

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

STAFF REPORT

DATE: September 21, 2021

TO: Committee of the Whole

FROM: Tyler Duval, Planning Consultant

SUBJECT: **ZONING BY-LAW AMENDMENT Z-08-21**
PAKENHAM CON 1 PT LOT 24
Pakenham Ward, Municipality of Mississippi Mills

CIVIC ADDRESS: n/a

APPLICANT: RoxAnne Darling, Evergreen Concepts

OWNER: Remi Jones

RECOMMENDATION:

THAT Council approve the Zoning By-law Amendment to change the zoning of the lands subject to file number Z-08-21, described as part of Part Lot 24 Concession 1, Pakenham Ward, from “Rural (RU) Zone” to “Limited Service Residential - Holding” (LSR-h) Zone. The holding provision will require that the Owners enter into a Site Plan Agreement with the Municipality in order to register a use, maintenance and liability agreement regarding a municipal unopened road allowance.

SUMMARY AND ADDITIONAL INFORMATION

This report was initially brought to Committee of the Whole on the evening of September 7th, 2021. The Committee elected to defer the file until additional information could be considered.

Attachment ‘D’ provides the additional information requested at the time of deferral. The additional information in Appendix ‘D’ speaks specifically to the past uses of the Limited Service Residential (LSR) Zone in the Municipality.

Based on the findings in Attachment ‘D’, the Staff recommendation and draft by-law have been changed

PURPOSE AND EFFECT

The purpose and intent of the Zoning By-law Amendment is to rezone the subject lands from “Rural” (RU) to “Limited Service Residential” (LSR) with a Holding provision, in order to permit a dwelling on a land locked parcel.

The Holding Provision is an implementation tool that the Municipal can use to require additional safeguards are in place to ensure the proper development of a site. In this specific instance, the Holding Provision will ensure that an agreement is registered on the title of the lands that addresses the use and maintenance of a portion of Municipal unopened road.

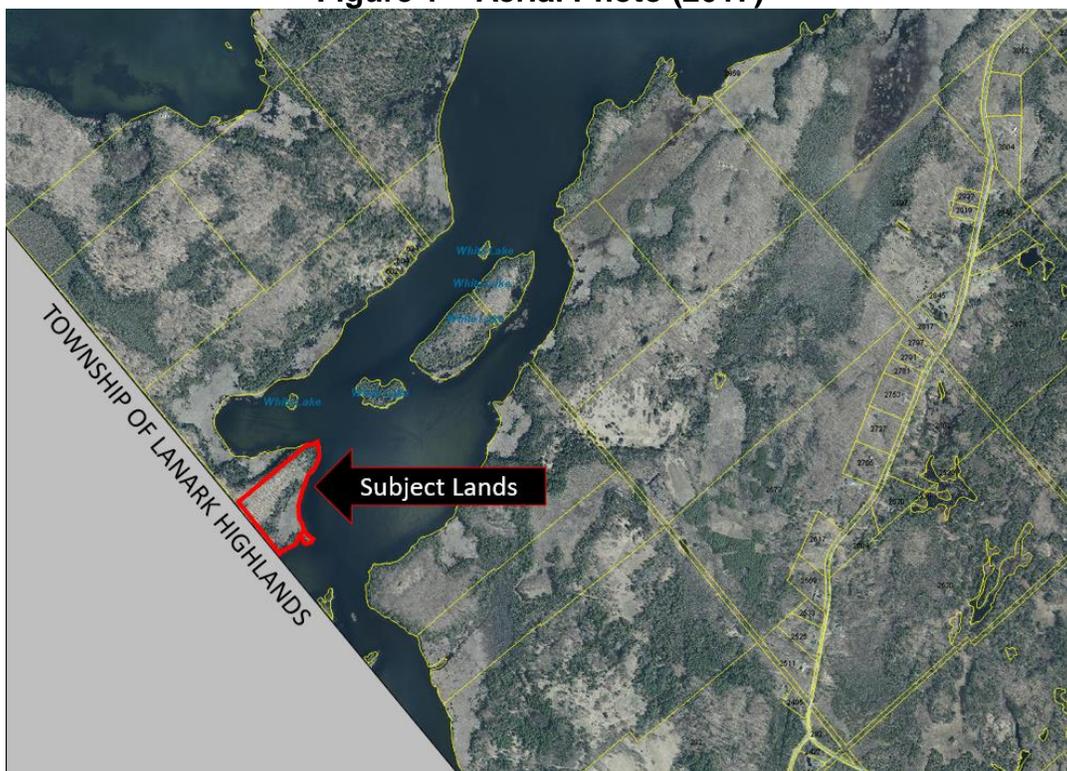
SERVICING & INFRASTRUCTURE

Although currently vacant, this property proposes to utilize private well and septic systems.

The property is accessed by vehicle via a combination of deeded rights-of-way over private property in the Township of Lanark Highlands before crossing over the unopened road allowance west of Concession 1 in Mississippi Mills. The Municipality’s solicitor has confirmed that the access over private property is legitimate and legal.

The parcel is also accessible by water (White Lake).

Figure 1 – Aerial Photo (2017)



COMMENTS

Staff circulated the application in accordance with the provisions of the Planning Act. Notice was posted on the subject property and circulated by mail to all property owners within 120m of the subject lands. Notice was also circulated to prescribed agencies and public bodies electronically.

MUNICIPAL COUNCIL

No comments received by members of Council.

INTERNAL CIRCULATION

Comments received based on the circulation of this application have been summarized below:

CAO: No comments received.

Clerk: No comments received.

Fire Chief: No concerns or objections.

Director of Roads and Public Works: No comments received.

Recreation Coordinator: No concerns or objections.

Planner: Will require a mechanism to be registered on the title that speaks to the crossing of the municipally owned road allowance.

CBO: Building code requires firefighting access routes to the building have been provided and are accessible.

- How will fire, police, ambulance, inspectors, planners et al get there?
- Is the municipality going to be held responsible if someone dies and proper access was not in place?
- Will the road go over private property that may be damaged?
- Will the neighbouring property have gates on this road?
- Will the road allow access in all 4 seasons?

EXTERNAL AGENCY CIRCULATION

Mississippi Valley Conservation

The subject property falls outside of the MVCA's jurisdiction.

Ministry of Energy, Northern Development and Mines

ENDM has no concerns regarding the Zoning By-law Amendment Application at this site.

FROM THE PUBLIC

No comments received.

The Municipality held a Public Meeting on August 24, 2021 to provide an opportunity for the public to comment on the application. A copy of all public submissions is appended to this report.

EVALUATION

COMMUNITY OFFICIAL PLAN (COP)

The subject lands are, and will continue to be, designated as “Rural” under the Community Official Plan. Permitted uses include residential dwellings.

Section 4.6.4.5 of the Community Official Plan speaks to the use of unopened road allowances. The specific polices of the Official Plan that this application is subject to include:

SECTION 4.6.4 – MUNICIPAL ROADS
Section 4.6.4.5 – Unopened Road Allowances
<p><i>1. This Plan recognizes that the public may use unopened public road allowances even though they are not maintained by the Municipality. The Municipality will not provide services to land fronting on an unopened road allowance.</i></p> <p>No Municipal services are proposed nor requested for the site.</p>
<p><i>2. The Municipality shall retain ownership of all unopened road allowances unless it is clearly demonstrated that there is no use for the road allowance for roadways, pedestrians, cycling or recreation trail or walkways, utility corridors, public access to waterways, recreational vehicle trails or any other possible future public use.</i></p> <p>The Municipality will maintain ownership of the unopened road allowance.</p>
<p><i>3. All private works or improvements to unopened road allowances shall require prior approval from the Municipality. The intentional or unintentional blocking up of an unopened road allowance by a private body shall be prohibited.</i></p> <p>The recommended Holding Zone will be the mechanism that captures the required Council approval.</p>
<p><i>4. The use of unopened road allowances as lanes to gain access to year-round residential development shall be discouraged.</i></p> <p>The minimal use of the unopened road allowance will be negligible. The proposal is simply to <u>cross</u> the road allowance rather than drive long the road.</p>

Section 4.6.8 of the Community Official Plan speaks to the use of unopened road allowances as a private road. Specifically, the plan states:

<p><i>8. The use of unopened road allowances as lanes to gain access to year-round residential development shall be discouraged. Private roads may be permitted to cross</i></p>
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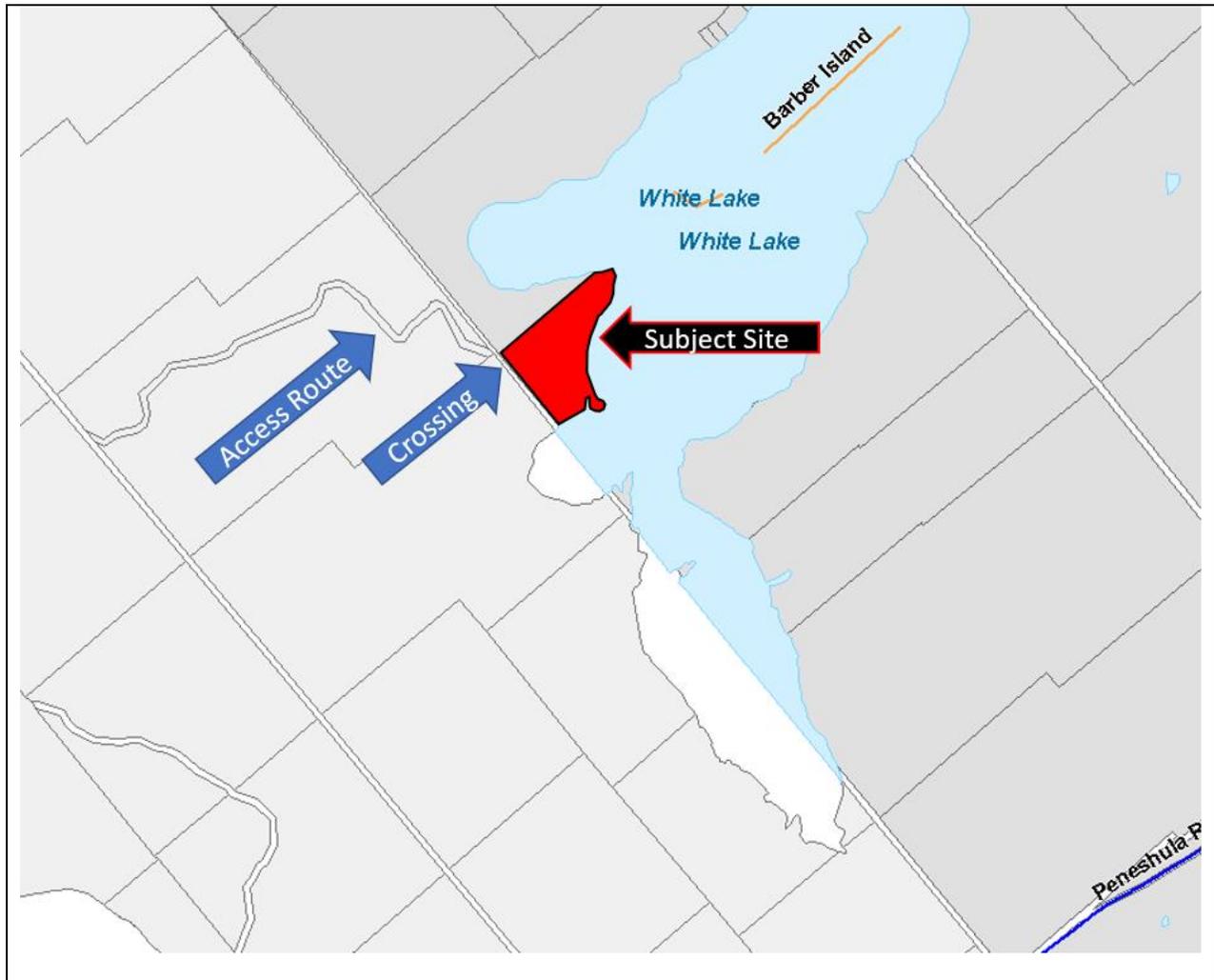
unopened road allowances with the permission of the Municipality.

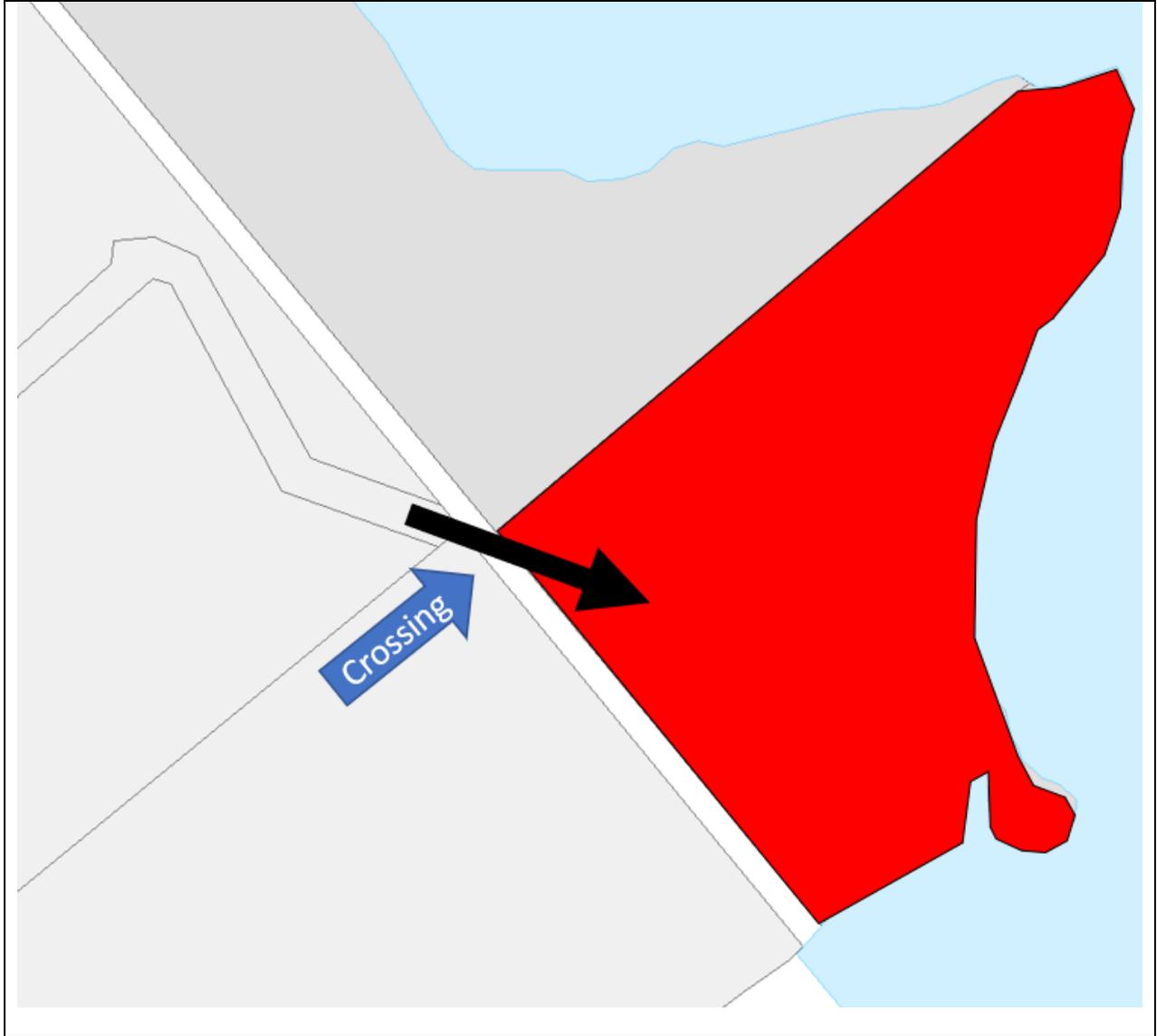
The proposed access to the subject lot only requires crossing the unopened road allowance, rather than a more intense utility such as driving along the road allowance for an extended distance.

An agreement will still be required between the owner and the Municipality regarding the use and maintenance of the travelled portion.

Figure 2, below, shows the proposed configuration of the access/crossing the unopened road allowance. As mentioned all the legally registered access instruments (in the Township of Lanark Highlands) have been reviewed and vetted by qualified professionals.

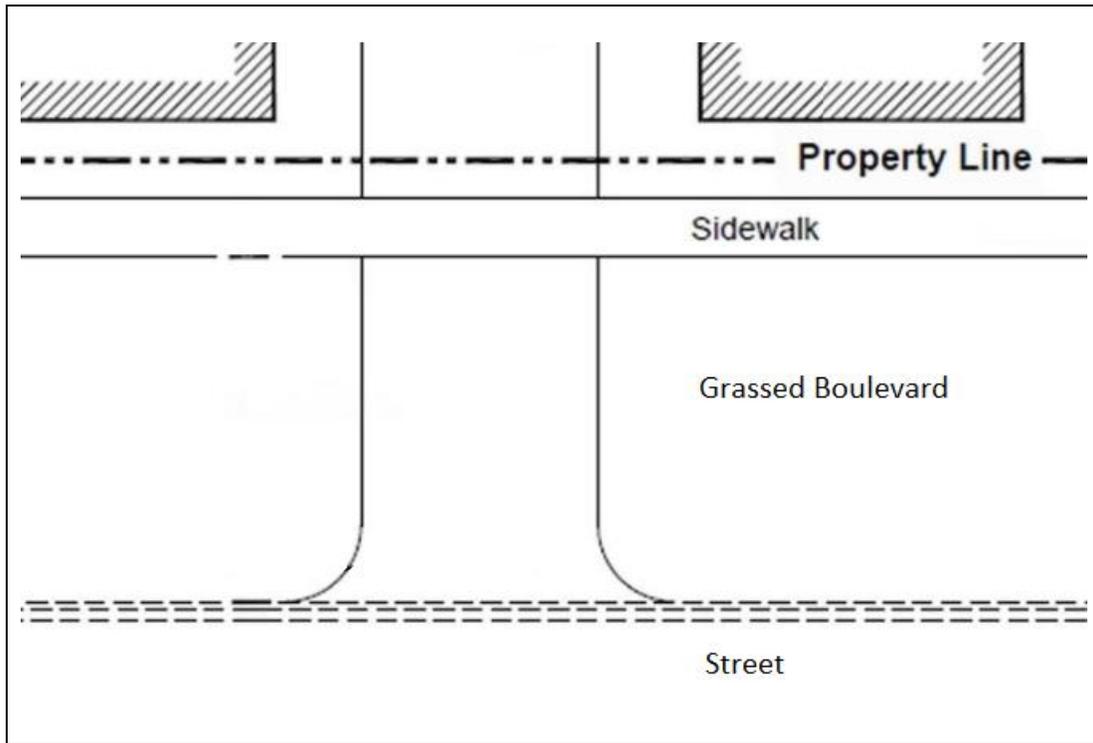
Figure 2





The effect of crossing the unopened road allowance is comparable to an individual's driveway that crosses through a grassed boulevard section of Municipal road allowance along a Municipally owned street as shown in Figure 3 below.

Figure 3



Although the COP is explicit in stating that *“the use of unopened road allowances as lanes to gain access to year-round residential development shall be discouraged”*, it is explicitly clear that access *“roads may be permitted to cross unopened road allowances with the permission of the Municipality.”*

As such, a registered agreement shall be executed between the Owner and the Municipality in order to govern over the use and maintenance of the crossed portion of the unopened road allowance. This registered agreement will be applied by means of Site Plan Control, which will be implemented via a Holding Zone.

ZONING BY-LAW #11-83

The subject lands are presently zoned “Rural (RU)” within the Comprehensive Zoning By-law #11-83.

The proposed “Limited Service Residential” (LSR) Zone is required in order to permit a dwelling on a land locked parcel. The existing lot exceeds the minimal required lot area and lot frontage of the LSR Zone.

The Holding Provision is an implementation tool that the Municipal can use to require additional safeguards are in place to ensure the proper development of a site. In this specific instance, the Holding Provision will ensure that an agreement is registered on

the title of the lands that addresses the use and maintenance of a portion of Municipal unopened road.

Staff are of the opinion that the Holding Zone is required, as an extra step, to make sure that an agreement is registered regarding the crossing of the unopened road. Although the Holding zone will require further Planning Act, without the Holding and the subsequent Site Plan Control process, there is no way to support the proposed zoning by-law amendment.

The by-law has been drafted and is appended to this report.

18.3 Special Provisions

18.3.25 Notwithstanding the provisions of the 'LSR' Zone, on those lands delineated as 'LSR-h' on Schedule 'A' to this By-law, shall be used in accordance with the following provisions:

The holding provision (h) shall prohibit further construction of new buildings on the site. The holding provision shall be lifted upon approval of the following to the satisfaction of the Municipality:

- a) approval of a site plan control application that includes a condition that requires an agreement be registered on title regarding the use of a portion of an unopened road allowance.*

SUMMARY

Having reviewed and assessed the proposed Zoning Amendment, staff are satisfied that the modified proposal complies with the provisions of the Provincial Policy Statement 2020, conforms to the policies of the Community Official Plan and satisfies the applicable sections of the Municipal Zoning Bylaw #11-83.

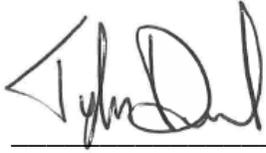
As the development complies and conforms to all applicable policies based on the analysis included herein, staff have no concerns regarding the proposed land use.

It is the professional opinion of the Planning Department that the proposed development to amend the Zoning By-law is appropriate and desirable.

Staff propose the following recommendation;

THAT Council approve the Zoning By-law Amendment to change the zoning of the lands subject to file number Z-08-21, described as part of Part Lot 24 Concession 1, Pakenham Ward, from "Rural (RU) Zone" to "Limited Service Residential - Holding" (LSR-h) Zone. The holding provision will require that the Owners enter into a Site Plan Agreement with the Municipality in order to register a use, maintenance and liability agreement regarding a municipal unopened road allowance.

All of which is respectfully submitted,



Tyler Duval, RPP, MCIP
Planning Consultant



Ken Kelly
Chief Administrative Officer

Attachments:

- Attachment A – Location Map
- Attachment B – Draft By-Law
- Attachment C – Comments Received
- Attachment D – Additional Information

Attachment A – Location Map



Attachment B – Draft By-Law

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

BY-LAW NO. 21-XXX

BEING a by-law to amend By-law No. 11-83 being the Zoning By-law for the Municipality of Mississippi Mills.

WHEREAS the Council of the Corporation of the Municipality of Mississippi Mills passed Zoning Bylaw 11-83, known as the Zoning By-law, to regulate the development and use of lands within the Municipality;

NOW THEREFORE the Council of the Corporation of the Municipality of Mississippi Mills pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, Chapter P.13, enacts as follows:

1. That Schedule 'B' to By-law No. 11-83, as amended, is hereby further amended by changing thereon from the "Rural" (RU) Zone to "Limited Service Residential - Holding" (LSR-h) for the lands identified on the attached Schedule 'A', which are legally known as Con 1 Pt Lot 24, Pakenham Ward, Municipality of Mississippi Mills.
2. That Section 14 to By-law No. 11-83, as amended, is hereby further amended by adding the following Subsection to Section 18.3:

"18.3.25 Notwithstanding the provisions of the 'LSR' Zone, on those lands delineated as 'LSR-h' on Schedule 'A' to this By-law, shall be used in accordance with the following provisions:

The holding provision (h) shall prohibit further construction of new buildings on the site The holding provision shall be lifted upon approval of the following to the satisfaction of the Municipality:

 - a) *approval of a site plan control application that includes a condition that requires an agreement be registered on title regarding the use of a portion of an unopened road allowance*
3. This By-Law takes effect from the date of passage by Council and comes into force and effect pursuant to the provisions of the *Planning Act*, R.S.O. 1990, Chapter P.13.

BY-LAW read, passed, signed and sealed in open Council this **X day of XXX, 2021.**

Christa Lowry, Mayor

Cynthia Moyle, Acting Clerk

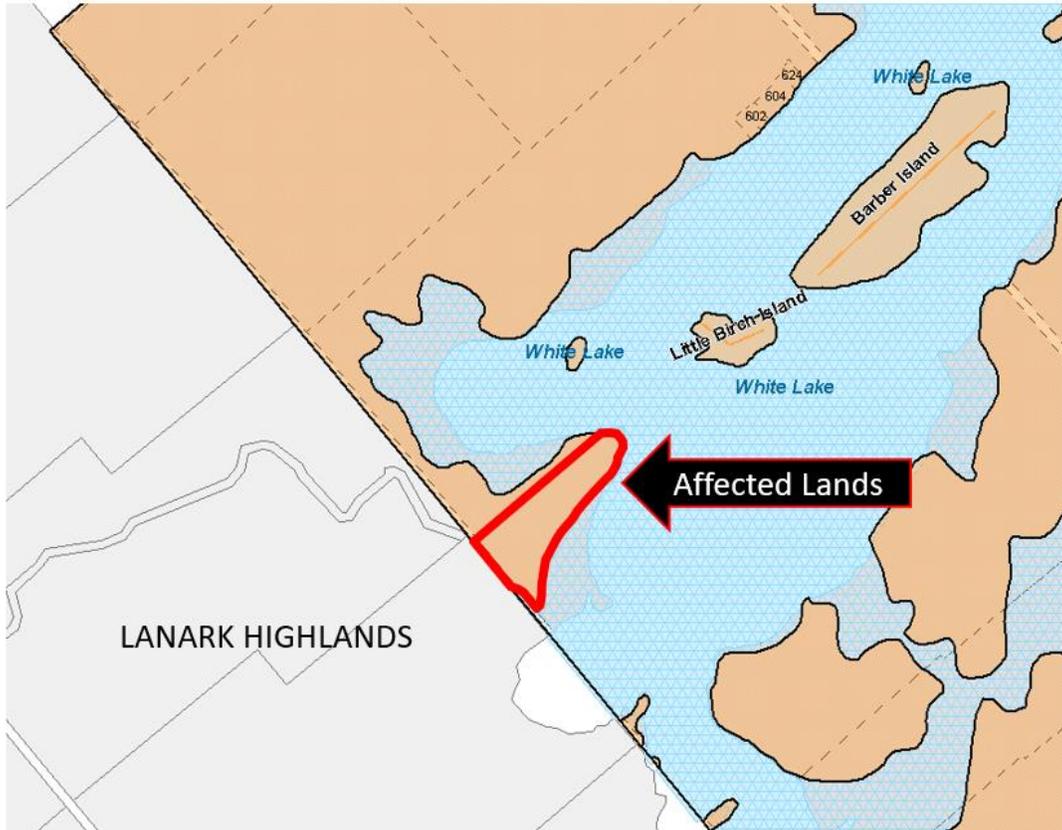
Bylaw 21-XXX
Schedule "A"

Lands Subject to the Amendment.

Con 1 Pt Lot 24, Pakenham Ward, Municipality of Mississippi Mills



LOCATION MAP
Zoning Amendment Application Z-08-21
CON 1 PT LOT 24
Pakenham Ward, Mississippi Mills



Attachment C – Comments Received

Building Department

Occupancy Requirements of Ontario Building Code state:

“1.3.3.4. (4)(e) required firefighting access routes to the building have been provided and are accessible”

- How will fire, police, ambulance, inspectors, planners et al get there?
- Is the municipality going to be held responsible if someone dies and proper access was not in place?
- Will the road go over private property that may be damaged?
- Will the neighbouring property have gates on this road?
- Will the road allow access in all 4 seasons?

Fire Services

No objections or concerns.

Parks and Recreation

No concerns.

Mississippi Valley Conservation

The subject property falls outside of the MVCA's jurisdiction.

Attachment D – Additional Information

The focus of the following remarks are to do with the interpretation of “**Lot Frontage**” and “**Front Lot Line**” in the case of a Lot that does not abut a street.

To properly unpack this concept, its is important to refer to the definitions of the Zoning By-law:

“**LOT FRONTAGE**” means the horizontal distance between the side lot lines, such distance being measured perpendicularly to a line joining the middle of **the front lot line** with either the middle of the rear lot line or the apex of the triangle formed by the side lot lines at the minimum distance from the front lot line at which erection of buildings or other structures is permitted by this By-law.

“**LOT LINE, FRONT**” means the line dividing the lot from the street.

[...]

(f) Where the “Lot” does not abut a **street**, the “Front Lot Line” shall be determined to be the boundary of the “Lot” closest to the **street** from which access to the “Lot” is gained.

As per the definitions above, the **Lot Frontage** is determined by measuring the distance between side lot lines, the measurement is to be parallel to the **Front Lot Line**. As per the definition, a parcel that does not abut a street may still have a **Front Lot Line**. As such, by definition, a land-locked parcel can technically have a measured frontage – being the length of the lot line nearest to the **street** it gains **access**.

Staying with the definitions, or in this instance, lack of a definition, it is important to consider the term **street**. Currently, **street** is not a defined term in the Zoning By-law. However, the following terms are define as follows:

“**STREET, OPEN PUBLIC**” means an open thoroughfare under the jurisdiction of the Corporation, the County, the Province of Ontario, or the Government of Canada. This definition includes highways, roads, rights-of-way and road allowances, but excludes public lanes and private rights-of-way.

“**STREET, PRIVATE**” means a street, not otherwise defined herein, which is described on a plan of subdivision or on a plan of condominium which is not under the jurisdiction of the Corporation, but which has been approved by the Corporation.

“**STREET, UNOPENED PUBLIC**” means a street which has not been assumed by the Corporation, the County, the Province of Ontario, or the Government of Canada as a public thoroughfare.

The definition of **Front Lot Line** refers to the term **street**, which must include all three defined types of **streets** – being **Open Public**, **Private**, and **Unopened Public**.

As such, land-locked properties do in fact have a measurable **Lot Frontage**. Traditionally, if a lot does no abut an opened and public road, there is no lot frontage. However, the Municipality

of Mississippi Mills Zoning By-law has a unique way of defining **Lot Frontage**, which implies that a land-locked parcel does have frontage (if it can prove legal access).

The Zoning By-law describes the purpose of the Limited Service Residential (LSR) Zone as follows:

- (1) recognize and permit limited service residential development in areas designated as Rural in the Community Official Plan;
- (2) permit residential-only used as well as related and accessory uses;
- (3) regulate development in a manner that respects the rural character of the area.

In the Zoning By-law, limited service means municipal services which may normally be provided on an opened public highway will not be guaranteed including, but not limited to, snow ploughing, road grading, school busing, garbage pickup, access by emergency vehicles, sanitary sewers, or piped water supply.

The permitted uses in the LSR Zone are regulated as follows:

No person shall within the “LSR” zone use any lot or erect, alter or use any building or structure for any purpose except one or more of the following uses:

- a single detached dwelling
- a seasonal detached dwelling
- buildings, structures and uses accessory to a permitted use
- sewage disposal system

If a use is permitted, such as a dwelling, LSR Zone requires the following development standards:

18.2 ZONE PROVISIONS

No person shall within any LSR Zone use any lot or erect or use any building or structure except in accordance with the following provisions:

PROVISIONS

Minimum lot area	4000 m ²	(43,055.6 ft ²)
Minimum lot frontage	60 m	(98.4 ft)
Minimum front yard	7.5 m	(24.6 ft)
Minimum exterior side yard	7.5 m	(24.6 ft)
Minimum side yard	3 m	(9.8 ft)
Minimum rear yard	7.5 m	(24.6 ft)
Minimum floor area	75 m ²	(807 ft ²)
Maximum building height	11 m	(36.1 ft)
Maximum lot coverage	15 %	

Section 18.2 of the Zoning By-law calls for 60 metres of **Lot Frontage** for a lot that does not abut any type of **street**.

As such, the subject Zoning By-law Amendment is incorrect in stating a required 0 metres of **Lot Frontage**. In fact, the subject lot currently exceeds the minimum required 60 metres of frontage

of defined in the By-law. Further, the minimum required lot area of the LSR Zone (4,000 m²) is exceeded as well.

Figure 1 – Existing Lot Specifications



As per **Figure 1**, the existing lot's configuration exceeds the minimum requirements of the LSR Zone. By definition, the **Lot Frontage** measures 277 metres, whereas 60 metres are required. The existing lot area is 40,000 m² whereas the minimum lot area in the LSR Zone is 4,000 m².

As a result, the subject application can appropriately be zoned LSR with no special exceptions required. The Holding provision will still be required to ensure the proper legal instruments are registered on the title of the property regarding the need to cross the unopened municipal road allowance.

RECENT ZONING BY-LAW AMENDMENTS TO LSR

Example 1

By-law #18-101

Rezone to LSR-22 to permit a single-detached home without frontage on an opened road allowance at 1941 Blakeney Rd.



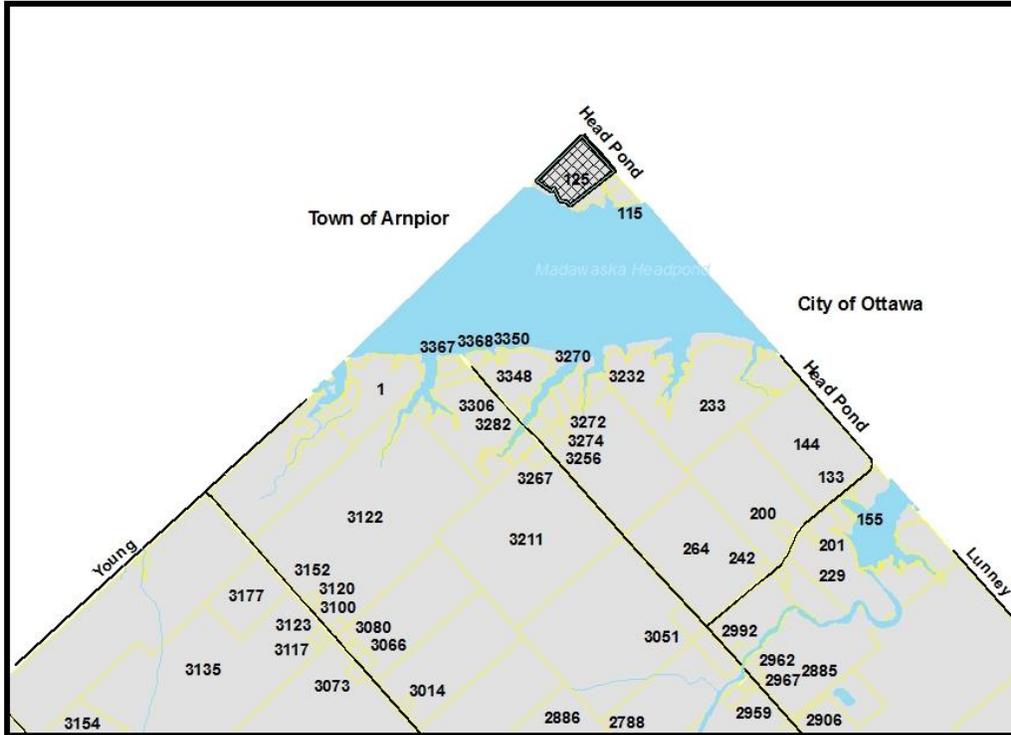
This lot does not abut an opened municipal road. As per the Zoning By-law's definitions, this lot has 60 metres of **Lot Frontage**, however the rezoning of this property implemented a special exception zone to permit "a single-detached home without frontage".

In my professional opinion, the Special Exception was not required on this file as the existing lot exceeds the minimum lot area and frontage of the standard LSR Zone. The LSR Zone is appropriate for this parcel.

Example 2

By-law #19-17

Rezone to LSR to permit a residential development on non-serviced lands at 125 Head Pond Rd N.



This lot does not abut an opened municipal road. As per the Zoning By-law's definitions, this lot has 88 metres of **Lot Frontage**.

In my professional opinion, the LSR Zone is appropriate for this property as the existing lot exceeds the minimum lot area and frontage of the standard LSR Zone.

Example 3

By-law #19-83

Rezoned to permit a residential development on non-serviced lands at 154 McManus SR.

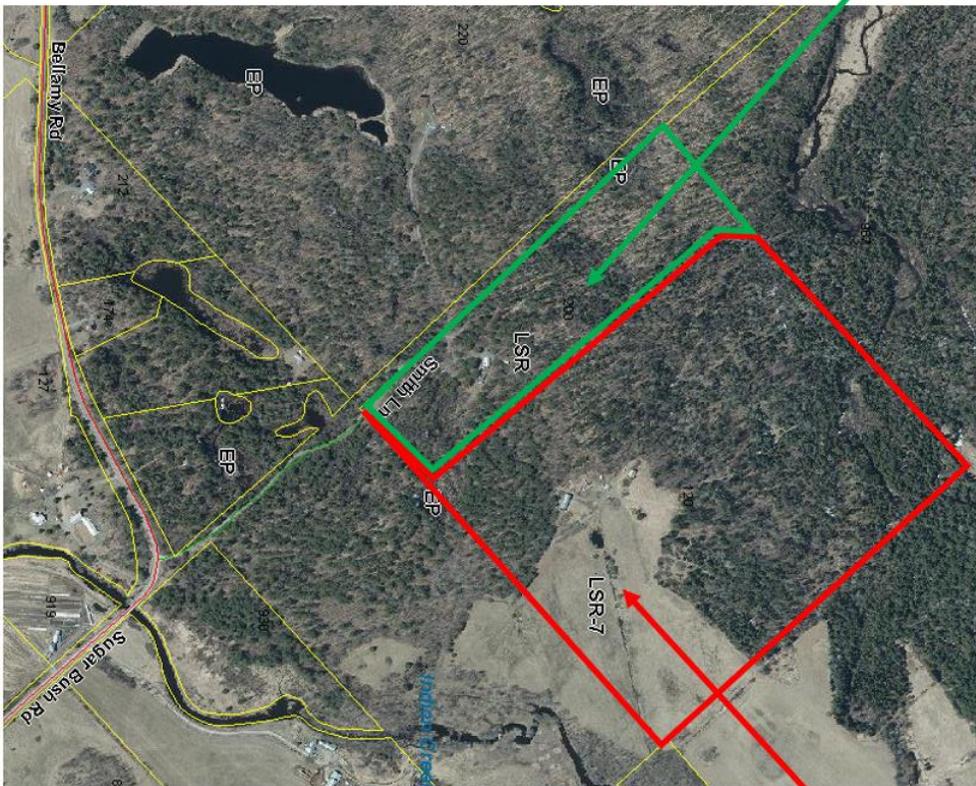


This lot does not abut an opened municipal road. As per the Zoning By-law's definitions, this lot has 335 metres of **Lot Frontage**.

In my professional opinion, the LSR Zone is appropriate for this property as the existing lot exceeds the minimum lot area and frontage of the standard LSR Zone.

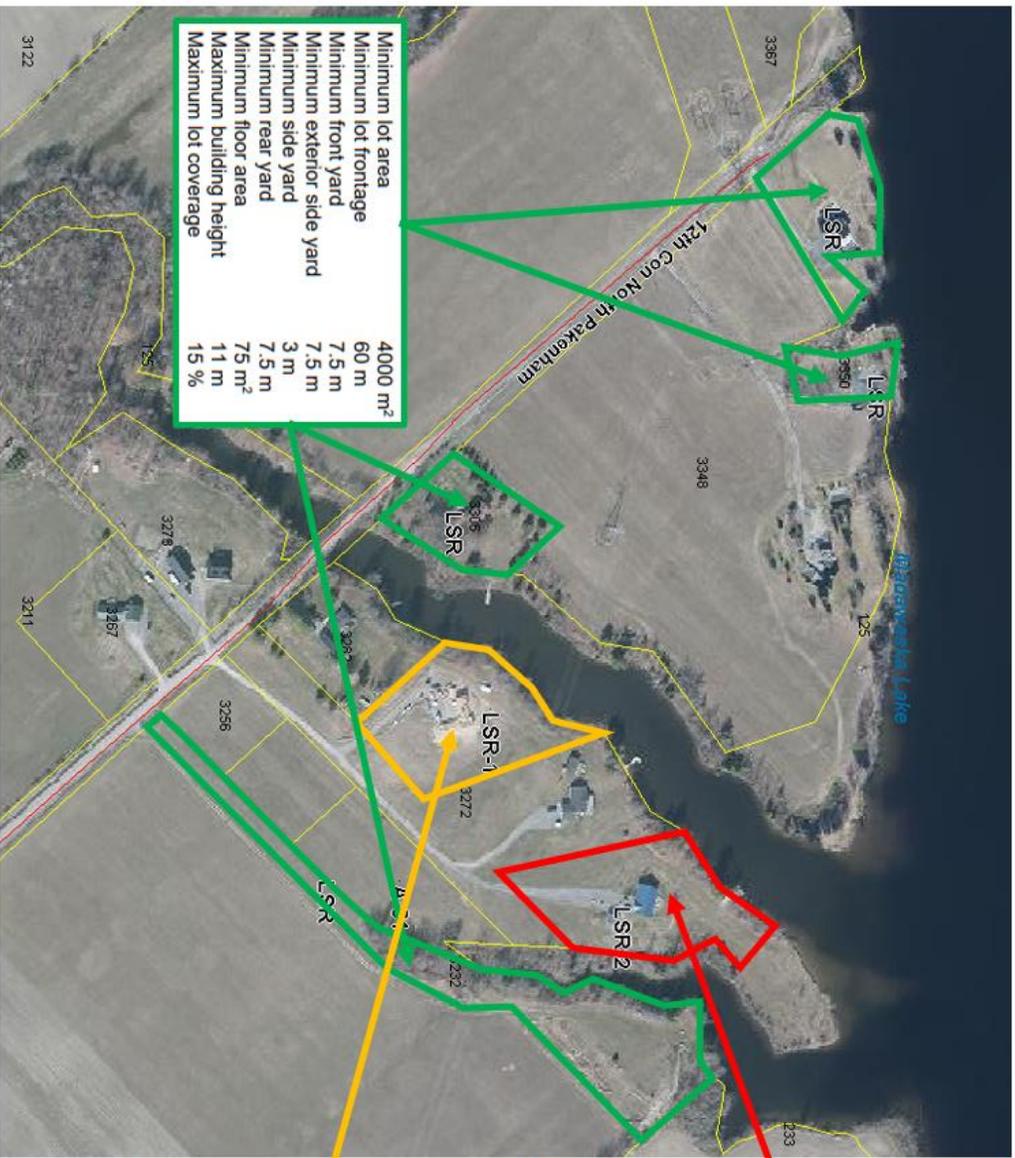
OTHER EXAMPLE OF THE LSR ZONE IN THE MUNICIPALITY

Minimum lot area	4000 m ²
Minimum lot frontage	60 m
Minimum front yard	7.5 m
Minimum exterior side yard	7.5 m
Minimum side yard	3 m
Minimum rear yard	7.5 m
Minimum floor area	75 m ²
Maximum building height	11 m
Maximum lot coverage	15 %



Notwithstanding their 'LSR' zoning designation, on those lands delineated as 'LSR-7' to this By-law, development shall be permitted in accordance with the LSR zone provisions, excepting however that:

- 1) the minimum lot area shall be 50 ha (123 ac).



Notwithstanding their 'LSR' zoning designation, on those lands delineated as 'LSR-2' to this By-law, development shall be permitted in accordance with the LSR zone provisions, excepting however that:

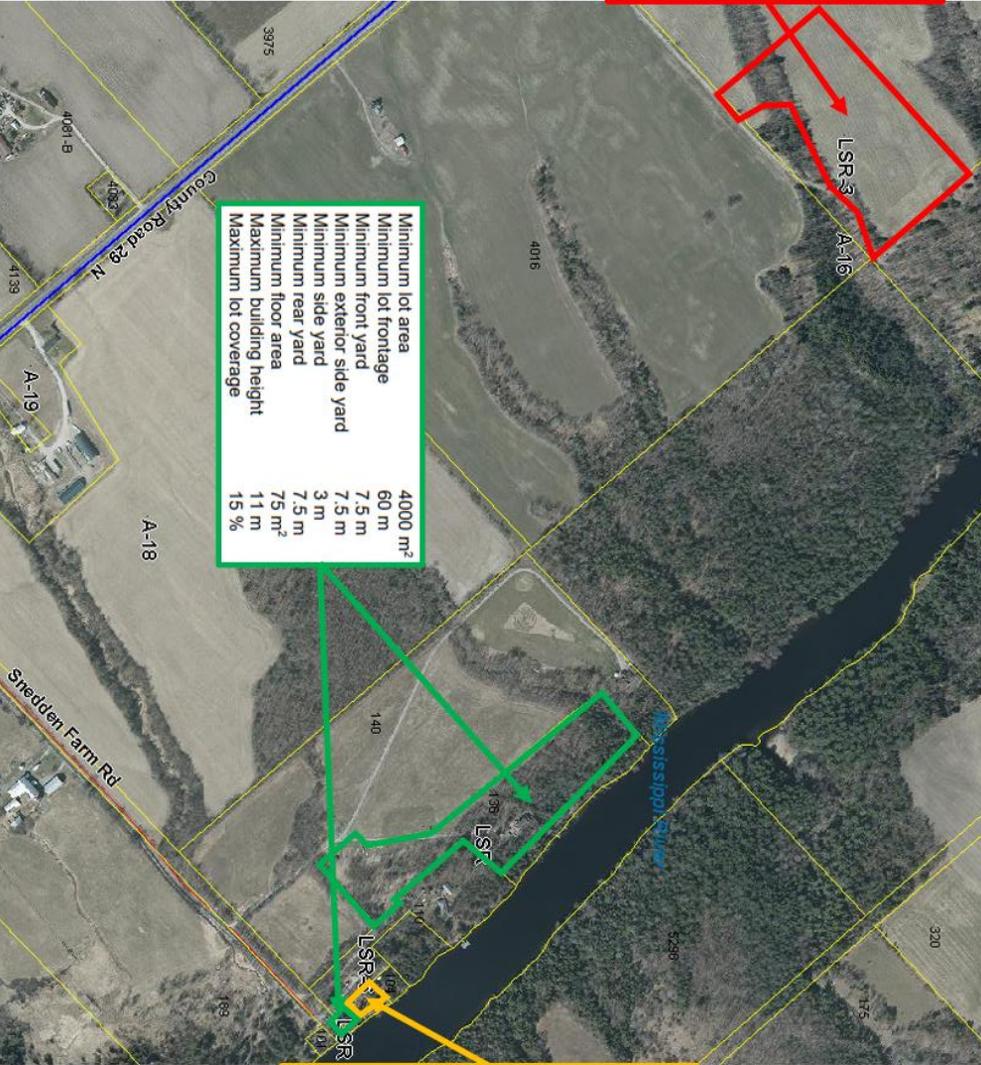
- 1) the minimum lot area shall be 1.0 ha (2.4 a);
- 2) the minimum lot frontage shall be 120 m (393 ft); and
- 3) the minimum setback from the Madawaska River shall be 30 m (98 ft).

Notwithstanding their 'LSR' zoning designation, on those lands delineated as 'LSR-1' to this By-law, development shall be permitted in accordance with the LSR zone provisions, excepting however that:

- 1) the minimum lot area shall be 0.8 ha (1.9 ac); and
- 2) the minimum lot frontage shall be 120 m (393 ft).

Notwithstanding their 'LSR' zoning designation, on those lands delineated as 'LSR-3' to this By-law, development shall be permitted in accordance with the LSR zone provisions, excepting however that:

- 1) the minimum lot area shall be 9.0 ha (22 ac); and
- 2) the minimum lot frontage shall be 300 m (984 ft).



Minimum lot area	4000 m ²
Minimum lot frontage	60 m
Minimum front yard	7.5 m
Minimum exterior side yard	7.5 m
Minimum side yard	3 m
Minimum rear yard	7.5 m
Minimum floor area	75 m ²
Minimum building height	11 m
Maximum lot coverage	15 %

Notwithstanding their 'LSR' zoning designation, on those lands delineated as 'LSR-6' to this By-law, development shall be permitted in accordance with the LSR zone provisions, excepting however that:

- 1) the minimum lot area shall be 0.1 ha (0.24 ac);
- 2) the minimum rear yard shall be 6 m (19.6 ft); and
- 3) the minimum setback from the flood plain shall be 7 m (22.9 ft).

