



Staff Report

Planning and Development Services – Planning Division

Report To: Special Meeting Committee of the Whole
Meeting Date: May 6, 2019
Report Number: PDS.19.51
Subject: Town of The Blue Mountains Official Plan Appeals Update
Prepared by: Shawn Postma, Senior Policy Planner

A. Recommendations

THAT Council receive Staff Report PDS.19.51, entitled “Town of The Blue Mountains Official Plan Appeals Update”;

AND THAT Council authorize the Mayor and Clerk to enter into Minutes of Settlement with the County of Grey and MacPherson / Home Farm substantially in the form identified as Attachment #1 to Staff Report PDS.19.51;

AND THAT Council request that the Local Planning Appeal Tribunal (LPAT) modify the policies of the Town of The Blue Mountains Official Plan to add a site specific policy applicable to the MacPherson / Home Farm lands and conclude the final appeal to the Town of The Blue Mountains Official Plan.

B. Overview

The purpose of this report is to provide Council with an update on the one remaining appeal to the 2016 Town of The Blue Mountains Official Plan and to seek authorization to settle the appeal based on the recommendations contained in this report.

C. Background

In June 2016 the County of Grey approved the new 2016 Town of The Blue Mountains Official Plan. In response, the Town received seven appeals. Six appeals are now resolved and one appeal remains on the MacPherson / Home Farm development lands. The issues identified in the appeal include: objections to the Significant Woodlands mapping, and the land use designation (Institutional) on the Town Owned Lands (Former school board property).

D. Analysis

Significant Woodlands

MacPherson / Home Farm disagreed with the delineation of the Significant Woodlands boundaries on their lands and the wording of the Significant Woodlands policies within the Official Plan.

MacPherson / Home Farm completed an Environmental Impact Study to refine the Significant Woodlands feature and development constraints, however this study has not been accepted to the satisfaction of the Town or the County. In lieu of a complete and accepted study, a special exception is proposed to recognize that development can occur within the feature and adjacent lands subject to demonstrating no negative impacts through an approved Environmental Impact Study.

Town and County Staff and MacPherson / Home Farm have developed and agreed on new exception being added to the 2016 Town of The Blue Mountains Official Plan as follows:

“B5.8 Home Farm Special Site Policy – Home Farm

Development of the subject lands known as the Home Farm, located within Part of Lot 20, Concession 2, is permitted within portions of the delineated significant woodlands as shown on Appendix 1 – Constraint Mapping of the Town of The Blue Mountains Official Plan and the adjacent lands, in accordance with an approved Environmental Impact Study (“EIS”) demonstrating that there will be no negative impacts on the significant woodland features or their ecological function. The EIS shall determine the extent of any significant woodlands and recommend the incorporation of appropriate mitigation strategies.”

Institutional Lands

The 2016 Official Plan carried forward the Institutional Designation forward from the previous Official Plan on the Town Owned Lands (former Schoolboard Property). A Memorandum of Understanding (MOU) between the Town and MacPherson / Home Farm was created in 2014 and included the development of the Town Owned Lands as part of the Home Farm project. However in 2018 the MOU was cancelled by the Town and the Town Owned Lands are now removed from the development lands. This issue in the Official Plan appeal is therefore no longer relevant and will be disposed of.

Based on the above, Planning Staff recommend that Council support the proposed Special Site Policy Section B5.8 to be added to the Official Plan and to authorize the Mayor and Clerk to enter into Minutes of Settlement with MacPherson / Home Farm and request that the Local Planning Appeal Tribunal (LPAT) to modify the policies of the Town of The Blue Mountains Official Plan to add a site specific policy applicable to the MacPherson / Home Farm lands.

E. The Blue Mountains Strategic Plan

Goal #3: Support Healthy Lifestyles
Objective #1 Promote the Town as a Healthy Community

- Objective #2 Increase the Range of Housing Choices and Promote Housing Affordability
- Objective #3 Manage Growth and Promote Smart Growth
- Objective #4 Commit to Sustainability

F. Environmental Impacts

Significant Woodlands features and adjacent lands are subject to Environmental Impact Study prior to development being considered.

G. Financial Impact

Legal fees have been incurred to defend the Official Plan as a result of the appeals to the Ontario Municipal Board / LPAT. Additional legal fees are required to facilitate the Minutes of Settlement before the LPAT.

H. In consultation with

Nathan Westendorp, Director of Planning and Development Services, Leo Longo, Legal Counsel

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. Comments regarding this report should be submitted to Shawn Postma, Senior Policy Planner at planning@thebluemountains.ca

J. Attached

1. Draft Minutes of Settlement

Respectfully submitted,

Shawn Postma
Senior Policy Planner

Nathan Westendorp
Director of Planning and Development Services

For more information, please contact:
Shawn Postma
planning@thebluemountains.ca
519-599-3131 extension 248

LPAT Case No. PL160747

LOCAL PLANNING APPEAL TRIBUNAL

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

Appellant: MacPherson Builders (Blue Mountains) Limited; and others
Subject: Town of The Blue Mountains Official Plan
Municipality: Town of The Blue Mountains
LPAT Case No.: PL160747
LPAT File No.: PL160747
LPAT Case Name: Dadyburjor v. The Blue Mountains (Town)

MINUTES OF SETTLEMENT

BETWEEN:

MACPHERSON BUILDERS (BLUE MOUNTAINS) LIMITED (“MacPherson”)

and

THE CORPORATION OF THE COUNTY OF GREY (the “County”)

and

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS (the “Town”)

WHEREAS the Town adopted The Town of The Blue Mountains Official Plan (“**TOBM OP**”) by passing By-law No. 2014-56.

AND WHEREAS the County modified and approved the TOBM OP on June 21, 2016.

AND WHEREAS MacPherson is the registered owner of the property legally described as Lots 2, 3, 4, 5, 6 and 7 Plan 555; Part of Lot 159 Plan 529 and Part Lot 20, Concession 2 Collingwood All Being Part 1 on 16R10467 Town of The Blue Mountains, County of Grey (“**Subject Property**”).

AND WHEREAS MacPherson appealed the decision of the County of Grey to approve the TOBM OP, as modified to the Ontario Municipal Board on July 20, 2016 on a site specific basis with respect to the Subject Property.

AND WHEREAS MacPherson, the Town and the County (collectively, the “**Parties**” and individually, a “**Party**”) have engaged in settlement discussions with each other;

AND WHEREAS the Parties have agreed to enter into these Minutes of Settlement to resolve MacPherson’s appeals of the TOBM OP in their entirety;

NOW THEREFORE, in consideration of the payment by each Party to the other Party of the sum of two dollars (\$2.00), the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Recitals above are true.
2. The following is a list of the Schedules to these Minutes which shall form part of these Minutes:
 - (a) Schedule A: TOBM OP Modifications

The MacPherson Appeal

3. The Parties agree to file these Minutes, including all of the Schedules, with the Tribunal as an exhibit at the Tribunal’s hearing of the TOBM OP appeal in the event that a hearing is required to resolve MacPherson’s appeal. If an in person attendance is not required, the Parties agree to file these Minutes with the Tribunal along with the affidavit that is provided in support of the settlement.
4. The Parties agree to request the Local Planning Appeal Tribunal (“**Tribunal**”) to modify the policies of the TOBM OP, as set out in **Schedule “A”** (the “**Modifications**”) to add a site specific policy applicable to the development of the Subject Property.
5. The Parties each agree not to request a costs award from the Tribunal against each other in respect of any aspect of the TOBM OP appeal.

Notice

6. Any notice required by these Minutes shall be sent by registered mail or email to:

MacPherson at:

MacPherson Builders Limited
40 West Wilmot Street, Unit #6
Richmond Hill, Ontario
L4B 1H8

Attention: Russell Higgins, russell@macphersonbuilders.com

With a copy to Loopstra Nixon LLP at:

600-135 Queens Plate Drive
Toronto, Ontario M9W 6V7

Attention: Quinto Annibale
qannibale@loonix.com

The County of Grey at:

595 9th Ave East
Owen Sound, ON
N4K 3E3

Attention: County Clerk

With a copy to The Alliance Lawyers at:

142 10th Street West
P.O. Box 730
Owen Sound, Ontario
N4k 5W9

Attention: Erroll G. Treslan
etreslan@owensoundlawyers.com

The Town of The Blue Mountains at:

32 Mill St. Box 310,
Thornbury ON, N0H 2P0

Attention: Town Clerk

With a copy to Aird & Berlis LLP at:

Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, Ontario M5J 2T9

Attention: Leo F. Longo
llongo@airdberlis.com

General

7. The Parties agree that if the Tribunal does not approve the Modifications substantially in accordance with Schedule "A", or in such modified form that is satisfactory to the Parties, the Parties shall co-operate in good faith to amend these Minutes to reflect any changes made to the Modifications, such that the intent of these Minutes is preserved.
8. The Parties agree that they are contractually bound to the terms of these Minutes, and that the obligations and benefits thereof are immediately enforceable by civil action should a Party be in breach of them.
9. These Minutes shall be binding and enure to the benefit of the Parties, their successors and assigns.
10. Subject to applicable law, the Parties shall execute diligently and expeditiously such further documents and take such further action as may be reasonably required in order to implement and give full legal force and effect to the terms of these Minutes.
11. The Parties agree to act reasonably and with good faith in respect of all dealings between the Parties pursuant to these Minutes.
12. Except as otherwise identified herein, these Minutes constitute the entire agreement between the Parties with respect to the Appeals and supersede all prior agreements, negotiations and understandings with respect thereto.

13. Any amendment to or waiver of any provision of these Minutes must be in writing and signed by the Parties.
14. If any provision of these Minutes is deemed illegal, invalid or unenforceable, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from these Minutes and the remaining provisions will remain in full force and effect.
15. These Minutes may be executed in one or more counterparts, which together shall constitute a complete set of these Minutes, and executed counterparts may be delivered by e-mail or facsimile transmission.
16. Headings are included for ease of reference only and shall not affect the interpretation or construction of these Minutes.

IN WITNESS WHEREOF, the Parties have executed these Minutes as of the date(s) indicated below:

MACPHERSON BUILDERS (BLUE MOUNTAINS)
LIMITED

Date:

Name:

Title:

I have authority to bind the Corporation.

THE CORPORATION OF THE COUNTY OF
GREY

Date:

Name:

Title:

I have authority to bind the Corporation.

THE CORPORATION OF THE TOWN OF THE
BLUE MOUNTAINS

Date:

Name:

Title:

I have authority to bind the Corporation.

Schedule “A”

B5.8 Home Farm Special Site Policy – Home Farm

Development of the subject lands known as the Home Farm, located within Part of Lot 20, Concession 2, is permitted within portions of the delineated significant woodlands as shown on Appendix 1 – Constraint Mapping of the Town of The Blue Mountains Official Plan and the adjacent lands, in accordance with an approved Environmental Impact Study (“EIS”) demonstrating that there will be no negative impacts on the significant woodland features or their ecological function. The EIS shall determine the extent of any significant woodlands and recommend the incorporation of appropriate mitigation strategies.