

**STAFF REPORT:**

**Planning & Building Services Department**



**REPORT TO:** Planning & Building Committee  
**DATE:** December 7, 2009  
**REPORT NO.:** PL.09.130  
**SUBJECT:** Application for Temporary Use By-law  
Shaun and Fawn Talbot  
Part Lot 14, Concession 4  
595839 - 4<sup>th</sup> Line  
Town of The Blue Mountains  
**PREPARED BY:** Shawn Postma, Planner II

**A. Recommendations**

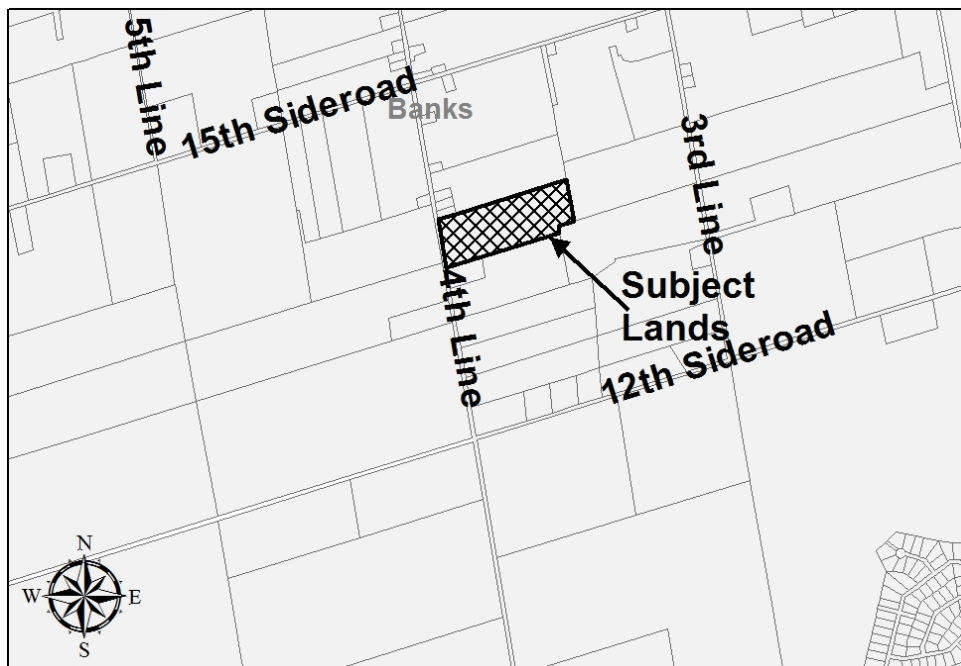
**THAT the Planning & Building Committee receive Staff Report PL.09.130 “Application for Temporary Use By-law, Shaun and Fawn Talbot, Part Lot 14, Concession 4, 595839 – 4<sup>th</sup> Line, Town of The Blue Mountains”; and**

**THAT Council refuse the Temporary Use By-law that proposes to permit an off-road Hummer Tour for a maximum of three (3) years on the subject property.**

**B. Background**

Planning Services received an application for a Temporary Use By-law in March 2008. The purpose of the By-law was to consider a request by the Tour Operator to continue to use the subject lands for off-road Hummer tours. The Temporary Use By-law would be limited to a maximum period of three (3) years.

**Location**



The subject lands are located south of Banks on the east side of the 4<sup>th</sup> Line. The lands are approximately 14.9 hectares (40 acres) in size with approximately 243 metres (800 feet) of frontage. The lands were previously used as a non-rehabilitated gravel pit which has been out of operation for a number of years. The rear portion of the property is mostly covered with trees. An existing trail winds through the property which is being used by the Hummer tours and also for selective logging of the existing trees. Surrounding land uses include residential uses, a variety of agricultural fields, an equestrian field and trees.

### **Provincial Policy Statement**

The Provincial Policy Statement (2005) provides policy direction on matters of provincial interest related to land use planning and development. The policies contained in the Provincial Policy Statement provide for appropriate development while protecting resources of provincial interest. These provincial policies are more specifically implemented through Provincial Plans and through the County of Grey and Town of The Blue Mountains Official Plan. All of these Plans must comply with the Provincial Policy Statement and in most cases where there are differences between Plans; the Provincial Policy Statement shall prevail.

Section 2.3 of the Provincial Policy Statement (PPS) indicates that “prime agricultural areas shall be protected for long term use for agriculture”. Prime agricultural areas are areas where prime agricultural lands predominate; which includes specialty crop areas, Class 1, Class 2, and Class 3 soils. The Canadian Soils Inventory Mapping identifies the subject lands and the surrounding area as Prime Agricultural Land and having Class 1 and 2 and Specialty Crop, and Class 3 soils. Permitted uses are strictly limited to agricultural uses, secondary use and agriculture-related uses. Each of these permitted uses are defined in the PPS, and include agricultural and agricultural related uses only. Secondary Uses are defined as uses secondary to the principal use of the property, including, but not limited to, home occupations, home industries and uses that produce value-added agricultural products from the farm operation on the property. It is clear through these definitions that a Hummer Tour Operation, or a variation to the existing Hummer Tour Operation would not be considered a permitted use.

Section 2.3.5 identifies that land can be removed from prime agricultural areas for limited non-residential uses, provided that: the land does not comprise of a specialty crop area, that there is a demonstrated need for the use, and that there are no reasonable alternative locations which avoid prime agricultural areas. Again, the intent of the PPS is to protect the subject lands and the surrounding prime agricultural area for agricultural use, and to minimize any potential land use conflicts that may arise from a non-agricultural use. At this time, our Official Plan does not contain policies for the removal of prime agricultural areas, nor has the Town reviewed the criteria as to how land may be removed from a prime agricultural area.

Based on the comments above, it would appear that the proposed Temporary Use By-law to permit the Hummer Tours on the subject property would not comply with the Provincial Policy Statement.

The PPS also identifies through Section 2.1.4 that development and site alteration shall not be permitted in areas of natural and scientific interest (ANSI) unless it is demonstrated that there will be no negative impacts on the natural features or ecological functions. The applicant has provided an Environmental Impact Study (EIS) which was prepared by Gartner Lee Limited. The study reviewed the potential impacts of the Hummer tour use on breeding birds and the Banks Moraine ANSI feature. The report concluded that the proposed By-law amendment is feasible from a natural heritage perspective provided that the Hummer tours are limited to start no earlier than 10:00am from May to mid July. The restriction on starting times is related to the breeding periods for Ontario Birds, and the necessity that they be heard by mates for reproductive health and success. Both the County of Grey and the Grey Sauble Conservation Authority have reviewed and accepted the study and the recommendations contained therein.

### **County of Grey Official Plan**

The subject lands are designated Rural in the County of Grey Official Plan. Almost the entire property is located within an Area of Natural and Scientific Interest (ANSI). The predominant use of land within the Rural designation will be agriculture and forestry. The Rural designation intends to protect the existing farming operations and maintain the visual appearance of a rural landscape. The designation will permit the consideration of resource based recreational activities and other appropriate rural land uses so long as they do not negatively impact on agriculture, forestry or the natural environment.

Resource based recreational activities are defined in the County Plan as:

*“those recreational uses where the prime reason for location in Rural, Recreational or Inland Lakes and Shoreline designations by their very nature, require certain natural attributes for their location including the availability of large lots or land areas. Uses permitted may include passive and active recreational facilities and associated commercial and residential uses.”*

It would appear that the proposed Hummer Tour operation would be considered a ‘resource based recreational use’ and would therefore be considered a permitted use on the subject lands provided that the Hummer Tour operation does not negatively impact the agricultural capabilities of the area.

Concerns have been raised regarding the impacts of Hummer Tour operation on surrounding agricultural uses. The equestrian fields, and any other fields that may be used for grazing could be impacted by the proposed use. No additional support has been provided through this application to indicate that the proposed use would have no impacts on the agricultural capabilities of the area.

The identified ANSI area does allow for development and site alteration provided that it is demonstrated through an acceptable Environmental Impact Study (EIS), prepared by

a qualified individual, that there will be no negative impacts on the natural features or on the ecological function for which the area is identified.

Without a further detailed review of the potential impacts of the proposed use on the surrounding agricultural areas, it would appear that the use may not comply with the County of Grey Official Plan. It should be noted that County comments are provided later in this report.

### **Town of The Blue Mountains Official Plan**

The subject lands are designated Rural within the Town of The Blue Mountains Official Plan. The purpose of the Rural designation is to provide for the continuation of agricultural practices in areas of generally lower capability soils while permitting other uses considered compatible with the rural environment. Other uses of land which are non-supportive activities of agriculture may be permitted on a limited scale provided: the use does not conflict with surrounding farm operations and practices, meets the Minimum Distance Separation Formula, that the use will not adversely alter the rural character of the area and the visual quality of the landscape is maintained, and the use is of a size or intensity of function which will not adversely impact costs of providing municipal services. More specifically, resource based recreational uses which are uses more orientated towards outdoor activity rather than requiring major structures and which are primarily used for day use activities, hunting and shooting clubs, riding stables, skiing, biking and nature trails may be permitted subject to a number of criteria including the protection of improved agricultural land, compatibility with surrounding agricultural uses, maintaining the rural character, adequate buffering from existing adjacent uses and the Recreational Uses (Section 3.12) to the Plan.

It would appear that the Official Plan encourages the establishment of this type of recreational use due to its need for a large area of land, that it would not be more appropriate within the urban areas, and that the use would appear to be considered small scale. The Hummer tour uses an existing logging trail for the tour, and portions of the former gravel pit. It has been indicated that the property is used for only about 15 minutes of the approximate 1 hour tour. No other buildings or uses associated with the Hummer tours use exists on the property. Recreational uses in the Rural areas are restricted where there may be a negative impact on farming operations, and as mentioned earlier in this report has not been reviewed.

Appendix Map 'D' identifies that the subject lands include an ANSI area. Similar to the County and Provincial Policy, an EIS must be prepared to review any potential impacts of the proposed use on the ANSI.

One of the goals of the Official Plan is to enhance the opportunities for tourism and recreational uses in the municipality (Section 2.5). To accomplish this, the plan lays out a number of objectives which are achieved through policy. It would appear that a Hummer tour operation would provide a new unique recreational use as part of a very diversified list of existing recreational uses. Hummer tours provide a form of trail access and adventure that serve a wide range of users. Provided that the Hummer tour use

does not create any adverse impacts on surrounding land uses, agriculture and the ANSI area it would appear that the proposed Hummer tour use would comply with the Town of The Blue Mountains Official Plan.

## **Zoning**

The subject lands are zoned General Rural 'A1' within the Township of Collingwood Zoning By-law 83-40. Permitted uses include agricultural uses, one single detached dwelling, forestry and conservation, temporary farm help, home occupations, home industries and uses, buildings and structures accessory to any of those uses.

The proposed Hummer tour operation is not considered a permitted use, and a Zoning By-law Amendment has been submitted in order to permit the use for a maximum of three years.

The draft By-law would permit the use of the lands for Hummer Tours for a maximum of three years. As recommended through the Environmental Impact Study, and in consideration of comments received by the Grey Sauble Conservation Authority, the By-law should be updated to limit the hours of operation to after 10:00am from April 1 to August 1 each year, and to recognize the existing trail location as the only permitted route. Alterations to the existing route would require further review of potential impacts on the ANSI area and also by the Conservation Authority.

The proposed amendment including the above noted changes would appear to properly recognize the proposed Hummer tour use.

## **Public Meeting**

A public meeting as required under the Planning Act was held on March 17, 2008. A mix of comments were received in support of and against the proposed temporary use By-law. a number of comments in favour of the temporary use noted that the Hummer tour business was managed and run in an orderly and environmentally friendly manner, that the use provided a number of people with access and adventure to the area, that the use promoted tourism in an area that encourages and welcomes tourists, and that the Hummer tours are one of the most popular tours in the area. These comments were confirmed over again, through letters of support from other tour operators, tour participants, and others. Comments were also received from an adjacent land owner who indicated that the Hummer tours created a nuisance through the numerous tours that run through the property per day and the noise created by the people on the tour.

## **Additional Comments**

Comments were received by the Grey Bruce Health Unit, the County of Grey and the Grey Sauble Conservation Authority.

The Grey Bruce Health Unit indicated that they had no objection provided that the Hummer tour use did not impact existing septic systems on the property.

The County of Grey and Grey Sauble Conservation Authority identified that the application was premature until such time as an EIS is completed to their satisfaction regarding any impacts on the ANSI area. As stated earlier in this report, an EIS was completed and both agencies have accepted the report and the recommendations contained therein.

Based on the foregoing, it is the opinion of Planning Staff that the proposed Temporary Use Zoning By-law Amendment does not conform to the Provincial Policy Statement, and therefore Planning Staff are unable to support the proposed Zoning By-law Amendment. Should Council grant a Temporary Use By-law, the By-law should be revised to include the comments contained within this report.

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

The recommendation in this Planning Staff Report is consistent and supports the following Strategic Plans Goals:

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

### **D. Budget Impact**

Nil

### **E. Attached**

Nil

Respectfully submitted,

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Shawn Postma, Planner II  
26 Bridge Street – Box 310  
Thornbury, ON NOH 2PO  
519-599-3131 ext.248  
1-888-258-6867  
F: 519-599-3018  
[spostma@thebluemountains.ca](mailto:spostma@thebluemountains.ca)

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David Finbow, Director, Planning & Building Services  
26 Bridge Street – Box 310  
Thornbury, ON NOH 2PO  
519-599-3131 ext.246  
1-888-258-6867  
F: 519-599-3018  
[dfinbow@thebluemountains.ca](mailto:dfinbow@thebluemountains.ca)