

Addendum to Report PDR-PCD-22-16

To: Chair McQueen and Members of the Planning and Community Development Committee
From: Scott Taylor, Senior Planner
Meeting Date: August 11, 2016
Subject: **Appeals to the 2016 Town of The Blue Mountains Official Plan**
Status: Recommendation A adopted as presented per Resolution PCD99-16; Endorsed by County Council September 6, 2016 per Resolution CC111-16;

Recommendation(s)

WHEREAS the County of Grey approved the Town of The Blue Mountains Official Plan on June 21, 2016;

AND WHEREAS the Town of The Blue Mountains Official Plan has been subsequently appealed by six (6) parties;

AND WHEREAS the County has an approved protocol on the County's attendance at Ontario Municipal Board proceedings;

AND WHEREAS the County was actively involved in the background work and approval of the Town of The Blue Mountains Official Plan, including making a number of modifications to the Plan;

AND WHEREAS the decision on the Town's Plan has the potential to impact multiple County interests including but not limited to economic development, growth management, housing, environmental, and transportation matters;

Option A

NOW THEREFORE BE IT RESOLVED that County staff and the County solicitor be directed to participate in the Ontario Municipal Board proceedings as a 'party' with respect to the Town of The Blue Mountains Official Plan in a collaborative fashion with the Town of The Blue Mountains;

AND THAT staff be directed to explore possible settlement opportunities with the Town and the appellants;

AND FURTHER THAT staff be directed to share legal services with the Town of The Blue Mountains, should the Town be willing to do so.

Option B

NOW THEREFORE BE IT RESOLVED that County staff and the County solicitor be directed to participate in the Ontario Municipal Board proceedings as a ‘participant’ with respect to the Town of The Blue Mountains Official Plan in a collaborative fashion with the Town of The Blue Mountains;

AND THAT staff be directed to explore possible settlement opportunities with the Town and the appellants;

Option C

NOW THEREFORE BE IT RESOLVED the County will not participate in the Ontario Municipal Board proceedings with respect to the Town of The Blue Mountains Official Plan;

AND THAT staff be directed to inform the Ontario Municipal Board, the appellants and the Town of the County’s non-participation in this regard;

AND FURTHER THAT the County requests notification from the Ontario Municipal Board of any decision rendered with respect to the Town of The Blue Mountains Official Plan.

Background

On June 21, 2016 the County approved the 2016 Town of The Blue Mountains Official Plan (TBMOP) with a series of modifications to the Plan. Notice of the County’s decision was given on June 30, 2016, and the last date of appeal was July 20, 2016. By the end of the appeal period the County received seven appeals; however one appeal was subsequently withdrawn before the package was sent onto the Ontario Municipal Board (OMB). The six remaining appellants to the TBMOP are;

1. Ivi Xhelili,
2. Tomson Xhelili,
3. Elisabeth Ecker Vanderploeg,
4. Dinaz Dadyburjor,
5. Gerard Borean, Parente Borean LLP, on behalf of Eden Oak (Trailshead) Inc.,
and

6. Quinto M. Annibale, Loopstra Nixon LLP, on behalf of MacPherson Builders (Blue Mountains) Limited.

Appeals 1 – 4 listed above all relate to the removal of a former exception to the 'Recreational Ski' designation, which limited new base lodges and maintenance facilities. This matter appears to be site-specific in nature.

Appeal 5 relates to a development which is presently under appeal to the OMB, known as Eden Oak (Trailshead). In their appeal letter the appellants have raised concern over the density, open space, and bonusing provisions, in addition to the hazard land mapping. They have also noted that their concerns are not limited to these matters. A prehearing is coming up for the existing Eden Oak OMB matter on August 11, 2016.

Appeal 6 relates to a proposed development known as the 'Home Farm' for which the County and Town have active development applications before them. No appeals have been submitted on the active development applications, and they are still working their way through the development review process. In their appeal letter the appellants have questioned an Institutional designation on a portion of the development lands, as well as hazard and woodlands mapping related to their property.

A link to the background studies on the Home Farm and Eden Oak applications has been included below.

[Link to Application Background Studies](#)

In 2013 County Council adopted a new approach towards dealing with County attendance at OMB proceedings. Details of the County's approach can be found in the background report PDR-PCD-08-13 linked below.

[PDR-PCD-08-13 Ontario Municipal Board Attendance Report](#)

Based on the criteria summarized in report PDR-PCD-08-13 the County's attendance at the OMB proceedings for the TBMOP is not automatic. The County could choose to participate as a 'party', a 'participant' or choose not to participate in the OMB proceedings. Each of these options will be assessed in the 'Evaluation of Options' section below. Furthermore it must also be noted that the Town of The Blue Mountains would also have generally the same options described above. Should the two municipalities involve themselves in the OMB proceedings, then they would have the option of partnering, or proceeding individually.

Based on the appeals submitted to the TBMOP, County staff are hopeful that a settlement or partial settlement may be possible, which would either negate the need for a hearing, or reduce the length of a potential hearing.

Evaluation of Options

The evaluation of options is generally caveated with the knowledge that there is no method by which to pre-judge the OMB's decision, or handling of a matter before the Board. Participation in a Board proceeding, or the decision to waive County involvement, would offer no certainty that County interests will be protected in the Board's ruling on the matter.

Option A – County Party Status Involvement in the OMB Proceedings

The County was the approval authority for TBMOP; however that authority has now shifted to the OMB based on the appeals. The 2016 TBMOP is implementing the County Official Plan and multiple County interests including but not limited to economic development, growth management, housing, environmental, and transportation matters. County staff have been actively involved in not only the approval, but also the pre-approval of the TBMOP, dating back to 2011. To protect County interests, and to be supportive of the Town, it may be worthwhile having the County participate, with 'party status', in the OMB proceedings for this matter. Having party status allows the County to call expert witnesses and to have the County solicitor cross examine the appellant's expert witnesses. As noted above, County staff remain hopeful that a settlement or partial settlement may be possible on the TBMOP.

Option B – County Participant Status Involvement in the OMB

Proceedings

The County would also have the ability to participate in the proceedings as a 'participant'; however in doing so the County would generally be permitted only one opportunity to speak or give a statement and would not have the ability to cross examine the appellant's expert witnesses. Involvement via participant status may give the County very limited input into a potential settlement, prior to a contested hearing. County staff would generally not recommend participating in OMB proceedings with participant status.

Option C – No County Involvement in the OMB Proceedings

The County also has the option to waive their participation in the OMB proceedings; however in doing so the County would have less input into the outcome of the hearing, and a resulting Board order could have little regard for County interests. Should Council decide not to participate in the hearing County Planning staff could still be summonsed to provide evidence at the hearing.

Staff are recommending Option A, but have provided Options B and C for the Committee's consideration as well.

Financial/Staffing/Legal/Information Technology Considerations

At this point it is difficult to predict the staffing time, or legal costs, associated with maintaining party status at the OMB on the TBMOP. If a settlement can be reached which fully or partially negates the need for an OMB hearing then staffing and legal costs would be minimized. However if a contested hearing is required, it is likely that a hearing could last between one to two weeks. In the above-referenced OMB attendance report, there is an example of a hearing a few years ago for which the County participated with party status. Legal costs for this eight day hearing were approximately \$19,000.00 and staff time for the hearing was approximately three to four weeks, including preparation and hearing time. The legal costs associated with the TBMOP hearing could also be reduced should the County split legal costs with the Town.

Should the County choose to participate in the OMB proceedings as a participant then staffing time and legal costs should be vastly reduced. However, by opting to be involved via participant status the County would have much less input into the OMB proceedings.

Should the County choose not to participate in the hearing it is unlikely that the County would incur any further legal costs. County staff time may still be summonsed to appear at the hearing; however this time would be minimized compared to the alternative of having the County appear as a party to the hearing.

Link to Strategic Goals / Priorities

An official plan has the ability to influence a number of the goals contained within the County of Grey Corporate Strategic Plan including goals 1, 2, and 5.

Action item 2.10 with respect to enabling healthy and resilient communities, while managing and directing growth through the creation of sound land use planning principles is what the TBMOP is striving to accomplish.

In accordance with Goal 5, the TBMOP has been collaboratively developed by the Town, stakeholders, the public, agencies, and the County.

Attachments

None

Respectfully submitted by,

Scott Taylor
Senior Planner

Director Sign Off: *Randy Scherzer*