

# THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

## STAFF REPORT

**DATE:** November 2, 2021

**TO:** Committee of the Whole

**FROM:** Melanie Knight, Senior Planner

**SUBJECT: Interim Control By-law – Limited Service Residential and the definition of frontage**

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### **RECOMMENDATION:**

**THAT Committee of the Whole recommends to Council to adopt an Interim Control By-law for a period of one year as detailed in this report and in Attachment 1.**

### **BACKGROUND:**

At the direction of the Committee of the Whole on October 19, 2021 to review the Zoning By-law regarding the interpretation frontage definitions and required changes to LSR zoning and that an interim control by-law be put in place while this review is underway, staff have prepared this report and draft by-law.

### **Planning Act – Interim Control By-law**

Section 38 of the Planning Act allows municipalities to pass an Interim Control By-law (ICB) which puts a temporary freeze on some land uses while a municipality is studying or reviewing its policies.

The ICB can be imposed for only a year, with a maximum extension of another year. There is no ability to appeal an ICB when it is first passed (other than the Minister of Municipal Affairs and Housing), however, an extension to a By-law may be appealed. The Planning Act allows an ICB to remain in effect past the two-year period if the new Zoning By-law which replaces the ICB is appealed to the Ontario Land Tribunal.

The ICB is a planning tool by which a municipality may respond quickly to identified planning issues. Prior to enactment, Council must authorize the land use planning study to be undertaken and substantiate the planning rationale behind the Interim Control By-law. This report along with the direction from the Committee of the Whole, is sufficient to achieve the above requirements.

The scope of the planning study and the area to be subject to the By-law must be clearly identified in the Council resolution. Once the Bylaw is enacted, the expectation is that the planning study will be completed expeditiously and will result in formal amendments that implement the future planning policies for the study area. Once an ICB is in place, the area to which the By-law applies may be reduced as information becomes available throughout the study process provided the proper justification exists. An amendment to the ICB to reduce the study area would be subject to appeal.

Under the Planning Act, an ICB is directly related to the use of the land and not the specific development standards associated with the use.

As Council is aware, the last time Mississippi Mills passed an ICB was in 2019 to undertake a parking study.

### **Other Municipal ICB**

A municipal scan indicates that the use of an ICB to address issues of development has occurred in many other municipalities across the province and for a variety of different development related uses, each unique to the municipality.

Below is a snapshot of those ICB which have been passed in the last few years:

- Town of Collingwood passed an ICB in May 2021 to address development issues in relation to municipal servicing constraints.
- City of Burlington passed an ICB in 2019 relating to development around transit stations and an emerging community.
- Town of Whitby passed an ICB in 2020 relating to development in mature neighbourhoods.
- City of Ottawa passed an ICB in 2020 relating to development along the Woodroffe transit corridor and in 2019 passed an ICB specific to the development of triplexes in the Westboro area.
- City of Hamilton passed an ICB in 2020 for the purposes of undertaking a land use study for a defined rural area within the Niagara Escarpment area.
- Town of Grimsby passed an ICB in 2020 to undertake land use and transportation studies along their waterfront area.
- Township of Scugog passed an extension to their ICB in 2021 to study the impacts of cannabis production facilities in the agricultural and environmentally sensitive areas.
- Township of Brock passed an ICB in 2020 to study supportive housing and the opportunities of modular housing and tiny homes.
- Town of Carleton Place passed an ICB in 2019 (and subsequent extension) to control the erection or development of stacked townhouses, apartments, triplex units and quadraplex units.

## **DISCUSSION:**

As Council is aware, there have been a number of recent applications for residential development (dwellings) through the rezoning of properties to a Limited Service Residential (LSR) zone. Some of these applications have included consent applications to create a new lot, or for lot additions to create lots large enough for residential development and then subsequent Zoning By-law Amendments to permit the use, while others have requested Zoning By-law Amendments on existing lots of record to permit residential development. In all circumstances, these properties do not have frontage on an opened, maintained road allowance, rather these lots are accessed by either an established private road (outside of municipal boundaries), boat for those lots with water frontage, registered, private right-of-way easement over adjacent properties, by crossing unopened municipal road allowances or by a combination of the above.

As indicated through the motion from Committee of the Whole on October 19, 2021, the proposed Interim Control By-law is for the purposes of a study on the policies and implementation of Limited Service Residential (LSR) uses and the definition and implementation of the definition of Lot Frontage in Zoning By-law 11-83.

For Council's information, there are a number of definitions related to Lot Frontage in the Zoning By-law such as the definition of "Street, public open", "Street, private", "Street, unopened". All of these definitions as well as the related General Provisions, including but not limited to "Frontage on a Public Street" will be reviewed as part of the planning study.

### **Community Official Plan (COP)**

The COP speaks to the use of an Interim Control By-law. Specifically, the COP states that:

The Municipality should only use Interim Control in limited circumstances, where the development of lands presents serious problems and requires study.

1. Interim Control may be used in circumstances where immediate policy review of specific issues is required.
2. An interim control by-law shall contain authorization for a study to be undertaken of identified problem(s) and may include the terms of reference for the study.
3. After placing lands under Interim Control, the Municipality shall undertake the identified study and bring forward the necessary corrective action, such as policies or practices.

The COP does not have direct policies related to 'Limited Service Residential' in its policies; however, the COP does address development on lots that do not have frontage on an opened road allowance within *Section 4.6 Transportation*. In addition, *Rural and Agricultural Sections 3.2 and 3.3*, respectively, speak to the requirements of lot

frontage. These policies warrant further review, their direct impact to development on lots without frontage on an opened road allowance, the interpretation and implementation of the associated General Provisions of the Zoning By-law and LSR zone.

As a result, staff are recommending that the ICB and planning study be subject to all lots outside of the Village Boundaries, which do not have frontage on an open road allowance proposing a dwelling (single detached or seasonal) and that the planning study review all of the applicable COP policies related to development on lots without frontage on an opened road allowance.

Based on the policies of the COP, staff are of the opinion that the proposed ICB meets the intent of the COP.

### **Zoning By-law 11-83 - Limited Service Residential (LSR) Zones and Frontage**

In examining the historical approach to LSR development applications, the current LSR zoning provisions as well as the definition of Lot Frontage, and associated definitions, in the Zoning By-law, it is clear that there have been differences in how these development applications are approached and the interpretation of the applicable sections in the Zoning By-law.

With respect to the LSR zone specifically, there are several elements of these developments that need to be taken into consideration, including as the LSR zoning provisions outline, ensuring that current and future property owners *“will not be guaranteed to have the same municipal services such as garbage pick-up, snow ploughing and access by emergency vehicles as they would if the property had frontage on an opened, public road.”* In addition, in those cases where the development of an LSR property includes the proposal for the construction of a private road or an entrance way that crosses an unopened road allowance, there may be long-term implications for the municipality, such as agreements with property owners, that warrant further review.

With respect to Lot Frontage and associated definitions such as Front Lot Line, there are inconsistencies in the Zoning By-law whereby LSR zoned lots are not required to have *“frontage on a road which is an improved road and is part of the Corporation’s approved road system.”* as per Section 6.7; however, within the LSR zoning provisions, the By-law requires a minimum of 60 metres of frontage. Further the definition of Front Lot Line specifically acknowledges that a lot may not have frontage on an opened road allowance, which provides even greater inconsistency. In addition, there are a number of definitions related to Lot Frontage in the Zoning By-law such as the definition of “Street, public open”, “Street, private”, “Street, unopened”. All of these definitions as well as the related General Provisions, including but not limited to “Frontage on a Public Street” will be reviewed as part of the planning study.

## **Current Planning Act applications and applicability of the ICB**

Staff have completed a review of all active, complete applications pertaining to proposed LSR development. Currently, there are two Zoning By-law Amendment applications proposing amendments from a Rural (RU) zone to an LSR zone pending approval:

- Z-09-21 (Snedden) currently in appeal period.
- Z-08-21 (Jones) which is an active Zoning By-law Amendment application where the Committee of the Whole passed a recommendation to approve the application, subject to a Holding zone and Site Plan Control, at its meeting on October 19, 2021.
- Z-14-21 (Bowes) which is an active Zoning By-law Amendment application related to the creation of three parcels of land, two lots and a private road. The County of Lanark Land Division Committee conditionally approved the consent applications and a public meeting for the implementing zoning was held on October 19, 2021.
- Z-02-2021 (Dafoe) which is a Zoning By-law Amendment application currently on hold at the request of the applicant. The statutory public meeting was held on August 24, 2021 and on September 1, 2021, staff received a request from the applicant's consultant to put the application on hold. At the time of writing this report, the application remains on hold.

Other than the above, staff are not aware of any other active Planning Act applications proposing an LSR zoning.

Council has the option to tailor the ICB as to how the active Planning Act applications will be dealt with, while also prohibiting specific future Planning Act applications.

Based on the municipal scan completed as part of the preparation of this report, Council has two main options.

### Option One

The first approach is for the ICB to prohibit any Zoning By-law Amendments, Site Plan Control applications (and subsequent building permits) to proceed for lots without frontage on an opened road allowance, until such time as the ICB study is complete.

This approach would be applicable to not only any future Planning Act applications but also to the active Planning Act applications on file, and any subsequent Planning Act applications to complete the development process. For example, for any lot that has LSR zoning, but has not yet applied for Site Plan Control and/or a building permit, this approach would 'freeze' these proposed developments in their current state. Another example is that for any applicant that has received conditional approval from Land Division Committee, the ICB would prevent them from satisfying any conditions of severance, such as Zoning by-law Amendment or Site Plan Control applications, thus removing the ability for the applicant to complete a severance application.

Taking this approach, in essence, would 'freeze' any associated applications for residential development on lots without frontage on an opened road allowance in their current state.

### Option Two

The second approach is for the ICB to allow the current, active applications (or ones that have received previous Council approval) to proceed and would allow Council to make decisions on active Planning Act applications for lots that do not have frontage on an open road allowance.

This approach also allows for staff to have the ability to proceed with required subsequent applications, such as Site Plan Control, and for Council to make a decision to lift any applicable holding zones. This will also allow staff to issue any subsequent building permits for those LSR zoned lots where the zoning is in full force and effect and any other approvals that have been given. Based on the municipal scan, this appears to be the most common approach by most municipalities as it relates to an ICB.

To clarify, based on Option Two, the ICB would not be applicable to those lots which have already gone through a rezoning to an LSR zone and would be eligible for a building permit. As the LSR zone has historically only been implemented through site-specific zoning applications, the current Zoning By-law has approximately 25 site-specific LSR zones/zoning amendments (in addition to the files noted in this report).

### Recommended Option

Specifically, for this ICB, staff are recommending the Option Two for a number of reasons. This approach does not compel Council to approve any of the active applications, rather it merely allows the current applications to move through the existing statutory process for a decision and if approved, implementation. Decisions made by Council on these active applications may help to further inform the planning study.

Secondly, staff have provided formal feedback and input into the active applications whereby approval *could be recommended to Council* if the applicant agrees to certain conditions and requirements or gains further, necessary approvals.

In addition, the Committee of the Whole has just recently passed a recommendation that Council adopt an amendment to the Site Plan Control By-law whereby any LSR zoned lots are now subject to Site Plan Control. This approach will provide the municipality with greater control over the active LSR applications and provides the ability for an applicant to proceed through the planning process with the necessary, subsequent approvals.

Staff note that neither Option One or Two provide for a prohibition on the creation of lots through the Land Division Committee as this falls outside of the jurisdiction of the

municipality; however, through the circulation of the application, objections to the consent applications can be communicated based on the parameters of the ICB.

Below is a table outlining staff’s recommended approach and the circumstances to which the ICB would apply:

<b>ICB would apply to:</b>	<b>ICB would not apply to:</b>
New Planning Act applications outside of the Village Boundaries, proposing an LSR zone and/or to permit the development of a dwelling without frontage on an open road allowance (for example zoning by-law amendments, minor variances).	Site Plan Control, lifting of holding zones and building permit applications (and subsequent approvals) associated with complete Planning Act applications in process prior to the passing of the ICB.
	Planning Applications deemed complete or in process before the ICB by-law is passed.
	Development as part of a draft plan or registered plan of subdivision.
	Accessory structures on LSR zoned lots
	Other permitted uses on LSR zoned lots or lots without frontage on an open road allowance that do not include dwellings (for example agricultural uses)

**FINANCIAL IMPLICATIONS:**

There are no financial implications resulting from this report.

**SUMMARY:**

As noted in the Background Section of this report, an ICB is in effect for a period of one year or can be repealed by Council at an earlier date. An ICB is not able to be appealed and does not require any statutory notification prior to the passing of the by-law; however, will require notification of passing of the ICB within 30 days. If Council chooses to extend the ICB for an additional year, this extension can be appealed.

As noted in the Discussion Section of this report, staff recommend that an Interim Control By-law (ICB) be passed, for a period of one year, on all lots outside of the Village Boundaries, which do not have frontage on an open road allowance proposing residential development (single detached or seasonal) and that the planning study

review all of the applicable COP policies related to development on lots without frontage on an open road allowance.

Staff further recommend “Option Two” whereby the ICB will allow for decisions on active Planning Act applications, subsequent approval necessary (Site Plan Control and lifting of Holding zone) and issuance of building permits; however, will prohibit further applications to facilitate development without frontage on an opened road allowance and/or proposed LSR zones until such time that a study is completed, and recommended options are adopted by Council.

Based on the above, staff recommend Council approve the Interim Control By-law 19-xxx (Draft Attached).

Respectfully submitted by,

Reviewed by:

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Senior Planner

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Ken Kelly  
CAO

ATTACHMENTS:

1. Draft Interim Control By-law