

ISSUE DATE:

May 31, 2010



PL080455

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: Proposed Official Plan Amendment No. 11
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090304

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Denis Martinek, Tyrolean Village Resorts Ltd.
Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: By-law No. 2009-03
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090152

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: By-law No. 2009-04
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090153

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: By-law No. 2009-05
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL090154

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
Subject: Interim Control By-law No. 2008-12
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL080455

IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Sheldon Rosen, The Lodges at Blue Mountain Corporation
 Subject: Interim Control By-law No. 2008-67
 Municipality: Town of The Blue Mountains
 OMB Case No.: PL080455
 OMB File No.: PL081124

APPEARANCES:

Parties

Counsel*/Agent

Town of The Blue Mountains

L. Longo*

Sheldon Rosen and the Lodges at Blue Mountain Corporation

S. Makuch*

Denis Martinek and Tyrolean Village Resorts Ltd.

D. Slade

Blue Mountain Resorts Limited and Intrust ULC

P. Peterson*

Participants

Michael Seguin for the Blue Mountains Ratepayers Association, Janis Burton (in absentia), Bill Pitaway (in absentia), Annette MacMaster (in absentia) Andy Lemyk (in absentia), Lester Posen (in absentia), Kim Posen, Dorothee Potter, Anne Cauley (in absentia) and Gord Palin (in absentia).

MEMORANDUM OF ORAL DECISION DELIVERED BY D. R. GRANGER ON MAY 19, 2010 AND PROCEDURAL ORDER OF THE BOARD

This is the final Pre-Hearing Conference regarding the appeals by Sheldon Rosen and the Lodges at Blue Mountains Corporation (Rosen) against Interim Control By-laws 2008-12 and 2008-67 (ICBs), against Amendment No. 11 to the Town of The

Blue Mountains (Town) Official Plan (OPA 11) and against By-laws 2009-03, 2009-04 and 2009-05 (By-laws). Also before the Board is the site-specific appeal by Denis Martinek and Tyrolean Village Resorts Ltd. (Martinek) against By-law 2009-03.

The matter relates to permissions and prohibitions for short term accommodation (30-day, or less, rental of non-owner occupied residences) in residential zones.

The Parties have reached a consensus on the hearing length and final issues in dispute. The Parties have also requested that the site-specific appeal by Martinek be heard subsequent to the conclusion of the appeals and decision related to Rosen. The Board agreed.

Counsel for Rosen has set out an issue regarding the Canadian Charter of Rights and Freedoms and acknowledges its requirement to serve appropriate notice to the Attorney General in that regard.

The Board confirms the above listed Parties and Participants as the Parties and Participants to the hearing.

Any Participant not providing a Participant Statement on or before June 23, 2010 will be removed as a Participant to the hearing. Participant Statements will be forwarded to the Town (Ms C. Welsh) for distribution to the other Parties. In addition, expert witness statements to be relied upon by the Parties at the hearing will be made available at the Town (Ms C. Welsh) for review by the Participants.

The Board further directs the following:

1. The hearing of the appeals by Rosen will commence on Monday, August 23, 2010 at 10:30 a.m. at the Trillium Room, Marsh Street Centre, 187 Marsh Street, Clarksburg, Ontario. Up to ten (10) days have been scheduled ending September 3, 2010. The Procedural Order, including final issues for the hearing, is Attachment "1" to this decision.
2. A final Pre-Hearing conference regarding the appeals by Martinek will be scheduled following the issuing of the Board's decision on the appeals by Rosen. The Board hearing the appeals of Rosen

will remain seized in that regard. Further notice will be provided in accordance with the requirements of the Board.

3. No further notice regarding the appeals of Rosen is required.
4. This Board Member will continue with the management of these appeals up to but not necessarily including the hearing.

The Board so Orders.

"D. R. Granger"

D. R. GRANGER
VICE CHAIR

ATTACHMENT "1"
(to decision)

ONTARIO MUNICIPAL BOARD

PROCEDURAL ORDER

PL080455

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IN THE MATTER OF subsection 38(4) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

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Subject: Interim Control By-law No. 2008-67
Municipality: Town of The Blue Mountains
OMB Case No.: PL080455
OMB File No.: PL081124

1. The Board may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing of these appeals shall be staged. The initial hearing stage shall consist of the consideration and disposition of the appeals of Sheldon Rosen and The Lodges at Blue Mountain Corporation. The second hearing stage shall consist of the consideration and disposition of the appeal of Denis Martinek and Tyrolean Village Resorts Ltd.

3. The initial hearing stage will begin on August 23, 2010 at 10:30 am at the Marsh Street Centre, Auditorium Room, 187 Marsh Street, Clarksburg in the municipality of The Town of The Blue Mountains.

4. The length of the initial hearing stage will be about 10 days.

5. The parties and participants identified at the prehearing conference (see Attachment for the meaning of these terms) are listed in Attachment 1 to this Order.

6. The Issues are set out in the Issues List as Attachment 2 to this Order. There will be no changes to this list unless the Board permits, and a party who asks for changes may have costs awarded against it.

7. Any person intending to participate in the hearing should provide a telephone number, facsimile number and electronic mail address to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Initial Hearing Stage

8. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in sections 12 and 13 respectively. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.

9. A party who intends to call witnesses, including expert witnesses, whether by summons or not, shall provide to the Board, the other parties and to the municipal Clerk a list of the witnesses in accordance with the following timeline:

- (a) appellants – on or before June 30, 2010;
 - (b) all other parties – on or before July 2, 2010.
10. A witness or participant who is not being called by a party must provide to the Board, the parties and the municipal Clerk a witness or participant statement on or before June 23, 2010.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, as in sections 12 and 13 respectively.
12. On or before July 7, 2010, the appellants shall provide copies of their witness and expert witness statements to the other parties and to the municipal Clerk.
13. On or before July 21, 2010, the parties other than the appellants shall provide responding materials to the appellants.
14. On or before August 4, 2010, the appellants may provide to the other parties and file with the municipal Clerk a written response to any of the written evidence submitted in accordance with section 13 by any other party.
15. On or before August 16, 2010, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Board.
- (see Rules 34 to 38, inclusive, of the Board's Rules, which require that the moving party provide copies of the motion to all other parties 10 days before the Board hears the motion.)*
17. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.
18. Documents may be delivered by personal delivery, facsimile, electronic mail or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax shall be governed by the Board's Rules [26 – 31] on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
19. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.
20. At the initial hearing stage, parties shall present evidence in the following order:
- (a) Sheldon Rosen and The Lodges at Blue Mountain Corporation;
 - (b) Other Parties and Participants in support of the Appeals;
 - (c) Town of The Blue Mountains;
 - (d) Other Parties and Participants in support of the Town; and
 - (e) In reply, Sheldon Rosen and The Lodges at Blue Mountain Corporation.

Requirements Before the Second Hearing Stage

21. After the consideration and disposition of the appeals of Sheldon Rosen and The Lodges at Blue Mountain Corporation, the Board will conduct a further prehearing conference to establish the relevant notice, exchange and hearing dates for the conduct of the second hearing stage.

This Member is not seized.

So orders the Board.

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Board recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Board to order following the conference. The Board will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-326-6800, or from the Board website at www.omb.gov.on.ca.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an unincorporated group wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Board to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Board will set the time for hearing this statements. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Board will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An expert witness statement should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness

will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Board Member or the senior staff of the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) If the Board requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;
direct examination by any party of similar interest, in the manner determined by the Board;
cross-examination by parties of opposite interest;
re-examination by the party presenting the witness; or
another order of examination mutually agreed among the parties or directed by the Board.

ATTACHMENT 1
PARTIES AND PARTICIPANTS

Parties

Town of the Blue Mountains

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Participants

Michael Seguin, President, Blue Mountains Ratepayers Association

Anne Cauley

Janis Burton

Bill Pittaway

Annette MacMaster

Andy Lemyk

Lester Posen [John Kruger]

Dorothee Potter

Betty Schiwkow

George Potton

Patti Stout

ATTACHMENT 2

ISSUES LIST – INITIAL HEARING STAGE

OPA/ZBA ISSUES

1. Is the proposed regulation of short term rental accommodation outside of the Town's authority to regulate land use, for example: does the proposed regulation attempt to regulate the user and not the use of land; does the regulation attempt to regulate tenure rather than the use of land; does the regulation attempt to regulate the operation of short term rental accommodation rather than the use of land; and, are the Interim Control By-Laws discriminatory by the exemptions they apply?
2. Is there adequate analysis and information to justify the prohibition of short term rental accommodation?
3. Was the authorization of the study and the enactment of the Interim Control By-law, and the passing of the by-law amendment done for a proper planning purpose?
4. Does the "Land Use Study" demonstrate that the prohibition was unnecessary?
5. Does the use of land for short term rental accommodation create any significant adverse planning impacts?
6. Does the prohibition of short term rental accommodation create any significant adverse planning impacts?
7. Is the proposed regulation of short term rental accommodation consistent with the PPS, 2005?
8. Does the proposed regulation of short term rental accommodation conform with the Town of the Blue Mountains Official Plan and the Town of the Blue Mountains Strategic Plan?
9. Are the provisions prohibiting short term accommodation contrary to s.15 of the Canadian Charter of Rights and Freedoms in that they discriminate on the basis of income?

ICBL ISSUES

10. Is the proposed regulation of short term rental accommodation outside of the Town's authority to regulate land use, for example: does the proposed regulation attempt to regulate the user and not the use of land; does the regulation attempt to regulate tenure rather than the use of land; does the regulation attempt to regulate the operation of short term rental accommodation rather than the use of land; and, does the Interim Control By-Law discriminate by the exemptions it applies?
11. Has a land use study been undertaken pursuant to s. 38 of the *Planning Act*?
12. Was the authorization of the study and the enactment of the Interim Control By-law done for a proper planning purpose?

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13. Does the "Land Use Study" demonstrate that the Interim Control By-law was unnecessary?
 14. Does the use of land for short term rental accommodation create any significant undue adverse planning impacts?
 15. Does the prohibition of short term rental accommodation create any undue adverse planning impacts?
 16. Is the proposed regulation of short term rental accommodation consistent with the PPS, 2005?
 17. Does the proposed regulation of short term rental accommodation conform with the Town of the Blue Mountains Official Plan and the Town of the Blue Mountains Strategic Plan?
 18. Are the provisions prohibiting short term accommodation contrary to s.15 of the Canadian Charter of Rights and Freedoms in that they discriminate on the basis of income?

ISSUES LIST – SECOND HEARING STAGE

19. Should Lots 9, 10, 11, 12, 13, 14, 15 and 16, Registered Plan 1107 and 7 lots created by Consent Applications B13, B14, B15, B16, B17 and B18-2009, all located along Arlberg Crescent, be covered by the provisions established by Section 26 of Zoning Bylaw Amendment 2009-03 similar to the remaining lands in Tyrolean Village?