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January 27, 2025

VIA E-MAIL

Our File No. 324747

Ms. Corrina Giles, CMO, Town Clerk
Town of the Blue Mountains,
32 Mill Street, P.O. Box 310,
Thornbury, ON N0H 2P0
E-mail: cgiles@thebluemountains.ca

Dear Ms. Giles:

**Re: 99 Camperdown Road, Town of the Blue Mountains
Written Submission Respecting Town of the Blue Mountains Draft Official Plan
Request for Site-Specific Policy Exception**

Please note that our firm been retained on behalf of the owner (Mr. Peter Doering, hereinafter referred to as our “**Client**”) of the property municipally known as 99 Camperdown Road in the Town of the Blue Mountains (the “**Property**”).

Previous & Current Zoning of the Property

In 2002, a site-specific zoning by-law applicable to the Property was enacted (By-law 2002-25) to amend the Former Zoning By-law (defined below). This site-specific zoning has the effect of permitting a single detached dwelling within a delineated building envelope on the Property with a maximum height of 1.5 storeys. The site specific by-law also exempts the Property from the requirement for frontage on a public road.

Prior to 2018, the Property was zoned General Rural (A1) and Hazard (H) in By-law 83-40 (the “**Former Zoning By-law**”). This was the Property’s base zoning, subject to the site-specific permission provided by By-law 2002-25 as described above. However, in 2018, the Town of the Blue Mountains (the “**Town**”) enacted Comprehensive Zoning By-law 2018-65 (the “**Current Zoning By-law**”), which proposed to zone the Property as Open Space (OS).

Recognizing that single detached dwellings and accessory uses were not proposed to be permitted as-of-right in the Open Space zone, our Client’s planner, Plan Wells Associates (“**PWA**”) made submissions to the Town resulting in the Property’s site-specific zoning permitted by By-law 2002-25 being carried forward into the Current By-law.

Accordingly, the Current By-law zones the Property as Open Space-Exception 108, Holding Provision 28 (OS-108-h28). Site Specific Exemption 108 permits the following:

One single detached dwelling and accessory buildings and structures may be permitted on a lot without frontage on an open and maintained road for those lands located and being in the Town of The Blue Mountains, comprised of Part of Lot 24, Concession 7. A single detached dwelling shall have a maximum height of 1.5 storeys and shall only be located within the building envelope identified on the Schedule.

Proposed New Official Plan

On December 10, 2024,¹ the Town introduced a draft of the new Town of the Blue Mountains Official Plan (the “**Proposed OP**”). The Proposed OP proposes to maintain the current *Escarpment* designation for the Property. Proposed Policy B3.15.3 describes the following uses/restrictions for lands within the *Escarpment* designation:

limited to those recreational uses that require the slopes to function. In addition, essential transportation and utility facilities may be permitted provided that no reasonable alternative is available outside the Escarpment designation. Where possible, site selection for permitted uses shall be directed toward other appropriate designations.

The foregoing policy would not permit a single-detached dwelling and accessory uses on the Property. Notwithstanding this, the Current By-law does zone the Property for such uses. This would create an inconsistency – while the zoning of the Property under the Current By-law would be deemed to conform to the Proposed OP (if approved) pursuant to subsection 24(4) of the *Planning Act*, our Client is concerned that the proposed designation of the Property will not accord with the long-standing zoning of the Property.

¹ [Recommendation Report – Official Plan 5 Year Review](#)

Request for Site-Specific Policy

Similar to PWA's submission in 2018, we request that a new site-specific policy be added to Section B3.15.8, "Special Site Policies", to include the permitted uses that are described in the Current Zoning By-law. We understand that PWA has also sent a letter to the Town dated November 12, 2024, requesting that this change be made in the Proposed OP.

Case Law

The loss of our Client's development rights, ostensibly for conservation purposes, would be akin to an expropriation without compensation. In relation to "down zoning" generally, the municipality must be prepared to justify the public purpose served by a designation and zoning that eliminates established property rights.² Case law also demonstrates that if lands in private ownership are to be zoned for conservation or recreational purposes for the benefit of the public as a whole, then the appropriate authority must be prepared to acquire the lands within a reasonable time.³ We also note there is jurisprudence establishing that "down zoning must be justified by a strong and compelling public interest and must take account of the rights that are lost".⁴

Our Client continues to enjoy the Property and does wish to maintain their site-specific permission for the future deployment of a single-family dwelling (and associated accessory uses) on the Property. While the Current By-law effectively reflects this intent, the Proposed OP currently does not. Accordingly, our request is that the Town bring forward a site-specific policy exception that recognizes the long-standing permissions on the Property. Such an exception would avoid the need for an appeal by our Client to protect its established development rights.

Please contact me with any questions, and kindly ensure that our firm is notified of any future meetings, reports or decisions in respect of the Proposed OP.

² *Canadian National Railway v. Brantford (City)*, 1991 CarswellOnt 5954 at para. 15.

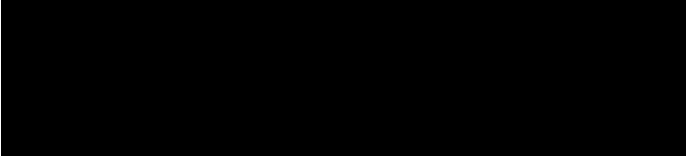
³ *Nepean Restricted Area By-law 73-76, Re (1978)*, 9 O.M.B.R. 36 (O.M.B.), at para. 55.

⁴ *Material Handling Problem Solvers Inc. v. Essex (Town)*, [2002] O.M.B.D. No. 1133 at para. 122, citing *Russell v. Toronto (City)*, 2000 CarswellOnt 4876.

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Yours truly,

AIRD & BERLIS LLP



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cc. Ms. Shelley Wells, Plan Wells Associates: shelley@planwells.com
Mr. Peter Doering, Owner: [REDACTED]
Mr. Shawn Postma, Senior Policy Planner, Town of Blue Mountains: spostma@thebluemountains.ca
Mr. Adam Smith, Director of Planning and Development, Town of Blue Mountains: asmith@thebluemountains.ca
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