

Sent via email

December 15, 2020

Mayor Harding and Members of Council  
Township of Muskoka Lakes  
1 Bailey Street  
Port Carling, ON  
POB 1J0

Dear Mayor Harding and Members of Council,

**Re: Agenda Item 8j - Legacy Condominium Agreement**

Friends of Muskoka and the Muskoka Lakes Association extend our sincere appreciation to Council and Planning Staff for the extensive time and effort that has clearly been made to improve the Township's condominium agreement with Legacy Cottages. A number of the concerns we expressed to you in our previous submissions and delegations have been addressed in the revised agreement, which we acknowledge and appreciate:

- The mechanics for dealing with securities in section 2.6 are now clearly set out
- By requiring the Condominium Declaration to include key terms, the condominium corporation and unit owners will now be required to comply with certain important obligations after the Owner has moved on - for example, no MPAC reassessments to residential (section 2.3), onsite management (section 2.9) and other important obligations throughout the agreement (section 2.11)

We welcome the addition to section 2.4 that prevents unit owners from occupying their units, or determining who occupies them, while they are in the rental pool. However, unit owners will still be able to rent their units outside of the rental program and, of great concern, they will be able to set the rental rate. Council is likely familiar with the situation at another large resort where rental rates were set so high that the units were never rented, and the unit owners were able to stay in them all summer.

We urge you to include in section 2.4 a prohibition on unit owners setting the rental rate, to ensure the units are actually available to the travelling and vacationing public on commercial terms set by management. Setting the terms and ensuring the continued operation of the required rental program is the job of the professional onsite manager of the resort, not unit owners operating in their own individual capacity. This is likely to be one of the few ongoing local jobs that this resort might actually create.

We welcome the improvements to the annual reporting requirements in section 2.5, including the addition of a due date and the additional information required. We also welcome the addition of an acknowledgment from the Operator confirming compliance with the rental program. This creates a contractual obligation, and an incentive for the Operator to ensure the rental program operates as required.

However, the annual report still does not include the rental rate charged, which is information the Township requires in order to satisfy itself that the rental terms were commercial. For example, if the annual report showed a rental rate of \$1 per week, this would be a red flag for enforcement staff. The renter was not likely a member of the travelling and vacationing public, but likely had a non-arm's length relationship with the unit owner. As noted above, there is a similar concern about a significantly above-market rental rate.

We urge you to revise the second sentence of section 2.5 to include these words marked in red: "The annual report shall document for each Unit: the weeks it participated in the Rental Program; the dates on which it was rented or available for rental; **the rental rates charged**; and the dates on which it was used by the Unit Owner during the summer season as defined in Section 2.4 herein."

We are disappointed that Section 3.1 of the revised agreement fails to include our suggestion to prohibit unit owners from having their own furniture, fixtures and equipment in their unit, or making alterations to their unit. Members of FOM and the MLA with considerable hospitality industry experience confirm that this is an important term in a resort condominium agreement, specifically designed to help ensure the ongoing success of the commercial rental operation. It will be fundamental to ensuring unit owners do not treat their units as residential cottages.

Although it is a great improvement for the Condominium Declaration to require the condominium corporation and unit owners to comply with key terms, such as the rental pool requirements, we are very concerned that these obligations can disappear simply by amending the Condominium Declaration. In addition, we are concerned that the Township will not have the ability to enforce the requirements in the Condominium Declaration. In our September 16th submission and delegations, we explained a simple way to give the Township this power, which is naming the Township as a third party beneficiary of the obligations of the condominium corporation and unit owners. We urge you to consult your legal counsel about including this provision, which we believe is a simple and effective solution to a considerable enforcement problem.

We are concerned that section 2.10 creates an undue burden on the Township's ability to ensure compliance with the commerciality requirement in the agreement. You may wish to confirm with Director Pink whether your by-law enforcement officers would find this provision to be useful. In particular:

1. As a pre-condition to being able to inspect or request information, the Township must have reasonable grounds to believe that there has been a contravention of the condominium agreement. In addition, the Township must provide ‘a detailed account of the alleged contravention.’ With respect, this puts the cart before the horse. In other words, it requires the Township to have evidence of a breach before it is entitled to inspect or request information to determine if there is evidence of a breach.
2. It only applies to a breach of Section 2.1, and not to a breach of any of the many other provisions in the agreement that will help ensure commerciality.
3. The Township is only permitted to inspect documents and records, and is therefore not permitted to inspect for compliance with any other aspect of the agreement (eg. onsite management, guest vehicle registration).
4. While we appreciate that unit owners will not want the Township to have the right to inspect their units, the Township should be permitted to require unit owners to provide information establishing compliance with the agreement.
5. The Township is required to send a member of staff on-site to inspect documents and records. This is overly cumbersome: the Township should be able to send a written request for information, which should then be sent to the Township.
6. We question the purpose of deeming all documents and records provided to the Township to be subject to the requirements of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). It would be a concern if this restricts the Township from using the documents/records it receives in an inspection (eg. the number of weeks the units were occupied by the unit owner in the summer) to enforce the agreement. In addition, it appears that consent is required to collect this information (which would need to be added to the agreement) per section 31(a) of MFIPPA, and the information must be collected directly from the person (so consent would need to be obtained from the unit owners regarding any information relating to them) per section 29(1) of MFIPPA. We urge Council to seek clarification from legal counsel about the purpose and effect of the MFIPPA addition, and any consents that should be added to the agreement for enforcement purposes.
7. We also note that, unlike a breach of the rental program requirement and the annual reporting obligation, there are no consequences specified for breaches of other provisions. Due to the difficulty in quantifying damages, the Minett Joint Policy Review Steering Committee recommended a liquidated damages provision.
8. We suggest the following alternative language in section 2.10 to address these concerns: “The Owner agrees that the Condominium Declaration for the Subject Lands shall include the following provision: “The Condominium Corporation and Unit Owners

shall permit the Township to attend at the Subject Lands (with the exception of the units owned by the Unit Owners) at any time and from time to time, upon reasonable notice, to inspect the same to ensure compliance with the terms of this Agreement. The Condominium Corporation and Unit Owners shall also provide the Township with such other information as the Township may reasonably request for such purposes.”

We are concerned that there is no restriction on unit owners having exclusive use of dock slips. In order for Legacy to truly operate as a resort, there should be ample dock space for renters and the travelling and vacationing public. Reserved parking for unit owners will hurt the commercial operation. In its September 14, 2017 report to the Committee of the Whole regarding the condominium agreement for Villas of Muskoka, Staff recommended that unit owners not be permitted to have exclusive use of docks. In addition, the *Condominium Act* prohibits exclusive use of common elements except in very specific circumstances, which must be set out clearly in the condominium declaration. We urge you to add to the Legacy condominium agreement a prohibition on exclusive use of docks by unit owners.

In closing, we wish to once again express our gratitude for the many hours Council and staff have spent working on this condominium agreement. We also are cognizant of the significant amount of legal fees that the proponents’ actions have already caused the Township’s taxpayers. Unfortunately, it would seem the proponent continues to push for the owners of these 100% commercial units to be able to use them as residences. We are concerned that the Township’s enforcement powers will not be able to prevent it. This makes it clear that whatever agreement is approved for Legacy must not become a template for condominium agreements at other resorts.

Most important, the Township needs a long term solution: this is the time to invest in creating a licencing by-law for condominium resorts. We welcome an opportunity to discuss this with you or staff and provide whatever assistance you may require.

Thank you for this opportunity to provide our comments, as we join you in protecting the Muskoka that we all love.

Sincerely,



Kenneth Pearce  
Secretary and Director  
Friends of Muskoka



Susan Eplett  
Chair, Government and Land Use Committee  
Muskoka Lakes Association

cc. David Pink, Director of Development Services and Environmental Sustainability