

VIA E-MAIL and REGULAR MAIL

February 12, 2018

Winanne Grant
Chief Administrative Officer
Town of Georgina
26557 Civic Centre Road, R.R. #2
Keswick, ON L4P 3G1

Dear Ms. Grant:

**RE: SHORT-TERM RENTAL ACCOMMODATIONS - TOWN OF GEORGINA
INTERIM CONTROL BY-LAW**

As requested, I am writing further to my report of January 28, 2018 regarding Short-Term Rental Accommodations ("STRA") to now address the issue of utilizing an Interim Control By-law to prohibit the creation of new STRAs while the Town decides how best to regulate their creation and operation.

Passing Interim Control By-law and Potential Appeal

Section 38 of the *Planning Act* permits a municipality to pass an Interim Control By-law to prohibit the use of land, buildings or structures within the municipality, or within a defined area or areas of the municipality, for such purposes as are set out in the By-law. Such a By-law can be passed only after Council has, by by-law or resolution, directed that a review or study be undertaken in respect of land use planning policies related to the use that will be affected by the Interim Control By-law. An Interim Control By-law cannot be in effect of a period of more than one year from the date of passage unless, pursuant to Section 38(2) of the *Planning Act*, Council amends the By-law to have it remain in effect for a period of no longer than one additional year.

Importantly, there is no requirement for the Town to provide notice or have a hearing prior to the passing of an Interim Control By-law. However, the clerk must provide notice of the passing of the by-law within thirty (30) days of its passing.

As the *Planning Act* currently reads, prior to the Lieutenant Governor proclaiming that specific amendments to the *Planning Act* are to come into effect under the Building Better Communities and *Conserving Watersheds Act*, 2017 (i.e. Bill 139), a person may appeal the passing of the Interim Control By-law to the Ontario Municipal Board within sixty (60) days of the date of the passing of the by-law.

Once the amendments to the *Planning Act* come into effect on the date proclaimed by the Lieutenant Governor, there will be no appeal by a person or public body (other than the Minister who can appeal the original Interim Control By-law) from the passing of an Interim Control By-law unless the Council amends the Interim Control By-law, pursuant to Section 38(2), to extend the period in which it is to be in effect. Such an appeal would not be brought to the Ontario Municipal Board but would be brought to the tribunal that has been identified in the legislation as 'continuing the Ontario Municipal Board' as the Local Planning Appeals Tribunal.

Given the above, if an Interim Control By-law were to be passed by Council before the date proclaimed by the Lieutenant Governor, an appeal of the Interim Control By-law could be brought to the Ontario Municipal Board for the purpose of challenging the by-law. The practical effect, however, is that any appeal to the Ontario Municipal Board is unlikely to be scheduled and heard until approximately one year after any appeal has been filed. Additionally, even if the Interim Control By-law is appealed, Section 38(6.1) of the *Planning Act* states that the by-law remains in effect until the decision of the Ontario Municipal Board is issued with respect to the appeal.

Limitation Upon Passing Additional Interim Control By-law

It is important to note that once an Interim Control By-law is passed, a new Interim Control By-law cannot be passed for another three (3) years if it is to apply to the same lands that were affected by the first Interim Control By-law. Therefore, if the Town passes a 'Town-wide' Interim Control By-law, it cannot pass another Interim Control By-law for a period of three (3) years from the date of the expiry of the first Interim Control By-law anywhere in the Town.

However, if the Town were to pass an Interim Control By-law for a limited geographic area of the Town, the prohibition of passing a new Interim Control By-law for a period of three (3) years would only apply to that specific geographic area.

Given the above restriction prohibiting the passing of another Interim Control By-law for a three (3) year period upon the same lands, it is usually in the best interest of a municipality to pass an Interim Control By-law for specific 'targeted' areas of the municipality rather than to pass a 'municipal wide' Interim Control By-law.

Matters to Consider Prior to Passing an Interim Control By-law Re: STRAs

In my opinion, the Town has the authority under the *Planning Act* to prohibit the creation or establishment of STRAs within the Town by way of an Interim Control By-law while the Town studies, or retains outside consultants to study, the land use planning effects of STRAs and how, if at all, the Town should regulate their creation and operation. The Courts have recognized Interim Control By-laws, “allow the municipality breathing space to rethink its land use policies by suspending development that may conflict with any new policy.”¹

The passing of an Interim Control By-law could not prohibit currently established STRAs from continuing to operate but it would stop the establishment of new STRAs within identified areas of the Town.

If Town Council is of the opinion that it is in the best interest of the Town to pass an Interim Control By-law to prohibit the creation of new STRA's, it is my recommendation that the Town limit the geographic scope of the applicability of the Interim Control By-law to areas of the Town in which such a use could currently be established. For example, it would make little sense to have the Interim Control By-law apply to industrial/employment lands within the Town as it would already be illegal for a person to create a STRA upon such lands. As noted above, it is important to restrict the Interim Control By-law only to lands upon which it is necessary to apply because, once an Interim Control By-law is brought into effect on certain lands, there is a three (3) prohibition on passing another Interim Control By-law on those same lands.

The second aspect that is critically important to the passing of any Interim Control By-law is to make certain that the use that is to be prohibited is properly defined. While this point may appear obvious, it is important that the Interim Control By-law capture only the specific uses that are of concern to the Town and not other uses. The by-law must also be broad enough to capture all forms of uses that would reasonably fall into the description of STRAs. As the Town cannot apply a new Interim Control By-law or amend an Interim Control By-law on an ongoing basis, it is important to make certain that the Interim Control By-law at the time of its passing, prohibits the uses that Council intends to prohibit.

It is also of assistance if Council identifies, in the public record, the reason or reasons as to why it is passing an Interim Control By-law. While this is not a requirement under the *Planning Act*, having Council identify the reason or reasons for passing the By-law will assist in defending the Town against any allegations, or Court challenges, claiming that the Interim Control By-law has somehow been passed in bad faith.

Conclusion and Recommendation

If Council determines that it is appropriate to temporarily (for up to one year with a permitted one-year extension) prohibit the creation of STRAs within Georgina for the purpose of allowing the Town time to study the land use planning and other impacts, if any, of STRAs,

¹ *Equity Waste Management of Canada v. Halton Hills (Town)* 35 O.R. (3d) 321 at 337, (C.A. Ont), 1997

Council has the authority to pass an Interim Control By-law prohibiting such a use throughout the Town, or in any part of the Town as Council deems appropriate.

If Council determines that it is appropriate to pass an Interim Control By-law to prohibit the creation of STRAs, Council should be aware that it will be prohibited from passing another Interim Control By-law affecting the same lands for a period of three (3) years from the date upon which the Interim Control By-law expires.

Once passed, a study must be undertaken and completed well before the expiry of the Interim Control By-law to allow Council to determine how, if at all, the Zoning on the affected lands should be amended to address any issues identified in the study or as brought to Council's attention concerning STRAs. As the expiry period of the Interim Control By-law approaches, Council will have the option of allowing the by-law to expire and have the current zoning remain in effect or it may decide to pass a Zoning By-law Amendment to regulate STRAs.

As noted above, it is critically important that Council consider the geographic scope of the Interim Control By-law as well as the definitions utilized in the Interim Control By-law. The Town will want to make certain that only intended uses are captured in the Interim Control By-law and, at the same time, have the definition that is broad enough to capture the uses intended.

I would be pleased to answer any questions that you may have regarding this matter.

Yours very truly,

**RITCHIE KETCHESON
HART & BIGGART LLP**



R. Andrew Biggart

RAB/bjc