

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: January 07, 2020

CASE NO(S): PL180715

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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|----------------|---------------------------------|
| Appellant: | Pamela Spence |
| Subject: | By-law No. BL 2018-42 |
| Municipality: | Town of The Blue Mountains |
| OMB Case No.: | PL180715 |
| OMB File No.: | PL180715 |
| OMB Case Name: | Spence v. Blue Mountains (Town) |

Heard: September 16, 2019 in Town of The Blue Mountains, Ontario

APPEARANCES:

Parties

Counsel*/Representative

| | |
|---------------------------------------|---------------------|
| Pamela Spence | Self-represented |
| Town of The Blue Mountains | L. Longo* |
| Parkbridge Lifestyle Communities Inc. | M. Flynn-Guglietti* |

DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

Disposition

[1] After considering the evidence and submissions, the Tribunal dismisses the appeal and approves Town of The Blue Mountains' Zoning By-law No. 2018-42.

Background

[2] This Decision and Order results from the hearing on an appeal, pursuant to s. 34(19) of the *Planning Act* ("Act"), by Pamela Spence ("Appellant") of the Town of The Blue Mountains ("Town") Zoning By-law No. 2018-42 ("ZBL").

[3] A copy of the ZBL is appended to this Decision and Order as Attachment 1 and it applies to lands located generally at Part of Lot 21, Concession 2 ("Site"). The ZBL amends Zoning By-law No. 83-40 and rezones the Site into three distinct Zones: a Hazard "H" Zone, a Private Open Space "OS2" Zone and the Residential "R6-286-h" Zone. The latter Zone includes permission for 211 Land Lease Community Homes (single detached dwellings and townhouse dwellings), a private clubhouse, a private storage facility and establishes certain site-specific provisions including building envelopes within which all buildings and structures shall be located and maximum building heights. The R6-286-h Zone is subject to a holding ("h") provision which cannot be removed until a subdivision agreement is executed, a subdivision is registered and a site plan agreement is executed. Prior to the lifting of the holding provision, the only uses permitted on the Site are those uses that existed on the date of the passing of the ZBL and, under certain conditions, six model homes.

[4] The ZBL responds to an application submitted to the Town by Parkbridge Lifestyle Communities Inc. ("Applicant").

[5] The Town's Planning and Development Services - Planning Division recommended the ZBL to Council in a Staff Report dated June 25, 2018 ("Planning Staff Report").

[6] In advance of the hearing, the Tribunal held a Case Management Conference

(“CMC”) and a Telephone Conference Call (“TCC”) and those events served to, amongst other matters: identify the Parties; identify seven Participants who may provide written submissions; establish an Issues List; and determine a format for the hearing. The Tribunal’s Decision and Order from the CMC and TCC was issued July 11, 2019.

[7] The County of Grey’s (“County”) conditional approval of a draft plan of subdivision for the Site has also been appealed by the Appellant and Moira McIntyre. The subdivision appeal is Tribunal Case/File No. PL180810 and it is subject to different adjudicative procedures than the ZBL appeal. A hearing on the subdivision appeal is scheduled to begin for nine days on March 23, 2020 and a Procedural Order is in place for that hearing.

LEGISLATIVE FRAMEWORK

[8] The Tribunal’s jurisdiction and decision making in this case is governed by s. 34(26) of the Act which effectively provides that the Tribunal shall dismiss the appeal unless the Tribunal determines that the ZBL:

- A. is inconsistent with the Provincial Policy Statement, 2014 (“PPS”);
- B. fails to conform with, or conflicts with, a Provincial Plan (in this case, the Niagara Escarpment Plan, 2017 (“NEP”) is the applicable Provincial Plan and the ZBL cannot conflict with it); or
- C. fails to conform with an applicable official plan which in this case is the County Official Plan (“COP”) and the Town’s Official Plan (“TOP”).

[9] An Issues List attached to the Tribunal’s July 11, 2019 Decision and Order identifies the specific aspects and policies of the PPS, the NEP, the COP and the TOP that the Appellant takes issue with and also includes three issues from the Town. The Issues List also identifies certain concerns the Appellant has with the ZBL and its

alignment with the policies and regulations of the Grey Sauble Conservation Authority (“GSCA”). The policies and regulations of a Conservation Authority often derive from and implement the relevant and above-noted policy planning documents.

RECORD

[10] The Appellant submitted an Appellant Form, a Case Synopsis and an Appeal Record.

[11] The Town submitted an Enhanced Municipal Record and a Responding Case Synopsis.

[12] As part of its request for Party status, the Applicant submitted a Responding Case Synopsis and a Responding Appeal Record.

AFFIDAVITS

[13] The Appellant did not include an affidavit(s) with lay or expert evidence in the Appellant’s Appeal Record, notwithstanding Rule 26.12 of the Tribunal’s *Rules of Practice and Procedure* effective April 3, 2018 (“Rules”) which requires an Appellant’s Appeal Record to include an affidavit.

[14] The Town declined to submit a Responding Appeal Record and, accordingly, did not file an affidavit which responds to the issues and concerns set out in the Appellant Form and the Appellant’s Case Synopsis and Appeal Record. The Enhanced Municipal Record submitted by the Town includes the Planning Staff Report and an affidavit, pursuant to Ontario Regulation, from Shawn Postma, a Senior Policy Planner with the Town, swearing that the decision of Council is consistent with the Policy Statements under s. 3(1) of the Act, conforms to or does not conflict with any applicable Provincial Plan or Plans and conforms with the applicable official plans.

[15] The Applicant's Responding Appeal Record includes an affidavit from Andrew Pascuzzo (sworn March 14, 2019). Mr. Pascuzzo is a Land Use Planning Consultant engaged by the Applicant and his March 14, 2019 affidavit responds to the issues and concerns of the Appellant as set out in the Appellant Form and the Appellant's Case Synopsis and Appeal Record. The Tribunal required the Applicant (the only Party who took the opportunity, pursuant to the Rules, to include in its Appeal Record an affidavit which addresses the specific concerns in the appeal) to make arrangements for Mr. Pascuzzo to update his affidavit to address the issues set out in the updated Issues List requested by the Appellant and approved by the Tribunal in its July 11, 2019 Decision and Order. The Tribunal determined that if it allowed the Appellant the opportunity to revise and update her Issues List, as she requested, it was fair to have Mr. Pascuzzo's March 14, 2019 affidavit revised and updated to coincide. This was done and Mr. Pascuzzo's updated affidavit was sworn on August 9, 2019.

PARTICIPANTS

[16] The Participants in the ZBL appeal are: Heather McNaughton, Terry Bunting, Eleanor Ward, Margaret and Dennis King, Tim King/Robert Newman/Mary Kershaw, Lucy Richmond and Alex Faltynek. The Participants made written submissions and all are opposed to the ZBL. The Participants believe that the ZBL is inconsistent with the PPS, conflicts with the NEP and does not conform with the COP and the TOP for a variety of reasons including: natural heritage features, including woodlands, wetlands, butternut trees and watercourses, have not been adequately studied and are not being adequately protected; setbacks to watercourses are not adequate; potentially hazardous areas on the Site have not been identified properly in the ZBL nor have appropriate and adequate setbacks to certain hazardous areas; the proposed internal, private road on the Nipissing Ridge is unacceptable; the ZBL advances a development that is out of character and not compatible with the area; archeological resources on the Site are not being adequately protected in the ZBL; the proposed residential uses and density are not permitted on the Site; the proposed residential units are not affordable; the public open space on the Site is inadequate; traffic impacts are unacceptable and

will negatively impact public health and safety; the Town's broad plans for such matters as stormwater management, water/waste water and transportation services are inadequate and the ZBL should not be approved in this context; and the ZBL does not reflect the requirements of the GSCA.

[17] The Participants' issues and concerns, to a significant extent, mirror those of the Appellant and, accordingly, are adequately addressed through the analysis of the Appellant's issues.

HEARING

Examination of Mr. Pascuzzo by the Tribunal

[18] At the oral hearing, the Tribunal examined Mr. Pascuzzo. At the request of the Tribunal, he provided an overview of his qualifications and experience and responded to questions from the Tribunal. As part of his responses he: identified the various studies that were done in support of the ZBL application; explained his understanding of the applicable density provisions in the TOP; described the watercourse setbacks and other provisions in the ZBL; and advised on the status of adjacent development.

[19] The Tribunal considers Mr. Pascuzzo qualified to provide independent expert opinion evidence in land use planning and it is his opinion that the ZBL is consistent with the PPS, does not conflict with the NEP and conforms to the COP and the TOP.

Submissions by the Parties

[20] At the hearing, the Tribunal heard submissions from the Appellant in support of the appeal and from Mary Flynn-Guglietti and Leo Longo in support of the ZBL.

ANALYSIS AND FINDINGS

Site

[21] The Site is about 27.1 hectares in area with frontage along both Lakeshore Road and Grey Road 19. The Site has two parts – a main parcel on the south side of Lakeshore Road and a small triangular parcel to the north of Lakeshore Road. The Site is occupied by one uninhabited single detached dwelling. The Site includes a number of natural heritage features, such as forested/vegetated areas and watercourses, and significant topographical grade changes associated with the Nipissing Ridge which is on the Site. The Site is close to Lake Huron's Georgian Bay and upper parts of the Site could be described as overlooking the Lake. It is a unique and sensitive property.

[22] Uses around the Site consist of a mixture of residential dwellings (both single detached and multiple and both seasonal and permanent) as well as recreational uses involving the Niagara Escarpment (four season public/private resorts) and the Georgian Bay shoreline.

Studies

[23] In support of the ZBL and subdivision applications, the Applicant had prepared and submitted to the Town a number of studies which are listed in the Planning Staff Report including: Environmental Impact Study ("EIS"); Functional Servicing and Stormwater Report; Updated Functional Servicing and Regional Stormwater Report; Slope Stability Assessment; Geotechnical Reports; a series of Archeological Assessments; Traffic Impact Study; Updated Traffic/Roads Assessment; Butternut (Tree) Health Assessments; Landscape Analysis; Trails Concept Plan; Updated Site Phasing Plan; and Planning Justification Report. The foregoing are referred to collectively as the "Technical Reports". The Applicant also submitted Site Plans and Architectural Drawings.

Analysis

General

[24] After analysing the records, evidence and submissions, the Tribunal finds that the ZBL is not inconsistent with the PPS, does not conflict with the NEP and does not fail to conform with the COP or the TOP. In making this finding, the Tribunal accepts and relies on the opinion of Mr. Pascuzzo who carefully and adequately addressed each issue raised by the Appellant. Town Planning Staff, as set out in the Planning Staff Report, are also satisfied that the ZBL is consistent with the PPS and conforms to the TOP. Further, there is no evidence which indicates that the Niagara Escarpment Commission (“NEC”), the County or the GSCA are opposed to the actual ZBL as adopted by Council and none of these latter agencies appealed the ZBL or requested party or participant status in order to raise issues or concerns with the ZBL in this proceeding.

[25] The Appellant failed to bring any persuasive evidence which, when weighed against Mr. Pascuzzo’s opinion, the applicable Technical Reports, the Planning Staff Report and other evidence, convinces the Tribunal that the ZBL is inconsistent, conflicting or non-conforming. The Appellant’s case and evidence, to a large degree and with all due respect, consisted largely of unsubstantiated personal opinion and apprehension, references to dated correspondence and comments from commenting agencies, questioning the adequacy and the results of various Technical Reports prepared by qualified persons and providing an inexperienced review and interpretation of the applicable policy planning documents. The Appellant, again with respect, does not have the qualifications to meaningful challenge the Technical Reports she identified as inadequate or lacking, did not submit any contrary reports or evidence from qualified individuals and did not, as lay persons often do, raise any matters that cause the Tribunal to question or find shortcomings in an expert’s opinion, a technical report or a staff report. The Appellant also failed to adequately recognize or acknowledge the role

and scope of a zoning by-law amendment, the nature of the holding provision in the ZBL and the matters that are appropriately to be dealt with as a prerequisite to the lifting of the h provision.

[26] As noted, the Appellant suggests that certain dated correspondence that the Town received from commenting agencies during the processing of the application is evidence of shortcomings in the Technical Reports and the ZBL. The Tribunal rejects this position and approach. Much of the correspondence identified pre-dates the adoption of the ZBL and the Tribunal finds it difficult to give weight, especially in light of Mr. Pascuzzo's evidence, to dated letters from agencies which have not expressed any concern with the actual ZBL, did not appeal the ZBL and did not seek status to raise issues with the ZBL in this proceeding. Further, the Tribunal is not persuaded that the comments are relevant to the ZBL itself, are current and will not be properly addressed in one of the subsequent stages of the development to be completed as prerequisites to the lifting of the h provision. The conditions in the ZBL for the lifting of the h provision are quite broad and capable of being appropriately used to fine tune and address detailed matters that need not form part of the ZBL. Not every aspect of a technical report or every detail of a proposed development needs to be included in a zoning by-law.

[27] In this Decision, the Tribunal does not find it necessary to address and dispense with each of the individual issues raised by the Appellant in her Appellant Form, Case Synopsis or the Issues List. Mr. Pascuzzo has done this adequately and has persuaded the Tribunal that the issues identified by the Appellant cannot result in a finding that the ZBL is inconsistent, conflicting or non-conforming. As reflected in the Act, it is the Appellant's obligation to show a lack of consistency/conformity or conflict and that was not done. This Member gave the Appellant a significant amount of discretion in creating the Issues List (much to the angst of the Town and the Applicant he knows) and it provided a broad canvas from which the Appellant could argue her case. In the end, the Tribunal finds that none of the issues raised by the Appellant call into question the appropriateness of the ZBL. It is not enough to identify and list a

myriad of issues and policies without bringing solid and reliable evidence that they have, in fact, been breached, disregarded or overlooked and result in a lack of consistency, conflict or non-conformity.

Broad Issues

[28] Before specifically dealing with each of the PPS, the NEP, the COP and the TOP, the Tribunal wishes to address some broad issues that are generally spoken to in one or more of these policy planning documents.

[29] The Appellant argues that the ZBL fails to protect the environment and natural heritage features in accordance with various of the applicable policy planning documents. The Appellant claims that the ZBL is inappropriate because it rests on an EIS that is faulty on a number of fronts and which does not adequately protect various natural heritage features. The 2016 EIS was prepared by Azimuth Environmental Consulting Inc., a qualified firm, and its transmittal is signed by a Terrestrial Ecologist and an Aquatic Ecologist. The EIS identifies the parts of the PPS, *Endangered Species Act*, 2007 (“ESA”), NEP, GSCA regulations, COP, TOP and *Federal Fisheries Act* that apply to natural heritage features on the Site. It reports the results of an extensive study approach that included evaluating existing vegetation communities, a habitat assessment and field surveys. The EIS also assesses the potential for negative ecological impacts to significant natural heritage features and functions and provides recommendations for mitigation. The EIS indicates:

- A. In respect to the PPS - the proposed development results in no negative direct or indirect impact to significant heritage features or functions (i.e. wetlands, woodlands, valleylands, ANSIs (“Areas of Natural and Scientific Interest”), wildlife habitat functions) including potential animal movement corridors/habitat linkages, can be achieved with no impact to the habitat of endangered or threatened species and conforms to the PPS. Department of Fisheries and Oceans authorization will be required during the

subsequent detailed design stage to ensure no serious harm to fish;

- B. In respect to the NEP- the proposed development will result in no loss of significant woodland, involves minimal disturbance to treed areas, includes a 15 metre (“m”) setback to the margin of the area designated Hazard Lands (i.e. Nipissing Ridge), results in no direct or indirect negative impact to habitats of endangered and threatened species and conforms to the NEP;
- C. In respect to the COP- the proposed development will result in no negative direct or indirect impact to significant natural heritage features and functions (i.e. significant woodlands, ANSIs, valleylands, wildlife habitat, and habitat of threatened and endangered species) and conforms with the relevant policies of the COP;
- D. In respect to the TOP and the ESA – the proposed development complies with a hazard setback policy of the TOP, can be constructed with no contravention of the ESA and that Butternut trees will be further studied and protected during the subsequent detailed design stage pursuant to the ESA; and
- E. In conclusion: “...the proposed development will not negatively affect any of the identified significant natural heritage features including significant wildlife habitat, habitat for threatened and endangered species, significant woodland or fish habitat on or adjacent (within 120 m) to the study area provided the recommended mitigation measures are implemented.”

[30] Mr. Pascuzzo advised the Tribunal that the recommended mitigation measures in the EIS are being and will be implemented. The Tribunal understands that the site plan on which the 2016 EIS is based has been revised to some degree but accepts Mr. Pascuzzo’s evidence that the ZBL is consistent, conforming and not in conflict.

[31] The watercourses on the Site are a significant natural heritage feature and it is the Appellant's opinion that the setbacks from the watercourses in the ZBL are inadequate. The 2016 EIS classifies each of the three significant watercourse features on the Site and identifies the following as appropriate: a 30 m setback from the west bank of the easterly watercourse; a 15 m setback from each bank of the central watercourse; and a 19-52 m buffer from the east bank of the westerly watercourse. Mr. Pascuzzo advises that the zoning boundaries in the ZBL reflect a 30 m setback from the top-of-bank of the easterly watercourse and a 20 m setback from each bank of the central watercourse. He further advises that the ZBL specifies a 30 m buffer from the top-of-bank of the westerly watercourse and that another small watercourse in the south-central part of the Site is buffered by the OS2 zoning with the majority of the lands surrounding it being outside of the regulated building envelope. Mr. Pascuzzo indicates that appropriate watercourse setbacks are included in the ZBL.

[32] Notwithstanding the two traffic/transportation studies conducted by C.F. Crozier & Associates Inc. ("Crozier"), the Appellant argues that the ZBL will create adverse traffic and transportation impacts to be avoided based on the provisions in the relevant policy planning documents. The Planning Staff Report indicates that Planning Staff are satisfied with the results of the traffic/transportation studies and that the County (which did a peer review) and the Provincial Ministry of Transportation("MTO") concur with the results. Mr. Pascuzzo advises that he is not aware of any outstanding concerns by the MTO, County or Town with regard to traffic impacts from the proposed development.

[33] Archeological resources are located on the Site and are to be adequately protected and conserved based on various of the relevant policy planning documents. In her Case Synopsis, the Appellant indicates that the Applicant has done a thorough job in identifying and respecting the cultural heritage and archeological resources on the Site but questions whether the ZBL provides adequate protection. Mr. Pascuzzo advises that a qualified firm did an extensive amount of archeological assessment on the Site, involving the Saugeen Ojibway Nation and the former Ministry of Tourism,

Culture and Sport, and recommended the protection of specific areas of the property plus buffers. He said these recommendations have been included in the ZBL. The Planning Staff Report indicates that a total of nine archeological reports have been completed and that archeological sites, buffer areas and conditions have been incorporated into the site plan to protect the known sites and their adjacent areas. The Tribunal notes that the finalization of the site plan is a prerequisite to the lifting of the h provision in the ZBL.

[34] Based on the foregoing, the Tribunal does not accept the Appellant's personal opinion and apprehension that the ZBL fails to recognize and protect natural heritage features as required, that the watercourse setbacks in the ZBL are lacking, that the ZBL will cause unacceptable traffic/transportation impacts and that the archeological sites are not addressed appropriately. The Tribunal recognizes, as well, that subsequent stages of the development process are required to be completed prior to the lifting of the h provision in the ZBL and that those stages can be appropriately used to finalize certain detailed matters not required to be included in the ZBL, such as exact building/structure locations. The GSCA may have regulatory and permitting requirements to be layered on and addressed as well. Further, the Tribunal considers the EIS to be the appropriate document from which to assess natural heritage features and not, as suggested by the Appellant, a constraints plan in the Traffic Assessment by Crozier.

[35] It is Mr. Pascuzzo's opinion that the ZBL is consistent, not in conflict and conforming and this means that he is satisfied with: the location of the zoning boundaries in respect to such matters as natural heritage features; setbacks from natural heritage features; the uses permitted in each of the zones; and the provisions and regulations in each of the Zones. The permitted recreation facility and the storage facility can be considered accessory uses in his opinion and can, as required, comply with the gross floor space set out in the TOP. Mr. Pascuzzo acknowledges that the R6-286-h Zone in the ZBL includes some lands designated significant woodlot, that this is a correct zoning and that no portion of the significant woodlot is proposed to be removed

as part of the current site plan. He indicates that it is acceptable to have storm water management facilities located in a zone other than an Environmental Protection Zone referenced in the OP as an accessory use or infrastructure use. Mr. Pascuzzo advises that the level of detail provided in the ZBL is appropriate and that a number of other details are most appropriately dealt with in the site plan control stage.

Provincial Policy Statement, 2014

[36] Mr. Pascuzzo advises that the ZBL is consistent with the PPS and he adequately addresses each alleged inconsistency raised by the Appellant. He advises that the ZBL is consistent with the PPS because, amongst other matters, it avoids a development pattern which would cause environmental or public health and safety concerns and, in respect to natural heritage features, will: protect the natural features and areas for the long term, including the Nipissing Ridge, the related slope and the watercourses; promote the protection of a large amount of open space on the Site (approximately 60% or more); and, based on the EIS, will not negatively affect any of the identified significant natural heritage features including significant wildlife habitat, habitat for threatened and endangered species, significant woodland, wetland or valleyland or fish habitat on or adjacent (i.e. within 120 m) to the Study Area provided the recommended mitigation measures are implemented. Mr. Pascuzzo believes that the archeological sites are being protected consistent with the PPS. Based on certain of the Technical Reports and discussions with staff at Crozier, Mr. Pascuzzo is of the opinion that the proposed development will occur outside of hazardous lands, hazardous sites and floodways and as such is consistent with the applicable parts of Section 3 (Protecting Public Health and Safety) of the PPS.

[37] The Town's Planning Staff include an analysis of the PPS in the Planning Staff Report and, in concert with Mr. Pascuzzo's opinion, advise that they are satisfied that the ZBL application, and the other companion applications, will be consistent with the PPS.

[38] Based on the foregoing, the Tribunal finds that the ZBL is not inconsistent with the PPS.

Niagara Escarpment Plan, 2017

[39] The Site is designated Escarpment Recreation Area in the NEP. The Appellant argues that the uses permitted by the ZBL conflict with the NEP. Judy Rhodes–Munk, a Planner with the NEC, advised the County in a letter dated March 31, 2017 on the companion subdivision that “The proposal is a permitted use provided the physical and visual impact of development on the Escarpment can be minimized.” It is also Mr. Pascuzzo’s opinion that the uses in the ZBL are permitted by the NEP.

[40] The Appellant argues that the ZBL is also in conflict with a number of other parts of the NEP. Mr. Pascuzzo adequately refutes these alleged conflicts. On this broad issue of conflict with the NEP, it is noted that the NEC did not object to the ZBL or request status in this proceeding and the record indicates that the NEC simply requires that a Visual Impact Assessment and Vegetation Preservation Plan be completed and implemented, as necessary, and this can be done in a future development agreement required as a prerequisite to the lifting of the h provision in the ZBL.

[41] Mr. Pascuzzo indicates that the ZBL does not conflict with the objectives for the Escarpment Recreation Area in the NEP as it: minimizes the negative impacts of recreational development on the environment; provides an area where new recreation and associated development can be concentrated around downhill skiing; maintains the community character, natural heritage features and scenic resources of the escarpment; and conserves archeological areas. There is no conflict between the ZBL and Section 2.5 of the NEP (Development Affecting Steep Slopes and Ravines) in Mr. Pascuzzo’s opinion. The ZBL does not permit any development on a steep slope and a setback from the toe and brow of the Nipissing Ridge is included in Schedule A-1 of the ZBL. The appropriate lands have been zoned Hazard in his opinion. A proposed private road crossing the Nipissing Ridge is not a matter for the ZBL but, according to Mr. Pascuzzo,

is located in an area within which a significant amount of historic disturbance has already occurred. The details of the private road are subject to the processes to be completed as a pre-requisite to the lifting of the h provision in the ZBL.

[42] The Appellant did not provide evidence sufficient to convince the Tribunal that the ZBL is in conflict with the NEP and, based on the more persuasive expert evidence of Mr. Pascuzzo and the position of the NEC, the Tribunal finds that the ZBL is not in conflict with the NEP. The Tribunal believes the Appellant is improperly interpreting the NEP when arguing that the uses in the ZBL are not permitted. The statutory affidavit of Mr. Postma swears that Council's decision to adopt the ZBL is not in conflict with a Provincial Plan.

County Official Plan

[43] The Site is designated Recreational Resort Area in the COP and the Appellant contends that the ZBL fails to conform to the COP in a number of ways. Town Planning Staff and Mr. Pascuzzo disagree.

[44] Following an analysis of the COP in the Planning Staff Report, the Town's Planning Staff advise that they are satisfied that the proposed development will provide suitable public and private recreational amenities and will therefore comply with the COP. Mr. Postma's statutory affidavit swears that Council's decision to adopt the ZBL complies with the COP.

[45] Mr. Pascuzzo adequately addresses all of the concerns raised by the Appellant in respect to the COP. He indicates that the uses permitted in the ZBL are allowed by the COP and that the ZBL conforms to a number of the applicable goals and objectives of the COP as it protects, buffers and enhances natural, cultural, and heritage features, including the archeological areas, clusters residential uses and promotes compatible recreational and social uses within an abundant amount of open space. He also explains why the ZBL conforms to the Natural Environment policies of the COP.

[46] The Appellant's personal opinion that the ZBL fails to conform with the COP is in direct opposition to the opinions of Mr. Pascuzzo and Town Planning Staff. The Tribunal prefers the opinions of the latter. Further, the County did not require an amendment to the COP, did not object to the ZBL and did not ask for status to raise issues or concerns in this proceeding. Based on the foregoing, the Tribunal finds that the ZBL does not fail to conform to the COP.

Town Official Plan

[47] The Site is designated Residential/Recreational Area and Hazard Lands in the TOP and the Appellant believes that the ZBL fails to conform to various policies in the TOP.

[48] In the Appellant's opinion, the number of units or density permitted by the ZBL exceeds what is allowed by the TOP and, in this regard, submitted an analysis of the permitted density based on her personal interpretation of the TOP. Neither Town Planning Staff nor Mr. Pascuzzo agree with the Appellant's interpretation of the density provisions in the TOP and, having considered and assessed both sides of the argument and the applicable policy itself, the Tribunal finds that the 211 units permitted by the ZBL conforms to the TOP. The density allowed by the TOP on the Site is properly calculated using the designations in the OP and not another or alternative method. Mr. Pascuzzo confirms that this approach is correct and consistent with his experience with other properties in the Town.

[49] Mr. Pascuzzo indicates that the ZBL conforms to the TOP and explains why. The ZBL includes uses that comply with the TOP and appropriately interprets and translates the designations in the TOP into Zones. He advises that the ZBL recognizes an area in which residential uses can support and provide access to resort and recreational amenities pursuant to the TOP. Mr. Pascuzzo advises, amongst other matters, that the ZBL complies with the TOP's Community Vision and Guiding Principles and advances a

Recreational Residential community that supports and emphasizes the Town's unique character, protects natural heritage features, includes extensive physical buffering that will ensure that the character of existing and well-established neighbourhoods is maintained and permits a residential development that is compatible with the surrounding neighbourhood, including the scale and density of existing development. He is also satisfied that the ZBL complies with the TOP's cultural heritage policies and the Environmental and Open Space policies in Section B5 of the TOP. Sections C1, C2 and C3 of the TOP set out objectives for water, environment and hazards, watercourse policies and floodplain planning policies and it is Mr. Pascuzzo's evidence that the ZBL conforms to these Sections as it reflects appropriate setbacks to the watercourses and ensures development will not occur on or near hazardous slopes. Mr. Pascuzzo advises that the ZBL complies with the Hazardous Slopes (Section C. 6) policies of the TOP because geotechnical studies have been completed by a qualified firm, appropriate setbacks are included in the ZBL and additional detailed geotechnical study will be completed as part of one of the processes required to be completed as a prerequisite to the lifting of the h provision in the ZBL. As required by the TOP, the appropriate studies have been done to ensure that the impacts on the adjacent road network are known and the h provision in the ZBL provides an opportunity to secure any required road improvements.

[50] The Planning Staff Report includes an analysis of the TOP as it relates to the proposed development and recommends a draft zoning by-law that mirrors the ZBL adopted by Council. It is clear from the Planning Staff Report that staff believe the ZBL conforms to the TOP. Shawn Postma, in his statutory affidavit, swears that the decision of Council to adopt the ZBL conforms with the TOP.

[51] The Tribunal does not accept the Appellant's personal opinion that the ZBL fails to conform to the TOP, in light of the other evidence to the contrary.

GSCA

[52] In respect to the issues raised by the Appellant regarding the policies and regulations of the GSCA, Mr. Pascuzzo advises that: various of the Technical Studies, including the EIS and the storm water management reports, were prepared in consultation with the GSCA to identify and map hazard areas, including studies pertaining to flood susceptibility and erosion susceptibility; and, based on these studies, he is of the opinion that the ZBL incorporates appropriate buffers from natural hazards and is not in conflict with GSCA requirements.

[53] The Tribunal notes that there is nothing on record to suggest that the GSCA has an issue with the ZBL as adopted. The GSCA did not appeal the ZBL, did not ask for status to raise issues and concerns in this proceeding and has Regulations that it can apply, as necessary and as permitted, to development sites within its jurisdiction.

Summary Finding and Other Considerations

[54] The Tribunal finds that the ZBL is not inconsistent with the PPS, is not in conflict with NEP and does not fail to comply with the COP and the TOP. In making this finding the Tribunal relies on and adopts the evidence and opinion of Mr. Pascuzzo. His evidence is preferred over that of the Appellant and the comments of the Participants. The Tribunal finds that its Decision in this matter has appropriate regard to matters of Provincial interest as set out in the Act and is consistent with the PPS and does not conflict with the applicable Provincial Plan.

[55] In cases in which an expert's opinion is being accepted over that of a self represented appellant and/or resident participants, this Member feels it necessary to advise that he does not simply adopt and follow the advice of uncontested expert witnesses but rather examines it from a number of perspectives including his own experience and the merits of the opinions of those in opposition. In this case, the expert evidence of Mr. Pascuzzo is accepted and relied upon. He adequately refuted each of

the Appellant's issues and explained why the ZBL meets the required tests. Further, professional planning staff at the Town echo Mr. Pascuzzo's opinion and there is no evidence that the NEC, County or GSCA have any concerns with the ZBL.

[56] The Tribunal thanks the Participants for their input, their time and effort and their passion for their community, however, their submissions did not convince the Tribunal, in light of the other evidence, that the ZBL is inconsistent, conflicting or non-conforming which is the jurisdiction of the Tribunal in this case.

[57] In respect to a further issue raised by the Appellant, the Tribunal advises that it has no issue with the manner in which the Town accepted and processed the application and adopted the ZBL.

[58] Given the nature and scope of this appeal and proceeding, the Tribunal did not take into consideration or put any reliance on the proposed conditions of draft plan approval proposed by the Town or the County.

[59] The ZBL amends Town Zoning By-law No. 83-40. Mr. Longo advises that the Town has adopted a new Comprehensive Zoning By-law and requests, in the event the Tribunal approves the ZBL, that the Town be given an opportunity to "translate" the ZBL into the language of the new Comprehensive Zoning By-law and to present a translated version of the ZBL to the Tribunal for administrative approval. This is a reasonable and prudent request and is agreed to as set out in the Order.

COSTS

[60] Both the Town and the Applicant have indicated that they may seek a cost award against the Appellant. Any such request must be advanced pursuant to the Tribunal's Rules.

ORDER

[61] The Tribunal orders that:

- A. The appeal is dismissed.
- B. Town of The Blue Mountains ZBL No. 2018-42, a copy of which is appended to this Decision and Order as Attachment 1, is approved.
- C. Pursuant to Paragraph 59 of this Decision, the Town is authorized to submit to the Tribunal for administrative approval a proposed amendment to the Town's new Comprehensive Zoning By-law that is a translation of ZBL No. 2018-42 into the language of the new Comprehensive Zoning By-law. The submission shall be made by 5 p.m. **Monday, June 1, 2020** and the transmittal and request shall include an affidavit from a qualified planner at the Town indicating that the proposed amendment to the new Comprehensive Zoning By-law is consistent with ZBL No. 2018-42 as approved by the Tribunal, consistent with the PPS, not in conflict with the NEP and in conformity with the COP and the TOP.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Parkbridge-Craigleith
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The Corporation of the Town of The Blue Mountains

By-Law Number 2018 – 42

Being a By-law to amend Zoning By-law No. 83-40 which may be cited as "The Township of Collingwood Zoning By-law"

Whereas the Council of The Corporation of the Town of The Blue Mountains deems it necessary in the public interest to pass a by-law to amend By-law No. 83-40;

And Whereas pursuant to the provisions of Section 34 and 36 of the Planning Act, R.S.O. 1990, c. P.13, the By-law may be amended by Council of the Municipality;

And Whereas pursuant to the provisions of Section 46 of the Planning Act, R.S.O. 1990, c. P.13, a By-law may be enacted under Section 34 of the Planning Act to permit more than one land lease community home on a parcel of land;

Now Therefore Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. Map 24 to Schedule 'A' of the Township of Collingwood Zoning By-law 83-40 as amended, is hereby further amended by rezoning the subject lands to the Residential 'R6-286-h' Zone, Private Open Space 'OS2' Zone and Hazard 'H' Zone for those lands lying and being in the Town of The Blue Mountains, comprised of Plan 529 Part Lot 21 Concession 2, being Part Lot 161, 172 and 173 as indicated on Key Map Schedule 'A-1'.
2. Section 32 to the Zoning By-law of the Township of Collingwood, being By-law 83-40, as amended, is hereby amended by adding Exception 286 as follows:

"286 Map 24 – Part Lot 20 and 21, Concession 2 (Parkbridge-Craigleith)

These lands shall be used for a maximum of 211 Land Lease Community Homes comprised of a minimum 45 single detached dwellings, and a minimum of 100 horizontally attached townhouse dwellings. A maximum 465 square metre Private Clubhouse, maximum 370 square metre Private Storage Facility and uses, buildings and structures accessory thereto are also permitted.

In addition to the list of permitted uses and required minimum yard setbacks of the Residential R6 Zone; and the minimum parking space requirements of Section 5.14, the following provisions shall apply:

- i. All buildings and structures shall be located within the Building Envelopes identified on Schedule 'A-2';
- ii. The maximum permitted height shall be 9.5 metres for single detached dwellings, 11.0 metres for townhouse dwellings, 7.5 metres for the Private Clubhouse, 6.5 metres for the Private Storage Facility and 4.5 metres for all other buildings and structures;
- iii. No building or structure shall be located any closer than 2.0 metres from a private road or any another building or structure;
- iv. A minimum of 80 visitor parking spaces shall be provided;

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3. In accordance with the provisions of Section 36 of the Planning Act, R.S.O. 1990, c. P. 13, as amended, the Holding 'h' symbol shall not be removed from the whole or part of the lands until such time as the following has been completed:

- i. Execution of a Subdivision Agreement;
- ii. Registration of a Plan of Subdivision;
- iii. Execution of a Site Plan Agreement


Until such time as the Holding 'h' symbol is removed, the lands shall only be used for those uses that existed as of the date of passing of this By-law.

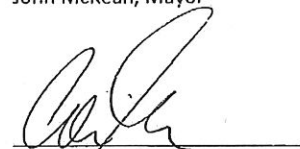
4. Notwithstanding the requirements of Section 3 above, a maximum of six (6) model home(s) may be constructed prior to the removal of the Holding 'h' Symbol provided that the owner enters into a Model Home Agreement to the satisfaction of the Town of The Blue Mountains.

5. That Schedule 'A-1' and Schedule 'A-2' are declared to form part of this By-law.

And Further that this By-law shall come into force and take effect upon the enactment thereof.

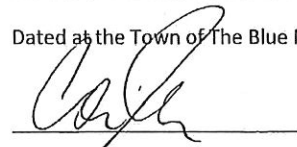
Enacted and passed this 9th day of July, 2018


John McKean, Mayor


Corrina Giles, Clerk

I hereby certify that the foregoing is a true copy of By-law No. 2018-~~42~~ as enacted by the Council of The Corporation of the Town of The Blue Mountains on the 9th day of July, 2018.

Dated at the Town of The Blue Mountains, this 9th day of July, 2018.


Corrina Giles, Clerk





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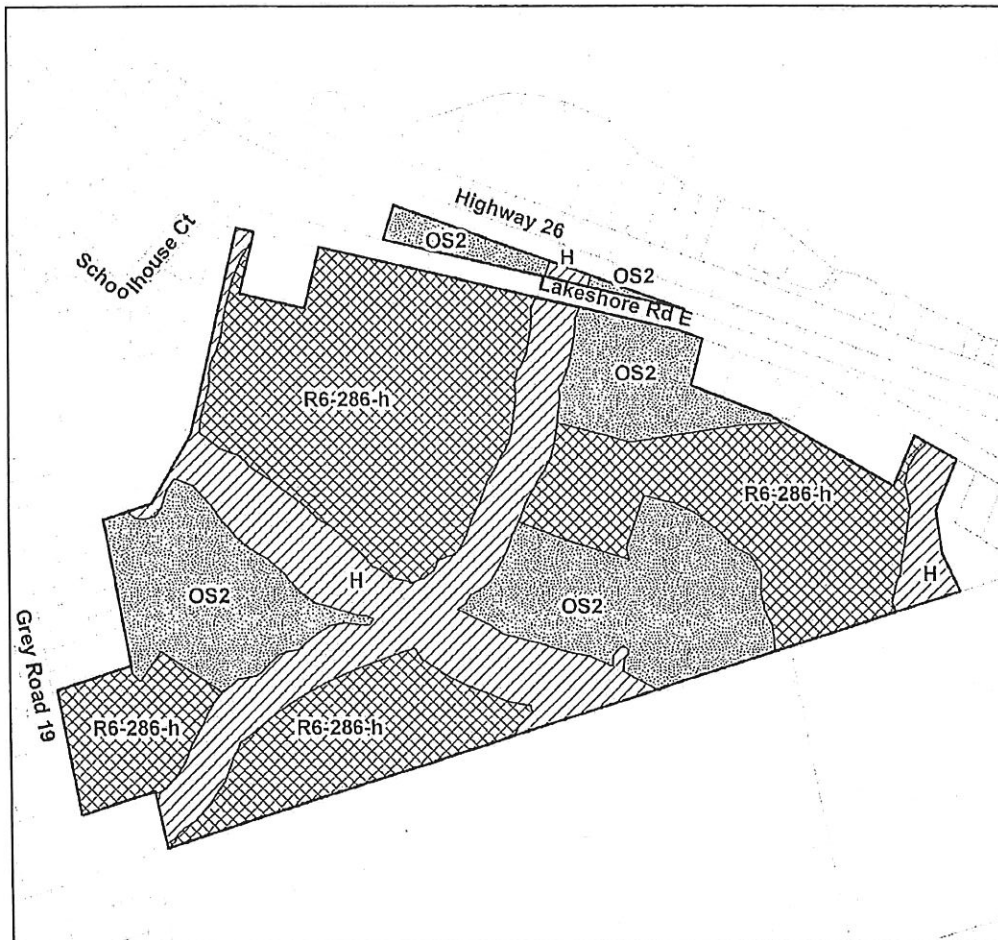


Town of The Blue Mountains

Schedule A-1

By-Law No. 2018- 42

-  Area affected by this amendment
-  Hazard 'H'
-  Private Open Space 'OS2'
-  Residential 'R6-286-h'



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Town of The Blue Mountains

Schedule A-2

By-Law No. 2018- 42

