA 11. In light of this, we offer the following commentary and observations for the purposes of providing background information and seeking assistance on behalf of our client.

At the November 10, 2014 Committee of the Whole meeting, Staff Report PL.14.118 was intending to address an issue over the STA Licensing program that was raised by BMR.

BMR was responding to a municipal Notice issued to the Owners of Units in Chateau Ridge (GCC18), Mountain Walk (GCC29), Wintergreen (GCC27), Rivergrass (GCC57), Sierra Lane (GCC36), and Cachet Crossing (GCC24). These particular properties are referred to as the "legacy condos". In effect, the Notice stated that if a unit does not meet the definition of a "Commercial Resort Unit" (CRU) and, is rented for periods of 30 days or less, an application for a STA licence must be submitted by December 1, 2014.

In September and October, BMR raised concerns with Staff that it thought the licensing of units in the legacy condos was not consistent with the direction of the OMB, the intent and letter of OPA 11, as approved by the OMB, and, in some cases, contrary to the intent of Zoning By-law 2009-03, also approved by the OMB. BMR also questioned the application of the STA Licensing programme to commercially zoned lands.

The existing Official Plan land use policy is based on the accepted principle that commercial accommodations in a commercial designation do not have the same degree of land use compatibility issues as commercial accommodations situated in residential designations. Existing policy is intended to enable a greater degree of land use control over commercial accommodations in residential designations. This was accepted at the OMB, reflected in OPA 11, and administered through Zoning By-law 2009-03.

There are two distinctions between a CRU and a STA. Firstly, a CRU is located in a commercial designation and an STA is located in a residential designation. Secondly, a CRU belongs within a Commercial Resort Unit "Complex", which indicates other similar uses within the same building or condominium development are anticipated. This is a fundamental land use principle accepted by the OMB. On the other hand, STAs, by nature and definition, are stand alone, 'one-offs'.

Contrary to the deputation made at the November 10, 2014 Committee of the Whole meeting, Planning Staff were not "confused" over the concerns raised by BMR. Staff Report PL.14.118 clearly stated that "staff are concerned that the method currently proposed to license STAs in commercial areas has the potential for creating confusion with residents and CRU management companies." To assert otherwise, as was done during the deputation, is misleading and shows a lack of understanding of the land use planning matters established through a long and expensive OMB Hearing.

BMR is concerned over the carte blanche acceptance of the above-noted deputation, one that misinterpreted the purpose and content of a professionally prepared Staff Report.

THE FACTS

Official Plan

1. The existing Official Plan designates the legacy condos as Medium Density Residential (MDR). Cachet Crossing is designated as "Blue Mountain Village Core".
2. MDR is a sub-category within the commercial node that is the "Blue Mountain Village" designation.
3. With reference to the MDR designation, the existing Official Plan lists a "commercial resort unit" as a permitted use (as amended through Item 4 of OPA 11).
4. STAs are not listed as a permitted use in the MDR sub-designation.
5. OPA 11, as approved by the OMB, changed the land use "ancillary residential accommodations" to "short term accommodation uses".

6. OPA 11 deleted “ancillary residential accommodations” as a permitted use in the Blue Mountain MDR designation (legacy condos) and replaced that use with “commercial resort unit”.
7. OPA 11 purposefully and intentionally did not recognize STAs as being necessary as a permitted land use in the MDR designations.
8. OPA 11 purposefully and intentionally recognized rental accommodations in the MDR designation (legacy condos) as a “commercial resort unit”.
9. OPA 11 specifically states that a STA is not a CRU (Section 3.4.2(2)).

Zoning

10. Zoning By-law 2009-03 amended the definition of a “Commercial Resort Unit Complex” to “a building or group of buildings containing ten (10) or more commercial resort units which is part of a rental or lease management program on a single lot” (Section 2(iii)).
11. Zoning By-law 2009-03 did not amend the definition of a “Village Commercial Resort Unit” or the definition of a “Village Commercial Resort Unit Complex”.
12. Zoning By-law 2009-03 specifically identifies zones in which a Short Term Accommodation is a permitted use: R5, R6, R7 and R8 zones (Sections 10, 11, 12, and 13).
13. Zoning By-law 2009-03 does not permit a “Commercial Resort Unit” or a “Village Commercial Resort Unit” in the R5, R6, R7 or R8 zones.
14. The Legacy Condos, excluding Chateau Ridge and Cachet Crossing, are zoned R8.
15. Chateau Ridge is zoned R6.
16. Cachet Crossing is zoned C5-67 - a commercial zone.
17. The C5-67 zone was amended by Zoning By-law 99-71 to replace “Commercial Resort Unit” with a “Village Commercial Resort Unit” and “Commercial Resort Unit Complex” with “Village Resort Unit Complex”.

STA Licensing

18. The STA Licensing By-law 2014-45 (Office Consolidation) does not apply to a “commercial resort unit, village commercial resort unit or similar commercial...use” (Section 2.4).

CONCLUSION

Generally, the municipality responds to complaints over incompatible land uses. STAs in residential areas are one such incompatible land use as defined and accepted by the OMB. This is reflected in the land use policy contained in OPA 11. The legacy condos were not part of the litany of complaints presented to the OMB. Land use incompatibility is not an issue in the legacy condos. This was accepted by the OMB and is also reflected in the land use policy contained in OPA 11. On this basis, BMR questions the need to impose a Licensing regime on the legacy condos.

Cachet Crossing is located in a Commercial land use designation. Cachet Crossing is zoned commercial. STAs are not recognized as a permitted use in Commercial land use designations. Such recognition is unnecessary as STAs are commercial by nature. STAs are not listed as a permitted use in the commercial zone C5-67. Again, this is unnecessary as STAs are a commercial use.

BMR respectfully questions why the STA Licensing regime is being implemented in the Blue Mountain Village land use designation. More specifically, BMR questions why and how STA Licensing is necessary in a commercial zone and contrary to OPA 11 and Zoning By-Law 2009-03. BMR also questions why it is necessary to implement a Licensing regime in a neighbourhood where no land use compatibility issues have been raised. There is no imperative and the policy framework suggests it is unnecessary. Furthermore, these important points were reported on in Staff Report PL.13.128 (copy attached). This report reiterated the OMB positions and clarified the distinction between CRUs and STAs. In addition, this Staff Report clearly stated licensing of CRUs was not necessary (i.e. licensing the legacy condos).

It is respectfully suggested that the current STA Licensing program is unnecessarily pushing the municipality and STA operators down the proverbial rabbit hole. When the municipality lost its key player charged with overseeing STA policy, regulations and licensing, it became inevitable that questions over the propriety of implementation would arise.

The foundation upon which the municipal STA program is based lies upon the OMB Decision and OPA 11. These matters also relate to the adopted Official Plan policies. Strong, clear policy is essential and, in this regard, we will be reviewing the adopted Official Plan with Grey County in an effort to ensure the policy thread from OMB and OPA 11 is effectively in place.

In Summary:

1. There is a disconnect between the Official Plan and Zoning By-law regarding permitted uses in the MDR sub-designations (legacy condos, excluding Cachet Crossing). The OP lists CRUs as a permitted use but does not list STAs as a permitted use.

2. The Zoning By-law lists STAs as a permitted use in the legacy condos (those zoned R6 and R8) but does not list CRUs as a permitted use.
3. Cachet Crossing is designated commercial and is zoned commercial. It was never intended for the Town to apply STA controls in commercial areas. Village Commercial Resort Units are permitted uses in Cachet Crossing as per the Official Plan and Zoning By-law. BMR questions the basis for the Town insisting on applying STA Licensing to the Cachet Crossing units.
4. Overall, there is a need to deal with the Village Core in a manner that is consistent with the OMB Decision and OPA 11.

In light of all of the above, BMR and legacy condo owners are at a loss to adequately rationalize the Town's Notice issued to property owners in October regarding STA Licensing. Staff Report PL.14.118 was before the Committee of the Whole on November 10, 2014 to request additional time to address these planning concerns raised by BMR. Unfortunately, the content and intent of the deputation missed the fundamental land use incongruities that led to the recommendation in Staff Report PL.14.118.

The intent and recommendations contained in the November 10, 2014 Staff Report PL.14.118 remain relevant and represent one step in assisting a rational process to address confusion and a variety of misunderstandings in the context of the OMB Decision and OPA 11. It is requested that the recommendations provided in Planning Report PL.14.118 be reconsidered by Council.

Finally, we are advised that negative business repercussions are now being experienced as a result of municipal direction to date. Given that there is no demonstrated need for STA Licensing in the legacy condos, it becomes incumbent upon BMR to raise this as a matter separate from the land use planning points raised above. BMR will address these economic implications directly with Council.

Yours truly,



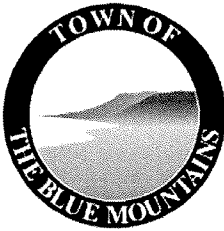
Travis & Associates
Colin Travis, MCIP RPP

Cc: Dan Skelton, BMR
Lindsay Ayers, BMR
Michael Benner, TBM

Att:

This document can be made available in other accessible formats as soon as practicable and upon request

STAFF REPORT: Planning & Building Services Department



REPORT TO: Council
MEETING DATE: November 25, 2013
REPORT NO.: PL.13.128 Addendum
SUBJECT: Short Term Accommodation
Licensing & Short Term
Accommodation Licensing By-law
PREPARED BY: D. Finbow, Director, Planning &
Building Services

A. Recommendations

THAT Council receive Staff Report PL.13.128 Addendum respecting Short Term Accommodation Licensing & Short Term Accommodation Licensing By-law for information purposes.

B. Background

Purpose:

To address or respond to comments/issues raised subsequent to the release of Staff Report PL.13.128.

Comments/Issues:

1. **Letter from Blue View Chateaux Inc. dated November 21/13 (Appendix A) & Subsequent Opinion Letter of BRA Engineering dated November 21, 2013 (Appendix B):**

A. Licence all STA's

It is recommended that the Town implement Short Term Accommodation (STA) Licencing in phases so as to address operational capacity (see 2.2 and 3.1 of Draft STA Licencing BL).

The Draft STA Licencing By-law anticipates all STA's will eventually be subject to the By-law.

With respect to CRU's, they are not STA's by definition, be it in the Draft STA Licencing By-law or the Town's Planning documents.

The Special STA Stakeholder Committee recommended that Council consider amending our Planning documents so as to include CRU's as STA's. Council at its meeting of October 28/13 considered this and decided not to proceed at this time.

B. “Why licence STA’s and not CRU’s?”

The *Municipal Act* indicates that a municipality may pass by-laws respecting, amongst other things, the following:

- Economic, social and environmental well-being of the municipality.
- Health, safety and well-being of persons.
- Protection of persons and property, including consumer protection.

The Ontario Municipal Board in its Order related to Town OPA No. 11 and the related Zoning By-laws indicates the following:

Extract A:

In this context the Board has considered LBM’s argument that STA units are dwellings and that they are compatible in any residential area. The Board, however, disagrees. The Board finds that STA units are distinct commercial entities with the goal of making a profit. They are often managed by a professional manager who uses a system of reservation, collects taxes and accepts credit cards from paying guests whose permanent residences are elsewhere and who have no right of renewal. Those premises are occupied by paying guests for a short span of time and for the purpose of allowing enjoyment of the recreational and tourist facilities in the area. This commercial entity has the potential to conflict with the character and stability of existing neighbourhoods because of the constant turnover of people and the difficulty that turnover brings in controlling noise and other nuisances. In the Town of the Blue Mountains, “the proof of the pudding is in the eating”; the evidence of conflict is categorical. The Board finds that the Town must ensure that compatibility is achieved between the commercial STA use and existing residential neighbourhoods in order to be in conformity with its Official Plan.

Extract B:

The Board finds, however, that in this case the complaints are well founded. There is convincing evidence of incompatibility and convincing evidence that the integrity and character of the low density residential neighbourhoods are being undermined by the presence of STA units in those areas. These are legitimate concerns to which the Municipality has turned its attention appropriately. The Board finds that the proposal is a reasonable response to the situation and represents good planning.

Extract C:

The Board agrees with the Residents, the Town and BMR that unlike the areas zoned for medium density residential development, the expectation is that low density residential neighbourhoods are reserved for permanent dwellings. Preservation and protection of the integrity and character of these established neighbourhoods must therefore be the paramount objective when considering whether commercial uses should be established within those residential areas.

Extract D:

BMR's evidence is that it has developed 345 STA units within medium density residential zones where the expectations by residents are different. This approach has proven to be successful. BMR's STA units were developed within a set of comprehensive planning tools such as site plan controls for proper buffering and other mitigation measures to achieve greater compatibility. These are the same standards that the Town seeks to impose by the proposal before the Board.

As Council will note, the Board found that there is conflict and incompatibility between the operation of commercial STA's and the existing residential neighbourhoods (Extracts A, B and C).

Further, Council will note that the Board turned its attention to the difference between the low density and medium density residential zones, being the "CRU's around the Village" (Extract D).

From a licensing perspective, i.e. putting into place measures to address the social well-being of the municipality; the health, safety and well-being of persons in the municipality; and, the protection of persons and property, Town staff believe that it is appropriate to require licences for STA's and not CRU's. Should there be a need identified and demonstrated in the future, Town staff will report back on this matter.

It is Town staff's belief that the enactment of the Draft STA Licensing By-law will assist in addressing this conflict and incompatibility of existing STA's and existing residential neighbourhoods and that, at this time, licensing of CRU's is not required.

C. Maximum 2 Persons per Bedroom

The Town has never indicated that the OBC "limits" occupancies of bedrooms to 2 persons. Town staff has indicated/advised that Part 9 of the OBC indicates that the occupant load of a bedroom "shall be based on 2 persons per bedroom" (it is noted that there are other prescriptive provisions in Part 9 of the OBC that are sensitive to occupant load that may be a derivative of the 2 persons per bedroom, such as the prescriptive ventilation requirements found at OBC 9.32).

With respect to RBA's letter dated November 21, 2013, copy attached, the Town's Fire Department has indicated that:

"I have reviewed RBA's letter; the writer is referencing OBC Part 3 and the buildings in question are Part 9 small buildings.

Removing the 2 persons per bedroom is not an option. Establishing an occupant load, including it in the fire safety plan and clearly defining it in the rental agreement is all part of due diligence on the owner and breaking that established number could result in the license suspension and or fire code prosecution.

The Ontario Building Code and The Ontario Fire Code are the minimum requirements in construction and life safety.

OBC Part 9-9.9.1.3. (1) (a) 2 persons per sleeping room or sleeping area in a dwelling unit or suite

OBC Part 9-9.9.8.2. (3) (b) where sleeping accommodation is not provided in the basement, a single exit is permitted from the basement floor area.

Establishing a safe occupant load that does not conflict with OBC, OFC and Retrofit where applicable is also clearly referenced in the Fire Safety Commissions decision."

Further, the Town's Fire Department has advised that:

"(We) do not want (the) dept and or the municipality in court trying to defend why we let 4, 5, 6 or 7 people occupy 1, 2, or 3 bedrooms and a death occurs as a result of a fire. The first question asked would be who authorized the exception to the OBC and Fire Code Commission ruling. Trust me when I say the STA owners will be nowhere to be found."

RBA has advised that their reference at 4.0 of "required to incorporate the current OBC criteria for sleeping area" should have been "recommended to incorporate the current OBC criteria for sleeping area".

The Draft STA Licensing By-law contains a maximum of 2 persons per bedroom. Town staff believes that this is within the Town's authority to do in accordance with the *Municipal Act* and related Regulations as a condition for holding a licence.

2. Email from Blue Mountain Resorts dated November 22, 2013

A. Request to revise Section 5.15 of the Draft STA Licensing By-law

Include the words "or agent" after "owner".

"The owner *or agent*' (it's hard for an Owner to ensure each renter is provided with the Renter's Code if they have entrusted an Agent to manage the rental on their behalf).

Town staff concurs with this request and same has now been included in the Draft STA Licensing By-law (Appendix C).

B. Clarify Footnote to Table 1 of the Draft STA Licensing By-law

Is footnote (1) supposed to reference 4.31, 5.4 and 5.7 (not 5.8)?

Town staff concurs with this request and same has now been included in the Draft STA Licensing By-law (Appendix C).

C. The Blue Mountains' Strategic Plan

Providing a strong, well managed municipal government.

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

D. Environmental Impacts

N/A

E. Financial Impact

N/A

F. In Consultation With

The Blue Mountains Fire Department re Occupant Load of Bedrooms

G. Attached

A Letter from Blue View Chateaux Inc, November 21, 2013

B Letter from BRA Engineering, November 21, 2013

C Extract revisions to the Draft STA Licensing By-law

Respectfully submitted,

D. Finbow
Director, Planning & Building Services