



Staff Report

Planning & Development Services – Planning Division

Report To: Committee of the Whole
Meeting Date: June 29, 2021
Report Number: PDS.21.064
Title: Recommendation Report – Zoning By-Law Amendment – 108 and 110 Deer Lane
Prepared by: Travis Sandberg, Planner I

A. Recommendations

THAT Council receive Staff Report PDS.21.064, entitled “Recommendation Report – Zoning By-Law Amendment – 108 and 110 Deer Lane”;

AND THAT Council enact a site-specific amendment to Zoning By-law 2018-65 for the lands legally described as Lot 1 and Lot 2, Plan 16M-62, to establish site-specific zoning provisions for the lands in accordance with the Draft Zoning By-law attached as Attachment 3 to Staff Report PDS.21.064.

B. Overview

This report provides recommendations to Council regarding a proposed Zoning By-Law Amendment related to 108 and 110 Deer Lane.

C. Background

Proposal

The Town received an application for Zoning By-law Amendment seeking to establish new site-specific zoning standards to the subject lands. Specifically, the application includes the following site-specific amendments to the R1-1-45 zone standards currently applied to the lands:

1. To deem Lots 1 & 2, Plan 16M-62, to be one contiguous lot for the purpose of Zoning, notwithstanding that each lot is a separately conveyable parcel of land;
2. To amend Table 6.2.1 to permit a maximum lot coverage of 35%;
3. To amend Exception 45 to permit a front yard setback of 5.2m;
4. To amend Section 4.13 to permit permitted eave projections to be measured from the front yard setback, as established by this amendment;
5. To amend Section 4.34.2 to permit a 13.3m setback to the 177.9m G.S.C. elevation adjacent to Georgian Bay.

The lands are known as Lot 1 and 2, Plan 16M-62, and are municipally addressed as 108 and 110 Deer Lane. The lands are currently vacant and are located within Grey Common Elements Condominium Plan No. 123 (see Figure 1). Grey Common Elements Condominium Plan No. 123 is comprised of Lots 1-4, inclusive, as Parcels of Tied Land to the private condominium road providing access to the lots (being Block 23 on GCEC Plan No. 123).

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An aerial photograph of the subject lands has been provided (see Figure 2).

Figure 2: Aerial Photo



Public Meeting

The statutory public meeting was held virtually on March 22, 2021, using Microsoft Teams. Attachment 1 to this report provides a summary of all written and verbal comments received with respect to the proposal and outlines Town Planning responses thereto. Attachment 2 to this report further outlines the applicant's responses to each comment received.

D. Analysis

This section provides the staff analysis based on the relevant legislation and policies, as well as the identified issues. Summaries of policies and issues are provided in the following sections.

Planning Act

The Ontario Planning Act gives municipal Councils the authority to pass zoning by-laws, and make amendments to existing zoning by-laws, under Section 34 of the Act. The *Planning Act* also requires that in making planning decisions Council must have regard for matters of Provincial Interest, as outlined by Section 2 of the Act.

After review of this application Planning staff are satisfied that there are no concerns with matters of Section 2 - Provincial Interest, as noted above.

The *Planning Act* also sets the framework for other Planning Policy that is used as the basis for decisions on development applications. The *Planning Act* requires that these decisions must be consistent with the Provincial Policy Statement (PPS); conform or not conflict with the Niagara Escarpment Plan; and conform with the policies of the Official Plan which apply to the lands. More detail is provided in the following sections of this report.

It is noted by Planning Staff that the usual process for merging whole lots registered within a plan of subdivision into one contiguous parcel is via a Deeming By-law enacted under Section 50(4) of the Planning Act. This section of the Act permits Council, by by-law, to deem any plan of subdivision, or part thereof, that has been registered for eight years or more to no longer be part of the registered plan of subdivision for the purposes of Section 50(3) of the Act related to subdivision control (i.e. a “Deeming By-law”). In this case a Deeming By-law cannot be used as the Plan of Condominium has yet to reach the requisite age of registration being eight years. More detail on this point is provided elsewhere in this report.

Provincial Policy Statement 2020

The Provincial Policy Statement 2020, also known as the “PPS 2020”, provides policy direction on matters of Provincial Interest related to land use planning and development. It aims to provide for appropriate development while protecting resources of Provincial Interest, public health and safety, and the quality of the natural and built environment. Decisions on Planning matters made by a municipal Council (or any other planning authority) must be consistent with the Provincial Policy Statement. Within the framework of the Provincial Policy Statement, the subject property is located in a *Settlement Area*.

Section 1.0 Building Strong and Healthy Communities

Section 1.0 of the PPS promotes Building Strong Healthy Communities through the provision of efficient development and land use patterns that promote cost effective development patterns to minimize land consumption and servicing costs. In this regard, settlement areas shall be the focus of growth and development.

In accordance with Section 1.1.3.2 of the PPS, land use patterns within settlement areas shall be based on densities and a mix of land uses that:

- a) efficiently use land and resources.
- b) are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available and avoid the need for their unjustified and/or uneconomical expansion.
- c) minimize negative impacts to air quality and climate change and promote energy efficiency.
- d) prepare for the impacts of a changing climate.
- e) support active transportation.
- f) are transit-supportive, where transit is planned, exists, or may be developed; and
- g) are freight supportive.

The subject property is located within a registered Plan of Condominium located within a Settlement Area. Full municipal services are provided to the property and the proposed use does not require any expansion to current sewer or water services. Matters relating to public space, recreation, parks, and trails, were addressed through the review of the associated Plan of Condominium which was registered in November 2018.

Based on the foregoing, Planning Staff have no concerns with respect to Section 1.0 of the PPS.

Section 2.0 Wise Use and Management of Resources

Section 2.0 of the PPS promotes long-term prosperity, environmental health, and social well-being of the province through the conservation of biodiversity, protection of the Great Lakes, and the protecting of natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources.

The PPS Section 2.1 (Natural Heritage) notes that natural features and areas shall be protected for the long term. Development and site alteration are not permitted within or adjacent to Natural Heritage features, such as areas of natural or scientific interest, unless it is demonstrated there is no negative impact.

The subject lands abut municipally owned Block 17 of Plan 16M-62, which is an identified Area of Natural or Scientific Interest (ANSI) as it contains invertebrate fossils estimated to be 455 million years old. Potential impacts on the identified ANSI were comprehensively reviewed through the review of the Plan of Condominium for the lands and contributed to the development of the Delphi Point Waterfront Management Plan, 2018. In accordance with the recommendations of the Delphi Point Waterfront Management Plan, 2018, ("DPWMP") the ANSI features in the Delphi Point area are to remain in public ownership in order to ensure the long-term protection and integrity of the sensitive fossil formations. The DPWMP further recommends that public access to Block 17 remain limited in order to minimize the level of disturbances on the shale formations. Accordingly, no direct public access to Block 17 is available and it may only be accessed by water. On-going monitoring and enforcement of development restrictions and By-laws will ensure that private development does not encroach into Block 17. It is also recommended that the Town pursue proactive delineation (ie. Signage and/or fencing) of the Town-owned lands to ensure all residents and members of the public are aware of the property boundaries and the importance and sensitivity of the ANSI.

As a part of the complete submission, the applicant submitted an opinion letter, prepared by John D. Bell Associates Ltd, who were also retained by the original developer of the lands in order to complete a Tree Inventory and Impact Assessment in support of the Plan of Condominium. It is noted in the opinion letter that the construction of the proposed single detached dwelling unit and associated shoreline works require removal of plantings within the Selective Pruning Zone, as established through the Draft Plan Approval process. The opinion letter recommends that a restoration planting plan be required and implemented through the future planning and/or building permit applications, consistent with the requirements of the registered Subdivision Agreement for the development.

Based on the foregoing, Planning Staff have no concerns with respect to Section 2.1 of the PPS. Comments have also been received from the Grey Sauble Conservation Authority in support of the proposed re-zoning and shoreline revetment works associated with the development of the lot.

Section 3.0 Protecting Public Health and Safety

Within Section 3.1 (Natural Hazards) policies regarding hazardous lands, and hazardous sites requires that development be generally directed to areas outside of these hazardous areas. While there are no hazard land designations applied to the subject lands, it is subject to the 177.9m G.S.C. elevation setback related to the wave uprush hazard associated with the 100-year flood level for Georgian Bay. All development is generally required to maintain a minimum 15.0m setback from the 177.9m G.S.C. elevation.

Comments received from the Grey Sauble Conservation Authority confirm that the findings of a shoreline hazard study, as prepared by Tatham Engineering, that was submitted in support of a requested reduced setback and the provisions for adequate floodproofing standards is satisfactory. GSCA indicate no concerns with the proposed 13.3m setback from the 177.9m G.S.C. elevation or the proposed 4.0m setback from the proposed shoreline revetment works to the future dwelling. The shoreline protection works will be reviewed in further detail by the GSCA through the Development Permit process prior to its construction.

Based on the above, staff are satisfied that the proposed rezoning is consistent with Provincial Policy Statement.

Niagara Escarpment Plan

The Subject Lands are designated *Escarpment Recreation Area* by the Niagara Escarpment Plan. This designation applies to areas of existing or potential recreational development associated with the Escarpment slope. Permitted uses in the *Escarpment Recreation Area* designation includes both seasonal and permanent residential uses, including single detached dwellings per Part 1.8.3 of the Plan. Part 1.8.1 of the Plan outlines the objectives of the *Escarpment recreation Area* designation. The objectives relevant to this proposal include:

- to provide areas where new recreation and associated development can be concentrated around established, identified or approved downhill ski centres.
- To provide areas where new recreation and associated development can be concentrated around established, identified or approved lakeshore residential areas in Grey and Bruce Counties.
- To recognize the importance of the four-season recreation resort areas in the Town of The Blue Mountains to the tourism sector of Ontario's economy.

General growth and development in the *Escarpment Recreation Area* is further guided by the policies of Part 1.8.5.10 of the Plan. These policies aim to protect the natural heritage and ecological features of the Escarpment, protect prime agricultural areas, conserve cultural heritage features, and encourage sustainability. Planning Staff are satisfied that the proposal complies and does not conflict with Part 1.8.5.10 of the Plan.

Part 1.8.5.13 of the Plan identifies Municipal sewer and water services as the preferred means of servicing and, in the Town of The Blue Mountains, will be required in the Service Districts of Craighleith, Camperdown, Castle Glen, and Swiss Meadows, in accordance with the municipal official plan. The subject lands are provided with both a municipal water service and a sanitary sewer

service that is under care and control of the Condominium Corporation. Planning Staff are satisfied that the proposal complies with the servicing criteria of the Niagara Escarpment Plan.

As a result of review of the pertinent policies of the Niagara Escarpment Plan, Planning Staff are satisfied that the proposal is consistent and does not conflict with the policies of the Plan as an appropriate level of servicing and be provided and the potential for adverse impacts on the natural heritage features (ANSI) can be appropriately mitigated.

Grey County Official Plan 2019

The Grey County Official Plan designates the lands as *Recreational Resort Area*. This designation applies to settlement areas which have developed as a result of site-specific amendments to the County of Grey Official Plan and/or local Official Plan consisting of a defined area, specific recreational amenities, residential development, and serviced with full municipal services. The County Plan generally defers to the local Official Plan for detailed development standards.

Section 7.9(b) of the County Official Plan further restricts development within 30m of Georgian Bay unless it has been deemed appropriate by the conservation authority that the setback may be reduced. Impacts of development on the Bay were addressed through the Plan of Condominium process. Further, comments received from the GSCA supports a reduced setback, as requested through this application.

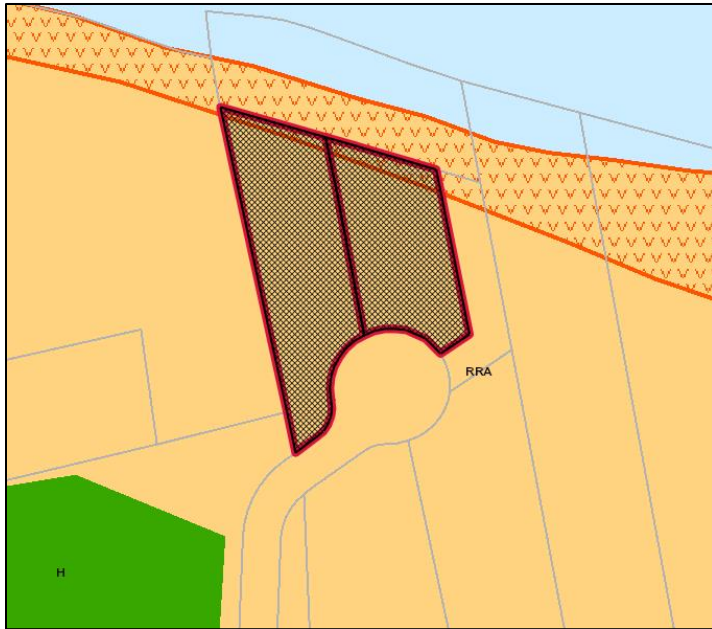
Based on the foregoing, Planning Staff have no concerns with respect to the County of Grey Official Plan.

Town of The Blue Mountains Official Plan 2016

The *Recreation Residential Area* Designation

The subject lands are designated *Recreation Residential Area (RRA)* in the Town of The Blue Mountains Official Plan. An excerpt of the Town's Official Plan mapping as it relates to the subject lands has been provided (see Figure 3).

Figure 1: Official Plan Map



As outlined in Section B3.7.1 of the Plan, it is the intent of the RRA designation to recognize areas within the Town where there is a mix of seasonal and permanent residential and recreational uses, and to recognize areas where some residential uses are located to support and provide access to resort and recreational amenities.

The proposed use of a residential dwelling is permitted in the RRA designation and Planning Staff have no concerns with respect to the RRA policies of the Official Plan.

Natural Heritage and Hazards

Appendix '1' of the Town of The Blue Mountains Official Plan identifies an Area of Natural or Scientific Interest (ANSI) abutting the property, which is associated with Block 17, Plan 16M-62. Section B5.2.1 of the Official Plan outlines the conditions for development and site alteration within adjacent lands to the ANSI feature. Specifically, no development or site alteration is permitted in adjacent lands to the ANSI unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated through an Environmental Impact Study that there will be no negative impacts on the natural features or their ecological functions. This requirement may be waived by the Town with support from the applicable Conservation Authority, the County of Grey and/or the Ministry of Natural Resources.

The potential impacts of development and site alteration in the lands adjacent to the ANSI were comprehensively reviewed through the review of the Plan of Condominium for Plan 16M-62. Further, comments received from the Grey Sauble Conservation Authority indicate no concerns with respect to impacts on the ANSI and support the proposed zoning amendment and development of the lots. It is noted that a Development Permit will also be required prior to site alterations or construction on the subject lands.

Preferred Means of Land Division

Section D4.1 of the Official Plan outlines the preferred means of land division in the Town. Specifically, this section states that land division by Plan of Subdivision, rather than by Consent, shall generally be deemed necessary if:

- a) The extension of an existing public road or the development of new public road is required to access the proposed lots; or
- b) The area that is proposed to be developed is not considered to be infilling; or
- c) A Plan of Subdivision is required to ensure that the entire land holding or area is developed in an orderly and efficient manner.

Section D4.1 further states that the creation of lots through part-lot control by-laws and deeming by-laws shall also be subject to these policies.

The subject application, with the inclusion of the proposed Restrictive Covenant outlined in detail further in this report and attached as Attachment 4, would have a similar effect as a Deeming By-law, in that the proposed re-zoning will allow development of two separately conveyable parcels of land to be considered as one contiguous lot for the purpose of Zoning. As such, Planning Staff have reviewed the policies above and note that in this case an extension of a public road is not required, the subject lots are existing lots of record within a registered Plan of Condominium, and that the result of the proposal will be to permit the development of a single detached dwelling. As such, there are no concerns with respect to the orderly and efficient development of the properties.

Based on the foregoing, it appears that the proposal is in conformity with the policies of the Official Plan.

Town of The Blue Mountains Zoning By-law 2018-65

The Town's Zoning By-law 2018-65 places the lands in the Residential One Exception 45 (R1-1-45) zone, as shown below in Figure 4. The current Exception 45 zone category establishes a minimum front yard setback of 6.0m for the lands where an attached private garage is provided.

The proposal is to rezone the lands in order to establish new site-specific zone provisions to permit the lots to be considered as one contiguous property to allow the construction of a single detached dwelling unit across the mutual property line. The following site-specific provisions are also included in the requested zoning by-law amendment:

1. To deem Lots 1 & 2, Plan 16M-62, to be one contiguous lot for the purpose of Zoning, notwithstanding that each lot is a separately conveyable parcel of land;
2. To Amend Table 6.2.1 to permit a maximum lot coverage of 35%
3. To Amend Exception 45 to permit a front yard setback of 5.2m
4. To Amend Section 4.13 to permit permitted eave projections to be measured from the front yard setback, as established by this proposed amendment;

5. Amend Section 4.34.2 to permit a 13.3m setback to the 177.9m G.S.C. elevation adjacent to Georgian Bay.

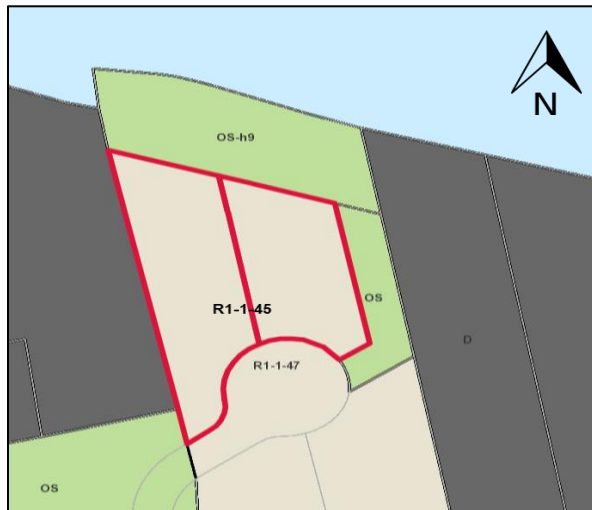
The current definition of a “Lot”, per Zoning By-law 2018-65, is as follows:

“Means a parcel of land that is registered as a legally conveyable parcel of land in the Land Titles Registry Office”.

Planning staff do not have any concerns with respect to the site-specific amendments to Zoning By-law 2018-65. More specifically, the unique configuration of the common elements condominium results in the subject lands not having any frontage onto a publicly accessible roadway. As such, the proposed building will not form part of, or otherwise impact, the public streetscape and character of the overall subdivision. A contributing factor to this is that the southerly abutting block of land is in ownership of the Town and provides for effective screening and buffering of the condominium lands from the public thoroughfare of Delphi Lane. While letters of support have also been received from the property owners to the east and west, the proposed building is to be one floor and will maintain appropriate side yard setbacks to the adjacent parcels to reduce the potential for adverse impacts. It is further noted that the GSCA supports the development of the two lots as one contiguous parcel as it reduces the potential for negative impacts on natural heritage features and ANSI features in the area.

Planning staff have provided a draft zoning by-law amendment in this staff report per Attachment 3.

Figure 2: Zoning Map



Identified Issues

Attachment 1 outlines the comments and issues raised as a result of the circulation of the Notice of Complete Application and Public Meeting, and through the Public Meeting, and includes Planning Staff responses thereto. The applicant’s authorized agent has also provided responses to the matters raised included as Attachment 2.

Proposed Restrictive Covenant

In this case, a Deeming By-law cannot be considered as the Plan of Subdivision has not been registered for a minimum of eight years, as required by the *Planning Act*. In this situation a Deeming By-law would effectively remove the two lots from being part of the registered plan which would subsequently allow them to merge on-title into one contiguous parcel.

Because the Plan of Subdivision has not been registered for a minimum of eight year, the applicant is proposing to register a Restrictive Covenant on title of the effected parcels per Section 118 of the *Land Titles Act*. The proposed Restrictive Covenant stipulates that neither Lot 1 nor Lot 2 could be individually conveyed without the Town's consent. The covenant further notes that the restriction will become null and void and may be deleted from the Registry if and when a Deeming By-law pursuant to Section 50(4) of the Planning is in effect with respect to the Lots.

The Restrictive Covenant, as outlined above, would give the Town the necessary control over the individual conveyance of one of the Lots, and would allow the property owner to sell both of the lots, if desired. The covenant would no longer be applicable at such a time that a Deeming By-law is passed by Council following the eighth anniversary of the registration of the Plan of Subdivision (ca. November 8, 2026).

It is noted that the applicant's solicitor has provided an undertaking to have the proposed Restrictive Covenant registered on-title prior to occupancy of the future dwelling unit, allowing this Zoning By-law Amendment application to move forward, and building permits to be issued, while the final legal documents are created and prepared for registration at the Land Registry Office. It is further noted that the proposed covenant has been drafted in consultation between the applicant's solicitor and the Director of Legal Services of the Town of The Blue Mountains.

Conclusions

Planning staff are satisfied that this application is supported by Planning policy. The application is consistent with the Provincial Policy Statement and conforms with both the Grey County Official Plan and Town's Official Plan. Planning staff are able to recommend approval of this application and a draft Zoning By-Law Amendment is attached to this report for consideration.

E. Strategic Priorities

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

4. Quality of Life

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

F. Environmental Impacts

No adverse impacts to the environment are anticipated as a result of this application, as confirmed by comments received from the Grey Sauble Conservation Authority. It is noted that a Development Permit from the Conservation Authority will be required prior to site alteration or construction occurring on the lot.

G. Financial Impacts

No adverse financial impacts to the Municipality are anticipated as a result of this application.

H. In Consultation With

Internal departments, commenting agencies and the general public through circulation of the Notice of Complete Application and Public Meeting. It is also noted that the proposed restrictive covenant was drafted in consultation between the applicant's solicitor and Will Thomson, Director of Legal Services. Ryan Gibbons, Director of Community Services, was also consulted with respect to the issue of public waterfront access and management of Block 17.

I. Public Engagement

The topic of this Staff Report has been the subject of a Public Meeting and/or Public Information Centre which took place on March 22, 2021. Those who provided comments at the Public Meeting and/or Public Information Centre, including anyone who has asked to receive notice regarding this matter, has been provided notice of this Staff Report. Any comments regarding this report should be submitted to Travis Sandberg, planning@thebluemountains.ca

J. Attached

1. Summary of Received Public Comments and Staff Responses
2. Applicant's Responses to Public Comments
3. Draft Zoning By-law
4. Draft Restrictive Covenant
5. Applicant's Solicitor's Legal Opinion RE: Impact on Condominium Declaration

Respectfully submitted,

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Manager of Community Planning

Nathan Westendorp, RPP, MCIP

Director of Planning and Development Services

For more information, please contact:

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Report Approval Details

Document Title:	PDS.21.064 Recommendation Report - Zoning By-Law Amendment - 108 and 110 Deer Lane (PB Holdings Limited).docx
Attachments:	<ul style="list-style-type: none">- PDS.21.064 Attachment 1 P2970 - PDS Comments Response Matrix.pdf- PDS.21.064 Attachment 2 P2970 - Comments Response Matrix (DF_April8_2021).pdf- PDS.21.064 Attachment 3 MKCK Holdings Inc restrictive covenant.pdf- PDS.21.064 Attachment 4 By-law-2021-XX-Zoning-By-law-Amendment-108-110-Deer-Lane.pdf- PDS.21.064 Attachment 5 2_108-110 Deer Lane - Vandergust Opinion GCECC No 123_Redacted.pdf
Final Approval Date:	Jun 21, 2021

This report and all of its attachments were approved and signed as outlined below:

Trevor Houghton - Jun 18, 2021 - 9:21 AM

Nathan Westendorp - Jun 21, 2021 - 8:54 AM

Shawn Everitt - Jun 21, 2021 - 9:58 AM