STAFF REPORT: **PLANNING & BUILDING SERVICES**

REPORT TO:	**Council**
MEETING DATE:	**December 7, 2009**
REPORT NO.:	**SRB.09.31**
SUBJECT:	**Short Tem Accommodation**
PREPARED BY:	**David Finbow, Director, Planning & Building Services**

A. Recommendations

THAT Council receive Staff Report SRB.09.31 "Short Term Accommodation" for information purposes.

B. Background

Further to Staff Report SRB.09.29 considered by Council at its meeting of November 9, 2009 (Addendum "A"), this is to advise that the OMB issued a Decision and Order of the Board on November 5, 2009 with respect to Mediation Assessment (Addendum "B") and subsequently issued Notices with respect to the Mediation Meetings (Addendums "B" & "C").

In accordance with the Board's rules, the "details of proceedings during a mediation are confidential" and only "Parties" to the proceedings before the Board are invited to attend.

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Budget Impact (cc: Treasury if required)

N/A

E. Addendums

A. Staff Report SRB.09.29.
B. Decision & Order of the Board on November 5, 2009.
C. Notices with respect to the Mediation Meetings.

Respectfully submitted,

David Finbow
Director, Planning & Building Services

"A"

D.4

STAFF REPORT: **PLANNING & BUILDING SERVICES**

REPORT TO:	**Council**
MEETING DATE:	**November 9, 2009**
REPORT NO.:	**SRB.09.29**
SUBJECT:	**Short Term Accommodation**
PREPARED BY:	**David Finbow, Director, Planning & Building Services**

A. Recommendations

THAT Council receive Staff Report SRB.09.29 "Short Term Accommodation".

B. Background

The purpose of this report is to provide Council with an update with respect to the appeals of the Town's enactment of an Interim Control By-law (ICBL) and Official Plan and Zoning By-law Amendments (OPA and ZBLA) related to short term accommodation uses (STA's) and to advise Council as to current actions/activities of the Building & By-law Division related to enforcement of STA related matters.

Status of Short Term Accommodation By-law Appeals

The Town's enactment of the ICBL, OPA and ZBLA were appealed to the OMB in 2008 by various parties. Prehearing Conferences were held on July 3, 2008, September 12, 2008, July 28, 2009 and September 21, 2009.

With respect to the September 21, 2009 teleconference Prehearing, the Board directed each Counsel/Agent to confer with their respective client about mediating the appeals and to inquire about a mandate for doing so. On October 16, 2009, OMB Vice Chair James R. McKenzie held a teleconference Mediation Assessment with the Town and subsequently held similar Mediation Assessments with the other parties. Vice Chair McKenzie's disposition on the Mediation Assessments has not been released at the time of writing. Upon the issuance of his disposition, same will be circulated to Council and interested stakeholders.

It is noted that OMB Decisions related to matters before the Board are available at www.omb.gov.on.ca (E-Status Case Information, filed under "T" – The Blue Mountains).

By-law Enforcement & Short Term Accommodation Uses

It is apparent that our residents continue to be concerned with what some deem to be "inaction" on the Town's part. In this regard, I note that the Town has been actively attempting to address the issues associated with Short Term Accommodation (STA) for some time. Actions include:

- enhancing the community's policing in 2002 by way of having policing in The Blue Mountains provided by way of an integrated arrangement with the Collingwood Detachment of the OPP (with it being noted that the 2009 Policing Contract was $2.1 million and the projected 2010 Policing Contract is $2.3 million representing approximately 13% of the Town's Operating Budget);

- obtaining approval from the senior Regional Justice for a $500.00 set fine associated with contraventions of the Town's Noise By-law;
- enhancing our By-law Enforcement presence by increasing our staffing compliment from 0.25 Officers in 2004 to 2 Officers in 2006;
- enacting an Interim Control By-law in January 2007 to prohibit the establishment of further STA's;
- developing and adopting STA policies for the Town's Official Plan;
- developing and enacting Zoning By-law regulations with respect to STA's;
- developing licencing provisions to regulate and control existing STA's with same to be brought back to Council for consideration upon the STA Appeals being finalized; and,
- liaising with STA operators with respect to implementing controls over renters.

In early 2008, post the enactment of the ICBL, By-law Enforcement determined to dedicate one Officer full time to the matter of STA's. The principal work associated with this was to identify STA's that pre-dated the ICBL, ensure that identified STA's were operating in compliance with current municipal by-laws, to act as a liaison with the OPP as it relates to OPP issues, and to assist the OPP when needed.

Notwithstanding the actions taken to-date, there continues to be questions raised and concerns expressed by our residents (principally related to public disturbance). Questions, and the related responses, that have been asked for many years include:

Q1. How do we get to the owners of these problem properties? The noise by-law contains a clause that owners "not permit noise to be made". Why can't we charge the owners as well as the renters?

A1. The Noise By-law was enacted pursuant to the provisions of the Municipal Act. The Municipal Act enables a municipality to enact a by-law so as to regulate and prohibit noise. The Act is clear that the by-law must provide that a person who contravenes a by-law is guilty of the offence. Therefore, the municipality does not have the authority to charge the owner of the premises unless they are responsible for the specific offence.

Q2. How can so many people use a septic system without causing a health concern?

A2. New on-site sewage systems, including the tank and field/bed, are sized based on the number of bedrooms and/or floor area of the dwelling. The majority of the dwellings that are serviced by on-site sewage systems were constructed prior to the current requirements. Notwithstanding this, the Town's Building & By-law is aware of only one instance in the past 9 years where a complaint was filed with the Grey Bruce Health Unit related to a breakout and it is noted that the dwelling was not used for STA purposes. Based on our knowledge, this issue is not a concern.

Q3. How can people who are obviously intoxicated be walking the streets, drinking and destroying public and private property without consequences?

A3. The OPP has recently provided the following data for the period May 15 – September 15, 2009 related to various policing matters for the Craigleith Zone:

	2008	2009	Charges 2008	Charges 2009
Assault	8	6	4	4
B & E	6	1	1	
Theft	19	18		2 + 2CDLC
Disturb Peace	5	7	2 + 2 CDLC	2 CDLC
Impaired	5	9	5	9
LLA	64	38	57	32
Mischief	26	11	3+1 CDLC	1 CDLC
Noise	71	69	1	6
Total incidents	502	402		

CDLC = Complainant declines to lay charge

As Council will note, the OPP received 5 and 7 complaints respectively in 2008 and 2009 related to Disturbing the Peace. These complaints resulted in 2 charges with the other 4 instances, the complainant declined to lay a charge.

With respect to Noise Complaints, a total of 71 and 69 complaints were received for the Craigleith Zone in 2008 and 2009 respectively (approximately 4 per week). It is noted that for the same time period, there were 15 complaints received by the OPP for the Thornbury Zone and 122 for the Town of Collingwood Zone. As to the entire Town for the period January 1 to October 31, a total of 191 complaints were received with 83 originating in the Craigleith Zone (43.5%).

In 2008, the Craigleith Zone accounted for 41% of all OPP calls whereas in 2009 it's 35%

Q4. How do we solve the issue of excess garbage generated from these properties?

A4. Bag limits are in place with By-law Enforcement prepared to enforce the By-law, including laying littering charges, when notified of violations. In addition, in response to complaints, By-law Enforcement has attended to garbage that has been left out on the wrong pick-up date and provided written notices of violation to property owners. In some instances, By-law Enforcement has been involved in litter pick-up resulting from garbage that has been disturbed by wildlife.

Q5. How can we contact the by-law officers in real time to allow them to really help?

A5. In no circumstance is By-law Enforcement to be contacted to address public disturbances or noise issues related to parties. Furthermore, residents are advised not to attempt to address these matters on their own. The primary response to public drinking, public nuisance, disturbance, noise, etc. must be the OPP.

Q6. How can we deal with the problems and stay safe and not feel threatened by violence or litigation?

A6. We encourage residents to contact the OPP @ 1.800.310.1122.

Q7. How can places such as those within residential areas continue to rent for short term purposes and many other start renting after the enactment of the Town's Interim Control By-law and not be told to cease operation?

Q7. If a use pre-dates the passing of the ICBL, they are protected by virtue of Section 34(9) of the Planning Act ("legal non-conforming"). If a use was commenced post the enactment of the ICBL, February 4, 2008, please advise By-law Enforcement.

Notwithstanding the work completed to-date, or that work that is underway, the real issue is:

> How can we utilize existing laws and by-laws more effectively to bring some relief for those residents that are most affected by these issues?

The response provided by Staff to this question in 2001 was to focus on and address the most common identified problem - public disturbance/noise. This is being addressed currently be the OPP and, as we move forward with our licencing initiatives, will be addressed directly with owners of STA's.

Ontario Provincial Police & Short Term Accommodation Uses

Traditionally, The Blue Mountains Police Services Board has requested that the Detachment Commander attend Town Council meetings to provide annual updates on policing matters. In this regard, Inspector John Trude, Detachment Commander, and Sergeant Charlie Watts will be in attendance at Council's November 9, 2009 meeting. In addition to providing an update, the Detachment Commander and Sergeant will be available to answer questions from Council related to the OPP's involvement in Short Term Accommodation matters.

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Budget Impact (cc: Treasury if required)

N/A

E. Addendums

N/A

Respectfully submitted,

David Finbow
Director, Planning & Building Services

"B"

ISSUE DATE:
Nov. 05, 2009

PL080455

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject:	Interim Control By-law No. 2008-12
Municipality:	Town of The Blue Mountains
OMB Case No.:	PL080455
OMB File No.:	PL080455

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject:	Interim Control By-law No. 2008-67
Municipality:	Town of The Blue Mountains
OMB Case No.:	PL080455
OMB File No.:	PL081124

APPEARANCES:

Parties	**Counsel*/Agent**
The Town of The Blue Mountains	L. F. Longo*
Sheldon Rosen and The Lodges at Blue Mountain Corporation	S. Makuch*
Denis Martinek and Tyrolean Village Resorts Ltd.	D. Slade
Blue Mountain Resorts Limited and Intrawest ULC	P. Peterson*

DECISION DELIVERED BY JAMES R. McKENZIE AND ORDER OF THE BOARD

This teleconference call was convened for the purpose of reviewing the status of the Rosen and Martinek appeals. During a teleconference call on September 21, 2009, the Board directed counsel to confer with their respective client about what role, if any, mediation might serve in addressing these appeals.

Concerning the Martinek appeal, Mr. Longo and Mr. Slade each advised of their respective client's willingness to participate in a Board-convened mediation. Accordingly, the Board will schedule that appeal for a one-day mediation session.

Concerning the Rosen appeal, Mr. Makuch advised that his clients are willing to participate in a Board-convened mediation. Mr. Longo advised that the Town is disinclined at this stage to partake in mediation. Not having an appreciation of the intricacies of the Rosen appeal leading the Town to its position, the Board directed a mediation assessment with a view to better understanding Mr. Rosen's and the Town's respective interests.

That assessment is now complete.

The Board is satisfied that the Rosen appeal is a suitable candidate for mediation and will proceed to schedule a one-day mediation session, but only upon being advised that the Town and Mr. Rosen each are open to such a course of action. Accordingly, Mr. Longo and Mr. Makuch are each directed to report on their respective client's willingness to participate in a Board-convened mediation, and that correspondence may be directed electronically to Ms Kimberly Livingstone, the Board's planner having administrative carriage of this file.

In the event that mediation is not taken up for the Rosen appeal, the Board will schedule a one-day pre-hearing conference to deal with the finalization of a Procedural Order and related Issues List, as well as any other preliminary matters to be addressed by way of a motion.

In view of having conducted the mediation assessment, I am no longer seized of case-management, but remained seized of any mediation sessions that are scheduled.

So Orders the Board.

"James R. McKenzie"

JAMES R. McKENZIE
VICE-CHAIR

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Ontario

IN THE MATTER OF subsection 17(36) of the *Planning Act*, R.S.O. 1990, C. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: Proposed Official Plan Amendment No. 11
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090304

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: By-law No. 2009-03
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090152

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: By-law No. 2009-04
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090153

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: By-law No. 2009-05
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090154

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: Interim Control By-law No. 2008-12
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL080455

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation

Subject: Interim Control By-law No. 2008-67
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL081124

NOTICE OF MEDIATION MEETING

The Ontario Municipal Board will hold a mediation meeting in connection with the appeals on the matters noted above. The purpose of the meeting is to provide all those in attendance with the opportunity to develop a detailed understanding of the issues in dispute and the reasons for appeal. The meeting will provide an opportunity for all those in attendance to fully explore and consider options for a mutually acceptable settlement of all or some of the issues in dispute. The Board, through this meeting, will try to facilitate a settlement amongst the parties.

The meeting will be held

at: **11:00 am**

on: **Wednesday January 27, 2010**

at: **the Trillium Room**
Marsh Street Centre
187 Marsh Street
Clarksburg, ON

The Board has set aside **1 day** for this meeting.

Mediators are impartial and are not present to assist the parties in achieving success with their case, and will not provide legal, planning or other expert advice. The mediator may, if requested, and in confidence, offer a view of the strengths and/or weaknesses of a particular party's case if the mediator is of the opinion that such a view will assist the party in developing strategies for achieving a successful resolution of the issues.

The details of proceedings during mediation are confidential. Any information or documents provided or exchanged during the mediation, and any suggested resolution of the issues or offer to settle made during a mediation shall remain confidential and cannot be disclosed in evidence in any proceeding, nor placed on the Board file, without the party providing the information or document, or making the suggestion or offer, consenting to such disclosure and the manner of such disclosure.

Mediators may suspend or terminate mediation if requested by one or more parties or on their own initiative.

If a settlement is reached and an order of the Board is required, the mediator may either hold a hearing with the consent of all the parties; or schedule a hearing with another Board member so that the Board can consider the public interest and the requirements of the governing legislation, before issuing an order.

Where a settlement is reached, an order of the Board is required and the parties consent to the matter being heard on the same date, the Board will require that the parties present evidence or formal statements addressing the requirements of the governing legislation.

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Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	Denis Martinek, Tyrolean Village Resorts Ltd.
Subject:	By-law No. 2009-03
Municipality:	Town of The Blue Mountains
OMB Case No.:	PL080455
OMB File No.:	PL090152

NOTICE OF MEDIATION MEETING

The Ontario Municipal Board will hold a mediation meeting in connection with the appeals on the matters noted above. The purpose of the meeting is to provide all those in attendance with the opportunity to develop a detailed understanding of the issues in dispute and the reasons for appeal. The meeting will provide an opportunity for all those in attendance to fully explore and consider options for a mutually acceptable settlement of all or some of the issues in dispute. The Board, through this meeting, will try to facilitate a settlement amongst the parties.

The meeting will be held

at: **11:00 am**

on: **Tuesday January 26, 2010**

at: **the Trillium Room**
Marsh Street Centre
187 Marsh Street
Clarksburg, ON

The Board has set aside **1 day** for this meeting.

Mediators are impartial and are not present to assist the parties in achieving success with their case, and will not provide legal, planning or other expert advice. The mediator may, if requested, and in confidence, offer a view of the strengths and/or weaknesses of a particular party's case if the mediator is of the opinion that such a view will assist the party in developing strategies for achieving a successful resolution of the issues.

The details of proceedings during mediation are confidential. Any information or documents provided or exchanged during the mediation, and any suggested resolution of the issues or offer to settle made during a mediation shall remain confidential and cannot be disclosed in evidence in any proceeding, nor placed on the Board file, without the party providing the information or document, or making the suggestion or offer, consenting to such disclosure and the manner of such disclosure.

Mediators may suspend or terminate mediation if requested by one or more parties or on their own initiative.

If a settlement is reached and an order of the Board is required, the mediator may either hold a hearing with the consent of all the parties; or schedule a hearing with another Board member so that the Board can consider the public interest and the requirements of the governing legislation, before issuing an order.

Where a settlement is reached, an order of the Board is required and the parties consent to the matter being heard on the same date, the Board will require that the parties present evidence or formal statements addressing the requirements of the governing legislation.

The Board encourages all those interested in this matter to attend in the spirit of cooperation and attend fully prepared to discuss the issues in dispute so as to maximize the benefits of this process.

DATED at Toronto, this 20th day of November, 2009.

PATRICK HENNESSY
SECRETARY

ONTARIO MUNICIPAL BOARD RULES ON ADJOURNMENTS

61. Hearing Dates Fixed Hearing events will take place on the date set unless the Board agrees to an adjournment.

62. Requests for Adjournment if All Parties Consent If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include the reasons, a suggested new date, and the signed consents of all parties. However, the Board may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent.

63. Requests for Adjournment Without Consent If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before the date set for the hearing event, the party must give notice of the request to the Board and to the other parties and serve their motion materials as soon as possible. If the Board refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

64. Emergencies Only The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

65. Powers of the Board upon Adjournment Request The Board may,
(a) grant the request;
(b) grant the request and fix a new date or, where appropriate, the Board will schedule a prehearing conference on the status of the matter;
(c) grant a shorter adjournment than requested;
(d) deny the request, even if all parties have consented;
(e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
(f) grant an indefinite adjournment, if the request is made by the applicant or proponent and is accepted by the Board as reasonable and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case the applicant or proponent must make a request that the hearing be rescheduled;
(g) convert the scheduled date to a mediation or prehearing conference; or
(h) make any other appropriate order.

August 11, 2008

ONTARIO MUNICIPAL BOARD RULES ON MEDIATION

66. **Mediation** A party or parties may request the Board to conduct a mediation of any issue raised in a proceeding. Prior to the Board granting this request, the Chair or a Vice-Chair designated by the Chair will conduct a mediation assessment of the proceeding to determine whether the issue or proceeding is suitable for mediation. If the Chair or designated Vice-Chair determines that mediation should proceed, then the Board will convene a mediation, with the participation of all or two or more of the parties, should they provide their consent to each other and the Board. The Board shall set the date of the mediation and direct how notice of the mediation will be given.

67. **Procedure at a Mediation** If a mediation request is granted, the Board will appoint a mediator who is a Member of the Board, and the mediator may make use of any appropriate dispute resolution techniques to help the parties involved in the mediation enter into a voluntary resolution of the issues in dispute.

68. **Member to Preside at Hearing Event Only with Parties' Consent** A Board Member who conducts a mediation in which one or more of the issues have not been resolved may not preside at any hearing event of those unresolved issues unless all of the parties consent and the Board Member agrees.

69. **Mediation or Settlement Discussions Confidential** The details of proceedings during a mediation are confidential. Any information or documents provided or exchanged during the mediation and any suggestion for resolution of the issues or offer to settle made during a mediation shall remain confidential and cannot be disclosed in evidence in the same or other proceeding, nor be placed on the Board file. A Board Member's notes of a mediation shall remain confidential and shall not be released to any person or admitted into evidence in any proceeding. A Board Member that participates in mediation is not competent or compellable in any proceeding to give evidence or produce documents regarding the mediation discussions.

August 11, 2008

The Board encourages all those interested in this matter to attend in the spirit of cooperation and attend fully prepared to discuss the issues in dispute so as to maximize the benefits of this process.

DATED at Toronto, this 20th day of November, 2009.

PATRICK HENNESSY
SECRETARY