

ISSUE DATE:

Aug. 17, 2010



PL030216

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

George H. Fleming and Associates and Condo Developments Limited have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Craigeith Camperdown Secondary Plan to re-designate land on Part of Lots 22, 23, 24, Concession 3, of the Town of The Blue Mountains, from Hazard Lands and Rural to Recreational Residential and Hazard Lands to permit the development 241 residential units

OMB Case No. PL030216

OMB File No. O030036

George H. Fleming and Associates and Condo Developments Limited have 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 refusal or neglect to enact a proposed amendment to Zoning By-law 83-49 of the Town of the Blue Mountains to rezone lands respecting Part of Lots 22, 23 and 24, Concession 3, from Limited Rural A2 and Hazard (H) to Residential Third Density (R3), Residential Third Density Exception (R3-*), Public Open Space (OS1), Development D and Hazard (H) for the purpose of a residential subdivision

OMB Case No. PL030216

O.M.B. File No. Z050135

George H. Fleming and Associates and Condominium Developments Limited have 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 Part of Lots 22, 23 and 24, Concession 3

OMB Case No. PL030216

O.M.B. File No. S050023

APPEARANCES:

Parties

George H. Fleming & Associates Limited
and Condominium Developments Limited

Town of Blue Mountain

Niagara Escarpment Commission

County of Grey

Counsel*/Agent

David Slade

John Metras*

Judy Rhodes-Monk

Randy Scherzer

DECISION DELIVERED BY A. CHRISTOU AND ORDER OF THE BOARD

George H. Fleming & Associates Limited and Condo Developments Limited (Applicant/Appellant) have appealed to the Ontario Municipal Board the lack of a decision of the County of Grey and the failure of the Town of The Blue Mountains to make a decision on an Official Plan Amendment application, a related Zoning By-law Amendment Application and a Draft Plan of Subdivision. The lands subject to these applications are located at Part of Lots 22, 23 and 24, Concession 3, in the Town of The Blue Mountains (former Township of Collingwood).

This was a Teleconference hearing to deal with this matter. At the start of the hearing, Mr. Metras, Counsel for the Town of Blue Mountain, advised the Board that a settlement has been reached with the Parties and Minutes of Settlement, dated June 8, 2010, have been executed, together with Attachments "A", "B", "C" and Draft Plan of Subdivision Conditions, which represent the agreement G.H. Fleming & Associates Ltd and Condo Developments Ltd has entered into with the Niagara Escarpment Commission, the County of Grey and the Town of The Blue Mountains. This is all described in the Affidavit of Peter Tollefsen, Director of Special Projects (formerly Director of Planning) for the Town of Collingwood, Attachment E to the Minutes of Settlement.

It was Mr. Tollefsen's Affidavit and *viva voce* evidence that:

1. The applicant submitted an Official Plan Amendment application to the Town in 2002.
2. In 2007 the Town's Official Plan (through Official Plan Amendment No 4) was approved by the OMB. This effectively resolved the appeal to the OP.
3. In 2005, applications were also submitted for Draft Plan of Subdivision and Zoning By-Law Amendment. With Council having not made a decision, all these applications were referred to the Ontario Municipal Board in 2005.
4. The municipality held a non-statutory Public meeting on Dec 1, 2008.
5. In 2009, a significant matter was resolved regarding Growth and Settlement as it relates to shoreline dedication.

6. In 2010 municipal staff updated Council with an agreed upon Zoning By-Law Amendment, Plan of Subdivision Conditions, Pre-Development Agreement and Minutes of Settlement. On Feb. 22, 2010 Council authorized the settlement of the OMB appeals.

Mr. Tollefsen also testified that the Modification to the Official Plan (Attachment "A" to the Minutes of Settlement) is a correction to Schedule "B" to the OP Maximum Unit Yield Service District 1 - CRAIGLEITH (for property A28a and A28b the Maximum Unit Yield total shall be 239) for the subject lands. The 239 unit yield now is in compliance with the 47.91 hectares designated for development at a density of 5 units per hectare. Ten additional units are applied to the subject lands that account for unused density from a previous phase. The 249 units within the Plan of Subdivision are therefore in conformity with the density policies of the Town of The Blue Mountains' Official Plan.

Further, the Preliminary Subdivision Agreement (Attachment "B" to the Minutes of Settlement) represents agreement on financial contributions, provision of recreational facilities and or payments, provision of municipal services, Development Charges (DC) prepayments and prepaid DC credits, work on the lands, financial arrangements and insurance. This satisfies the requirement of a Master Development Agreement outlined within Exception 50 of Section 13 of the Official Plan.

According to Mr. Tollefsen, the Zoning By-Law (Attachment "C" to the Minutes of Settlement) amends Zoning By-Law No. 83-40 and provides appropriate zones and regulations for the Draft Plan of Subdivision.

Similarly, the Draft Plan of Subdivision Approval and the Conditions of Draft Plan Approval implement the planning requirements for the County of Grey, Town of The Blue Mountains and the Niagara Escarpment Commission.

Mr. Tollefsen opined that the Minutes of Settlement, Modifications to the Official Plan, Preliminary Subdivision Agreement, Zoning By-Law Amendment and Draft Plan of Subdivision Approval and Conditions are consistent with Section 1.1 of the Provincial Policy Statement - "Managing and Directing Land Use To Achieve Efficient Development and Land Use Patterns", conforms to the Town of The Blue Mountains Official Plan and represents good planning.

Mr. Slade and Mr. Scherzer concurred, and Ms. Rhodes-Monk indicated that the Niagara Escarpment Commission's concerns have been satisfied.

Mr. Metras submitted, with the concurrence of the Parties, that if the Board was to approve the subdivision, it should allow the County to issue the final approval, consistent with s. 51 and 56.1 of the *Planning Act*.

DISPOSITION

The Board having heard both affidavit and *viva voce* evidence on the appeals by George H. Fleming & Associates Limited and Condo Developments Limited, and the Parties having settled, is satisfied that the Official Plan Amendment (Attachment "B" to the Minutes of Settlement) and the Zoning By-law Amendment (Attachment "C" to the Minutes of Settlement) which provide for 239 residential units and 10 additional units that were a shortfall to the previous phase of the development, is consistent with the Official Plan which designates the land for residential purposes. The evidence confirms the development is consistent with provincial policy and represents good planning.

The Board also finds that the Draft Plan of Subdivision and the Conditions of Draft Plan Approval implement the planning requirements for the County of Grey, the Town of The Blue Mountains and the Niagara Escarpment Commission. This subdivision will complete the development of the area, as it was contemplated in the Official Plan and is consistent with s. 51 and 56.1 of the *Planning Act*.

THE BOARD ORDERS that the appeal under subsection 22(7) of the *Planning Act* against the Official Plan of the Corporation of the Town of the Blue Mountains, to permit the development 249 residential units is allowed in part and the Official Plan is amended as set out in Attachment 1 to this Order. In all other respects, the Board orders that the appeal is dismissed.

AND THE BOARD ORDERS that the appeal against By-law No. 83-40 of the Corporation of the Town of the Blue Mountains is allowed in part, and By-law No. 83-40 is amended as set out in Attachment 1 to this Order. In all other respects, the Board orders that the appeal is dismissed.

AND THE BOARD ORDERS that the appeal is allowed and the draft plan shown on the plan prepared by Paul Thompsen, OLS, dated December 18, 2009, comprising Part of Lots 22, 23 and 24, Concession 3, Town of Blue Mountains (formerly Township of Collingwood), County of Grey, is approved subject to the fulfillment of the conditions set out in Attachment 1 to this Order;

AND THE BOARD ALSO ORDERS that pursuant to subsection 51(56.1) of the Planning Act, the County of Grey shall be the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the Act. In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

This is the Order of the Board.

“A. Christou”

A. CHRISTOU
MEMBER

ATTACHMENT 1

- Applicant: G.H. Fleming & Associates Limited & Condo Developments Limited
- Municipality: Town of The Blue Mountains
- Location: Part of Lots 22, 23 & 24, Concession 3
(Geographic Township of Collingwood)

CONDITIONS OF DRAFT APPROVAL

No. Conditions

1. That this approval applies to the draft plan prepared by D.C. Slade Consultants Inc. for G.H. Fleming & Associates and Condo Developments Limited revised December 18, 2009 (Drawing 296-99-DP11) showing a total of 101 single detached residential lots (Lots 1 to 101), six internal road allowances (Streets A to F), one block for future multiple residential development of 148 units (Block 115), six blocks for walkway and/or servicing purposes (Blocks 102 to 107), three blocks for stormwater management purposes (Blocks 116, 117 and 118), two blocks for future access and servicing easements (Blocks 113 & 114) and five blocks for open space and park purposes (Blocks 108, 109, 110, 111 and 112) on Part of Lots 22, 23 & 24, Concession 3 (Geographic Township of Collingwood) Town of The Blue Mountains, County of Grey.
 2. That a Subdivision Agreement shall be entered into and executed by the applicant and the Town of The Blue Mountains to satisfy all financial, legal and engineering matters, growth and settlement obligations, as well as landscaping and the installation of municipal services and other requirements of the Town and the County, including the payment of development charges in accordance with their applicable Development Charges By-laws.
 3. That the Subdivision Agreement include provisions for financial contributions in lieu of providing the following:
 - a. Shoreline Dedication in accordance with the increased density provisions of Section 6.5.3 of the Town of The Blue Mountains Official Plan
 - b. Recreational Lands and/or Facilities in accordance with the increased density provisions of Section 6.5.3 of the Town of The Blue Mountains Official Plan
 4. That the road allowances included in this draft plan shown as Streets A, B, C, D, E and F shall be dedicated as public highways.
 5. That the street shall be named to the satisfaction of the Town of The Blue Mountains in accordance with the Town's Street Naming Policy.
 6. That Blocks 102 to 114 and 116 be conveyed to the Town of The Blue Mountains for walkways, open space, roads, drainage and stormwater management purposes.
 7. That Block 112 be conveyed to the Town for public park purposes with same constituting the 5% parkland dedication for Phase 1 only as required under Section 51.1 of the Planning Act, R.S.O. 1990 as amended.
 8. That Blocks 119 to 124 be conveyed to the Town of The Blue Mountains for 0.3 meter reserve purposes.
 9. That Block 125 be conveyed to the Town of The Blue Mountains for road widening purposes.
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10. That prior to final approval being given by the County, it is advised by the Town that appropriate zoning is in effect for this proposed subdivision.
 11. That prior to the initiation of any site grading, tree removal or servicing, and prior to the registration of the Plan, submit for the approval of the Town of The Blue Mountains, Grey Sauble Conservation Authority and the County of Grey, the following:
 - a. A detailed engineering and drainage report which describes the stormwater drainage system for the proposed development on the subject lands. The report should include:
 - i. Plans illustrating how the drainage system will tie into the drainage of surrounding properties
 - ii. The stormwater management techniques which may be required to control minor or major flows
 - iii. How external flows will be accommodated and the design capacity of the receiving system
 - iv. Location and description of all outlets and other facilities which may require permits
 - v. Proposed methods for controlling or minimizing erosion and siltation on-site and/or in downstream areas during and after construction
 - b. Overall grading plans for the subject lands.
 - c. Agree in the Subdivision Agreement, in wording acceptable to the Town of The Blue Mountains and the Grey Sauble Conservation Authority:
 - i. To carry out, or cause to be carried out, all the works referred to in condition 11. a. above
 - ii. To obtain the necessary permits from the Grey Sauble Conservation Authority
 - iii. Prior to the initiation of any grading or construction on the site, to erect any silt fence as referred to in condition 11.a.(v) above.
 12. Prior to the initiation of any site grading or servicing and prior to registration of this plan, submit for the approval of the Town Engineer a detailed soils investigation of the site prepared by a qualified geotechnical engineer. A copy of this report shall also be submitted to the Town's Chief Building Official.
 13. Prior to the initiation of any site grading or servicing and prior to the registration of this plan, submit to the Town:
 - a. A Phase 1 Environmental Site Assessment
 - b. A Phase 2 Environmental Site Assessment if required as a result of the Phase 1 Environmental Site Assessment
 - c. A decommissioning report if contaminated material has been identified and is removed, or alternatively, a copy of the risk assessment together with a copy of the written acknowledgement of its acceptance by the Ministry of the Environment, and
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- d. A copy of a Record of Site Condition and confirmation of the filing of the Record of Site Condition in the Environmental Site Registry.
 14. Prior to the initiation of any site grading or servicing, the applicant shall provide a report identifying all existing water wells and private sewage disposal systems on the lands. The applicant shall provide verification to the satisfaction of the Town that all wells and septic systems identified have been decommissioned in accordance with all applicable laws and regulations
 15. That prior to final approval, the applicant shall provide a further engineering study with respect to downstream structures and to develop estimated costs and timelines associated with culvert maintenance and replacement program. Such work is to be completed at the sole cost and expense of the applicant and be in accordance with a Terms of Reference approved by the Town of The Blue Mountains. The details of the work to be completed shall be included in the Subdivision Agreement along with a commitment from the Town to exercise best efforts in collecting a percentage of the cost of the works from future development benefactors.
 16. Prior to final approval, the applicant shall submit for review and approval by the Ministry of Culture an Archeological Assessment (Stage 1 and 2 Report).
 17. That the Subdivision Agreement contains clauses satisfactory to the Ministry of Culture, recognizing that should human remains or other cultural heritage materials or features be discovered on site that the requirements of the Ontario Heritage Act shall be adhered to.
 18. That a Tree Preservation and Landscape Plan, which includes the identification of building envelopes, be prepared for the approval of the Niagara Escarpment Commission prior to registration of the Plan. The Tree Preservation and Landscape Plan should be prepared in concert with the required Grading Plan. The Tree Preservation and Landscape Plan shall be incorporated into the Subdivision Agreement and if applicable, into conservation easements.
 19. That the applicant shall save and/or remove any trees and vegetation on the subject lands as required by the Tree Preservation and Landscape Plan.
 20. That the applicant shall make satisfactory arrangements with Canada Post and the Town's Engineering and Public Works department, for inclusion in the Subdivision Agreement, for the installation of Canada Post Community Mailboxes and shall indicate these locations on the appropriate servicing plans. The applicant shall further provide the following for the Community Mailboxes:
 - a. An appropriately sized sidewalk section (concrete pad), per Canada Post standards, to place the mailbox on, plus any required walkway access and/or curb depressions for wheelchair access.
 - b. A suitable temporary Community Mailbox location which may be utilized by Canada Post until the curbs, sidewalks and final grading have been completed at the permanent Community Mailbox Site locations to enable Canada Post to provide mail service to new residences as soon as homes are occupied.
 21. The horizontal and vertical alignments of all roads and underground services including their intersection geometrics shall be designed to the Town of The Blue Mountains Engineering
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- Standards. In this regard, minor revisions to the road pattern and intersection alignments may be required.
22. Prior to the approval of any engineering drawings, arrangements shall be made to the satisfaction of the Town for a suitable construction traffic route.
 23. The street lighting system on all roadways for this subdivision shall be designed and constructed in accordance with the Town of The Blue Mountains Engineering Standards or as otherwise approved by Town.
 24. That all easements and/or agreements for drainage, gas line or utility purposes shall be dedicated to the appropriate authority or public utility. Should the relocation of any utilities be required as a result of this development, that all associated costs be at the Applicant's expense.
 25. That prior to final approval, a copy of the fully executed Subdivision Agreement between the applicant and the municipality shall be provided to the County of Grey.
 26. That prior to final approval being given, that the County is advised in writing by the Niagara Escarpment Commission, how Condition 18 has been satisfied.
 27. That prior to final approval being given that the County is advised in writing by Canada Post Corporation how Condition 20 has been satisfied.
 28. That prior to final approval being given by the County, it is advised in writing by the Grey Sauble Conservation Authority how Condition 11 has been satisfied.
 29. That prior to final approval being given by the County, it is advised in writing by the Ministry of Culture, how Conditions 16 and 17 have been satisfied.
 30. That prior to final approval being given by the County, it is advised in writing by the Town of The Blue Mountains how Conditions 2 to 25 inclusive, have been satisfied.
 31. If final approval is not given to the plan within three years of the draft approval date, and no extensions have been granted, draft approval shall lapse under Subsection 51(32) of the Planning Act, RSO 1990, as amended. If the applicant wishes to request an extension to draft approval, a written explanation along with the applicable application fee and a resolution from the local municipality must be received by the County of Grey, Director of Planning prior to the lapsing date. Please note that an updated review of the Plan and revisions to the conditions of approval may be necessary if an extension is to be granted.
 32. That the applicant provides the County of Grey with a computer disk containing a digitized copy of the Final Plan in a format acceptable to the County of Grey.
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NOTES TO DRAFT APPROVAL

NOTES TO DRAFT APPROVAL

1. It is the applicant's responsibility to fulfil the conditions of draft approval and to ensure that the required clearance letters are forwarded by the appropriate agencies to the **County of Grey, quoting the County** file number. Completion of the Application Form for Final Approval of a Subdivision is required.
2. We suggest you make yourself aware of the following subsections of the Land Titles Act:
 - a) subsection 143(1) which requires all new plans to be registered in a Land Titles system if the land is situated in a land titles division; and
 - b) subsection 143(2) allows certain exceptions.
3. Development directly adjacent to or near a provincial highway system may require permits (access, building and land use, and sign) from the Ministry of Transportation, under The Public Transportation and Highway Improvement Act. Consultation with the Ministry of Transportation Southwestern Regional Office at 659 Exeter Road, London Ontario N6E 1L3 (519-873-4100) is recommended.
4. It is recommended that the applicant or his consultant contact the Town Engineering and Public Works Department and the Grey Sauble Conservation Authority prior to preparing the above report to clarify the specific requirements of this development.
5. Clearances are required from the following agencies:

<p>Town of The Blue Mountains 26 Bridge Street Thornbury, Ontario, N0H 2P0</p> <p>Niagara Escarpment Commission 99 King Street East Thornbury, ON N0H 2P0</p> <p>Ministry of Culture 435 South James Street, Suite 334 Thunder Bay, ON P7E 6S7</p>	<p>Grey Sauble Conservation Authority 237897 Inglis Falls Road, RR 4 Owen Sound, Ontario, N4K 5N6</p> <p>Canada Post Delivery Planning 73 Morrow Road Barrie, ON L4N 3V0</p> <p>Ministry of Natural Resources 2284 Nursery Road Midhurst, ON L0L 1X0</p>
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6. An electrical distribution line operating at below 50,000 volts might be located within the area affected by this development or abutting this development. Section 186 - Proximity - of the Regulations for Construction Projects in the Occupational Health and Safety Act, requires that no object be brought closer than 3 metres (10 feet) to the energized conductor. It is the applicant's responsibility to be aware, and to make all personnel on site aware, that all equipment and personnel must come no closer than the distance specified in the Act. They should also be aware that the electrical conductors can raise and lower without warning, depending on the electrical demand placed on the line. Warning signs should be posted on the wood poles supporting the conductors stating "DANGER - Overhead Electrical Wires" in all locations where personnel and construction vehicles might come in close proximity to the conductors.
7. Portions of the Plan may be subject to the Grey Sauble Conservation Authority's 'Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses' (Regulation No. 151/06). As such, written permission may be required from the Authority prior to any development occurring on the subject property.

8. Inauguration or extension of a piped water supply, a sewage system or a storm drainage system, is subject to the approval of the Ministry of the Environment under the Ontario Water Resources Act, RSO 1990, as amended.
 9. All measurements in subdivision final plans must be presented in metric units.
 10. It is required by the Town that the Applicant register the Subdivision Agreement as provided by subsection 51(26) of the Planning Act, RSO 1990 as amended, against the land to which it applies, as notice to prospective purchasers.
 11. The final plan approved by the County must be registered within thirty (30) days or the County may withdraw its approval under subsection 51(59) of the Planning Act RSO 1990, as amended.
 12. Final approval of the subdivision plan approved by the OMB is given to the County of grey pursuant to Section 51 (56.1) of the Planning Act.
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THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

BY-LAW NO. 2010 - _____

Being a By-law to amend Zoning By-law No. 83-40, as amended.

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 of the Planning Act, R.S.O. 1990, c. P.13, the By-law may be amended by Council of the Municipality;

NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS ENACTS AS FOLLOWS:

1. This By-law applies to the lands comprised of Part of Lots 22, 23 and 24, Concession 3 as set out in Map Schedule "A-1" (the "subject lands").

2. Zoning By-law No. 83-40, as amended, is hereby further amended as follows:

Map 19 to Schedule 'A' is amended by rezoning the subject lands to the Residential 'R3-h' Zone, Residential 'R3-219- h', Residential 'R6-220-h' Zone, Public Open Space 'OS1' Zone and Hazard 'H' Zone as set out on Map Schedule "A-1"

3. Zoning By-law No. 83-40, as amended is hereby further amended as follows:

By adding the following to Section 32:

- 219. The minimum lot frontage shall be 8.0 metres.
- 220. a. The maximum number of dwelling units shall be 148.
- b. The minimum required setback for any building or structure from the Georgian Trail shall be 30.0 metres.

4. The removal of the holding 'h' symbol on all, or a portion of the subject lands, in accordance with Section 36 of the Planning Act, shall be conditional upon the execution of a Subdivision Agreement and the Registration of a Plan of Subdivision and/or the execution of a Site Plan Agreement, as the case may be.

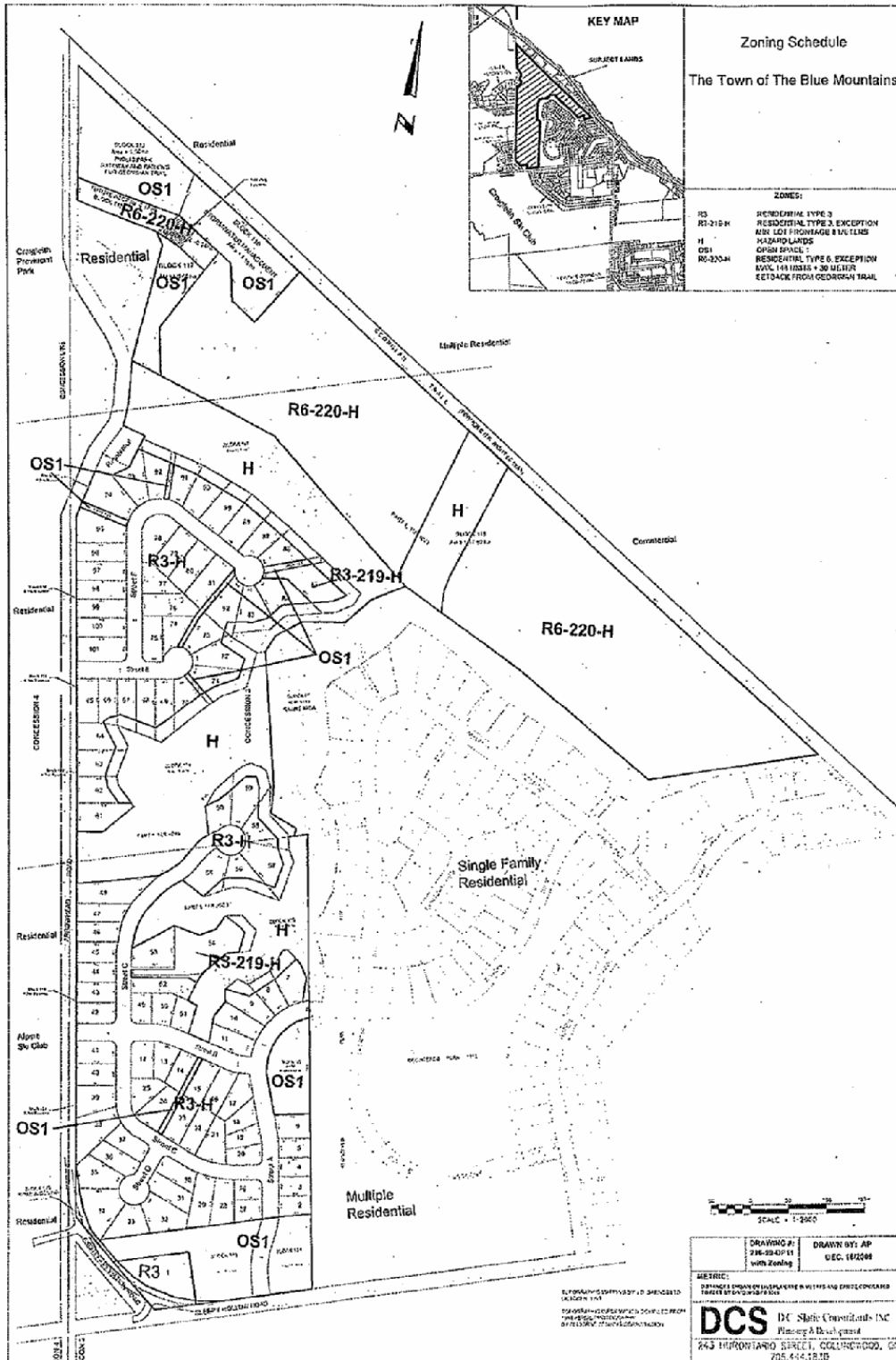
5. Schedule "A-1" is hereby declared to form part of this By-law.

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

Enacted and passed this _____th day of _____, 2010.

Ellen Anderson, Mayor

Corrina Giles, Clerk



SCHEDULE 'B' - MAXIMUM UNIT YIELDS
 TOWN OF THE BLUE MOUNTAINS OFFICIAL PLAN
 (AS AMENDED BY OPA 4)

Service District 1 - CRAIGLEITH

Property	Official Plan Designation	Area Designated (ha)	Maximum Unit Yield
A1a	MDR-33	3.26	
A1b	MDR-33	2.28	
A1c	MDR-33	2.56	
A1d	MDR-33	2.26	
A1e	MDR-33	1.73	
A2	PR-50	12.60	100
A3	PR-50	17.42	189
A4a	RR-28	4.33	261
A4b	RR-28	6.62	
A4c	PR-28	18.70	
A4d	PR-28	1.61	
A4e	PR-28	4.75	
A4f	PR-28	10.00	713
A5	RR-50	4.30	21
A6	RR-50	3.10	15
A7	PR, RR-50	2.52	265
A8	RR-50	5.51	69
A9	RR-50	3.36	81
A10	RR-50	1.24	19
A11a	MDR-45	0.91	
A11b	MDR-45	0.39	102
A12	MDR	1.80	25
A13	RR-28	0.39	12
A15	RR-46	3.39	41
A17a	RR-50	12.01	
A17b	RR-50	20.36	
A17c	RR-50	1.00	166
A18a	RR	1.02	
A18b	RR	14.47	77
A19	RR-50	1.21	6
A20	RR-50	20.14	100
A21	RR-50	2.16	10
A22	RR-50	0.90	4
A23	RR-50	1.47	9
A24	PR-30	0.34	16
A25	RR	3.87	19
A26	RR	2.03	10
A27	RR-47	18.47	130
A28a	RR-50	32.23	
A28b	RR-50	15.71	239
A29	RR-50	3.33	16
A30a	RR-50	10.22	
A30b	RR-50	0.76	
A30c	RR-50	1.62	65
A31	RR-51	19.89	99
A32	RR-51	16.53	82
A33	RR-51	13.81	69
TOTAL		328.58	3023