



Meeting Date: February 3, 2021

Submitted by: James Hutson, Municipal Clerk; Dan FitzGerald MPI, Planner

Report No: CLK-02-2021

Subject: Interim Control By-law for Prime Agricultural Lands

Recommendation:

THAT Report CLK-02-2021 re: Interim Control By-law for Consent Applications be received;

AND THAT an Interim Control By-law for those lands identified on schedule "A" for the Municipality of Middlesex Centre be adopted.

Purpose:

The purpose of this report is to provide Council with a recommendation regarding the passing of an Interim Control By-law, which would have the effect of a temporarily freezing and prohibiting the recognition by Council of any use of land, buildings or structures for residential uses on residential parcels of land severed from areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) which have not received consent from Middlesex Centre Council under section 53 of the *Planning Act* to be severed as surplus residences as a result of farm consolidation by the date and time the proposed Interim Control By-law comes into force and effect. This would have the effect of freezing any subsequent applications for a change in use of lands to residential uses from lands designated Agricultural in Middlesex Centre's Official Plan, as a result of surplus residences as a result of farm consolidation for a period of (1) year from the date and time of the proposed Interim Control By-law is passed, subject to any extensions.

Background:

On January 20, 2021, Council adopted a resolution to direct Staff, as part of Middlesex Centre's overall Official Plan review process, to review and study the surplus as a result of farm consolidation planning policies that apply in Middlesex Centre, with a particular focus on pre-requisites for the occurrence of farm consolidations and whether or not it may be necessary or prudent to modify those policies.

Section 38 of the *Planning Act* outlines the circumstances in which the Council of a local municipality may pass a by-law prohibiting the use of land, buildings or structures within

their municipality. Referred to as an Interim Control By-law, a municipality may enact such a by-law if it has previously directed that a review of land use policies within the municipality be undertaken.

Middlesex Centre is currently undertaking a review of the Official Plan which is expected to be completed in the fall of 2021. As a result of this review and Council's January 20, 2021 resolution, the Municipality is positioned to meet the criteria required by the *Planning Act* to adopt an Interim Control By-law.

An Interim Control By-law can be in effect for a period of 1-year and may be extended under certain circumstances allowing Council to place a temporary freeze and prohibition on certain land uses while the larger Official Plan review is being contemplated.

Analysis:

In adopting the proposed Interim Control By-law, Council would temporarily freeze and prohibit the recognition by Council of any use of land, buildings or structures for residential uses on residential parcels of land severed from areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) which have not received consent from Council under section 53 of the *Planning Act* to be severed as surplus residences as a result of farm consolidation by the date and time the proposed Interim Control By-law comes into force and effect. This planning tool exists to allow municipal councils to enact and enforce regulations on the use of lands when, at municipal council's discretion, there is a need to address an immediate concern for which the municipality has identified a requirement for further study or analysis.

The purpose of the temporary freeze and temporary prohibition on approval by Council of any use of land, buildings or structures for residential uses on residential parcels of land severed from lands designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) which have not received consent to be severed as a result of farm consolidation by the date and time the proposed Interim Control By-law comes into force and effect would be to provide time and breathing space for Middlesex Centre to:

- a. undertake and conduct a land use review and study of the residence surplus as a result of farm consolidation planning policies that apply in Middlesex Centre, with a particular focus on pre-requisites for the occurrence of a farm consolidation; and
 - b. consider whether or not it may be necessary or prudent to modify the pre-requisites for the occurrence of a farm consolidation;
- to the end of:
- c. ensuring that no residential parcels are severed from areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) prior to any provisions that may be necessary to ensure the protection of

prime agricultural lands in Middlesex Centre are contained in the Middlesex Centre Official Plan; and

- d. ensuring that all applications received to approve residential uses on proposed to-be severed parcels as a result of farm consolidation received after the date and time in which the proposed Interim Control By-law comes into effect will be subject to planning provisions adopted by Council in light of the review and study following the temporary freeze.

As part of the Official Plan review process, the entire surplus residence as a result of farm consolidation severance planning policies that apply in Middlesex Centre, with a particular focus on pre-requisites for the occurrence of farm consolidations and whether or not it may be necessary or prudent to modify those provisions is being reviewed and studied. From a planning perspective, whether or not municipalities have clearly defined and sufficient residence surplus as a result of farm consolidation planning policies and consolidation pre-requisites is important, as those pre-requisites form part of the planning test which determines the approval or prohibition of residential uses on residential parcels severed from areas designated as Agriculture in Municipality of Middlesex Centre's Official Plan (shown on *Schedule "A"*), which are the prime agricultural lands in the Municipality. Pursuant to the Provincial Policy Statement 2020 ("PPS"), residential lots in prime agricultural areas are not permitted, except for an exception for severances as a result of farm consolidation recognized in section 2.4.4.1(c). There is no definition of 'consolidation' included in the PPS. A municipality's planning policies are impactful in determining whether or not a farm consolidation has or has not occurred for the purposes of approving land uses. Council has raised a concern that Middlesex Centre's policies included in section 10.3.2.1 of its Official Plan provide for a broad overall scope of pre-requisites but lacks clear definition and qualifications for the occurrence of a consolidation. This concern is valid from a planning perspective. As such, Staff are recommending that it is necessary and prudent to place a freeze on the use of any land, buildings or structures for residential uses on residential parcels severed from areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) if a property owner has not first received consent from Middlesex Centre Council to sever a residential parcel of land as a result of farm consolidation by the date and time this By-law comes into force and takes effect. In the event that residential uses on residential parcels severed from areas designated as Agriculture in Middlesex Centre's Official Plan (and shown on *Schedule "A"*) were able to be recognized by Council during the temporary freeze prior to any provisions that may be necessary to ensure the protection of prime agricultural areas are in place, there would be risk of irreparable planning harm because surplus farm residence applications as a result of farm consolidation in prime agricultural areas could be received and approved, which: were not subject to ample consideration of necessary policies; allow for incompatible residential uses of a different character than Agricultural uses; may not preserve long-term viable farming; are contrary to Council's interpreted intent of the policy contained in Middlesex Centre's Official Plan; and/or which are otherwise inappropriate.

Accepting applications for approval for residential uses on severed parcels in areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) during the temporary freeze would create confusion for applicants, the public, staff and Municipal Council when evaluating such applications in determining the appropriateness of permitting uses on prime agricultural lands that may be contrary to the PPS and would not protect prime agricultural lands. As a result, the proposed Interim Control By-law would ensure that all applications to approve residential uses on new potential to-be severed parcels as a result of farm consolidation received after the date the Interim Control By-law becomes effective will be subject to planning instruments adopted by Council in light of the review and study, to be in place following the temporary freeze.

Applications to approve residential uses on new potential to-be severed parcels as a result of farm consolidation are proposed to be treated as follows:

- No applications for Council to recognize residential uses on new proposed to-be severed parcels in areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) would be received or processed by Staff after the date and time in which the Interim Control By-law becomes effective and during the temporary freeze.
- New applications for Council to recognize residential uses on new proposed to-be severed parcels in areas designated as Agriculture in Middlesex Centre's Official Plan (shown on *Schedule "A"*) would be received and processed when the Interim Control By-law or any extensions thereof is no longer in effect.
- All applications received to approve residential uses on proposed to-be severed parcels as a result of farm consolidation received after the date and time in which the Interim Control By-law becomes effective would be subject to planning instruments adopted by Council in light of the review and study, to be in place following the temporary freeze.
- During the temporary freeze, pre-consultations concerning residential uses on new potential to-be severed parcels in areas designated as Agriculture in Municipality of Middlesex Centre's Official Plan (shown on *Schedule "A"*) may occur.
- Applications for Council to recognize residential uses on proposed to-be severed parcels in areas designated as Agriculture in Middlesex Centre's Official Plan which were received by Staff prior to the effective time and date of the Interim Control By-law would be exempt from the temporary freeze and would be processed by Staff and decided upon by Council during the temporary freeze based on the in-force planning provisions as they existed prior to the temporary freeze.

Similar approaches to temporary freeze and prohibit changes in use due to severances through the adoption of an Interim Control By-law have been undertaken in other Ontario municipalities recently, including the City of Waterloo and the Town of Newmarket.

When an Interim Control By-law is in effect, the area to which the by-law applies may be reduced as information becomes available throughout the planning review. An amendment to a passed Interim Control By-law would need to be enacted in order to reduce the study area.

Notice Requirements

A public hearing or notice is not required prior to passing an Interim Control By-law; however, should Council enact such a by-law then the Municipal Clerk will prepare a Notice of Passing to be distributed to the public. Subsequently, the Minister of Municipal Affairs may within 60 days' appeal to the Local Planning Appeal Tribunal by filing with the Municipal Clerk.

Financial Implications:

There is a fixed application cost of \$1,750.00 for surplus as a result of farm consolidation consent applications, along with additional fees dependent on conditions of the severance. As such, the Municipality would not generate these application revenues during a period in which the proposed Interim Control By-law is in effect.

Strategic Plan:

This matter aligns with following strategic priorities:

- 1b. Planning & Positioning: Preserving rural heritage.
- 1c. Planning & Positioning: Realizing development potential.

Attachments:

1. Interim Control By-law
2. Schedule "A"