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Dear Mr. Paoli:

**Re: Ability of Bruce County to Delegate Planning Authority**

You have asked me to review and consider Bruce County's ability to delegate its planning approval authority to lower-tier municipalities within the County. You have specifically referenced the following existing authorities:

1. County Official Plan Amendments
2. Local Official Plans and Amendments
3. Plans of Subdivision
4. Plans of Condominium
5. Part Lot Control By-laws
6. Consents/Severances

I have examined each of these areas in turn below.

**1. County Official Plan Amendments**

The County's Official Plan is governed by section 17 of the *Planning Act* (the "**Act**"). Subsection 17(1) provides that the Minister of Municipal Affairs and Housing (the "**Minister**") is the approval authority for official plans except as otherwise provided within section 17. There is no provision within section 17 that alters that default provision, so the Minister remains the approval authority for upper-tier official plans.

Amendments to the County Official Plan are dealt with under sections 21 of the Act (for County-initiated amendments) or section 22 of the Act (for amendments at the request of a person). The authority for the consideration of amendments lies with the County, and the approval authority for such amendments has been delegated by the Minister to County Council by Ontario Regulation 525/97. There is no provision within the Act or the Regulation for the County to further delegate its approval authority for County official plan amendments to a lower-tier municipality.

**2. Local Official Plans and Amendments**

Subsection 17(2) of the Act provides that an upper-tier municipality is the approval authority in respect of an official plan for a lower-tier municipality if the upper-tier

municipality has an approved official plan. Since the County has an approved official plan, it is the approval authority for the official plans of all lower-tier municipalities within the County. Those lower-tier official plans must conform to the County's Official Plan.

There is a provision in the Act (s. 17(6)) for the Minister to remove the County's power in this regard and transfer the power to the Ministry (s. 17(7)), or to exempt (s. 17(9)) a proposed official plan or plan amendment from any approval under section 17. These provisions have not been exercised in Bruce County, and the approval authority remains with the County.

Section 5 of the Act provides that where the Minister has delegated any authority to County Council with respect to the approval of official plans or amendments to official plans, the County may, in turn, by by-law and subject to such conditions as may have been imposed by the Minister, delegate any such authority other than the authority to approve official plans or the authority to exempt from approval plans as official plans or amendments to official plans to a committee of Council or to an appointed officer identified in the by-law other by name or position.

In summary, the County is not able to delegate its approval authority over local official plans and amendments thereto to the lower-tier municipalities.

### **3. Plans of Subdivision**

Section 51 of the Act sets up a similar default proposal. Subsection 51(3) provides that, except as provided in the section, the Minister is the approval authority for plans of subdivision. The section then permits the Minister to delegate its authority to a council or planning board.

Subsection 51(5.1) provides that where an upper-tier official plan is in effect, the upper-tier municipality is the approval authority for plans of subdivision. However, subsection 51(6) gives authority for the Minister to, by regulation, prescribe a lower-tier municipality to be the approval authority for subdivisions. In effect, it is the Minister who chooses which municipality will be the approval authority.

Ontario Regulation 353/02, which was filed on December 12, 2002 and has been updated a number of times since that date, sets out a list of lower-tier municipalities which have been delegated the authority to approve plans of subdivision by the Minister. None of those lower-tier municipalities are within Bruce County. It is therefore possible, but only with the approval of the Minister, for local municipalities within the County to be assigned authority for the approval of plans of subdivision. The Minister would presumably want to be satisfied that such local authorities had the necessary resources and infrastructure to carry out these duties.

We have not researched the mechanics of seeking such a transfer, but it would in my view likely be necessary for both the County and the lower-tier municipality to consent to a proposed reassignment of the authority, and for the Minister to then be satisfied that such delegation made sense from a planning perspective and approve it. The County does not have authority to approve the delegation of the authority without Ministerial approval.





#### **4. Plans of Condominium**

Our comments with respect to plans of condominium are similar to the comments set out above under plans of subdivision. Any re-assignment of authority would in our view require the consent of both the County and the applicable lower-tier municipality, and the subsequent approval by the Minister.

#### **5. Part Lot Control By-laws**

Subsection 50(7) of the Act allows the council of local municipality to, by by-law, provide that the subdivision control provisions of the Act do not apply to designated lands within a plan of subdivision. Subsection 50(7.1) provides that such a by-law does not take effect until it has been approved by the approval authority for plans of subdivision, which in this case is the County.

A proposed transfer of this authority could therefore only occur together with a transfer of the authority to approve plans of subdivision as noted above.

#### **6. Consents/Severances**

Subsection 50(1) of the Act provides that where land is situated within a lower-tier municipality, the default position is that a consent to sever must be given by the Council of the upper-tier municipality. However, section 54 of the Act then provides that the Council of an upper-tier municipality made by by-law delegate to the Council of a lower-tier municipality the authority for the giving of consents within the lower-tier municipality. Subsection 54(2) further provides that such lower-tier municipality may in turn, by by-law, delegate the authority to a committee of council, to an appointed officer identified in the by-law, or to a committee of adjustment.

Accordingly, it is clearly within the County's authority to delegate its authority to grant consents to sever land directly to lower-tier municipalities without Ministerial approval. Those lower-tier municipalities can then determine whether they wish to deal with such consents directly, or to delegate them to a committee of council, a committee of adjustment or a designated officer.

Before proposing to delegate such authority, it would be prudent for the County to satisfy itself that the local municipality has in place the capacity to take on and effectively implement the proposed down-loaded authority.

### **Summary**

In summary, there is a limited ability for the County to delegate or have re-assigned some of its planning approval authority to the local level. In the case of consents to sever (#6 above) this can be done by simple Council by-law. In the case of subdivisions, condominiums and part lot control (#3, 4 and 5 above), it would involve seeking the approval of the Minister to make a regulation providing for the reassigned delegation of authority. In the remaining cases of County Official Plan amendments and local official plans and amendments (#1 and 2 above), it would require legislative changes to the Act.

In all cases, the over-riding role of the Province should be kept in mind. The planning system in Ontario is a "top down" system, in that the Province (through the Ministry) sets out the broad planning principles, objects and procedures which must be followed. Upper-tier



municipalities, such as the County of Bruce, must then be consistent with and conform to those statements and planning objectives. Lower-tier/local municipalities must in turn conform to and be consistent with all of the planning principles that are higher up in the planning pyramid.

I would be pleased to discuss this further with you, and/or to assist in drafting any documents that may be necessary to implement any proposed transfers of authority.

Yours truly,

MILLER THOMSON LLP

Per:



Steven J. O'Melia  
SJO/dms

