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May 5, 2021

Friends of Muskoka
c/o Suite 4400
181 Bay Street
Toronto, ON M5J 2T3

Dear Friends of Muskoka:

**Re: Resort Community of Minett, Township of Muskoka Lakes
Draft Minett Official Plan Amendment
Application of Clergy Principle**

We write further to your request for a brief commentary as to whether Township Council or the Local Planning Appeal Tribunal (“LPAT”, formerly, the Ontario Municipal Board) would be bound to consider and apply only the current policies of the Township of Muskoka Lake Official Plan for Minett (i.e. Section C1 - Resort Village (Minett)) (the “**Current OP**”), which is currently under review (a new draft Official Plan Amendment for Minett is scheduled for a Public Meeting on May 28, 2021), in the event that an application for planning approvals were to be filed by the owner of the Cleavelands House property, 2666940 Ontario Inc. (the “**Owner**”) before the new Official Plan Amendment for Minett has been adopted and approved.

For the reasons set out below, we are of the view that in the event such an application were to be filed, Council or the LPAT would be entitled to consider and apply newly adopted or emerging policy as a matter of good planning, notwithstanding that the application may be filed under the Current OP. This conclusion is based on our analysis of the so-called “Clergy Principle” and its exceptions, as set out below.

The Clergy Principle takes its name from the decision of the former Ontario Municipal Board in *Clergy Properties Ltd. v. Mississauga (City)* (1996), 34 O.M.B.R. 277, which remains relevant and applicable in LPAT proceedings today. There is a body of jurisprudence developed by the LPAT and the Courts to determine how development applications should be evaluated when there is a change in the municipal policy regime between the date the application was filed and the date of consideration of that application by the approval authority.

While the Clergy Principle rests on the view that, as a matter of procedural fairness, the approval authority must apply the policies of the official plan that were in effect at the date of the application, there are important exceptions to the principle. The jurisprudence supports the view that, where subsequent policies are compelling in terms of considerations of good planning and the applicant was aware of and/or involved in the public process associated with the subsequent policies, then such policies will be considered, in appropriate circumstances, to determine whether the application represents good planning and is in the public interest. The argument for applying subsequent policy is

strengthened where, as here, the Owner knew of and participated in the policy changes at the time of filing.

In our view, the following considerations support the conclusion that the Clergy Principle would not preclude Council or the LPAT from considering and applying newly adopted or emerging policy for Minett as a matter of good planning in this case:

1. Compelling Public Interest: There is a compelling public interest in considering policy that is aimed at establishing an effective land use planning framework for Minett with respect to matters of natural heritage, cultural heritage, lake capacity and servicing. This public interest suggests that any application for development in Minett, especially one that proposes the redevelopment of a lakeside resort, should be considered against the most current policy framework, even if those policies come into force after the application is submitted.

The Current OP policies for Minett were approved more than a decade ago, in January, 2007. Since that time, there have been two major revisions to the Provincial Policy Statement and significant policy and legislative direction with respect to protecting the environment, mitigating greenhouse gas emissions and adapting to a changing climate.

The public interest is further evidenced by the passage and extension of the interim control by-law in this area, the extensive and ongoing public processes involving the review of the Township's Official Plan (as well as the Minett OPA), and the abundance of substantive studies and consultations surrounding that process.

2. ICBL was in Effect when Owner Purchased: The Owner acquired the lands on January 10, 2019, which is during the period that Interim Control By-law 2018-66 was in effect for lands in Minett. The Owner knew, or should have known, that there was an ongoing process to review and amend the Official Plan policies with respect to Minett, which counters any argument as to unfairness to the present Owner.
3. Owner is Involved in Emerging Policy Review: Moreover, the Owner is a member of the Minett Joint Policy Review Working Group and is actively involved in the review and consideration of the Minett Official Plan Amendment. The fact that the Owner has had input in the process and was a member of the Working Group supports the argument that the Clergy Principle should not apply if a private development application is advanced before the Minett Official Plan Amendment comes into force.

We trust this is satisfactory and remain available to consider further issues.

Regards,



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