



Department of Community
& Development Services
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The Town of Niagara-On-The-Lake

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Report:	CDS-20-013	Committee Date:	June 08, 2020
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Due in Council:	June 22, 2020
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Report To:	Community & Development Advisory Committee
Subject:	File ICBL-EX-02-2020 - Niagara Stone Road & Niven Road (Village) Exemption to Old Town Interim Control By-law 5105-18 (as amended)

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 The request for an exemption (File ICBL-EX-02-2020) to the Old Town Interim Control By-law 5105-18 (as amended), for the property described as Niagara Stone Road & Niven Road (Village Centre) and shown on **Appendix A**, be approved; and
- 1.2 Staff advise the owner of Council's decision.

2. PURPOSE / PROPOSAL

This report provides a recommendation to Council respecting a request for an exemption to Interim Control By-law 5105-18 (as amended by By-law 5105A-19) that applies to Old Town. The review of the request is based on the Council-approved Exemption Criteria for the "Implementation of Site-Specific Zoning By-law Approval" and "Heritage Resource Screening".

3. BACKGROUND

Interim Control By-law 5105-18 was passed by Council on December 5, 2018 and extended for another year on November 11, 2019 through By-law 5105A-19. Unless repealed by Council at an earlier date, the Interim Control By-law (ICBL) will be in effect beyond the further one-year period (November 11, 2020) in accordance with Provincial legislation respecting the COVID-19 emergency and *Planning Act* timelines.

The Interim Control By-law temporarily prohibits the subdivision of land within the Old Town urban area. The ICBL prohibits applications for Subdivision, Condominium, Consent and Part Lot Control Exemption. Applications are also prohibited for Official Plan Amendments, Zoning By-law Amendments and Minor Variances that could permit or facilitate the subdivision of land or construction of townhouses or apartment residential units. The ICBL permits exemptions for certain condominium conversions, Minor Variance applications for additions to existing dwellings and also complete

applications filed prior to the By-law enactment.

At the April 27, 2020 Special Meeting of Council, the recommendations of Report CDS-20-010 were approved to establish Exemption Criteria and a Procedure for Council to consider exemption requests to Interim Control By-law 5105-18 (as amended).

4. DISCUSSION / ANALYSIS

Council Criteria for Exemption

A request to exempt a property from the Interim Control By-law must satisfy one of the criteria - not necessarily both. An ICBL exemption permits the submission and processing of a *Planning Act* application. There is no implied approval of a development proposal through the exemption process since applications require a full review, public consultation and a decision by Council or the Committee of Adjustment.

Criterion 1 - Implementation of Site-Specific Zoning By-law Approval

A property with existing site-specific Zoning By-law approval may proceed with required subsequent planning applications for lot creation to implement the prior Council approval. Such applications could include Consent, Part Lot Control Exemption, Removal of a Holding (H) Symbol, Draft Plan of Subdivision and Draft Plan of Vacant Land Condominium. Applications for an Official Plan Amendment, new Zoning By-law Amendment and/or Minor Variance to site-specific zoning are not permitted.

Criterion 2 - Heritage Resource Screening

The property must be located outside of areas containing defined heritage resources (Built Heritage Resources, Cultural Heritage Landscapes and Cultural Heritage Resources). The Town's proposed Official Plan (adopted October 22, 2019) includes Schedules D2, D3 & D4 - Heritage Resources & Areas of Heritage Significance. These schedules reference designated properties and districts under Part IV and Part V of the *Ontario Heritage Act* as well as Character Areas of heritage significance based on a recent consultant study. Properties within these heritage resource areas are not eligible for an ICBL exemption.

Evaluation of ICBL Exemption Request

The subject property (Niagara Stone Road and Niven Road - Village Centre) is shown on the Location Map (**Appendix A**). The submitted written request for exemption (undated) is contained in **Appendix B**. The following Staff review comments and information is provided:

- The letter requesting an exemption was previously submitted to Council through the Information Package dated March 19, 2020
- The required Preconsultation meeting for the proposed development of the property was conducted on September 5, 2019
- The property has site-specific commercial/residential zoning (By-law 4316DF-18) approved by the Local Planning Appeal Tribunal (LPAT) on December 24, 2019
- The owner requires Consent applications for new lot creation

- The subject land has existing site-specific zoning that satisfies Criterion 1 (Implementation) and also is located outside of any defined heritage resource area to satisfy Criterion 2 (Heritage Screening)

5. STRATEGIC PLAN

The request for an ICBL exemption is not directly applicable to Council's Strategic Plan.

6. OPTIONS

There are several options available to Council respecting the requested exemption to the Interim Control By-law, including:

- approve or refuse the exemption request
- select alternate or additional evaluation criteria
- repeal the Interim Control By-law

7. FINANCIAL IMPLICATIONS

There are no direct costs associated with granting an exemption to the Interim Control by-law for Old Town. The owner of an exempted property would be able to submit planning applications and review fees to the Town.

8. COMMUNICATIONS

A copy of this report has been provided to the property owner or their representative. Staff will advise the owner of Council's decision on the ICBL exemption request.

9. CONCLUSION

Community and Development Services Staff recommend approval of the request to exempt the property from Interim Control By-law 5105-18 (as amended). The request satisfies Criterion 1 (Implementation of Site-Specific Zoning By-law Approval) and Criterion 2 (Heritage Resource Screening) established by Council. Approval of the exemption request will allow the owner to submit certain *Planning Act* applications for standard processing and review for the proposed development of the subject land.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Rick Wilson', is positioned above the printed name.

Rick Wilson, MCIP, RPP
Manager of Planning

**Craig Larmour, MCIP, RPP
Director, Community and
Development Services**

**Sheldon Randall
Interim Chief Administrative Officer**

ATTACHMENTS



Appendix A - Niagara Stone Road & Niven Road (Village) - Location Map.pdf

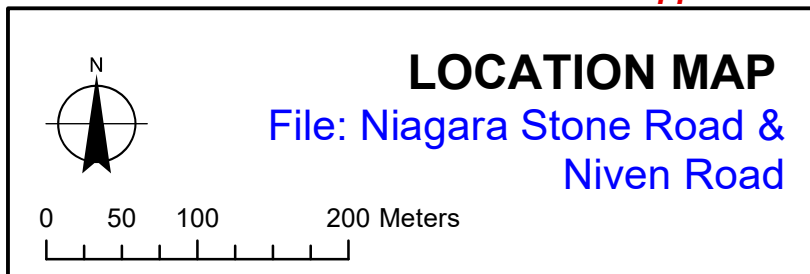
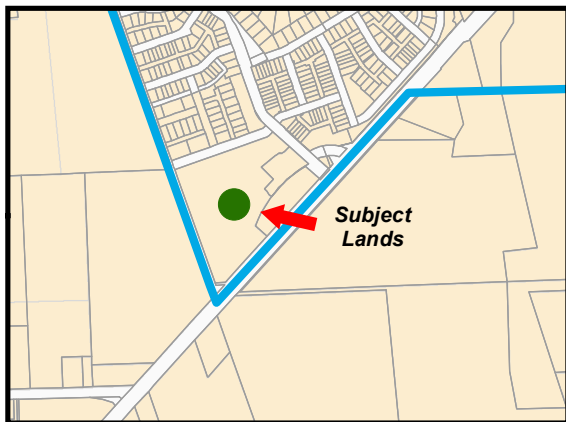


Appendix B - Niagara Stone Road & Niven Road (Village) - Exemption Request.pdf

WEB ATTACHMENTS

ATTACHMENTS FOR LINK

First Capital of Upper Canada - 1792



TND

Traditional Neighbourhood Developments Inc.
42 Garrison Village Drive, RR3, Niagara-On-The-Lake, ON L0S 1J0
Ph:289.868.8617

Dear Lord Mayor and Members of Council,

We understand that the handling of the CoVid-19 crisis is of paramount importance to Council at this time and we want to thank Council for its leadership on this. This coupled with your responsibility to try to keep the rest of The Town's business in view is a daunting task which no one could have foreseen last fall running for Council. Thank you again for the time and effort all of you are taking to provide calm leadership and optimism at this time.

I do need to put the following issue before you for your consideration. Adam Hawley attempted to address the Committee of the Whole Monday March 9th. He was unfortunately denied the opportunity for a delegation on the basis of our being in "litigation" with the Town. Given our longstanding track record of working with the Town on the successful implementation of our project we were quite taken back by this characterization of the situation as we were only attempting to provide Council with an understanding of why we unfortunately had to appeal the ICBL extension, and we wanted to offer a solution that we believe benefits everyone.

Our family is developing The Village at the entrance to the Old Town. The last phase of houses and townhouses is under construction. We have had two recent pre consultations with staff to begin the site plan stage of the remainder of our Village Centre (commercial area) beside CIBC and Shoppers at the corner of Stone Road and Niven Road. We are fully zoned for everything we plan to build and our plans have met with enthusiastic responses from staff at the Town and the Region, and local residents. We have just under eight acres for the remainder of the Village Centre which will include a boutique grocer, a boutique hotel, a Centre for Learning and the Arts, a cafe, retail shops, restaurants, a professional medical building, vacation rental apartments and long term rental apartments. The standard we have set architecturally will continue.

On November 11th, 2019 Town Council enacted By-law 5105A-19 which extended Interim Control By-law 5105-18 for up to one year.

Soon after November 11th, 2019, we made inquiries to the Planning Department to confirm that this extension would not interfere with the development plans for the completion of our Village Centre. We were initially advised that the ICBL was never intended to stop us from proceeding as it was never intended to include commercial development, and there were no concerns with our proposed fully zoned development.

The Village Centre will require an investment of tens of millions of dollars so for certainty we asked for written confirmation from the Town's Planning Department and the Town Solicitor that we would not be impacted negatively by the ICBL extension. A few days before the end of the 60 day appeal period for By-law 5105A-19 we were quite shocked to be told by the Town's solicitor that we were, in fact, caught up by this By-law. We were advised we cannot apply for any necessary severances to allow us to proceed in phases with the individual aspects of The Village Centre.

We unfortunately had no choice, at the eleventh hour, but to appeal the extension of the ICBL due to an unfortunate and, we believe, completely unintended consequence of the ICBL. While this has not cost us serious harm to date, this has the potential to cause us significant harm and damages if we are not allowed to proceed in the near future with severance applications and a Site Plan application.

As you may be aware a Case Management Conference (CMC) for the appeal had been scheduled with the LPAT for March 27th. Due to concerns with the Coronavirus, the CMC will no longer be held in person but may continue via teleconference. Assuming Council is in agreement that this is an unfortunate and unintended consequence of the ICBL we are requesting that Council correct this and have our fully zoned Village Centre lands removed from the area included in the ICBL so that we can proceed forthwith with our development plans. Our understanding is that this is not a complicated process to correct. If we are forced to proceed with our appeal, we and the Town could unnecessarily spend tens of thousands of dollars pitted against one another when the implementation of our plans is in our mutual best interests and has tremendous public support. Further, we realize that Council had a very challenging budget to balance this year and that anticipated legal fees were a substantial reason for the approved increase and spending further time and money in this regard, we respectfully submit, would not be prudent. As a final consideration, every month we are delayed will delay the millions of dollars of Development Charges and ongoing taxes that will be generated by our Village Centre and available to the Town to reduce taxes and/or advance the other projects they're considering.

Thank you for your consideration of this request.

Regards,

John Hawley | President

Traditional Neighbourhood Developments Inc.

NewArk Niagara Corporation

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