Staff Report
Legal Services

Report To: Committee of the Whole  
Meeting Date: June 16, 2020  
Report Number: FAF.20.098  
Subject: Requests Regarding Short Term Accommodations During COVID-19  
Prepared by: Will Thomson, Director of Legal Services

A. Recommendations

THAT Council receive Staff Report FAF.20.098, entitled “Requests Regarding Short Term Accommodations During COVID-19”;

AND THAT Council deny the request to extend Short Term Accommodation Licenses for a period equal to the COVID-19 Emergency;

OR,

THAT Council approve the request to extend Short Term Accommodation Licenses for ____ months.

AND THAT Council receive this Report as it relates to Legal Non-Conforming Uses, for Information.

B. Overview

At the April 27th meeting of the Town of The Blue Mountains Community Recovery Task Force the Committee directed the Director of Legal Services to review and respond to two questions (numbers 2 & 3 in the attached correspondence) from Mr. Stu Frith, on behalf of Blue Mountains Short Term Accommodation providers.

The first question related to waiving STA licensing fees for a period equivalent to the duration of the Provinces Emergency Order prohibiting most operations of STA’s.

The second question related to legal non-conforming uses and Short-Term Accommodations in the Town. It is Staff’s recommendation that Council receive this question/section for information, but make no decision, as these rules are statutory creations of the Planning Act, not the Town itself.

C. Background

In response to the COVID-19 Pandemic, the Province of Ontario implemented numerous and varied Emergency Orders under the Emergency Management and Civil Protection Act. One such
order prohibited the use or operation of Short Term Accommodations for anything other than a person \textit{in need of housing}, in other words - no recreational or tourist use. As a result, most STA operators in the Town have seen most, if not all, of their operations cease.

In 2013 the Town implemented By-Law 2013-50, the “Short Term Accommodation Licensing By-law in the Town of the Blue Mountains”. Licensed STA’s in the Town are considered those for a duration less than 30 days; as such, rentals for longer than 30 days are considered typical long-term leases, and not prohibited by the Provincial Order.

Furthermore, when STA’s were originally licensed under the Town’s Short Term Accommodation By-Law, many units which would not otherwise be approved by reason of zoning, were approved as they could establish a legal non-conforming use (LNC) on the Property which protected the use as an STA.

Legal non conformance is a provision contained in the \textit{Planning Act} which protects uses which existed on the day prior to a change in zoning. Many STA’s in the Town take advantage of this protection in the \textit{Planning Act} to continue operating their STA’s. One of the many nuances of preserving legal non-conforming uses is the continuity of the use – in some cases, if a protected use ceases for a period, the protection may be lost.

As a result, Mr. Frith’s request is for the Town to approve the temporary change of use from Short Term Accommodation to Long-term accommodation for the duration of the Emergency.

As will be explained in this report, Staff recommend that Council not make any decision on this issue.

Furthermore, the Mr. Frith’s request is to waive licensing fees for a time equivalent to the Provincially mandated shut-down of STA’s. The restriction on the use of STA’s came into force at the beginning of April, and as such, STA’s have been largely shut-down for nearly three months. If Council opts to waive a portion or all the license renewal fees, the Town, and STA division in particular, will be facing a significant revenue shortfall. This is particularly challenging in the STA division, as it is designed to be self-funding based on fees collected. Given that the entire By-law and enforcement department may face an overall revenue reduction on account of reduced fines and charges, the reduced STA revenue will not be easily recouped.

\textbf{D. Analysis}

\textbf{Issue 1 – Waiving STA License Fees:}

There are 259 licensed Short Term Accommodation units in the Town of the Blue Mountains, of which approximately 111 are condominiums and 148 are chalets/cottages/homes (“chalets”).

Condo’s are charged $1575.00/2 year term and $500.00 for a renewal.

Chalets are charged $2575.00/2 year term and $1000.00 for a renewal.
As such, the total renewal fees for a condos is $55,000.00/2 years or $2312.50/month. For chalets, the total renewal fees is $148,000.00/2 years or 6166.67/month, for a total monthly renewal fees receivable of $8479.17.

Given that we are already approximately two-and-a-half months into the STA shutdown, if Council were to direct that the ‘lost-time’ be added to the end of expiring STA licenses, the Town, and STA division specifically, would be facing a revenue shortfall of approximately $21,000.00 to date.

Furthermore, not all STA Licenses expire or renew on the same date, as such, analyzing and extending each license as it expires and/or renews would require significant staff resources and time.

Managing and operating the STA licensing regime within the Town is a resource intensive operation, it requires significant staff time to manage both the licensing and renewal process, and the enforcement of both licensed and unlicensed STA operations. This results in a net-benefit to all parties; STA operators and visitors benefit from the added bona-fides of a regulated industry, and the Town benefits from a systematic means to oversee Short Term Rentals within the Town. Licensing fees serve to fund these operations.

While Staff are sympathetic that STA’s have been largely shut down during this emergency, it should be noted that the shutdown has taken place largely in the “shoulder season” where STA rentals are expected to be significantly reduced from peak winter & summer seasons. Given the uncertainty of Town revenues during this COVID-19 emergency, an extension of even a few months will result in a revenue shortfall in the tens of thousands of dollars, which will not be easily recouped by other divisions within the Legal Services department.

**Question 2 – Legal Non-Conforming Uses**

As described above, many STA’s within the Town were originally approved and licensed by virtue of legal non-conforming uses on their properties which allowed an STA where one would otherwise not be permitted.

Section 34(9) of the *Planning Act* considers legal non-conforming uses, that section reads in part, as follows:

> (9) No by-law passed under this section applies,

> (a) to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose.

In basic terms, if an STA was operating prior to a change in zoning which would otherwise prohibit that use, the STA may continue to operate under the LNC protections in the *Planning Act*, and thus, be licensed under By-Law 2013-50.
Legal non-conforming uses are a creation of the *Planning Act* and their validity is a factual and legal question which ultimately could be decided by a Court, the variables that are considered are broad and may include (but aren’t limited too) the nature of the use, the duration of the use, the continuity of the use, the duration of any cessation of the use, and the intent of the property owner.

When these STA’s came forward for their original licenses, Town staff reviewed the evidence of any legal non-conforming use and if deemed compelling and sufficient, granted those licenses accordingly. It should be noted that the issuance of a license by the Town does not, unto itself, create, preserve or validate a legal non-conforming use. For example, a property owner could be challenged by an interested member of the public regarding the validity of their LNC and the issuance of a license by the Town would not necessarily be determinative of that issue.

Some STA owners have expressed interest in pursuing longer than 30-day rentals as a stop-gap measure to help fund their operations during the COVID-19 STA shutdown. As such, the herein request, in addition to some individual requests, have sought “permission” from the Town for property owners to offer longer-term rentals without risking the preservation of their legal non-conforming use.

As mentioned, the creation and preservation of a legal non-conforming use is not a Town construct and is a legal and factual question related to a statutory protection in the *Planning Act*. As such, it is Staffs opinion that the Town should not be granting “permission” to an owner to offer longer-term rentals which would offend or breach their LNC. That being said, on the requests received to date, Staff have suggested individual owners seek independent legal advice with respect to preserving their LNC uses, and further, that we encourage them to revert back to their STA use *as soon as practically possible* after the end of the COVID-19 emergency. Staff are also making note of each request and saving the same to the property file as evidence of the owners’ intent.

Staff recommend that Council receive this question and answer for information, but make no decision or resolution related to the same.

**E. The Blue Mountains Strategic Plan**

<table>
<thead>
<tr>
<th>Goal #1: Create Opportunities for Sustainability</th>
<th>Objective #1 Retain Existing Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal #2: Engage Our Communities &amp; Partners</td>
<td>Objective #3 Strengthen Partnerships</td>
</tr>
<tr>
<td>Goal #4: Promote a Culture of Organizational &amp; Operational Excellence</td>
<td>Objective #4 To Be a Financially Responsible Organization</td>
</tr>
</tbody>
</table>

**F. Environmental Impacts**

None.
G. Financial Impact

Extending STA licenses for a duration equivalent to the COVID-19 pandemic will result in a monthly revenue shortfall of $8479.17.

H. In Consultation With

Wayne DeWitt, Supervisor, By-Law Services

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 Will Thomson, Director of Legal Services at directorlegal@thebluemountains.ca.

Attachments:

1. Correspondence from Stu Frith, on behalf of BMSTA, undated.

Respectfully submitted,

Will Thomson
Director of Legal Services

For more information, please contact:

Will Thomson
directorlegal@thebluemountains.ca
519-599-3131 extension 258
From: STU FRITH

Good Morning Alar, Shawn and Peter,

Allow us to first pass on our best wishes, this Easter Weekend, to you and your families in the hope that all are staying safe and healthy during these unprecedented times stemming from Covid-19.

We also wish to open by commending Town Management and Staff for all their evident efforts, of late, to thoughtfully manage the Blue Mountains Community through these challenging times.

We are writing to you, on behalf of the BMSTA, which represents just over 70% of the Short-Term Accommodations Community here in The Blue Mountains, which as you can accurately conclude, has been absolutely decimated by Covid-19. The initial jarring business impact was felt by our Industry, in mid-March, which was solely attributable to initial and understandable consumer behaviour by way of wholesale reservation cancellations. Our reservation calendars literally emptied out in the days leading up to March Break. Between that justifiable and predictable societal reaction to Covid-19 and today's date we, of course, have seen no signs of any recovery trends by way of Spring and Summer bookings. We are simply not there yet and, as we all know, the path forward beyond the current Covid-19 landscape remains a complete unknown.

A further blow was recently received, by our Industry, when the Ontario Government very recently passed legislative changes under their approach to essential services definitions which removed short-term rentals from inclusion on that essential services list. Our reality is now that we are now not able to rent out our Licensed and non-licensed units (CRU’s). Knowing that such legislation is focused on ensuring that people are safe and healthy and that all Ontarians do their part to slow and stop the spread of Covid-19, we of course support such actions.

At this stage our businesses are shuttered and we are not able to operate.

In light of our current reality we wish to table the following requests on behalf of all of our property owner stakeholders (STA’s and CRU’s);

1. We wish to seek forgiveness of all property tax and water/sewer fees on our properties during what is a yet to be quantified period of time. We are seeking an initiation date of March 15th for this request. We would seek a lifting of this agreement with TBM’s Finance Department when the Ontario Government makes a legislative amendment to the essential services definition of our businesses thereby enabling us to re-open our doors.

2. It is fact that all Licensed STA’s carry a Town-issued/owned License with a definable life-span of two years. Currently we are legally prohibited from offering our properties for rent for periods of less than thirty(30) consecutive days. Therefore we are seeking your agreement to quantify this lost time and add this time back on the tail end of the life-span of our STA Licenses. Simply put, our STA Licenses have a two year life span and, the time we are experiencing now under the restrictions of Covid 19, is definable as lost time. The time, to which we refer, is time that we have paid the Municipality for, which under the current Provincial Emergency Orders, is of no value to us.

3. As you know, under the prevailing Section 34.9 of the Planning Act most STA License holders are prohibited from renting out their properties for periods of greater than thirty(30) consecutive days as that would be defined as a change of use. By renting for periods beyond thirty(30) consecutive days, under the change of use definition, currently the License holder would jeopardize their legal protections under Section 34.9. We would therefore seek your agreement to temporarily remove that limitation so as to enable property owners to seek longer term rentals, of their choosing, during this time. Having this provision temporarily removed would enable property owners to seek and generate essential revenue from other sources that are otherwise unavailable to them during normal times. That opportunity for other revenue sources would, in numerous cases, make the difference between an owner being able to keep their property as opposed to being forced to sell it as they are unable to meet their financial obligations.
As important pillars in the local Tourism-based economy of our region the Short-term Vacation Rental Community has been hit incredibly hard by Covid-19. We trust that you shall recognize this and agree to our three requests. We are available to discuss by phone or video-conference. We are certainly able to supply full lists of the properties to which we refer that we are seeking to be included in the scope of agreements that we can undertake with the Town.

At the outset we commended Town Management and Staff for their thoughtful approach to the regional impact of Covid-19. That impact is in no way more evident in terms of the business community and the economic impact/fallout than on the short term vacation rental market, its owners and company employees alike.

We look forward to hearing from you.

Sincerely,

Stu Frith

President
BMSTA