



Corporation of the Municipality of Temagami

Report No.
2018-027

Memorandum to Council

Staff
 Committee

Subject: Home Occupation Matters
Agenda Date: November 13, 2018
Attachments: Report from MHBCS Planning

RECOMMENDATION

BE IT RESOLVED THAT Council receive Report 2018-027;
AND FURTHER THAT Council choose Option 2 and direct Staff to act accordingly;
AND FURTHER THAT Council direct Staff to defer starting the process to change wording in the Comprehensive Zoning By-Law until the earlier of either the Official Plan update has been completed and approved or an Ad-Hoc Committee is formed to work with our Planning Consultant to review the Comprehensive Zoning By-Law in its entirety.

INFORMATION

Council directed further conversation occur with MHBC Planners related to the ongoing Home Occupation issue. Attached is a report received from MHBC Planners.

On pages 9 and 10 there are recommendations.

MHBC recommends that if Council was to undertake a change in wording of the Comprehensive Zoning By-Law that results in Home Occupations and Home Industries being more permissive that Council should also consider a more comprehensive review of the By-Law.

The next detailed review will follow the Official Plan update. That being said, given that approval of the Official Plan updates are not always timely, Council may wish to undergo this review with the understanding that a further review will occur when the Official Plan update has been completed.

In any event, the public notice provisions in the Planning Act would apply which, translated, means that this process could take up to a year. Since this change would not be for a specific property, notice would need to be provided to each property owner 30 days prior to the statutory public meeting being held and 15 days after the decision being made. While we are looking at options to mailing notices, at present, if notices were to be mailed as is the standard practice, the cost of postage would be significant. Aside from the postage cost would be the Planning Consultant cost and Staff cost.

In addition, MHBC has provided two options for the business in question. In discussion with Mr. Robinson of MHBC, the option of allowing the operation to continue as is while the wording of the By-Law is being considered in not an option. Rather either the business needs to modify its operations to comply with the By-Law as presently written or the owner can made application for a zoning by-law amendment which would be considered in the normal fashion.

Prepared by:

Reviewed by:

Craig Davidson, Treasurer/Administrator
Name, Position

Name, Position

MUNICIPALITY OF TEMAGAMI	
Report Prepared For:	Craig Davidson
Report Prepared By:	Jamie Robinson, MCIP, RPP and Carolyn Kellington, MCIP, RPP
Subject:	Subsequent Information Report Regarding Zoning By-law Provisions for Home Occupation/Home Industry
Report Date:	November 8, 2018

A. BACKGROUND

Home Occupations and Home Industries have been a topic of discussion within Temagami over the past several months. This was raised as a specific issue when dealing with the matter of the Simpson Diving Facility and discussions have broadened to consider a municipally initiated Zoning By-law Amendment to modify the home industry and home occupation provisions.

At its meeting of March 13, 2018, the Municipality's Planning Advisory Committee passed the following motion:

BE IT RESOLVED THAT the Committee recommend to Council to proceed with a Zoning By-law Amendment in response to the correspondence from Mr. Simson's inquiry dated March 5, 2018 and encourages a broader range of the definition in the zoning by-law of home occupation/home industry;

AND FURTHER THAT the definition of home occupation/home industry include home teaching and small learning facility in section 6.23(g).

Two previous reports (April 11, 2018 and June 12, 2018) were prepared and received by Council which pertained to home industry and home occupation uses within the specific context of the Simpson Diving Facility.

At the Council meeting of September 27th, 2018, there was further discussion regarding home based businesses and direction was given to have MHBC provide a letter/report addressing the matter of home based occupations and potential amendments to the Municipality's Zoning By-law; with a view to possibly make the home industry and home occupation provisions more permissive. As part of the September discussions, concern was expressed that the examples contained in the Zoning By-law have the potential of being interpreted as a complete list rather than examples.

Additional research has been undertaken to inform possible modifications to the current Zoning By-law provisions which the Municipality may wish to consider. This report has been prepared to provide some general information regarding home occupations and home industries and to make recommendations as to the Municipality of Temagami's current regulations.

B. GENERAL INFORMATION

Advances in technology, societal and economic changes, in addition to flexible work schedules, have enabled people to work from their homes and have encouraged the establishment and growth of home-based businesses. Home-based businesses constitute a growing trend. They can enhance the local employment mix, contribute to generating local jobs and possibly act as an incubator for small businesses.

There are positive aspects to providing for and potentially encouraging home-based businesses. Local municipalities must, however, consider how to balance the promotion of an economic activity while regulating such uses to ensure that matters such as environmental affects and impacts on surrounding residential properties are appropriately avoided, managed and/or mitigated.

In the Municipality of Temagami, home-based businesses would generally fall into the category of a Home Occupation or the category of a Home Industry.

Traditionally, home industries/home occupations are to be essentially undetectable to the surrounding neighbourhood and passersby. They are clearly secondary to the main residential use and should not result in negative impacts to the surrounding area. In considering expanding the scope of home industries and home occupations, these use must continue to be compatible with surrounding residential areas.

C. OFFICIAL PLAN

The Official Plan for the Municipality of Temagami includes several provisions relating to home industries and home occupations, defined as follows:

Home Industry – An occupation conducted in whole or in part in a building accessory to a single detached dwelling, and such home industry is clearly secondary to the main residential use of the property, does not change the residential character of the neighbourhood, and as further defined in the Zoning Bylaw.

Home Occupation – Any gainful occupation which is conducted within the dwelling unit by the resident(s) of the dwelling, and such home occupation is clearly secondary to the main residential use, does not change the residential character of the dwelling and as further defined in the Zoning By-law.

With regard to general economic development policies, Section 2.3 of the Official Plan speaks to commercial uses to occur in the Urban Neighbourhood as well as referencing that home occupations, home industries and tourism services may be established in the Rural Neighbourhoods; the Village of Temagami and Temagami North being the Urban Neighbourhood with the Rural Neighbourhoods being comprised of Lake Temagami, Matabitchuan, Marten River, and Backcountry.

While the specific Home Occupation and Home Industry policy details in each of the neighbourhoods have slight differences, the basic principle is the same. A Home Occupation is to be carried out in a residential dwelling, be incidental to the residential use and shall not change the residential character of the dwelling.

A Home Industry may be permitted but would be subject to a zoning by-law amendment and site plan approval process. Again, a Home Industry is to be clearly incidental to the primary residential use of the property.

D. ZONING BY-LAW

The Municipality's Zoning By-law permits home industries and home occupations subject to a number of regulations to ensure that these are small in scale, the potential for negative impacts on adjacent residential uses is minimized and the general residential character of the neighbourhood is maintained.

HOME INDUSTRY USES

1. Existing Provisions

The Municipality's Zoning By-law defines Home Industry as follows:

HOME INDUSTRY shall mean a gainful occupation including an electrical, woodworking, carpentry, window frame, welding, plumbing, machine or small engine repair shop, or a live bait supplier. A Home Industry is conducted entirely in an accessory building or part of an accessory building on a Rural Residential or Remote Residential lot by the residents. A home industry does not include a contractor's yard. (By-law 13-1121)

As set out in Section 6.22 of the Zoning By-law, the following general provisions would apply to home industries:

A home industry may be carried out in the R1, R2 and R3 Zones in accordance with the following and in accordance with the provisions of Section 7.4.3, Section 7.5.3 and Section 7.6.3.

- (a) there is no external advertising other than a sign erected in accordance with any bylaws of the Municipality regulating signs;*
- (b) the external storage of goods, materials or equipment is not permitted;*
- (c) such home industry is not an obnoxious use, trade, business or manufacture;*
- (d) such home industry is clearly secondary to the main residential use, does not change the residential character of the dwelling and in no case shall the accessory building used for the home industry have a gross floor area greater than forty percent (40%) of the ground floor area of the dwelling;*
- (e) not more than two (2) persons, other than the owner of the dwelling shall be employed in a home industry on a full-time basis;*

- (f) *except in the case of island lots, for every person, other than the owner of the dwelling employed therein on a full-time basis, one parking space shall be provided but shall not be located in the front yard or flanking yard;*
- (g) *except in the case of island lots, one on-site parking space shall be provided for patrons of the home industry and such parking space shall not be provided in the front yard;*
- (h) *except in the case of island lots, an accessory building used for a home industry shall not be located in the front yard or flankage yard of the residential lot; and*
- (i) *notwithstanding any of the provisions of this By-law, an accessory building used for a home industry shall have a minimum setback from the property line of five (5.0) metres.*

For home industry uses, Section 6.33 of the Zoning By-law requires the provision of 1 parking space per employee plus 1 parking space for patrons. This would be in addition to the minimum parking that must be provided for the residential unit.

2. Discussion of Potential Amendments to Zoning By-law Provisions

The definition of Home Industry itself includes a list of specific uses. As noted previously, concern has been expressed that the list provided in the Home Industry Zoning By-law definition may be interpreted as a complete list and that there may be additional uses, similar to those listed, which may fall within the category of a home industry use.

The definition of Home Industry does not provide an exhaustive list as the term “such as” is used. Similar uses to these may be permitted.

A more appropriate approach that listing specific uses in the definition may be to include categories of uses or types of use that would be permitted as a home occupation. For example, small scale manufacturing; assembly; processing or repair. This language would provide more flexibility.

The Municipality's current standards limits a home industry use to an accessory building. Based on our research, some Municipalities have provided for some flexibility as to the use being within an accessory building or a portion of the residential dwelling.

Temagami may also wish to consider adding provisions to reflect that a home industry may also be accommodated in a portion of a residential dwelling. As an example, a welding business may be located within an accessory building, however, a portion of the residential dwelling may be used as the office associated with that business. There should continue to be limitations as to the gross floor area being used for the home industry to ensure that it remains limited in scale and secondary to the residential use.

To provide clarification and flexibility, the definition of Home Industry could be modified to read, as follows:

*HOME INDUSTRY shall mean a gainful occupation, **secondary to a Residential Use, which includes fabrication, light manufacturing, processing, assembly or repair***

~~**of goods that is** including an electrical, woodworking, carpentry, window frame, welding, plumbing, machine or small engine repair shop, or a live bait supplier. A Home Industry is conducted entirely in an accessory building, or part of an accessory building **and/or part of a residential dwelling** on a Rural Residential or Remote Residential lot. by the residents.—A home industry may include, but not be limited to, such uses as electrical, woodworking, carpentry, window frame, welding, plumbing, machine or small engine repair shop, or a live bait supplier. A home industry does not include a contractor's yard.~~

Permitting a home industry, or a part thereof, to be located within a portion of the residential dwelling would also necessitate a revision to Section 6.22 of the Zoning By-law.

We would suggest a rewording of subsection (d), and the addition of the following as subsection (e), and the renumbering of the subsequent subsections.

- (d) ~~such home industry is clearly secondary to the main residential use,~~ **and does not change the residential character of the dwelling and lot;**
- (e) *in no case shall the accessory building, **or part thereof, and/or portion of the residential dwelling** used for the home industry have a **combined** gross floor area greater than forty percent (40%) of the ground floor area of the dwelling;*

We note that the Municipality's Zoning By-law does not permit a home industry as of right. While the term "Home Industry" is defined within the Zoning By-law and general provisions are outlined in Section 6.22, the specific regulations within the three zones that are referenced (R1, R2 and R3) state that a home industry is only permitted subject to a site specific rezoning. This is reasonable approach, as a rezoning allows for consideration of each home industry proposal on a site specific basis; within the context of the proposal itself and the area in which it is to be located. A rezoning is also subject to a formal public consultation process which provides opportunities for the area residents to review and provide comments on that specific proposal.

HOME OCCUPATION USES

1. Existing Provisions

The Municipality's Zoning By-law defines a Home Occupation as follows:

HOME OCCUPATION shall mean any gainful occupation which is conducted within the dwelling unit by the resident(s) of the dwelling, and such home occupation is clearly secondary to the main residential use, does not change the residential character of the dwelling and as further defined in this Zoning By-law.

As set out in Section 6.23 of the Zoning By-law, the following general provisions would apply to home occupations:

A Home Occupation may be carried out in certain zones, where permitted, subject to the following:

- (a) *no person, other than a resident of the dwelling unit and one non-resident employee may be employed in the home occupation, except in the R1, R2 and R3 Zones where two non-resident employees may be employed in the home occupation;*
- (b) *there is no display, other than an un-illuminated sign not greater than one (1.0) square metre in size, to indicate to persons outside that any part of the dwelling unit or lot is being used for a purpose other than a dwelling unit, except in the, R1 and R2 Zones where no such sign is permitted;*
- (c) *such home occupation is clearly secondary to the main residential use and does not change the residential character of the dwelling unit nor creates or becomes a public nuisance, particularity in regard to noise, noxious odours or emission of smoke, traffic or parking;*
- (d) *such home occupation does not interfere with television or radio reception;*
- (e) *there is no outside storage of goods or materials and there is no use of any part of an accessory building;*
- (f) *not more than twenty five per cent (25%) of the gross floor area of the dwelling unit or forty six (46.0) square metres, whichever is the lesser, is used for the purposes of a home occupation;*
- (g) *such home occupation uses may include a service or repair shop, a personal service shop, tradesperson, the office of a doctor, dentist, lawyer, or a real estate agent, insurance agent, planner, architect, or engineer, professional offices but a clinic, a hospital, a nursing home, a tea room and an animal hospital shall not be deemed to be home occupations;*
- (h) *when retail sales are carried out as part of a home occupation located on a lot accessible by a municipally maintained road, one on-site parking space shall be provided in addition to any required for the dwelling unit and employees;*
- (i) *(By-law 13-1121) except in the R1 and R2 Zones, one parking space shall be provided for each employee not residing in the residence.*

For an office, including a home occupation, Section 6.33 of the Zoning By-law requires the provision of 1 parking space per 30 square metres of gross floor area. This would be in addition to the minimum parking that must be provided for the residential unit.

Home Occupation uses are listed as permitted uses within the Remote Residential (R1) Zone (Section 7.4.1), the Remote Residential (R2) Zone (Section 7.5.1), the Rural Residential (R3) Zone (Section 7.6.1), and the Low Density Residential (RL) Zone (Section 7.7.1.1). Within each of these zones the home occupation must be in accordance with the provisions of Section 6.23.

2. Discussion of Potential Amendments to Zoning By-law Provisions

In this case, the wording of the definition of a home occupation is broader, however, Section 6.23(g) sets out a list of example home occupation uses. As noted previously, concern has been expressed that this list may be interpreted as a complete list rather than simply examples. To add clarification as to the interpretation of this section, we would suggest that Section 6.23(g) be modified to read as follows:

*(g) such home occupation uses may include, **but not be limited to, such uses as a service or repair shop, a personal service shop, tradesperson, the office of a doctor, dentist, lawyer, or a real estate agent, insurance agent, planner, architect, or engineer, professional offices but a clinic, a hospital, a nursing home, a tea room and an animal hospital shall not be deemed to be home occupations;***

The most recent matter which has prompted the Municipality's discussions regarding home occupations and home industries, the Simpson Diving Facility, included the notion of "teaching" or "instruction" as a home occupation use.

The idea of including home teaching and a small learning facility as part of the current list in section 6.23(g) was raised in response to review and consideration of the Simpson Diving Facility proposal. Based on a review of the Municipality's current home occupation provisions, indoor teaching such as one-on-one/small scale tutoring, video training, etc. would be permitted, subject to compliance with all of provisions of Section 6.23. Verbiage could be added to this section to formally address private teaching or instruction. Such as,

*(g) such home occupation uses may include, **but not be limited to, such uses as a service or repair shop, a personal service shop, tradesperson, the office of a doctor, dentist, lawyer, or a real estate agent, insurance agent, planner, architect, or engineer, professional offices, indoor teaching/tutoring/instruction** but a clinic, a hospital, a nursing home, a tea room and an animal hospital shall not be deemed to be home occupations;*

We would suggest, however, that the Municipality consider also adding provisions to limit the scale of this type of use beyond the maximum square footage which is currently in place. Such provisions could be based on limiting the quantify of student taught at any given time, limiting the quantity of students over a 24 hour period. The intention would be to limit any issues which could arise with respect to on-street parking, traffic and/or noise at any given time. An additional provision could be included, such as:

The total cumulative number of on-site clients or attendees of lessons, classes, instruction, treatment or service provided by a home occupation located in a principal dwelling unit or structures accessory thereto shall be limited to a maximum of 5 at any one time, and no more than a total of 20 over a consecutive 24 hour period

The question raised for the diving facility proposal related more to that component of the instruction which was being conducted outdoors. Based on our research, outdoor instruction, particularly referring to outdoor swimming lessons, has been the topic of

discussion and review by other municipalities as well. There are varying opinions as to whether these should be considered appropriate home occupation uses, specifically given potential noise impacts to surrounding properties.

We would caution against encouraging home occupation, or home industry, uses outdoors as this may result in negative impacts on the surrounding properties, i.e. noise. It is recognized that small scale private outdoor instruction may not create any more noise than the outdoor private recreational use of a property by a property owner and their family/friends, however, this private recreational use tends to be somewhat more limited in scale and consistency.

Applications for these types of uses could be considered via amendment, and would be based on their site specific merits.

Based on our research, some municipalities have permitted home occupation uses to be located in an accessory structure.. The examples within the Municipality's current home occupation provisions refer to a tradesperson, which is defined as a "carpenter, plumber, electrician, welder, general contractor or a person engaged in a similar occupation, providing a service to the general public". It may be that the use of an accessory structure for related equipment or materials could be an integral part of the home business. The Municipality may wish to consider permitting the use of an accessory building for a home occupation use. If so, we would suggest that specific provisions be included to limit the overall gross square footage being used for the home occupation. This would assist in ensuring that the home occupation is limited in scale. We would also suggest that the Municipality may want to consider limiting the home occupation use of an accessory building to properties with a specific lot area minimum. This provision would then relate to a rural lot versus a more urban residential lot. To provide for the use of an accessory structure, the definition of Home Occupation would have to be modified, for example

*HOME OCCUPATION shall mean any gainful occupation which is conducted within the dwelling unit **or an enclosed accessory structure**, by the resident(s) of the dwelling, and such home occupation is clearly secondary to the main residential use, does not change the residential character of the dwelling and as further defined in this Zoning By-law.*

This would then necessitate an amendment to Section 6.23 to ensure that the use is still limited in scale and potentially to limit this provision to lots with more of a rural character. For example,

An accessory building or structure may only be used for the purpose of a home occupation if the lot is a minimum of 1 hectare in size and the home business does not occupy more than 50 square metres of the accessory building or structure;

The minimum 1 hectare would limit the use of an accessory building to rural and remote residential lots. The maximum gross floor area provisions of Section 6.23(f) would continue to apply; being not more than twenty five percent (25%) of the gross floor area of the dwelling unit or forty six (46.0) square metres, whichever is the lesser.

D. ADDITIONAL CONSIDERATIONS - SHORELINE AREAS

There is a considerable amount of waterfront/shoreline areas within the Municipality. As evidenced in the policies of the Municipality's Official Plan, Shoreline Areas are to be protected. Specific Official Plan policies speak to this matter. In Section 2.17 of the Municipality's Official Plan, it states:

It is a goal of the Municipality to maintain shorelines and the area between the shoreline and any buildings in their natural state and as a vegetative buffer, to protect the visual and environmental integrity of the lakes. The principle of development in the vegetative buffer shall be minimal disturbance on the ground, shrub and canopy layers.

Such policies go on to speak of a Shoreline Activity Area and includes the following:

Such Shoreline Activity Area is a portion or cumulative portions of a shoreline frontage of a lot where accessory shoreline structures such as boathouses, docks, pumphouses, gazebos and decks are permitted, as well as access to the water for activities such as swimming or boat launching. To maintain an appropriate balance between a natural shoreline and built form, the Shoreline Activity Area should be focused within a defined area and be limited in extent. The extent of the Shoreline Activity Area shall be a function of the shoreline frontage and the primary use of the lot and shall be set out in the Zoning By-law.

Section 6.40 of the Municipality's Zoning By-law sets out specific provisions relating to the extent and use of a Shoreline Activity Area. Some of these provisions relate to remote or rural residential lots on which home occupation and home industry uses would be permitted and/or considered. In keeping with the policies of the Official Plan, we would recommend that the Municipality consider including a provision in Sections 6.22 and 6.23 that any structure (accessory or main residential building) to be used for a home occupation or home industry cannot be located within a Shoreline Activity Area.

E. SUMMARY AND RECOMMENDATIONS

The existing Zoning By-law provisions could be reworded to provide some clarification as to the interpretation of the examples of uses which have been referenced. Such amendments would not necessarily address the broader question of being "more permissive rather than restrictive". Other amendments could be considered by the Municipality, as discussed previously in this report.

The premise of encouraging local economic activity through home industry and/or home occupation uses is valuable but complicated. Any modifications to the current Zoning By-law provisions, including those discussed in this report, should be thoroughly vetted to ensure that they meet the needs of the proponents while protecting the interests of the surrounding property owners. We note that any amendments to the Zoning By-law would of course be subject to the full public consultation process and that it may be more fruitful for this to be part of a broader more comprehensive review of the Zoning By-law.

As it specifically relates to the Diving Facility matter, we put forward the following two options for Council's consideration:

OPTION 1 – Advise the Diving Facility operator to amend its current operations.

As detailed in the June 2018 report, there are two components of the Diving Facility operation which would not comply with the current Zoning By-law provisions relating to Home Occupations; the use of the accessory building to house the compressor used to fill the tanks and the in-water training/diving component of the business. Home Occupations are to be conducted within a dwelling unit.

The one-on-one instruction, video training, etc. which is located within the dwelling would be permitted by the Municipality's current Zoning By-law. We would suggest that the owner investigate alternative arrangements for the filling of the tanks and the in-water training component. For example, the in-water training/diving component may be able to be accommodated from another appropriate location rather than to and from the shoreline or dock of the residential property.

With appropriate alternative arrangements in place and subject to compliance with all other provisions of the Zoning By-law, the Diving Facility could continue as a Home Occupation use. The Municipality could still proceed with potential amendments to the Zoning By-law to consider broadening the Home Occupation provisions, however, the property owner would be able to carry on with a modified Diving Facility operation until such time as the Zoning By-law amendments have been appropriate vetted and dealt with through the required Planning Act process.

OPTION 2 – Require the Diving Facility operator to submit a Zoning By-law Amendment Application.

To permit the continued use of the property for the Diving Facility, as it currently operates, would necessitate the submission of a Zoning By-law Amendment application to modify the Home Occupation provisions on a site specific basis. The property owner would be required to submit the necessary application and the application would be subject to the Planning Act process, including the provision of notice and the holding of a statutory public meeting. This process would allow for due consideration of the specific proposal while providing for comments from the public and any agencies having jurisdiction. This would require the submission of application fees, in keeping with the Municipality's Fee By-law, whereby the proponent would be bearing the associated costs for application review and processing.

We are not suggesting that the submission of a Zoning By-law Amendment application would guarantee an approval. The processing of a site specific Zoning By-law Amendment Application would, however, be less complicated and not as lengthy as the processing of amendments to the Zoning By-law on a municipal-wide basis.

Respectfully Submitted,
MHBC Planning

A handwritten signature in black ink, appearing to read 'J. Robinson', written in a cursive style.

Jamie Robinson, BES, MCIP, RPP
Partner

A handwritten signature in black ink, appearing to read 'C. Kellington', written in a cursive style.

Carolyn Kellington, MCIP, RPP
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