

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** June 10, 2022

**CASE NO(S):** OLT-22-002269  
(Formerly PL210156)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                               |  |
|-------------------------------|--|
| Applicant and Appellant:      | Tammy Abbotts  |
| Subject:                      | Application to amend Zoning By-law No. 2018-65 - Refusal or neglect of County of Grey to make a decision |
| Existing Zoning:              | Residential One (R1-1)   |
| Proposed Zoning:              | Residential Two (R2)   |
| Purpose:                      | To permit the creation of lots for 22 semi-detached dwellings  |
| Property Address/Description: | Lots 35-39, SW Side of Bay Street  |
| Municipality:                 | Town of The Blue Mountains   |
| Municipality File No.:        | P2832  |
| OLT Case No.:                 | OLT-22-002269  |
| Legacy Case No.:              | PL210156   |
| OLT Lead Case No.:            | OLT-22-002269  |
| Legacy Lead Case No.:         | PL210156   |
| OLT Case Name:                | Abbotts v. Blue Mountains (Town)   |

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                               |   |
|-------------------------------|---|
| Applicant and Appellant:      | Tammy Abbotts   |
| Subject:                      | Proposed Plan of Subdivision - Failure of County of Grey to make a decision |
| Purpose:                      | To permit the creation of lots for 22 semi-detached dwellings               |
| Property Address/Description: | Lots 35-39, SW Side of Bay Street   |
| Municipality:                 | Town of The Blue Mountains  |
| Municipality File No.:        | 42T-2019-02   |

|                       |               |
|-----------------------|---------------|
| OLT Case No.:         | OLT-22-002272 |
| Legacy Case No.:      | PL210152      |
| OLT Lead Case No.:    | OLT-22-002269 |
| Legacy Lead Case No.: | PL210156      |

**Heard:** May 24-26, 2022 by video hearing

## **APPEARANCES:**

### **Parties**

### **Counsel**

|  |                                   |
|--|-----------------------------------|
| Tammy Abbots (“Appellant”)                       | Al Burton                         |
| Town of The Blue Mountains (“Town”)              | Leo Longo                         |
| County of Grey (“County”)                        | Errol Treslan                     |
| Grey Condominium Corporation No. 11<br>(“GCC11”) | Samantha Lampert<br>Grace O’Brien |
| Harbour West Residents Group Inc. (“HWRG”)       | Harry Burkman                     |

## **DECISION DELIVERED BY T. PREVEDEL AND INTERIM ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] The matter before the Tribunal is an appeal by Tammy Abbots (“Appellant”) under subsections 34(11) and 51(34) of the *Planning Act* with respect to the Town of The Blue Mountains’ and the County of Grey’s failure to deal with the Appellant’s proposed application for a Zoning By-law Amendment and associated Draft Plan of Subdivision within the prescribed timeframe.

[2] The lands are legally described as Lots 35-39, Southwest Side of Bay Street, Former Town of Thornbury, Town of The Blue Mountains, County of Grey. The subject lands consist of a 1.01-hectare site that is currently vacant and is

designated as "Community Living Area" in the Town of The Blue Mountains Official Plan ("Town OP").

## **AREA CONTEXT**

[3] The subject lands are located in the Northwest quadrant of Thornbury, between existing residential uses along Lakeshore Drive and Huron Street on the East side of Lansdowne Street North, and South of the unopened Bay Street West road allowance. The subject lands are vacant lots with frontage on Lansdowne Street North and the unconstructed road allowances of Bay Street West and Victoria Street North.

[4] Under the Town's OP, the subject lands are currently designated "Community Living Area". They are currently zoned R-1 and are within holding zone areas H3 and H4A within the Town's Zoning By-law 2018-65.

## **THE SETTLEMENT PROPOSAL**

[5] The Tribunal received, on May 16, 2022, executed Minutes of Settlement between the Appellant, the Town, the County and GCC11. The Parties also submitted a draft Zoning By-Law and a revised Draft Plan of Subdivision along with Conditions of Draft Plan Approval, which were attached to the Minutes of Settlement.

[6] The revised proposal reduces the number of proposed lots from 22 to 20, consisting of 4 single detached lots and 16 semi-detached lots. The subject lands have a total area of approximately 1.01 hectares, resulting in a proposed density of approximately 20 units per gross hectare.

[7] The proposed units will have "as of right" zoning permissions for accessory apartments under the Zoning By-law.

[8] The Harbour West Residents Group Inc. (“HWRG”) has not consented to this proposed settlement.

### **PRELIMINARY MATTERS**

[9] The Tribunal received and marked the following documents as Exhibits to the Hearing:

- Exhibit 1 – Joint Document Book
- Exhibit 2 – Minutes of Settlement dated April 18, 2022
- Exhibit 3 – Township of The Blue Mountains (“TBM”) Supplementary Document Book
- Exhibit 4 – HWRG Supplementary Document Book
- Exhibit 5 – Agreed Statement of Facts (“ASF”)
- Exhibit 6 – TBM’s Cross-examination documents for Scott Taylor
- Exhibit 7 – HWRG’s Witness Examination Book
- Exhibit 8 – Scott Taylor’s Acknowledgement of Expert’s Duty
- Exhibit 9 – HWRG Preliminary Matters
- Exhibit 10 – Index for Visual evidence by HWRG
- Exhibit 11 – Gordon Russell version of ASF, not signed



- Exhibit 12 – Affordable Price Points in the Town of The Blue Mountains, May 2022

[10] The Tribunal dealt with several technical objections raised by Mr. Burkman, counsel for the HWRG, prior to the start of the evidentiary portion of the Hearing:

A. Inclusion of Tabs 5, 6 and 7 in the Joint Document Book (Exhibit 1)

[11] Mr. Burkman questioned which applications were actually before the Tribunal at this point in time, as the proposed development has undergone some revisions to reach a settlement. He submitted that Tabs 5, 6 and 7, which contain the revised Draft Plan and Zoning By-Law with Schedules, should be removed as these documents have not been formally submitted to the Tribunal.

[12] Mr. Burton, on behalf of the Appellant, submitted that Mr. Burkman was not familiar with the normal planning process before the Tribunal, and that it is often the case where Parties work together in advance of a Hearing to scope issues and make revisions in an effort to reach a settlement and reduce Hearing time before the Tribunal.

[13] This submission was supported by Messrs. Longo and Treslan, on behalf of the Town and County, respectively.

[14] Upon consideration of the matter, the Tribunal agrees with the settling Parties that Mr. Burkman's objection has no merit and that Tabs 5, 6 and 7 are to remain in the Joint Document Book.

B. Should the Applications be considered complete?

[15] Mr. Burkman questioned whether the applications before the Tribunal should be deemed complete. He submitted that, as the proposed plan has

undergone several submissions, no additional background studies have been submitted in support.

[16] Mr. Burton disagreed with Mr. Burkman's submission, stating that the revisions to the plan have been minor in nature and undertaken in consultation with the other Parties.

[17] The Tribunal notes that the applications have been processed by both the Town and County staff, resulting in a proposed settlement on consent of all Parties except HWRG. There is no question that the applications should be considered complete.

C. Request to add some additional issues to the Issues List

[18] Mr. Burkman, on behalf of HWRG, requested that two additional issues be added to the Issues List: namely subsection 24 of the *Planning Act* and Policy D2.3.1 of the Town's OP, both relating to various aspects of public works and road classifications.

[19] The other Parties objected to this request, stating that no formal Motion has been brought forward, no evidence relating to these issues has been submitted, and HWRG has been silent regarding the Procedural Order ("PO") since its July 23, 2021, issuance.

[20] The Tribunal notes that paragraph 5 of the PO explicitly states that there will be no changes to the Issues List unless the Tribunal permits. There does not appear to be any merit in adding these two additional issues to the proceeding, and the Tribunal notes that counsel for HWRG can cross-examine the Appellant's witnesses regarding these matters.

[21] The request to add the two additional issues is denied.

## THE HEARING

[22] The Hearing of the appeal took place over the course of three days. The conduct of the Hearing was governed by a Procedural Order issued on July 23, 2021.

[23] At the onset of the Hearing, it was agreed that the Appellant would call evidence in support of the proposed settlement. It was also agreed that no other Parties would call evidence, unless specifically requested to do so by the Tribunal or as a necessary response to any issue raised by the non-settling Party, HWRG.

[24] The Town and the Appellant also agreed that the Town would call evidence in support of a request by the Town that the Appellant, without compensation, would provide six accessory apartments to be offered as affordable housing, and that the Appellant would offer the right of first refusal of the administration of such units to The Blue Mountains Attainable Housing Corporation.

[25] The Tribunal heard from 5 expert witnesses, on behalf of the Parties. The land use planning and engineering witnesses were qualified to provide expert evidence in their respective fields, as follows:

|  |
|--|
| Appellant's Witnesses                          |
| Kristine A. Loft - land use planning           |
| Alexander Fleming – transportation engineering |
| George Cooper – civil engineering              |
| County's Witness                               |
| Scott Taylor – land use planning               |
| HWRG Witness                                   |
| Gordon H. Russell – land use planning          |

[26] Mr. Burton made submissions to the Tribunal, expressing his concern that the witness for HWRG should not be qualified, in his opinion, he was not providing

independent expert evidence but rather acting as an advocate for HWRG. He made particular reference to Mr. Russell's reliance on the Thornbury Density and Intensification Study Report, dated February 2022 in his evidence, which he admitted would be advantageous to his client.

[27] The Tribunal agrees that, in accordance with the "Clergy Principle", the above-noted study, which has no status at this point, has no relevance and should not be relied on as a planning instrument during this Hearing.

[28] Notwithstanding Mr. Burton's concerns, the Tribunal feels that not qualifying Mr. Russell as an expert witness would be prejudicial to HWRG's case in these proceedings. The Tribunal qualified the witness on the condition that he makes no reference to the Intensification Study during his testimony.

[29] The Town called two witnesses regarding the issue of affordable housing: Alar Soever, Mayor of the Town and Robert Sampson, a Councillor with the Town and Chair of the Blue Mountain Attainable Housing Corporation.

[30] Ms. Lampert, on behalf of GCC11, stated that her client was one of the settling Parties and would not be taking an active role in these proceedings. Ms. Grace O'Brien, co-counsel for GCC11, would monitor the balance of the Hearing.

[31] As noted earlier in this Decision, the Appellant has reached a settlement agreement with the Town, the County and the GCC11.

[32] The HWRG have not consented to the settlement agreement and are calling a case which centres around the concerns of the neighbours that the proposed development is not compatible with the existing built form, and does not conform to the Town's OP.

[33] The broader issue, and the one which was most contested, was the "last

minute” request by the Town to add a condition requesting that the Appellant provide six accessory units as affordable housing units. This issue will be discussed separately later in this Decision.

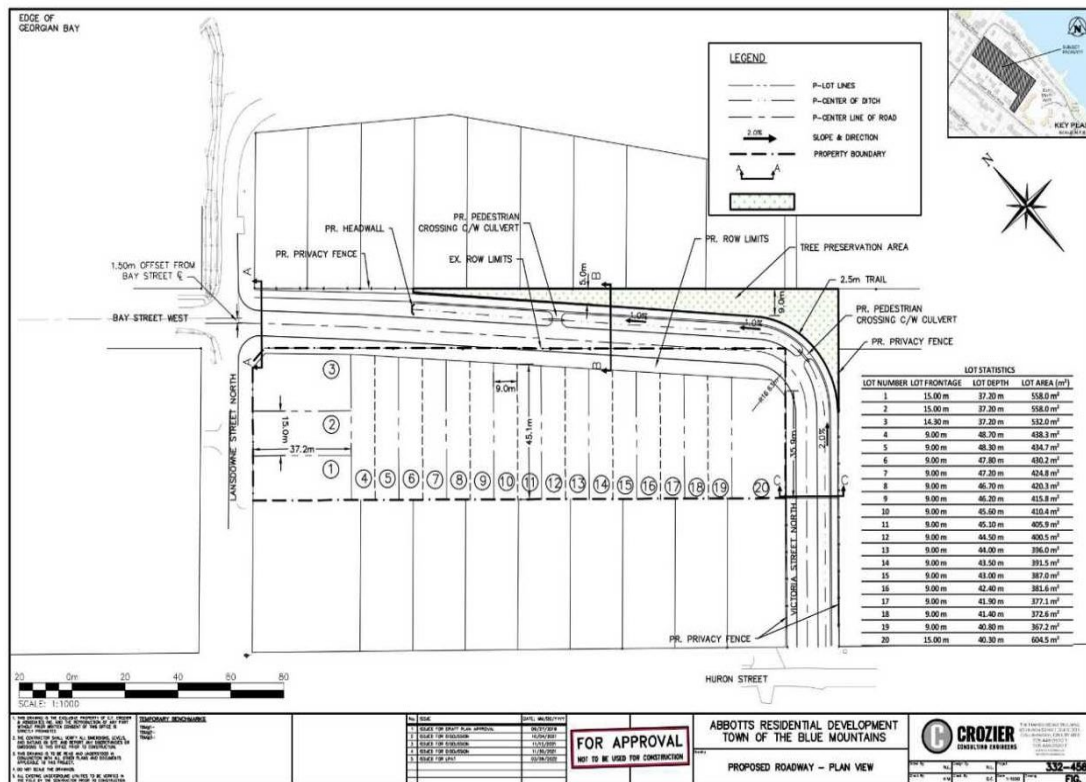
## **PLANNING EVIDENCE**

[34] Mr. Taylor provided the Tribunal with a chronological overview of the background to this development starting in late 2019 when the Town and County received a plan of subdivision application to create 22 new residential dwellings (11 semi-detached lots) along with a Zoning By-Law amendment application.

[35] He stated that the five Parties to the Hearing have met to discuss issues and potential settlement options. The most recent proposal is a revised plan of subdivision to create four single detached residential dwellings and 16 semi-detached dwellings. HWRG put forth a revised plan of subdivision proposal to create 11 single detached residential dwellings and six semi detached dwellings. In both proposals, the new residential units would gain access from an extension of Bay Street West to be serviced by municipal water and sewer services.

[36] County staff brought forward an in-camera report to the County Committee of the Whole on March 24, 2022, seeking direction on the proposed settlement. At that meeting, the staff recommendation was supported by the Committee.

[37] The proposed conceptual plan of subdivision, which forms part of the Minutes of Settlement, is presented graphically in the figure below:



**Map 2: Proposed Conceptual Plan of Subdivision – Proponent's Proposal - (Map 2  
Courtesy of Crozier Consulting Engineers)**

## THE ISSUES

[38] The Tribunal must have regard to matters of provincial interest under the *Planning Act* and be consistent with the Provincial Policy Statement, 2020 (PPS) when rendering decisions on planning applications. The Tribunal must also ensure that the proposal conforms to the County's OP, the Town's OP, is good planning and is in the public interest.

[39] Despite the settlement agreement amongst the Appellant, Town, County and GCC11, there are twelve (12) issues raised by the HWRG which remain in dispute. HWRG has refused to remove any of these issues and has not called any engineering evidence.

## PROVINCIAL POLICY STATEMENT

[40] The PPS provides policy direction on matters of provincial interest related to land use planning and development in Ontario. This PPS was issued under section 3 of the *Planning Act* and came into effect on May 1st, 2020.

[41] Although consistency with the PPS was not flagged in the Issues List, both County and Appellant expert witnesses have provided comments.

[42] Mr. Taylor submitted that a key goal of the PPS is directing new growth to serviced settlement areas and promoting the vitality of such settlement areas through re-development, infill and intensification. The subject lands have been primarily designated for residential growth and are within a serviced settlement area.

[43] Ms. Loft opined that the approval of the proposed Draft Plan and Zoning By-law Amendment to permit single and semi-detached units on the subject lands is consistent with the PPS and specifically Section 1.1.1 – “Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns”.

[44] She stated that the proposal would accommodate new population growth on vacant land in an area that can be serviced and is within a defined settlement area. She also opined that the proposal would incorporate an appropriate range and mix of residential uses in a compact form to meet the long-term needs of the community.

[45] Ms. Loft submitted that the proposal would assist the Town in meeting its intensification and density targets set by the County’s OP.

[46] Ms. Loft further opined that the proposal would promote active

transportation by connecting the proposed development to the surrounding neighborhood with trail connectivity.

[47] In conclusion, Ms. Loft opined that the proposal is consistent with the PPS.

[48] This opinion was echoed by Mr. Taylor, the County's witness.

[49] Mr. Russell did not address the PPS in his written or oral testimony.

[50] The Tribunal agrees with Ms. Loft that the proposed development is consistent with the PPS.

**Issue One: Does the proposed development have appropriate regard to sections 34, 36 and 51(24) of the *Planning Act*?**

[51] Ms. Loft provided the Tribunal with a thorough overview of subsection 51(24) of the *Planning Act*, which outlines matters to be considered when considering Draft Plans of Subdivision.

[52] She opined that the proposed development is not premature and is in the public interest, as it is located within the settlement area of the Town and is designated and zoned for residential development. Furthermore, she opined that the proposed development assists in implementing the matters of provincial interest outlined in subsection 2 of the *Planning Act*.

[53] She also stated that the subject lands are ideally suited for the proposed development, as they are within the settlement area and are located within the built-up area of Thornbury. The subject lands have access to existing municipal water and sewage services and transportation infrastructure. The standard H41 holding symbol, which remains on the subject lands, is subject to municipal water and sanitary sewage capacity being made available to service the development.



[54] Ms. Loft opined that the proposed development conforms to the County's OP and the Town's OP and that the development is compatible with adjacent development.

[55] Ms. Loft also stated that the proposed draft plan has been designed with consistent frontage, taking into consideration the elongated shape of the site along the Bay Street West road allowance. This plan will allow for efficient pedestrian and vehicular movements. Additionally, the proposed development has been designed to an appropriate density to allow for the efficient use of land.

[56] Mr. Taylor, representing the County, was in total agreement with the professional opinions expressed by Ms. Loft.

[57] Mr. Russell, on behalf of HWRG, submitted that he formalized his opinions in a Planning Review report dated February 8, 2022, concluding that there was land use planning justification to raise concerns with the degree of conformity to the Town's OP, and if not revised, an OP Amendment would be required concerning non-conformity to the Town's Infill Development policies and the reclassification of the unopened road allowances to a local road classification.

[58] Mr. Russell was consistent in his opinion that an OPA was required to satisfy certain subsections of the Town's OP and, in particular, to deal with the reclassification of unopened road allowances to local roads.

[59] Mr. Russell's evidence was based on his opinion that the infill development should have larger lot sizes, larger frontages and consequently fewer lots. He submitted two alternate proposals for the plan of subdivision to support this.

[60] The Tribunal notes that the Town's OP should be read as a whole, not just specific paragraphs. Section B3.1.5.1 of the Town's OP states that, "although existing residential neighbourhoods are intended to retain their existing character

with limited change, this does not mean that new housing must mimic the existing character and built form”.

[61] The Tribunal further notes that, if one were to accept the evidence of Mr. Russell, the proposed infill would not meet the objectives of the County OP and PPS with respect to efficient use of land.

[62] On the basis of the witness statements submitted and oral testimony presented by the land use planning experts, the Tribunal prefers the evidence of Ms. Loft and Mr. Taylor and finds that the proposal has regard for sections 34, 36 and 51(24) of the *Planning Act*.

**Issue two: Does the proposed development conform with the County’s OP, sections 3.4.1, 3.4.1.1, 3.5, 4.2.5, 8.10, and 9.13?**

[63] Ms. Loft explained that the subject lands are designated as “Primary Settlement Area” on Map 2A of the County’s OP.

[64] They are located where full municipal services can be provided. The proposal conforms to Section 3.3 Subsection 1) “Primary Settlement Areas” and Section 3.4 “General Policies Affecting Settlement Area Land Use Types” Subsection. 2) b) which ensures that new development does not conflict with the surrounding development.

[65] Ms. Loft also opined that the proposal conforms to Subsection 3) identifying that local Official Plans and plans of subdivision shall ensure a proper and orderly street pattern. The proposal conforms to Subsection 15) where the proposed development is compatible with adjacent land uses. The proposal achieves the Minimum Targets for Residential Intensification (Section 3.4.1),(Section 3.4.1 Subsection 1)).

[66] Ms. Loft submitted that the proposed development conforms to the “Primary Settlement Areas” policies within Section 3.5 including Subsections 2), 5) and 6), which she took the Tribunal to during her oral testimony.

[67] Mr. Taylor took the Tribunal to Sections 3.4.1 and 3.4.1 Subsection 1) of the County OP, which requires municipalities to promote intensification and redevelopment, while mitigating impacts on neighbouring residential areas. A mix of single detached and semi-detached dwellings does represent some additional density in this neighbourhood, but it is in accordance with the required residential density targets in Section 3.5 of the County OP. Semi-detached dwellings are generally considered to be compatible with the neighbouring single detached and condominium development in this area of Thornbury. Fencing and tree retention has been included in the Minutes of Settlement to assist in addressing the concerns of the neighbours.

[68] Mr. Taylor advised the Tribunal that Section 3.5 of the County OP provides policies for development of Primary Settlement Areas. Within “Primary Settlement Areas”, the County OP generally defers to the detailed policies and provisions in municipal Official Plans and Zoning By-laws. Section 3.5 Subsection 5) requires new residential development in Thornbury to meet a minimum residential density of 20 units per net hectare. This proposed plan of subdivision would achieve that density. Section 3.5 Subsection 6) again references the compatibility of intensification. Mr. Taylor stated that it is noteworthy that the County OP defines 'compatible' as follows:

"Compatible means the development or redevelopment of uses which may not necessarily be the same as or similar to the existing development but can coexist with the surrounding area with limited impacts."

[69] This was confirmed in the written and oral testimony provided by Ms. Loft.

[70] During the County and Town's Planning review, neither the County planning

staff, nor the Town planning staff, have ever referred to the 'must have' Intensification Strategy required by the County's OP.

[71] Ms. Loft advised that Accessory Apartments are permitted in each of the 20 units. These units would be located within Thornbury with appropriate levels of service. The four single detached units can have an Accessory Apartment in either the primary residence or within an accessory structure. It is anticipated that, with the depth of the lots, homeowners may wish to utilize these policies for Accessory Apartments within an accessory structure. The single detached units would allow for four accessory apartments. The semi-detached units are each permitted an Accessory Apartment which would permit up to 16 accessory apartments. It is anticipated that these units would be offered at market value by the homeowners and could also provide a homeowner with an opportunity to house an aging parent or family member. (Section 4.2)

[72] Ms. Loft also advised that the Accessory Apartments are expected to provide rental apartments which would have a range in size (bedrooms) and would provide a range of housing type in this area. (Section 4.2.1 and 4.2.2). The Accessory Apartments could be offered as rental units thereby increasing the number of rental units in the municipality by an upwards limit of 20 units. The site is suitable to accommodate rental housing and is within a central location and close proximity to services. The development is not by way of a condominium. (Section 4.2.2).

[73] Ms. Loft opined that the proposed Draft Plan conforms to the Plans of Subdivision and Condominium policies (Section 9.13) including Subsection 1) a) thru n) and Subsections 2, 3, 4, 5 and 6) which she took the Tribunal to in her oral testimony.

[74] Ms. Loft concluded by opining that the proposal conforms to the County's OP.

[75] Mr. Russell, in his cross examination, agreed that the proposed development conformed with the County OP.

[76] However, he opined that the County OP directs municipalities to undertake a mandatory Intensification Strategy.

[77] Without the mandatory Intensification Strategy, he submitted that it was unknown whether the subject lands would qualify as lands for which higher density development would be appropriate and whether the subject lands should be directed to accommodate intensification development.

[78] The Tribunal notes that this Intensification Strategy is currently a work in progress, and as noted earlier in this decision, does not apply to this planning application.

[79] On the basis of the written and oral evidence provided by the expert witnesses, the Tribunal prefers the evidence provided by Ms. Loft and Mr. Taylor and finds that the proposal conforms to the County's OP.

**Issue Three: Does the proposed development conform with the Town's OP?**

[80] Ms. Loft advised the Tribunal that the subject lands are designated "Community Living Area" ("CLA") within Schedule A-2 of the Town's OP. Furthermore, the development has been considered "Intensification" within the policy framework.

[81] She explained that permitted uses in the CLA (Section B3.1.3) include single-detached dwellings, semi-detached dwellings, duplex dwellings, local convenience uses, home occupations, residential intensification uses, nursing homes and senior citizen retirement homes. The proposed uses are permitted uses.

[82] She opined that the proposed residential use is contemplated in the Town's OP and the use of the lands for the proposed density is appropriate for the area, given the location and surrounding area. The proposed development conforms to Section A2 by providing a land use form which provides a range of housing that is respectful of the character of the community and the established neighbourhood, while making efficient use of infrastructure.

[83] Ms. Loft further explained that the permitted density within the CLA is 10 to 25 units per gross hectare for singles and 15 to 35 units per gross hectare for semi detached. Based on a total of 20 lots, the development would have a density of 18.69 units per gross hectare and a density of 24.07 units per net hectare.

[84] Ms. Loft stated that the development would allow for accessory apartments in all units which could be provided for rent. The future owners of the dwellings could participate in housing programs that support appropriate housing development as it relates to either the primary dwelling unit or accessory apartment.

[85] Ms. Loft opined that the proposed building heights will reflect patterns of existing zoning provisions for height. As well, similar lot coverages to adjacent housing are based on the existing range of lot coverages in the area and the zoning provision requirements for the proposed zones. She opined that this is considered infill development, and, in her professional opinion, it complies with section B3.1.5.2 of the Town's OP.

[86] Mr. Russell, in his written and oral testimony, focussed on the mandated requirement for the Town to develop an Intensification Strategy report in order to comply with the County's OP. In his opinion, the proposed development should be considered premature until such time as this plan has been conducted.

[87] Mr. Russell also expressed concerns that the proposed development was

not compatible with the adjacent neighbourhood, in terms of lot size, building heights and setback requirements.

[88] Mr. Taylor submitted that County staff would generally defer to the planning opinion of Town staff with respect to Town OP conformity. County staff would also note that the Appellant's planner as well as planners for the Town and the Condo Corporation have also offered their assessment of Town OP conformity.

[89] Mr. Taylor did not agree with the HWRG opinion that a Town OPA may be needed based on the new streets serving this subdivision. Should that opinion be accepted, it could mean that all new subdivisions opening new streets or extending streets would require an OPA. County staff do not believe this was the intent of the Town OP, and certainly has not been interpreted in this manner in the past.

[90] The Tribunal notes that Town staff, in reaching a settlement agreement with the Appellant, are also of the opinion that the proposal conforms to the Town's OP.

[91] Based on the evidence proffered by the expert witnesses, the Tribunal finds that an OPA is not required to deal with the matter of the unopened road allowances. The Tribunal prefers the evidence put forward by the Appellant, Town and County planners and finds that the proposed development is in conformity with the Town's OP.

#### **Issue Four: Is the proposed Zoning By-Law Amendment appropriate?**

[92] Ms. Loft stated that the effect of the proposed Zoning By-law Amendment is to permit the development of the subject land for 20 residential units, including a mix of single detached units and semi-detached units, having frontage on an open and maintained municipal road.

[93] She provided the Tribunal with a detailed review of the proposed 20 lots, their frontages and lot areas.

[94] Ms. Loft also explained that there is a holding symbol included on all zones which provides that the condition of removal shall be the execution of a subdivision agreement with the Town, registration of a plan of subdivision and that municipal water and sanitary sewage capacity has been confirmed as available to service the development.

[95] She also explained that the current zoning includes a holding H3 symbol, which is proposed to be lifted upon the completion and acceptance of a D4 study.

[96] Mr. Russell advised the Tribunal that part of the west half of the subject lands are zoned holding H3, being in proximity to a former landfill site. He agreed that the Appellant had submitted a Ministry of the Environment D4 assessment dated November 2019 prepared by Peto MacCallum Ltd. and further peer reviewed on July 23, 2020, by Golder & Associates. Both reports concluded that there is no concern of significant adverse effects from the landfill on the proposed residential development at the site. The Tribunal notes that the issue of the D4 study has already been addressed by the other expert witnesses and considers this issue to be moot.

[97] Mr. Russell also expressed his concerns with respect to zone standards, and details regarding maximum lot coverage, lot widths, setbacks and building heights.

[98] Mr. Taylor was in agreement with the evidence provided by Ms. Loft. He opined that this matter had been discussed in the *Planning Act* review and County staff would generally defer to the planning opinion of Town staff.

[99] Mr. Taylor further opined that the proposed zoning amendment would



appear appropriate in this regard.

[100] The Tribunal notes that the Town and County planning staff, in reviewing and approving the proposed development, have taken into consideration the required standards in the Zoning By-Law. Mr. Russell, in his opinion evidence, does not agree with the opinions expressed by the other experts.

[101] However, having considered the evidence presented by Ms. Loft and Mr. Taylor, the Tribunal prefers this over the opinion evidence of Mr. Russell.

[102] The Tribunal finds that the proposed Zoning By-Law Amendment is appropriate.

**Issue Five: Is the proposed stormwater management approach appropriate for controlling water on-site and are there improvements needed in the off-site outlets to the Bay?**

[103] Mr. Russell, in his witness statement, did not express a concern regarding stormwater management, he merely stated that, in order to conform to the Town's OP, Section C5, the proposed design needs to be approved by the Town.

[104] Mr. Cooper, on behalf of the Appellant, provided the Tribunal with a detailed analysis of the stormwater management design undertaken for this development. He made reference to the Functional Servicing and Stormwater Management Report dated October 2019, which was reviewed and approved by Town and County staff.

[105] Mr. Taylor noted that there are recommended draft plan conditions which speak to finalization of a Stormwater Management Plan. Mr. Taylor further stated that the Grey Sauble Conservation Authority staff had not raised any stormwater concerns with respect to this development

[106] The Tribunal accepts the expert evidence provided by Mr. Cooper with respect to stormwater management.

**Issue six: Does the proposed servicing meet Town Engineering Standards and is there water and wastewater capacity available?**

[107] Mr. Russell opined that, in his professional opinion, until such time that Council is prepared to formally allocate both municipal water and sewer capacity to this project, a condition within the Holding provision of the Zoning By-law Amendment should be applied.

[108] Ms. Loft stated that the proposed development will be serviced with watermain and sanitary sewer via connections to the existing Municipal infrastructure adjacent to the site. The proposed internal servicing is in conformance with the Town's Engineering Standards. Further details are provided in the 2019 Functional Servicing & Stormwater Management Report prepared by Crozier, which was reviewed by the Town and County.

[109] The Town's annual water and wastewater capacity assessment was referenced in the 2019 Functional Servicing and Stormwater Management Report, which indicated that capacity was available for the number of units proposed. As is standard practice within the Town, confirmation of available capacity in the water and wastewater systems will be a condition of draft approval.

[110] Mr. Taylor explained to the Tribunal that the draft plan conditions and a holding symbol H41 are being applied to this development to ensure servicing capacity is in place prior to construction of the dwellings.

[111] The Tribunal accepts the evidence that the proposed servicing meets Town engineering standards, and that water and wastewater capacity will be available.

**Issue seven: Is/does the proposed road design:**

- a. premature to approve until such time as final determination of the status of the portions of the unopened road allowance known as Bay Street West;
- b. appropriate and represent good transportation planning;
- c. consistent with Town Standards;
- d. compatible with adjacent developments; and
- e. accommodate for the movement of servicing vehicles?

[112] Mr. Russell opined that an OPA is required to be approved to reclassify the existing unopened road allowances road to a local road classification. His opinion was that additional mitigation design requirements would likely emerge from this public process.

[113] Mr. Russell concluded by stating that the final design of the proposed road is premature until the Town has approved the required OPA concerning reclassification of the road type.

[114] Mr. Fleming, on behalf of the Appellant, provided the Tribunal with a thorough and comprehensive review of the proposed road design, making reference to his Traffic Opinion letter. The road design extends the local road grid system, provides for active transportation with sidewalk that links to the external system and, in his professional opinion, will not cause traffic operations or safety concerns.

[115] Mr. Fleming also provided a critique of the two proposed draft plan

concepts prepared by Mr. Russell, demonstrating how the road and cul-de-sac layout was sub-standard from a turning radius and intersection offset point of view.

[116] Mr. Fleming provided evidence that the proposed road design will facilitate the movement of waste collection vehicles, snow clearing and emergency vehicles.

[117] The Tribunal notes that a consistent theme throughout Mr. Russell's witness statement and oral testimony is the contention that the construction of a road in an unopened road allowance constitutes a change of road classification which would require an OPA. However, County and Town staff, through their approval, have made it quite clear that this is not required.

[118] Based on the expert evidence proffered by Mr. Fleming, the Tribunal finds that the proposed roadway design is appropriate and represents good transportation planning.

**Issue eight: If it is determined that the proposed road network is appropriate, what is the appropriate terminus treatment at the Bay Street West and Victoria Street West intersection, and should implementation of this treatment be imposed as a condition of approval?**

[119] Mr. Fleming explained that the Bay Street West and Victoria Street intersection will consist of two approaches, those being the south (Victoria Street) and the west (Bay Street West). There will be no east nor north approaches. As there are only two approaches to the intersection, the appropriate treatment would be a horizontal curve. Intersection controls such as stop or yield signs are not necessary as there are no conflicting traffic flows, such as a left turn across an oncoming lane. As a horizontal curve is the only viable treatment, it is not necessary for it to be imposed as a condition of approval.

[120] The Tribunal notes that, although this issue was added at the request of the HWRG, Mr. Russell had no comment on this matter except to confirm that the Official Plans promote grid pattern road design as the preferred road system.

**Issue nine: Are the tree removal and retention on-site and in the abutting road allowances appropriate and in the public interest?**

[121] Mr. Taylor submitted that having open and connected streets is in the public interest. While there will be limited tree retention available in the road allowances, a tree protection block is being proposed. Furthermore, Vegetation Assessments and Vegetation Management Plans are being required through draft plan conditions 24 and 25. The proposed Minutes of Settlement further states that:

"The Applicant agrees that any augmentation of the tree protection area in paragraph 6 above may be further identified in the Subdivision Agreement and shall be at the Applicant's cost"

[122] Ms. Loft explained that a Tree Preservation Block has been proposed within the unopened road allowance of Bay Street West. In order to achieve this, the proposed roadway has been pushed further south and appropriate land dedications have been provided in the Draft Plan of Subdivision.

[123] Based on the witness statements and oral testimony provided by the Appellant's and the County's witnesses, the Tribunal is satisfied that the proposed tree removal and tree retention on site and in the unopened road allowance is appropriate and in the public interest.

**Issue ten: Does the current proposed 2.5 metre landscape buffer sufficiently mitigate undue impacts to neighbouring landowners? Are any alternative or additional buffering or conditions of draft plan approval required to ensure no light, noise and traffic impacts are suffered by adjacent landowners, including but not limited to, tree retention, fencing and setbacks?**

[124] Ms. Loft explained that the 2.5 m landscape buffer previously contemplated has been revised and a tree preservation area varying between 0.0 and 9.0 m is proposed. The tree preservation area will begin approximately at the extension of Lot 6 and reach a maximum opposite the most easterly lot, Lot 20.

[125] Mr. Fleming opined that the proposed development will not result in light, noise and traffic impacts to adjacent landowners, and that a tree preservation area (or landscape buffer) is not required for the purposes of mitigation, notwithstanding it is being proposed for tree preservation purposes. The rationale for this opinion is as follows.

[126] The projected volumes of vehicle trips are low and are not associated with traffic operational issues at the boundary road network nor with the need for roadway network improvements. Accordingly, it is Mr. Fleming's opinion that there will be no discernable traffic impacts to either adjacent landowners or the wider community.

[127] The reference to the 2.5 m landscape buffer refers to an older version of the proposed draft plan of subdivision. With the tree protection block now being proposed, it means that for some of the lots fronting onto Lakeshore Drive, there will be greater than 2.5 m of buffering. There is a privacy fence being proposed for the rear yards of 3 lots on Lakeshore Drive as well as abutting the rear yards of the Condominium Corporation.

[128] The proposed lots are quite deep with approximately 47 m of depth for the 3 single detached lots on Lansdowne Street North and 40 to 48 m of depth for the lots on the Bay Street West extension. This should provide adequate separation between the new single and semi-detached dwellings which would share a side yard or rear yard with those lots fronting onto Huron Street West.

**Issue eleven: Does the proposed development contain sufficient details**

**about the potential accessory units in order to determine the impacts on traffic safety and operations, and what mitigation measures are required to address any potential adverse transportation and parking impacts for neighbouring properties?**

[129] Ms. Loft confirmed that any future Accessory Residential Units will be required to comply with Town zoning and engineering standards, as it applies to setbacks, parking, servicing connections, and entrances onto a Town street. While Accessory Residential Units would be permitted in each of the 20 residential units being proposed, County's staff's experience is that not all landowners will construct them. In more recent residential developments across the County, staff have not seen a huge uptake in Accessory Unit construction, and often less than 30% of the dwellings contain an Accessory Unit. County staff do not see the potential for Accessory Units to have any undue impacts on parking or traffic operations here. Particularly now that the streets are no longer proposed as one-way streets, staff see little potential for heavy traffic volume impacts even if each of the 20 residential dwellings had an Accessory Unit.

[130] Mr. Fleming submitted that the vehicle trips generated from Accessory Units at some or all of the residential dwellings will be less than that forecast in the Traffic Opinion Letter for the residential units themselves. The maximum total volume of trips, if all of the residential dwellings incorporated accessory units would be 22 two-way a.m. trips and 30 two-way p.m. trips. This volume of trips is still considered low and would not result in discernable traffic impacts to either adjacent landowners or the wider community.

**Issue twelve: What are the appropriate conditions to impose upon any approval of the proposed draft plan of subdivision, including any conditions and clearances regarding contamination, leachate or methane?**

[131] This item has been discussed above, and there are no additional holding

symbols needed as it pertains to the nearby former landfill site, and the former H3 holding symbol is proposed to be removed.

[132] The Tribunal notes that both the Town and County staff have agreed upon a settlement proposal with the Appellant, and there are conditions of draft plan approval to be satisfied by the Appellant prior to entering into final approvals being granted.

[133] On this basis, the Tribunal finds that there are no additional conditions that need to be imposed on the proposed draft plan of subdivision.

### **ANALYSIS AND DISPOSITION OF ISSUES LIST**

[134] The majority of the three-day Hearing was taken up with evidence brought forward by the Appellant's and County's expert witnesses to address the twelve (12) issues on the Issues List, as requested by the HWRG.

[135] The Tribunal notes that the consistent theme throughout Mr. Russell's witness statement and oral testimony is the contention that the construction of a road in an unopened road allowance constitutes a change of road classification which would require an OPA.

[136] Mr. Russell also brought forward his opinion evidence that the proposed development was not compatible with the existing neighbourhood and, in the Tribunal's opinion, he "cherry picked" certain clauses and sub-clauses in the Town's OP and Zoning Standards to assist in supporting his submissions.

[137] The Tribunal finds that the oral testimony provided by Mr. Russell was not substantive and did not make a convincing argument as to why the proposed development should not be approved. Counsel for the Appellant made a point of stating that the HWRG concerns were, in essence, "much ado about nothing".



[138] On the basis of the witness statements and oral testimony provided, the Tribunal concludes that the proposed development is consistent with provincial policies, conforms to the County's OP, conforms to the Town's OP, represents good planning and is in the public interest.

**THE TOWN'S REQUESTED CONDITION THAT THE APPELLANT PROVIDE SIX ACCESSORY APARTMENTS TO BE OFFERED AS AFFORDABLE HOUSING.**

[139] With the exception of the HWRG, all Parties agreed that the proposed development had regard for matters of provincial interest, conformed to both the County and Town Official Plans, represented good planning and was in the public interest.

[140] The only contested issue between the Town and the Appellant was the recent request by Town Council for the Appellant to provide six accessory apartments to be offered as affordable housing.

[141] Both witnesses for the Town, Alar Soever and Robert Chapman, provided the Tribunal with PowerPoint presentations outlining the Town's concern regarding the lack of affordable housing.

[142] Mr. Soever, the Town's Mayor, told the Tribunal that the lack of affordable housing in The Blue Mountains is hampering the development of the community in that the lack of any affordable housing is making it impossible for essential workers to live in the Town. This includes, but is not limited to, police officers, volunteer firefighters, young doctors, personal support workers, early childhood educators, and other service industry workers.

[143] He provided the Tribunal with real estate sales data reports and statistics obtained from the Municipal Property Assessment Corporation.

[144] Mr. Soever also took the Tribunal to excerpts from the *Planning Act*, the PPS, the County OP and the Town's OP where references have been made for the need to provide affordable housing in communities across Ontario.

[145] Mr. Sampson told the Tribunal that in January 2014, The Blue Mountains Attainable Housing Corporation (BMAHC) was established as a not-for-profit corporation with majority control held by The Town to augment the supply of healthy and sustainable ownership housing units in Town, with the goal of providing housing to moderate income working individuals and families locked out of the housing market.

[146] Under cross-examination, both witnesses confirmed that the Town does not have any formal policy in its OP to address affordable housing. The witnesses also confirmed that no staff report had been brought to Council's attention regarding the provision of affordable housing, and in particular requesting affordable housing units in this subdivision.

[147] As noted by counsel representing the Town, this is an unprecedented request. The witnesses, under cross-examination, admitted that two previous subdivision applications had been approved by the Town without a request for the provision of affordable housing.

[148] Counsel for the Town submitted that there is a housing affordability crisis, not only in the Town, but across all municipalities in Ontario. He made reference to numerous excerpts from provincial policies requiring municipalities to provide for an appropriate range and mix of housing options to meet projected market-based and affordable housing needs of current and future residents.

[149] Counsel for the Appellant did not disagree there was an affordable housing crisis but questioned why this burden was being put upon his client by the Town, at the "eleventh hour" and with no statutory authority. He stated that this condition,

if it were to be imposed, would equate to expropriation without compensation.

[150] Counsel brought forward the following case law for consideration by the Tribunal:

- Jock River Farms Ltd. v. Ottawa-Carleton (Regional Municipality), [1999]
- Taylor v. Guelph (City), [1998]
- Go-To Glendale Avenue Inc. v. St. Catherines (City), 2019
- Reemark Holdings No. 12 Inc. v. Burlington (City), [1991]

[151] The Tribunal notes that the “Go-To Glendale” case is very similar to the issue before the Tribunal, where a settlement was being proposed between the Appellant and the City, and a “last minute” ask for 10-30 % affordable housing units was injected by Council

[152] Mr. Treslan, on behalf of the County, also agreed that this was an unprecedented request.

[153] Counsel for the Appellant provided the Tribunal a copy of an email sent from Mr. Treslan’s office, as he was unable to attend closing arguments. The email was read into the record, as follows:

“Mr. Treslan, solicitor for the County of Grey, regrets that his trial is currently ongoing and that he is unable to make final submissions on the issue of the request by the Town for the condition relating to affordable housing. This is a request of concern to the County. Mr. Treslan has reviewed my submissions relating to that issue and adopts them as his own on behalf of the County. Absent inclusionary zoning powers or legal bonusing, the County submits that it has no legal authority to impose a condition requiring the dedication of affordable housing by a private developer in any

manner (nor were they asked to in this instance). The County further submits that this Tribunal has no jurisdiction to impose such a condition. If such a condition were imposed, it would amount to expropriation without compensation.”

[154] The Tribunal recognizes that there is an affordable housing crisis across municipalities in Ontario. Earlier this year, the province released a report on the “Ontario Housing Affordability Task Force”.

[155] There is no question that municipalities must consider how best to accomplish the task of providing affordable housing. There are many tools available to assist in accomplishing this, such as Inclusionary Zoning, incentives and/or the use of Section 37 or Community Benefits provisions.

[156] However, the Town has not provided any tools by which the Tribunal can adjudicate on this matter. In the absence of OP policies providing direction, the Tribunal is not in a lawful position to grant or approve the Town’s request.

[157] Subsection 51(25) of the *Planning Act* states that:

“The approval authority may impose such conditions to the approval of a plan of subdivision as in the opinion of the approval authority are reasonable, having regard to the nature of the development proposed”

[158] Not only must the Tribunal consider the test of reasonableness, it must also consider whether the proposed condition is relevant, necessary and equitable.

[159] With respect to reasonableness, there is no policy basis for this request and the Town’s OP is silent, therefore the Tribunal does not consider this request reasonable.

[160] With respect to relevancy, the request is not tied to the development or the nature of the subdivision. Unlike servicing requirements which are clearly connected, the issue of affordable housing is a broader community issue and did

not arise as a result of this proposal.

[161] With respect to equity, prior planning applications have not been asked to provide affordable housing, and yet this one developer is now being asked to set aside 6 units or 30% for affordable housing.

[162] The Tribunal finds that the Town's request, although heartfelt and sincere, is not reasonable, is not relevant and is not equitable in the case of this proposed development.

## **ORDER**

[163] The Tribunal Orders that the appeal is allowed, in part, and that the Zoning By-Law Amendment attached as **Schedule 1** to this Decision, be approved.

[164] The Tribunal Orders that the appeal is allowed, in part, and that the Draft Plan of Subdivision and the Conditions of Draft Plan Approval, attached as **Schedules 2** and **Schedule 3** to this Decision are approved.

[165] The Tribunal Orders that pursuant to subsection 51(56.1) of the *Planning Act*, the County of Grey shall have the authority to clear the conditions of draft plan approval of the plan of subdivision for the purposes of subsection 51(58) of the *Planning Act*.

[166] The Tribunal will withhold its final Order respecting the above until such time that the Town of The Blue Mountains advises it has passed the Open Space Zoning By-Law Amendment for the depicted Tree Preservation Area in the portion of the unopened road allowance, and the time for initiating all appeals of the Open Space Zoning By-Law Amendment has expired.

[167] 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 Tribunal may be spoken to.

[168] In the absence of Official Plan policy, the Tribunal encourages the Town of The Blue Mountains and Tammy Abbots to continue discussions towards a potential mutually agreeable resolution to the affordable housing concerns.

*“T. Prevedel”*

T. PREVEDEL  
MEMBER

### **Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

## Schedule 1 Zoning By-law Amendment

OLT-22-002269 AND  
OLT-22-002272 - TAB 7

**The Corporation of the Town of the Blue Mountains  
By-law Number 2022-\_\_\_\_\_**

**Being a By-law to amend Zoning By-law No. 2018-65 which may be cited as “The Blue Mountains Zoning By-law”;**

**Whereas**, pursuant to the provisions of Sections 34 & 36 of the Planning Act R.S.O. 1990, c.P13, the By-law may be amended by Councils of Municipalities; and,

**NOW THEREFORE THE ONTARIO LAND TRIBUNAL APPROVES AS FOLLOWS:**

1. Schedule A – Map 8 to By-law 2018-65 is hereby amended by amending the zoning on the subject lands described as Town Plot Lots 35 to 39 Bay: W/S, former Town of Thornbury, Town of the Blue Mountains and shown on Schedule “A”, affixed hereto from Residential (R1-1-h3-h4A) to Residential (R1-2-X-h4a-h41) and Residential (R2-XX-h4a-h41) Zone.
2. That Table 9.1 – Exceptions is amended by adding the following new exceptions to Table 9.1:

| Exception Number | Zone           | Special Provisions  |
|------------------|----------------|---|
| X                | R1-2-X-h4a-h41 | Short Term Accommodation Units shall be prohibited.   |
| XX               | R2-XX-h4a-h41  | Only semi-detached dwellings, home child care, accessory apartments, home businesses and accessory uses thereto, shall be permitted. Accessory apartments shall only be permitted in the semi-detached dwelling only. Short Term Accommodation Units shall be prohibited. |

3. That Section 10.3 Site-Specific Holding Provisions is amended by adding the following new exception to Table 10.1:

| Holding Number | Zone           | Conditions of Removal  |
|----------------|----------------|--|
| 41             | R1-2-X-h4a-h41 | i) Execution of a Subdivision Agreement with the Town.<br>ii) Registration of a Plan of Subdivision. |
|                | R2-XX-h4a-h41  |  |

|  |  |  |
|--|--|--|
|  |  | iii) Municipal Water and Sanitary Sewage capacity have been confirmed as available to service the development. |
|--|--|--|

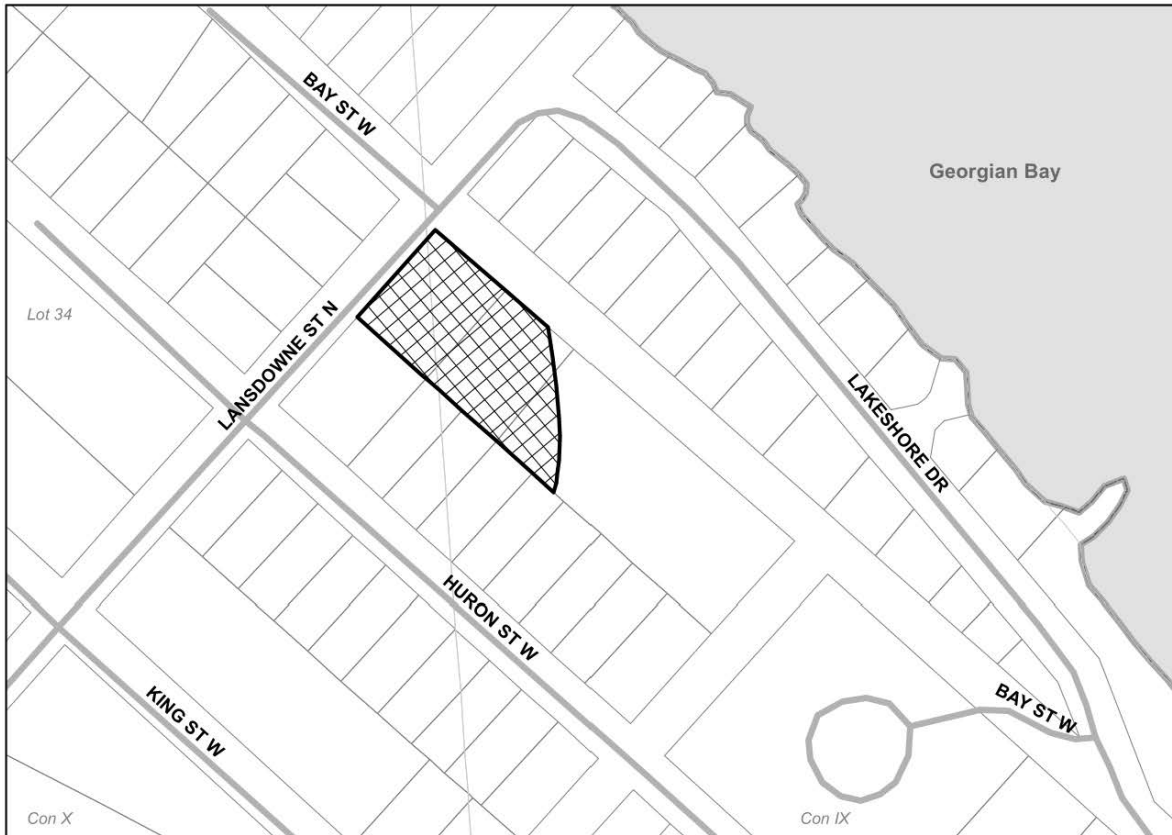
4. The Zoning By-law of the Blue Mountains being By-law 2018-65, is hereby amended by removing the Holding '-h3' symbol from the lands lying and being in the Town of The Blue Mountains comprised of Town Plot Lots 35 to 39 Bay: W/S, former Town of Thornbury.
5. That Schedule 'A-1' and Schedule 'A-2' are declared to form part of the By-law.  
And Further that this By-law shall come into force and take effect upon the enactment thereof.

Approved \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Ontario Land Tribunal Member



**Schedule 'A-1'**  
**By-law 2022-\_\_\_\_\_**  
**Town of The Blue Mountains**  
**Lots 35-39, SW of Bay Street, Town of The Blue Mountains**



Lands to be rezoned from the Residential One Exception (R1-1-h3-h4a) Zone to the Residential One Exception (R1-2-x-h4a-h41) and (R2-xx-h4a-h41) Zones

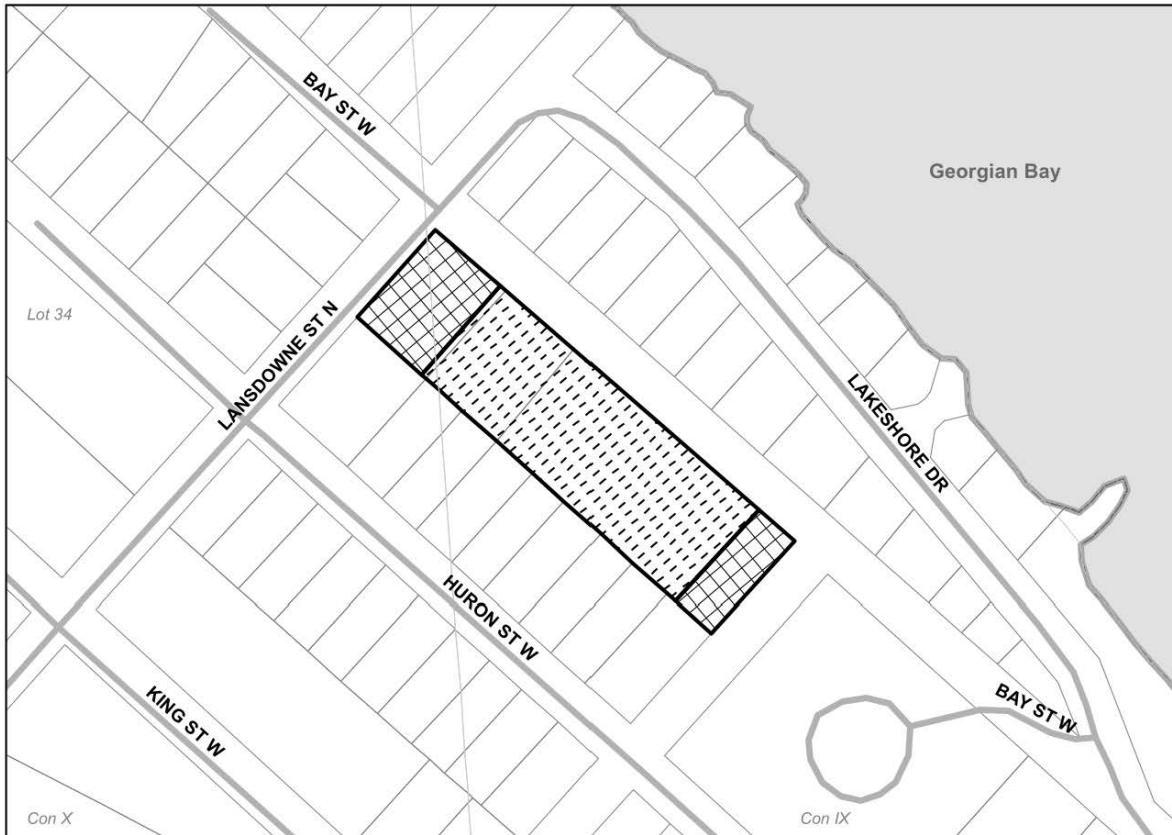
This is Schedule 'A-1' to By-law \_\_\_\_\_

Approved by the Ontario Land Tribunal this \_\_\_\_\_ day

of \_\_\_\_\_, 2022.

\_\_\_\_\_  
 OLT Member

**Schedule 'A-2'**  
**By-law 2022-\_\_\_\_\_**  
**Town of The Blue Mountains**  
**Lots 35-39, SW of Bay Street, Town of The Blue Mountains**



Lands to be rezoned from the Residential One Exception (R1-1-h3-h4a) Zone to the Residential One Exception (R1-2-X-h4a-h41) Zone



Lands to be rezoned from the Residential One Exception (R1-1-h3-h4a) Zone to the Residential Two Exception (R2-XX-h4a-h41) Zone

This is Schedule 'A-2' to By-law \_\_\_\_\_

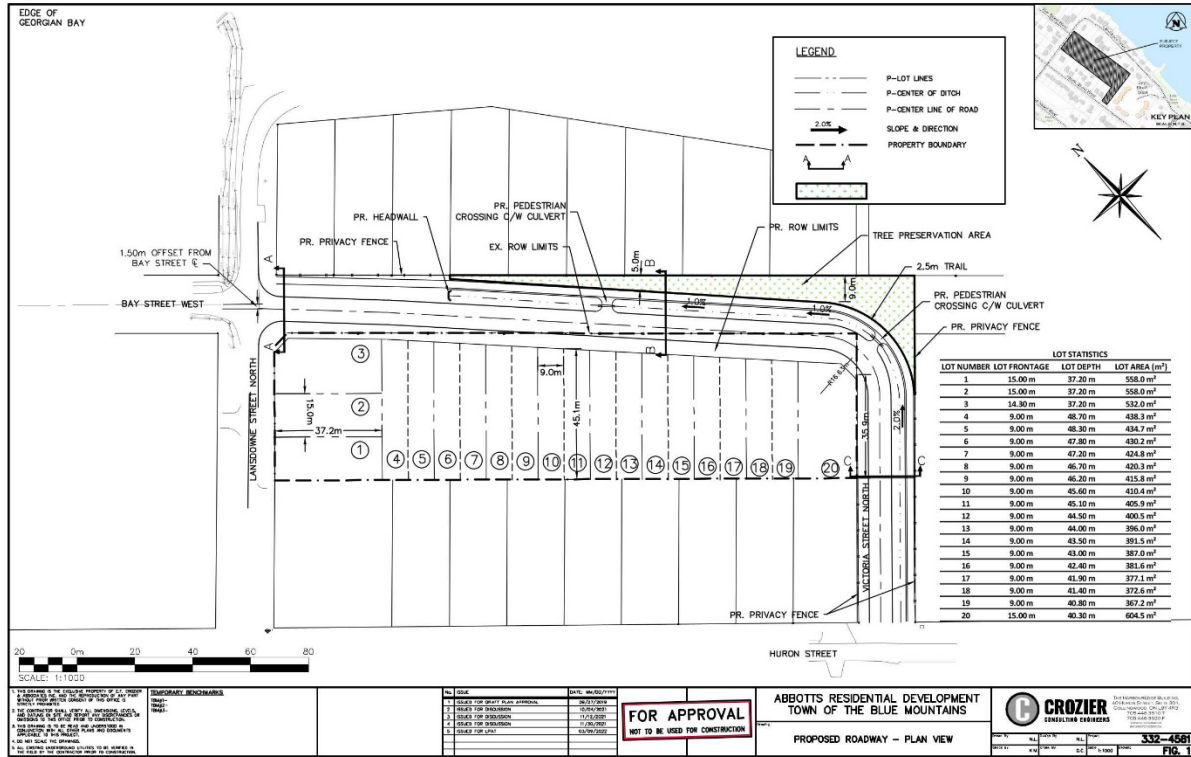
Approved by the Ontario Land Tribunal this \_\_\_\_\_ day

of \_\_\_\_\_, 2022.

\_\_\_\_\_  
 OLT Member

## Schedule 2

### Draft Plan of Subdivision



J:\300\332 - Hahne Property\4581-Abbotts Condo Dev\CAD\civil\_Sheets\4581\_700-F16.dwg, FIG. 1, 2022-03-09 10:54:53 AM, niefelbne

## Schedule 3

### Conditions of Draft Plan Approval

Applicant: Tammy Abbotts  
Town of The Blue Mountains

OLT File No.: OLT-22-002269

Location: Town Plot Lots 35 to 39: W/S (geographic Town of Thornbury) Town of the Blue Mountains

#### General Requirements

1. That this approval applies to the draft plan of subdivision located on the property legally described as Town Plot Lots 35 to 39 Bay: W/S (geographic Town of Thornbury) Town of The Blue Mountains, County of Grey, prepared by Van Harten dated April 19, 2022 and signed by the Owner on \_\_\_\_\_, showing the following:
  - 8 Residential Lots planned for 16 semi-detached residential units (Lots 4-19) and 4 single detached units (Lots 1-3, 20)
  - 1 Block for Road Widening and Daylighting Triangle (Block 21).
2. The Owner shall enter into and execute a Subdivision Agreement, in accordance with these Draft Plan Conditions, prior to final approval and registration of the Plan, to satisfy these conditions and all financial, legal, and engineering matters, including landscaping and the installation of municipal services, and other requirements of the Town and the County of Grey ("the County"), as well as any statutory requirements of other government authorities, including the payment of all applicable Town and County development charges in accordance with the applicable Development Charges By-law.
3. That the Owner shall enter into development and other necessary agreements or obtain necessary approvals, satisfactory to the Town or any other appropriate authority before any development or site alteration within the plan including filling, grading, removing trees and/or topsoil, installing any works, or constructing any buildings or structures. These Agreements may deal with matters including but not limited to the following:
  - i. Engineering works which include municipal water, sanitary sewer services;
  - ii. Professional services including preparation of reports, plans, inspections, certifications and approval;
  - iii. Drainage, stormwater management;
  - iv. Storm sewers and infiltration galleries;
  - v. Road construction and intersection;
  - vi. Securities, cash contributions, development charges;
  - vii. Emergency services;
  - viii. Land dedications and easements, reserves;
  - ix. Hydro, Street Lighting, Natural Gas and Telecommunication Utilities;
  - x. Architectural Control;
  - xi. Grading and sodding;
  - xii. Fencing & Landscaping;
  - xiii. Trails/walkways;
  - xiv. Fire Break Plan, if required;
  - xv. Construction Implementation and/or Mitigation Measures;
  - xvi. Warning clauses, signed entry features and safety hoarding;

The details of which may be indicated in correspondence from appropriate commenting agencies and/or departments.

Applicant: Tammy Abbotts  
Town of The Blue Mountains

OLT File No.: OLT-22-002269

Location: Town Plot Lots 35 to 39: W/S (geographic Town of Thornbury) Town of the Blue Mountains

4. The Owner/Developer shall acknowledge in the Subdivision Agreement that draft approval does not in itself constitute a commitment by the Town of The Blue Mountains to providing servicing access to the Town's water or wastewater treatment plants or allocation of associated built capacity. Plans may proceed to registration provided there is sufficient residual capacity and capability to service the development.
5. The Owner shall agree in the Subdivision Agreement that all of the works required by the Town, the County, other government authorities and utility providers for the development and servicing of the lands shall be designed and installed in accordance with the Town's Engineering Standards, and Provincial & Federal Guidelines & Standards, that are in effect at the date of execution of the Subdivision Agreement to the satisfaction of the Town. Where compliance with Town Engineering Standards necessitates offsite works, (i.e. stormwater management system upgrades) the owner shall enter into agreements with the Town and/or the County to implement the requisite offsite works, to the satisfaction of the Town.

#### **Servicing, Grading and Road Requirements**

6. That prior to final approval by the County, a Site Servicing Plan is prepared to show how the development is fully serviced with sanitary sewer and water to the satisfaction of the Town of The Blue Mountains.
7. That prior to execution of a Pre-Servicing Agreement and/or Subdivision Agreement with the Town, sufficient water and sanitary sewer capacity shall be available and confirmed in writing by the Town Director of Operations.
8. That prior to final approval and registration of the Plan, the Town shall provide confirmation to the County that there is sufficient water and sanitary capacity available and allocated to service the entire plan of subdivision.
9. That the Subdivision Agreement shall detail and confirm the water and sanitary servicing capacity allocated to this plan of subdivision.
10. That the Owner shall agree in the Subdivision Agreement to provide for all necessary installations and connections to any existing municipal storm drainage, sanitary sewer collection and water servicing systems to service the proposed development, to the satisfaction of the Town.
11. That prior to execution of a Pre-Servicing Agreement or Subdivision Agreement, a detailed engineering and drainage report will be provided which describes the stormwater drainage system for the proposed development on the subject lands to the satisfaction of the Town. The Plan shall demonstrate how the drainage

Applicant: Tammy Abbotts  
Town of The Blue Mountains

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Location: Town Plot Lots 35 to 39: W/S (geographic Town of Thornbury) Town of the Blue Mountains

system will tie into the drainage of surrounding properties and how external drainage and site drainage is appropriately conveyed.

12. That the Subdivision Agreement shall include wording for the provision of Operation and Maintenance Manuals for any non-standard infrastructure that may be required, to the satisfaction of the Town.
13. Stormwater overland flow routes shall be kept within municipal roads or approved walkways or as illustrated in the overall grading plan for the subdivision.
14. Prior to the initiation of any site grading or servicing and prior to registration of the plan, the Owner submit for the approval of the Town Development Engineering Division 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. If, in the sole discretion of the Town, certain lots are not recommended for below grade basements, the Subdivision Agreement shall reference said building restrictions including any applicable warning clauses to prospective purchasers.
15. Prior to the initiation of any site grading or servicing, the Owner 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.
16. That the Subdivision Agreement shall contain specific clauses related to the required Ontario Building Code / Engineering Standards, as applicable, of the Town including but not limited to the following:
  - i. The appropriate horizontal and vertical alignments of all roads, including their intersection geometrics, and underground services;
  - ii. That suitable construction traffic routes are identified to the satisfaction of the Town; and,
  - iii. The street lighting system on roadways be designed and constructed to the satisfaction of the Town. The Subdivision Agreement shall also require that all external lighting, including street lighting, be dark-sky compliant.

#### **Utilities**

17. That the Owner shall grant all necessary easements and/or blocks and/or enter into agreements for drainage, utility and servicing purposes, including CRTS-

Applicant: Tammy Abbotts  
Town of The Blue Mountains

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Location: Town Plot Lots 35 to 39: W/S (geographic Town of Thornbury) Town of the Blue Mountains

licensed telephone and broadcasting distribution, as may be required, to the appropriate agency or public authority.

18. The Owner, in consultation with the applicable utilities and Communications Service Providers, shall prepare an overall utility distribution plan that shows the locations of all utility infrastructure for the subdivision, as well as the timing and phasing of the installation.
19. That the Subdivision Agreement include a clause requiring that the Owner agrees to relocate any existing utilities as a result of the subject development at the sole expense of the Owner.
20. Prior to final approval, the Owner shall provide written confirmation to the Town that satisfactory arrangements, financial and otherwise, have been made with necessary utility companies for any facilities serving this draft plan of subdivision.
21. The Owner shall agree in the Subdivision Agreement to locate all utilities (telephone lines, local power, other cable services) underground and is encouraged to provide fibre optic cable or enhanced telecommunication technologies.
22. The Owner shall agree in the Subdivision Agreement to provide sites for community mailboxes to service the Subdivision and that it is the responsibility of the developer/builder to provide the concrete pad for the placement of the community mailboxes in accordance with the requirements as provided by Canada Post.
23. The Owner covenants and agrees to provide the Town with evidence that satisfactory arrangements, financial and otherwise, have been made with Canada Post for the installation of community mailboxes as required by Canada Post.

#### **Vegetation, Fencing and Streetscape Requirements**

24. That prior to final approval, the Owner prepares a Vegetation Assessment and Vegetation Management Plan by a qualified consultant to the satisfaction of the Town of The Blue Mountains. The Vegetation Assessment and Vegetation Management Plan shall include amongst other matters:
  - i. Special provisions to ensure that the existing vegetation on the periphery of the site be maintained and protected, where feasible, during the development process;
  - ii. Special provisions to ensure that the existing vegetation on the lands within the Unopened Right of Way, specifically Bay Street West between Lansdowne Street and unopened Victoria Street and unopened Victoria Street between Huron Street West and Unopened Bay Street are assessed.

Applicant: Tammy Abbotts  
Town of The Blue Mountains

OLT File No.: OLT-22-002269

Location: Town Plot Lots 35 to 39: W/S (geographic Town of Thornbury) Town of the Blue Mountains

- iii. Special provisions to ensure that existing vegetation on adjacent lands be protected during development and construction; and,
  - iv. That said plan be incorporated into the Subdivision Agreement with the Town.
25. The Subdivision Agreement shall ensure that the Owner shall save and/or remove any trees and vegetation on the subject lands as required by the Vegetation Assessment / Vegetation Management Plan to the satisfaction of the Town of The Blue Mountains.
26. The Owner shall agree in the Subdivision Agreement to pay the reasonable costs for the design and installation of a solid board residential screen fence (STD No. 504) as identified in the Minutes of Settlement for the following locations:
- a. Along the rear lot line of the first three lots that front onto Lakeshore Drive and being Plan 533, Lot 1 (61 Lansdowne Street); Plan 533, Lot 2 (111 Lakeshore Road); and Plan 533, Lot 3.
  - b. Along the rear lot line adjacent to Victoria Street between the Tree Preservation Block and Huron Street of the Grey Condominium Corporation No. 11.
  - c. Along the east lot line of 96 Huron Street from the intersection of Huron Street to the rear lot line.

#### **Park and Open Space Requirements**

27. The Owner shall pay cash-in-lieu of Parkland dedication of 5% to the Town of The Blue Mountains, in accordance with the *Planning Act*.

#### **Miscellaneous**

28. That the Subdivision Agreement between the Owner and the Town provide for the dedication of a road widening (Block 21) and daylighting triangles (Block 21) and any 0.3m reserves to be conveyed to Town of The Blue Mountains without monetary consideration and free of all encumbrances to be held by the Town for the purpose of a daylight triangle.
29. That prior to execution of any Subdivision Agreement, final approval, and registration, the Owner shall submit a Development Communications Plan for review and approval by the Town. The Development Communications Plan shall inform the Town and area residents of Significant Site activities and include:
- i. Installation of a Project Notification Sign, 1.2 m x 2.4 m minimum, to Town template, at each construction access to the Lands and visually obvious to the public, at least two (2) weeks before the construction start date, and maintained for full duration of construction.



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- ii. Notification of the construction project to property owners as deemed appropriate in consultation with Development Engineering via hand/mail delivery.
  - iii. Schedules of intended site activities updated routinely. (typically, weekly to bi-weekly).
  - iv. A minimum of two (2) weeks notice following Town approval and prior to commencement of:
    - a. Significant site activities including such as site alteration works as tree clearing & grubbing, commencement of site servicing/grading, placement of asphalt, concrete curbs and sidewalk, and landscaping, and/or
    - b. Off-site works on Town Owned Lands/Roads following receipt of a Municipal Land Use Permit (MLUP).
30. That prior to final approval and registration, the Owner shall obtain a letter from the Ministry of Heritage, Sport, Tourism and Culture Industries, that the Archaeological Assessment has been entered into the Ontario Public Register of Archaeological Reports.
31. Prior to final approval and registration of the Plan, the lands within this Draft Plan of Subdivision shall be appropriately zoned by a Zoning By-law that has come into effect in accordance with the provisions of the Planning Act.
32. That the Owner shall agree in the Subdivision Agreement, prior to offering any of the residential lots for purchase, to place a 'Display Map' on the wall of the sales office in a place visible to the public, which indicates the approved location of all sidewalks, walkways, trails, community mailboxes, parks, schools, open space areas, environmental protection areas/tree preservation areas, watercourses, and surrounding land uses. The Owner shall also agree to keep Accepted for Construction drawings in the sales office which show easements, hydrants, utilities, lighting, lot grading, landscaping, and noise attenuation measures, as applicable.
33. Where applicable, the Owner shall agree in the Subdivision Agreement to include a clause within all Offers of Purchase and Sale Agreements with prospective purchasers of lots adjacent to a public walkway, advising of the potential for exposure to pedestrian traffic and related noise from time to time, to the satisfaction of the Town.
34. Where applicable, the Owner shall agree in the Subdivision Agreement to include a clause within all Offers of Purchase and Sale Agreements with prospective purchasers advising that buildout of the development may generate construction related noise, vibration, dust and other such nuisances.

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35. The Owner shall agree in the Subdivision Agreement to place the following notification in all offers of purchase and sale for all lots and/or units:

- a. "Purchasers are advised that winter maintenance and snow plowing from public streets and laneways will be done in accordance with the Council approved protocol and policies for snow removal."
- b. "Purchasers and/or tenants are advised that the homeowner's builder is responsible for the timing and coordination of rectifying lot grading matters which occur prior to assumption."
- c. "Purchasers and/or tenants are advised that prior to the placement of any structures in side and rear yards, the Zoning By-law should be reviewed to determine compliance and that a Site Alteration Permit may be required prior to proceeding to do any site work."
- d. "Purchasers and/or tenants are advised that private landscaping is not permitted to encroach within the Town's road allowance, public open space or environmental areas. Any unauthorised encroachments are to be removed by the homeowner prior to Assumption."
- e. "Purchasers and/or tenants are advised that an overall grade control plan has been approved for this Plan and further some lots will incorporate the drainage of adjoining lots through the design of swales and rear lot catch basins."
- f. "Purchasers are advised that any unauthorized alteration of the established lot grading and drainage patterns by the homeowner may result in negative drainage impacts to their lot and/or adjoining lots."
- g. "Purchasers and/or tenants are advised that the homeowner's Builder is required to ensure the lot is graded to the approved lot grading plan and to have the lot grading certified prior to the reduction/release of any post lot grading securities. The Builder is to advise the purchaser once the lot has been graded to the approved plan and certification has been provided to the Town. The purchaser and/or tenant will be provided a period of time in which contest any grading issues. Should the purchaser not contest the grading certificate completed by the Builder, the purchaser will then assume full responsibility for the lot grading beyond that point. Purchasers are advised that they are not permitted to modify or alter the grading of their lot without prior written approval from the Town of The Blue Mountains."
- h. "Purchasers are advised that accommodation within a public school in the community is not guaranteed and students may be accommodated in temporary facilities; including but not limited to accommodation in a portable classroom, a "holding school", or in an alternate school within or outside of the community."
- i. "Purchasers are advised that if school buses are required within the Subdivision in accordance with Board Transportation policies, as may be amended from time to time, school buses will not enter cul-de-sacs and school bus pick up points will generally be located on the through street at a location as determined by the Student Transportation Service Consortium of Grey Bruce."

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36. The Developer shall prepare a preliminary Neighbourhood Development Information Map for the subdivision, to the satisfaction of the Town's Director of Planning & Development Services. The Map is to be posted in a prominent location at the entrance to the development, in each sales office from where homes in the subdivision are being sold, and included within the individual purchase and sale agreements. The Map shall include the location and type of parks, open space / valleyland and walkways, a general description of their proposed facilities as well as the following information:

- a. All approved street names,
- b. The proposed land uses within the subdivision based on the draft approved plan,
- c. The immediately surrounding existing and proposed land uses,
- d. The approved phasing of the development (if applicable) and construction access routes,
- e. The approximate locations and types of other fencing within the subdivision,
- f. Where parks and open space, stormwater management facilities and walkway / vista blocks / servicing blocks are located,
- g. The types and locations of parks, valley lands and other open space (i.e. passive or active) and a general description of their proposed facilities and anticipated level of maintenance,
- h. The locations of all anticipated community mailboxes,
- i. The following standard notes:
  1. "This map, and the following list, is intended to provide potential home buyers with general information about the neighbourhood and the surrounding area. If you have specific questions, you are encouraged to call the Town's Planning & Development Services Department during normal business hours which are 8:30 am to 4:30 pm, Monday to Friday."
  2. "Please Note: this map is based on information available on \_\_\_\_\_ (month/year) and may be revised without notice to purchasers."
  3. "Some streets in this subdivision will be extended in the future and temporary access roads may be closed."

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4. "There may be catch basins or utilities easements located on some lots in this subdivision."
5. "Environmentally sensitive areas, hazard lands, valleys, woodlots and stormwater management ponds in this subdivision will be left in a natural condition with minimal maintenance and no grass cutting, only periodic removal of debris. Residents adjacent to these blocks are requested to limit the use of pesticides and fertilizers to reduce adverse effects on the natural environment."
6. "Community mailboxes will be directly beside or in front of some lots."
7. "Purchasers are advised that the final location of walkways in Blocks may change without notice."
8. "Streets may contain on-street parking, and may be available for overnight parking, subject to parking permits."
9. "The completion of some dwellings in this subdivision may be delayed until after the completion of exterior finishes on the adjacent buildings."
10. "Neighbourhood and/or boulevard trees will be planted according to Town standards and a tree will not necessarily be located in front of every home. Purchasers are further advised that home builders are not permitted to charge a purchaser separately for the cost of trees, sodding, fencing and paving of the driveway apron. The Town will not reimburse purchasers, nor assist in any recovery of moneys paid, under any circumstance."
11. "The design of features on public lands may change. Builders' sales brochures may depict these features, however, the Town has no control over builders' sales brochures."
12. "Gates are not permitted in fences when lots abut publicly owned lands, including but not limited to open space lands, hazard lands, a trail, valleyland, active park, woodlot or stormwater management pond."
13. "The Town's Zoning By-law regulates the width of driveways. Please do not have your driveway widened before inquiring about the permitted driveway width for your lot."
14. "The Town of The Blue Mountains is responsible for household garbage, recycling and green bin collection after certain levels of occupancy have been achieved within this development or a phase."

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For further information, please contact the Town at 519-599-3131"

15. "For further general information on proposed and existing land use, please call the Town's Planning Services Division 519-599-3131."

16. "For detailed grading and berming information, please call the Town's Development Engineering Division 519-599-3131"

The developer shall ensure that each builder selling homes within the subdivision provides prospective purchasers as part of any offer of purchase and sale agreement the material referred to in condition above.

#### **Administration**

37. Prior to final approval and registration, the Subdivision Agreement shall include special provisions addressing the following matters in wording acceptable to the Town:
- i. That the Owner shall agree to engage a qualified engineer and that the Owner's Engineer certify that their reports conform with applicable standards to the satisfaction of the Town of The Blue Mountains and that the Engineer provides certification that the final constructed works conform to the approved design.
  - ii. That the Owner shall agree to engage a qualified engineer to review and certify that the completed pre-grading works comply with the pre-grading shown on the approved grading and drainage plan.
  - iii. The Owner, and/or any future Lot Owner, shall agree to engage a qualified consultant to prepare a Final Lot Grading Certificate prior to Final Inspection, indicating that the grading of the lot has been completed in conformity with the Approved for Construction Master Grading/Drainage Plan, and to submit to the Chief Building Official for approval.
  - iv. The Owner shall agree that any temporary stormwater management, construction mitigation, sediment and erosion control measures be approved by the Town and in place prior to site alteration, except for site alteration to install such measures.
  - v. That the Owner shall agree to obtain any required statutory permits from the County of Grey, Town of The Blue Mountains, or any other applicable authority, prior to any site alteration.
  - vi. The Owner shall agree to the following:
    - a. Should previously unknown or unassessed deeply buried archaeological resources be uncovered during development, such

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resources may be a new archaeological site and therefore subject to Section 48 (1) of the *Ontario Heritage Act*. The proponent or person discovering the archaeological resources must cease alteration of the site immediately and engage a licensed archaeologist to carry out archaeological fieldwork, in compliance with section 48 (1) of the *Ontario Heritage Act*,

- b. That anyone working on the subject lands who uncovers a burial site containing human remains shall cease fieldwork or construction activities and immediately report the discovery to the police or coroner in accordance with the Funeral, Burial and Cremation Services Act.
  - vii. The Owner shall agree to provide for all necessary installations and connections to any existing municipal storm drainage, sanitary sewer collection and water servicing systems to service the proposed development, to the satisfaction of the Town.
  - viii. The Owner shall agree that a municipal numbering system shall be assigned to the satisfaction of the Town regarding 911 emergency servicing. The Owner shall also agree in the Subdivision Agreement to display the lot number and corresponding assigned municipal address in a prominent location on each lot prior to and during all times of construction.
  - ix. That prior to final approval, Street "A" and Street "B" shall be named to the satisfaction of the Town with regard to 911 emergency servicing and in accordance with the Town of The Blue Mountains Street Naming Policy.
  - x. That the Owner shall agree that the Town of The Blue Mountains will provide full collection curb side in front of the individual homes and collection will not begin collection until development is 90% occupied or until Town contracted waste collection trucks can safely access the site. It is the Developer's responsibility to request municipal curbside collection from the Town Operations Division. Upon request, the Town will assess the ability to provide curbside waste collection to the development or phase requested, and will provide written confirmation of the Town's ability to commence collection and the date of commencement. Until municipal collection commences it is the responsibility of the Owner/Developer to provide appropriate private collection to occupied units.
  - xi. That the Owner agrees to not store construction materials on vacant lots and/or open space blocks that abut lots which are occupied by homeowners.
38. That prior to final approval, the County is to be advised in writing by the Town of The Blue Mountains how Conditions 1-37 have been satisfied.

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39. This draft plan approval shall lapse on (three years after the Tribunal's formal written Order). If final approval is not given to this plan within three (3) 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 owner wishes to request an extension to draft approval, a written explanation together with the applicable application fee and a resolution/letter of support from the local municipality must be submitted to the County of Grey, 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.
40. That prior to final approval, a copy of the fully executed Subdivision Agreement between the Owner and the municipality shall be provided to the County of Grey. The Subdivision Agreement shall be registered by the Town against the lands to which it applies as provided under the *Planning Act*, prior to final approval of the plan of subdivision.
41. The Owner shall agree in the Subdivision Agreement that all applicable Development Charges will be submitted in accordance with the Town's Development Charges By-law, the County of Grey Development Charges By-law and any applicable Education Charges By-law, subject to any applicable development charge credits and any other Agreements with the Town and County.
42. The Owner shall agree in the Subdivision Agreement to pay all processing and administration fees in accordance with the policies and by-laws in effect at the time payment is due.
43. That the Owner, submit to the Town of The Blue Mountains and the County of Grey a digitized copy of the Final Plan in a format acceptable to the County of Grey.

#### 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.
2. 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 proponent'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**"

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in all locations where personnel and construction vehicles might come near the conductors.

3. Clearances or consultations are required from the following agencies, as well as the appropriate agency or authority providing utilities or services:

Town of The Blue Mountains  
PO Box 310, 32 Mill Street  
Thornbury, ON N0H 2P0

4. We suggest you make yourself aware of the following subsections of the *Land Titles Act*:
  - a) subsection 144(1) 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 144(2) allows certain exceptions.

The subdivision plan for Registration must be in conformity with the applicable Ontario Regulation under *The Registry Act*.

5. 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 Conservation and Parks under the *Ontario Water Resources Act*, RSO 1990, as amended.
6. All measurements in subdivision final plans must be presented in metric units.
7. The final plan approved by the County must be registered within thirty (30) days or the County may withdraw its approval under subsection 51(32) of the *Planning Act* RSO 1990, as amended.