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STAFF REPORT: Planning & Building Services Department



REPORT TO: Council
MEETING DATE: August 26, 2013
REPORT NO.: PL.13.92
SUBJECT: Ontario Municipal Board Order:
 Assigning a By-law Number to
 Blue Mountain Villas / Matesa
 Enterprises Inc.
 Town Plot Lots 37, 38, 39 and
 Part Lot 36 King Street E/S
 Town of The Blue Mountains
PREPARED BY: Shawn Postma, Planner II

A. Recommendations

THAT Council receive Staff Report PL.13.92 "Ontario Municipal Board Order: Assigning a By-law Number to Blue Mountain Villas / Matesa Enterprises Inc., Town Plot Lots 37, 38, 39 and Part Lot 36 King E/S, Town of The Blue Mountains;; and

THAT Council assign By-law Number 2013-33 for administrative and tracking purposes to the Zoning By-law Amendment approved by the Ontario Municipal Board and attached to the Minutes of Settlement as Schedule "A".

B. Background

The Ontario Municipal Board (OMB) issued a Memorandum of Oral Decision and Board Order regarding OMB File No's. PL100598 and PL100677. This Order approved a Zoning By-law Amendment to the Town of Thornbury Zoning By-law No. 10-77 as amended.

As this By-law was approved by the Board, and therefore a by-law number was not assigned by the Town, it is appropriate at this time that Council assign a By-law number for administrative purposes.

C. The Blue Mountains' Strategic Plan

Nil

D. Environmental Impacts

Nil

E. Financial Impact

Nil

F. In Consultation With

Nil

G. Attached

1. Zoning By-law Amendment as approved by the Ontario Municipal Board
2. Memorandum of Oral Decision and Order of the Board

Respectfully submitted,

Shawn Postma, Planner II

David Finbow, Director of Planning and Building Services

For more information, please contact:

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THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

BY-LAW NO. 2013-33

Being a By-law to amend Zoning By-law No. 10-77
which may be cited as "The Zoning By-law of the Town of Thornbury".

WHEREAS the Ontario Municipal Board deems it necessary and in the public interest to pass a by-law to amend By-law No. 10-77;

AND WHEREAS pursuant to the provisions of Section 34 of the Planning Act, the by-law may be amended by Council of the Municipality;

NOW THEREFORE, THE ONTARIO MUNICIPAL BOARD ENACTS AS FOLLOWS:

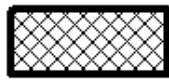
1. Schedule 'A' to the Zoning By-law of the Town of Thornbury, being By-law No. 10-77, is hereby amended by rezoning from the Development 'D' Zone to the Residential 'RM1-h' Zone for those lands lying and being in the Town of The Blue Mountains, comprised of Town Plot Lots 37, 38, 39 and Part Lot 36 King E/S, as indicated in cross-hatching on the attached key map Schedule "A-1".
 - a. The holding '-h' symbol shall not be removed from the whole or part of the lands until such time as the Registration of a Plan of Subdivision and/or Plan of Condominium and the execution of a Development Agreement.
2. Notwithstanding the maximum height provisions of Section 11.5(g) to By-law No. 10-77, the maximum height for all townhouse dwellings shall be 2 ½ storeys. For the purposes of this By-law a basement or cellar shall be counted as a storey for those lands identified in Section 1 to this By-law.
3. Notwithstanding the Minimum Side Yard provisions of Section 11.5(e)(ii)(1) to the By-law, the minimum side yard setback abutting a public street shall be 6.0 metres for those lands identified in Section 1 to this By-law.
4. Schedule "A-1" is hereby declared to form part of this By-law.

APPROVED BY ONTARIO MUNICIPAL BOARD ORDER PL100598

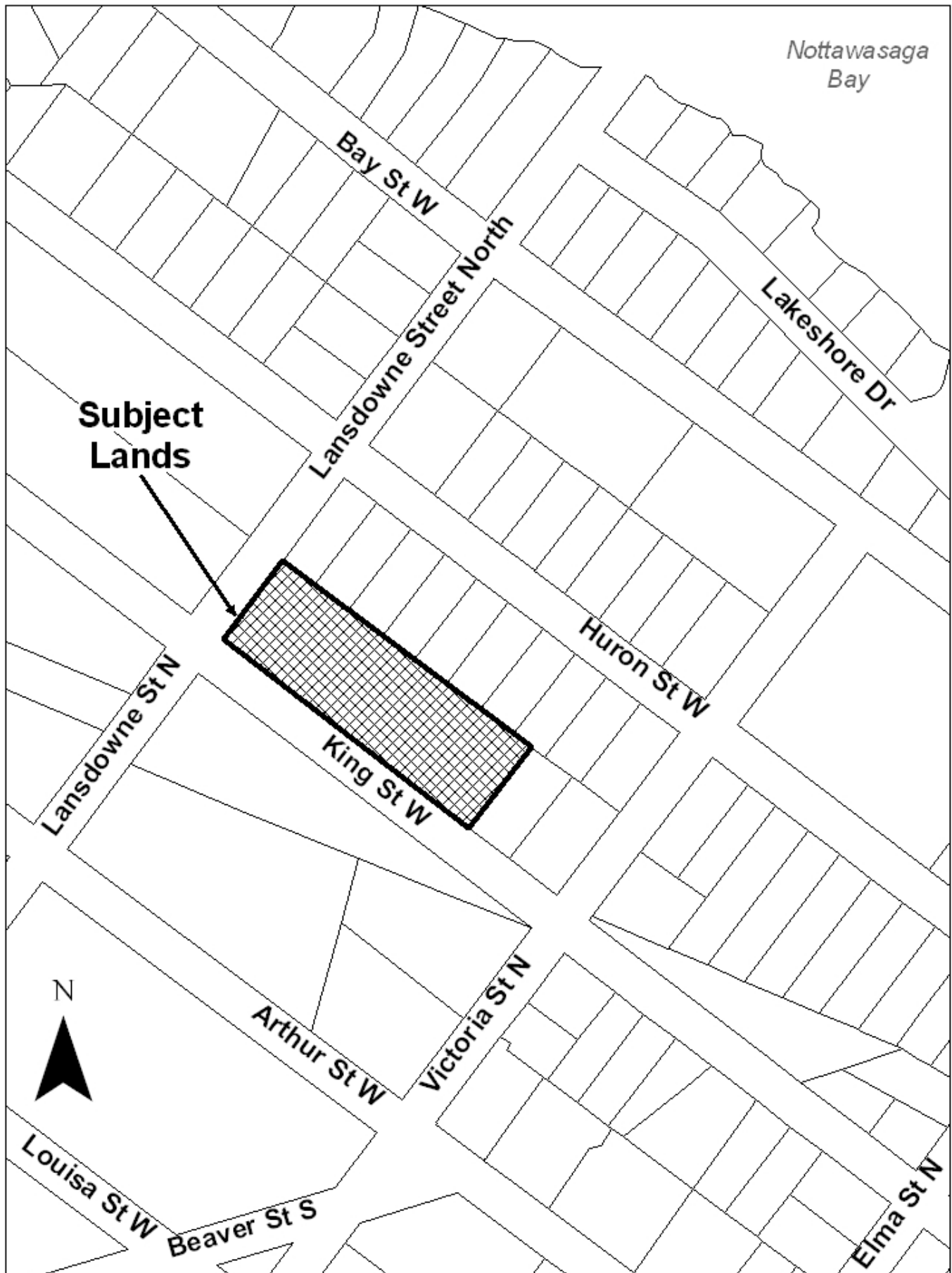
Town of The Blue Mountains

Key Map Schedule A-1

By-Law No. _____



AREA AFFECTED BY THIS AMENDMENT



ISSUE DATE:

June 12, 2013



Ontario

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

RECEIVED

JUN 17 2013

PL100598

Matesa Enterprises Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 10-77 of the Town of The Blue Mountains to rezone lands respecting Lots 37, 38, 39 and Part Lot 36 King E/S Town of The Blue Mountains from Development 'D' zone to the Residential 'RM1-h' zone to permit the development of a 17 unit townhouse.

OMB File No.: PL100598

Matesa Enterprises Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the Town of The Blue Mountains to make a decision respecting a proposed plan of subdivision on lands composed of Lots 37, 38, 39 and Part Lot 36 King E/S Town of The Blue

(Approval Authority File No.PL10.38)

OMB File No. PL100677

APPEARANCES:

Parties

Counsel*/Agent

County of Grey

Erroll Treslan*

Town of The Blue Mountains

John Metras*

Matesa Enterprises Inc.

Shelley Wells

MEMORANDUM OF ORAL DECISION DELIVERED BY C. HEFFERON ON MAY 22, 2013 AND ORDER OF THE BOARD

BACKGROUND

[1] In 2006 Matesa Enterprises Inc. ("Matesa") first applied to the Town of The Blue Mountains ("Town") to amend Zoning By-law 10-77 ("By-law") and for draft plan of subdivision approval to permit development of 17 freehold townhouse dwelling units on a 0.73 ha (1.8 a) parcel located at the northeast corner of Lansdowne Street and King Street West in Thornbury ("subject property").

[2] At that time, the Town deferred deciding on the matter because it was determined that there was insufficient excess capacity in the Town's sewage treatment plant to handle all the draft plan of subdivision applications that had at that time already

been approved. The Sauble-Grey Conservation Authority ("SGCA") also refused to support the proposal because it had concerns respecting what it determined was "an indirect fish habitat", that is, a stream running adjacent to the site providing water to the Little Beaver River, which is a fish habitat. The SGCA determined that the application, which involved alteration of a watercourse, required a permit from the (federal) Department of Fisheries and Oceans.

[3] In 2010, after re-calculating its excess sewage treatment capacity, the Town determined there was sufficient excess capacity and Matesa submitted a new application for an amendment to the By-law and for draft plan of subdivision approval.

[4] The matter was appealed to the Ontario Municipal Board ("Board") when the Town neglected or refused to make a decision on the matter within the statutory time limits.

MATTER BEFORE THE BOARD

[5] The matter or matters before the Board in these proceedings are both the proposed draft plan of subdivision and the proposed amendment to the By-law. Erroll Treslan, counsel for the County of Grey ("County") explained that the County is the approval authority for the draft plan of subdivision. However, its practice is not to grant draft plan approval until the Town has approved any required zoning by-law amendment.

PARTICIPANTS

[6] The following local residents were admitted as participants:

- Helga Chapman
- Donald Chapman
- Herb Denton
- Grant Holmes
- Loraine Lowe

[7] Several of the participants indicated that although they were generally aware that Matesa proposed to develop townhouses on the subject lands, they were unaware of what exactly this involved and how Matesa proposed to deal with matters such as on-site snow storage, potential noise and light pollution (from vehicles and residents), motor traffic access and egress, garbage storage and pick-up, site drainage, and the adequacy of recreation or amenity space in the area. They also indicated that they considered the density (number of units) too high and they were concerned that the proposed three-storey design would negatively affect what they termed the "village character" of the area.

[8] One participant, Mr. Holmes, implied that the site may have been used in the past as a dump, and that this may have resulted in some soil contamination. Mr. Holmes told the Board that he owns and operates a woodworking business on lands immediately adjacent to the subject property and that he is concerned that noise and chemical odours emanating from his shop may draw complaints from future residents of the proposed townhouses.

SETTLEMENT AGREEMENT

[9] At the commencement of the hearing, Mr. Treslan, informed the Board that the parties had arrived at a settlement. The Minutes of Settlement were entered to the evidence as Exhibit 2.

EVIDENCE AND FINDINGS

[10] The Board asked the land use planners representing the County and the Town to respond under oath to the concerns of the participants before they commenced their opinion evidence as to the merits of the proposal.

[11] The Board qualified Randy Scherzer, who is director of planning and development for the County, and Shawn Posma, who is a planner with the Town, to provide opinion evidence on land use planning.

[12] Mr. Scherzer gave a brief overview of the proposal. He explained that grading, drainage and landscaping plans are required with the application for draft plan of subdivision approval. County engineering officials, who will have final word on their

acceptability, will review the proposed grading and drainage plans. He explained how Matesa has proposed to deal with these matters.

[13] Mr. Posma explained that questions such as the exact location of on-site snow storage, garbage storage and pick up, as well as proposed light shielding will be reviewed and determined finally by Town officials at the site plan approval stage of development. However, he endeavoured to explain how Matesa has proposed to deal with these and other logistical matters.

[14] He also advised that the proposed townhouse units will be laid out in groups of four to allow visual access to Georgian Bay from King Street West. Although the proposed units are to be 2 ½ storeys in height, they will appear from King Street West to be 1½ storeys in height because of the south-to-north slope of the site.

[15] Shelley Wells, who is agent for Matesa, and a professional land use planner, explained both the proposed access/egress strategy and the rationale for the proposed location of the garages and the common elements condominium roadway.

[16] After consideration of this expert land use planning evidence in light of the evidence (and questions) of the participants, the Board finds that the local property owners will not suffer any adverse impact as a result of this development.

[17] Mr. Scherzer and Mr. Posma then testified as to the consistency of the proposal with provincial policy and conformance with local (County and Town) policy.

[18] The Board accepted Mr. Scherzer's unopposed evidence and finds that the draft plan of subdivision is consistent with the Provincial Policy Statement ("PPS"), which encourages residential intensification while protecting the natural heritage and, as well, conforms to the policies of the applicable County of Grey Official Plan ("COP"), which designated the subject property "Urban".

[19] The Board further accepted Mr. Posma's unopposed land use planning evidence and finds that the proposed amendment to the By-law re-zoning the subject property from Development ("D") to Residential Multiple One, Holding ("RM1-H") conforms to the policies of the Town's Official Plan ("TOP"). The TOP designates the subject property "Residential". Mr. Posma explained that the "D" is a holding category used by the Town

to encourage development proposals. A site specific zoning by-law amendment can then be tailored to the proposal Town Council determines is the most acceptable to it. He also advised that the requested new zoning category has a holding category attached to ensure that the conditions of the draft plan of subdivision are cleared in the manner agreed to in the Minutes of Settlement.

CONCLUSION

[20] After consideration of all the evidence as well as the submissions of counsel, the Board accepts the Minutes of Settlement.

[21] The Board further accepts the uncontested land use planning evidence of Messrs. Scherzer and Posma and finds that the proposed draft plan of subdivision and the proposed amendment to the By-law are consistent with Provincial policy, conform to the Official Plans of both the County and the Township, and represent good planning.

ORDER

[22] The Board orders that the By-law is amended in accordance with the zoning by-law attached to the Minutes of Settlement as Schedule "A". The Board understands that minor modifications made by made to this by-law before the Clerk assigns a number to it.

[23] The Board further orders that the draft plan of subdivision and conditions attached to the Minutes of Settlement as Schedule B and Schedule C respectively are approved.

[24] The Board further orders that pursuant to s. 51 (56.1) of the *Planning Act*, final approval authority for the plan of subdivision for the purposes of s. 51(58) is given to the County, which is the approval authority in which the subject lands are situate.

"C. Hefferon"

C. HEFFERON
MEMBER