



The Corporation of the Town of Essex

Special Council Meeting Minutes

March 28, 2022, 5:00 pm

Location: <https://www.youtube.com/user/EssexOntario>

This meeting was hosted and chaired from the Essex Municipal Building. Due to the ongoing COVID-19 pandemic this meeting was not currently open to the public for in person attendance. This meeting can be viewed by the public electronically via livestream on YouTube at www.youtube.com/EssexOntario

This statutory public meeting was being held for the purpose of providing information and obtaining public comments relating to a Zoning By-Law Amendment application at 6954 6th Concession Road.

Present:

- Mayor Richard Meloche
- Deputy Mayor Steve Bjorkman
- Ward 1 Councillor Joe Garon
- Ward 1 Councillor Morley Bowman
- Ward 2 Councillor Kim Verbeek
- Ward 3 Councillor Chris Vander Doelen
- Ward 3 Councillor Jason Matyi
- Ward 4 Councillor Sherry Bondy

Also Present:

- Doug Sweet, Director, Chief Administrative Officer
- Lori Chadwick, Director, Development Services
- Kevin Girard, Director, Infrastructure Services
- Kate Giurissevich, Director, Corporate Services
- Robert Auger, Town Solicitor, Legal and Legislative Services/Clerk
- Shelley Brown, Deputy Clerk, Legal and Legislative Services
- Jake Morassut, Director, Community Services
- Rita Jabbour, Manager, Planning Services
- Rick Arnel, Fire Chief, Fire and Rescue Services
- Jason Pillon, Deputy Fire Chief, Fire and Rescue Services

1. Call to Order

Mayor Meloche called the meeting to order at approximately 5:00 PM.

2. Declarations of Conflict of Interest

There were no declarations of conflict of interest noted at this time.

3. Adoption of Published Agenda

3.1 Special Council Meeting Agenda for March 28, 2022

SP22-03-011

Moved By Councillor Verbeek

Seconded By Councillor Vander Doelen

That Council allow Mary Day and Pat Conrad the opportunity to be delegates at tonight's meeting.

Carried

SP22-03-012

Moved By Councillor Garon

Seconded By Councillor Bjorkman

That the published agenda for the March 28, 2022 Special Council Meeting be adopted with the following amendments:

1. That Agenda Item 6.7 be added to allow for a delegation from Donny and Penny Anger
2. That Agenda Item 6.8 be added to allow for a delegation from Brad Anger.
3. That Agenda Item 6.9 be added to allow for a delegation from Mary Day and Pat Conrad.

Carried

4. Reports from Administration

4.1 Rita Jabbour, Manager, Planning Services

RE: General Zoning By-law 1037 site specific zoning amendment application for the property municipally known as 6954 Concession Road 6

Rita Jabbour, Manager, Planning Services, presented the site-specific zoning amendment at 6954 6th Concession Road brought forward by the applicant Victor and Deborah Anber. She explained the Official Plan designation is agricultural district 1.1 which is used for general agriculture and farm production support activities which can include wineries, breweries, marijuana production facilities, and mushroom farms. She noted that the subject property has a natural heritage overlay that may house endangered animals or a specific species of trees. She stated that in May 2019 Council approved a site-specific zoning amendment for a temporary by-law to permit the storage of fireworks for a period of three years. She explained that subject property has 21 Hectors of productive farmland, 2.8 Hectors of woodlot, and 28 shipping containers (22 contain fireworks and 6 contain equipment and personal items). She noted that prior to 2018 there was no limit on the number of shipping containers that a property could house but after 2018 Council changed the zoning by-law to permit a maximum of two shipping containers on agricultural, industrial and commercial properties. Ms. Jabbour stated that these shipping containers were in existence prior to the passing of this by-law. She stated that the property is gated and has an access way to the farming property that serves as an emergency path to the fireworks if needed. She stated that there is fire safety plan in the case of an emergency.

Ms. Jabbour stated that the applicant is asking for the permanent storage of professional display fireworks in the existing shipping containers because the applicants are the proprietors of K & H Distributing Fireworks in Tecumseh, Ontario. She explained that in Canada there is law regulating the sale and storage of fireworks and K & H Distributing have been licensed by the Federal Ministry of Natural Resources for several years. She further stated that K & H is a

wholesaler of consumer fireworks with over 30 years of experience in planning professional fireworks and pyrotechnic displays and provides display fireworks training and supervision. In addition, they are members of the Canadian National Fireworks Association and Canadian Pyrotechnic Council. She noted that K & H conducts 75% of the fireworks displays in the region and 90% in Essex County and employs over 60 seasonal employees.

Ms. Jabbour explained the reasons for the zoning change is that the existing operation in Tecumseh is located near a school and lands designated for residential development which precludes storage of these products at that site due to Federally regulated minimum distance requirements. She stated that in 2019 the applicants were granted a temporary zoning amendment to allow for the storage of the fireworks to provide the applicants with reasonable time to relocate but due to the limits of gatherings during COVID-19 they were not able to reduce the quantity of professional fireworks in order to find a site with a lesser distance requirement. She explained that Mr. Anber cannot find a site that is affordable or available for purchase that would legally meet the federal requirements for fireworks storage or the specifications.

Ms. Jabbour noted that permitted uses in prime agricultural areas are limited to agricultural, agricultural-related uses, on-farm diversified uses and other uses that must be directed to settlement areas or rural lands unless they can be justified in accordance with Policy 2.3.6 of the Provincial Policy Statement. She explained that the policy stated that planning authorities may permit limited, non-residential uses in prime agricultural areas if the following criteria is demonstrated which includes if the land does not comprise a specialty crop area, the proposed use complies with minimum distance separation formulae, that there is an identified need within the planning horizon and alternative locations have been evaluated. She noted that this land does not comprise a specialty crop area and that none of the lands in Essex-County are designated specialty crop areas. She stated that this proposal complies with minimum distance separation formulae in relation to building uses and identify a need within the planning horizon for additional lands to accommodate the proposed use for the storage of fireworks which is considered an industrial use and the industrial real estate market in Southwestern Ontario, from Waterloo to Windsor, is nearly full and far below national averages thus warehouses have become a rarer commodity across Canada. She noted that in 2019 the Town of Essex underwent an Official Plan amendment to designate more agricultural lands for industrial purpose.

She explained that alternative locations have been evaluated as the applicant has provided Council a list of 17 potential sites in Windsor Essex through Chatham-Kent that were considered since 2019 however, most sites did not meet the minimum distance required by the Federal Government and were therefore, unsuitable for the proposed use. She noted that Mr. Anber explained that the asking price for industrial property considered within the Harrow Settlement Area had increased by 50% making it unaffordable as the applicant cannot obtain financing on vacant land to build a warehouse to house the fireworks supply. She further noted that all agricultural lands in the Town of Essex are prime agricultural lands and there are no reasonable alternative locations in the Town of Essex.

Ms. Jabbour highlighted Section 3.1.8 of the PPS which speaks to the Protection Public Health and Safety that states development shall generally be

directed to areas outside of lands that are unsafe for development due to the presence of hazardous forest types for wildland fire and the risk assessment tools established by the Ontario Ministry of Natural Resources and Forestry include high density coniferous forests. She explained that Mr. Anber marked trees within the existing woodlot on the subject lands in 2015 for the purposes of improving the health of the stand and increasing tree quality and timber value and maintaining a good diversity of species throughout the forest. She noted that the trees species identified were primarily oaks, hickory, maple, basswood and elm thus the existing woodlot is not considered a hazardous forest type.

Ms. Jabbour received comments from the Manager, Senior Inspector of Explosive, Natural Resources Canada who noted that the property has been licensed for several years for the storage of fireworks in several storage containers and that the subject is in compliance with all Federal regulations and meets all the requirements. She further noted that she received letters of opposition from mainly neighbouring property owners who were concerned with storage of fireworks being hazardous, the impact on their property value and woodlot, and concerns with potential for soil and water contamination as most houses in the area are serviced by wells.

Ms. Jabbour stated that the next step is a report to Council and a proposed by-law for Council's decision at the next Regular Council Meeting.

5. Correspondence

6. Delegations

6.1 Ruth and Mark Smith

Ruth Smith explained that she resides on her property located near 6954 Concession Road 6 and is concerned for the residents who live in close proximity to the subject site as there will be a decrease in property values and the use and enjoyment of the residency. She noted that it is important to discourage unnecessary fragmentation of existing farms and maintain the viability of farming areas. She explained that three years were allotted to find a site and although industrial storage is expensive and difficult to find the default should not be a farm. She stated that if this zoning is permanently changed it sets a precedent for the future use of this property and other agricultural lands.

6.2 Steve Mayer and Stephanie Bedard

Steve Mayer property owner near 6954 Concession Road 6 explained that Mr. Anber told him that the storage of fireworks was only temporary. He expressed that he was concerned with the decrease of his property value if Mr. Anber is approved for the permanent storage of fireworks on the subject property.

6.3 Tim and Mary Hutchinson

Tim Hutchinson explained that he believes the reason Mr. Anber has not built his house is because he too does not want shipping containers and explosives in his backyard. He noted that he lives in a quiet community and that there is no need for an industrial setting in a residential and agricultural area. He stated that if this is approved it will open the door for other property owners to rezone their properties as industrial.

6.4 Marie Vieira and Victor Vieira

Marie Vieira stated that nothing has changed since May 6, 2019. She explained that By-Law 1815 under Section 34 of the Planning Act was passed to amend the general zoning By-Law 1037 and that the land is designed agricultural in the Town of Essex Official Plan. She further explained that By-Law 1815 added the storage of fireworks as a temporary permitted use until May 6, 2022 and after which time the storage of fireworks must cease. She noted that this was the promise that Council provided in 2019 which provided the proponent the opportunity to relocate the storage facility within a three-year time frame. She noted that she has no assurance that Mr. Anber is building a house and believes this is a way for him to have a commercial business on farmland. Ms. Vieira explained that the zoning by-law permits a maximum of two storage containers on a farm and 26 storage containers were present in 2019 however Rita Jabbour, Manager, Planning Services, stated that there are 28 storage containers on the property now. She explained that Victor Anber illegally stored fireworks for seven years as the address has been licensed since 2012 by the Federal Government to store professional fireworks but the Federal website states that nothing in the explosive act relieves a person of the obligation to comply with other acts, regulations and by-laws lawfully enacted in relation to explosives. She further explained that she was not aware of this operation when she moved to this location and moved away from a marijuana operation only to find herself near fireworks. She stated that the reason that there were lack of complainants for the last three years was due to the temporary by-law that was approved for three years.

SP22-03-013

Moved By Councillor Bondy

Seconded By Councillor Verbeek

That Marie Vieira be provided an additional three minutes for her presentation.

Carried

6.5 Jeff Sylvestre/Josette Eugeni

Josette Eugeni referenced Section 516 of the Designated Lands and explained four points to consider during re-designation of land. She noted the following points in Section 516: employment land will be based on new industrial areas with logical extensions of existing built up and designated settlement area, that the Town must be able to provide for the extension of full urban services in an environmentally sound and fiscally responsible manner, that whenever possible lower capability agricultural lands should be used for urban expansion purposes and that the transportation network should be able to accommodate the amount and type of traffic anticipated. She explained that Section 516 of the Official Plan states that lands designated industrial should have access and transportation links where industrial development can take place in an orderly manner to broaden and enhance the Town's assessment base, provide additional local employment opportunities and minimize conflicts with surrounding land uses. Ms. Josette stated that she does not believe that the industrial use within the prime agricultural lands is achieving that goal.

Jeff Sylvestre explained that the extension of services for this property would be expensive for the Town and the misuse of this industrial zone would

prevent the expansion of employment lands that are regulated by the Province and the County through the review of the Official Plan. He noted that it is difficult to provide a solution for Mr. Anber but he has had three years. He future noted he does not believe that this is a problem the Town needs to solve for Mr. Anber and that Mr. Anber operated for seven years before a temporary zoning by the Town which afforded him the opportunity to find a new location.

6.6 Jeannette Sylvestre

Jeannette Sylvester was not present at the meeting.

6.7 Penny and Donald Anger

Penny Anger explained that she owns the land directly across from Mr. Anber and circulated a petition in support of the zoning amendment. She noted that her family has worked the ground for over many years and that Mr. Anber deserves respect and trust as a landowner.

6.8 Brad Anger

Brad Anger stated that he is not opposed to the zoning amendment. He explained that he has farmed that land for 50+ years and there have only been 8 acres out of the 40 removed from production and the remaining land has not been affected since Mr. Anber purchased the land.

6.9 Merrie Day and Pat Conrad

Merrie Day explained that she did not believe this zoning amendment benefits the Town and that the petition in support of this are from individuals not near the subject property. She noted that she has researched explosions that have happened around the world and that many people could be impacted if there was such an explosion. She stated that there was recently a barn fire off Manning Road and CTV news noted that it was very difficult to obtain water to put out such a fire. She explained that are many trees in the area on Mr. Anber's property and the surrounding neighbourhood. She noted that if there was a fire it would be difficult to contain and it would affect valuable properties. She explained that the trucks that move the explosives are not marked, and that the 6th Concession is a dirt road. She noted that she believes Mr. Anber thinks his operation is safe but accidents happen and if an accident were to happen it would be detrimental.

6.10 Victor Anber

SP22-03-014

Moved By Councillor Garon

Seconded By Councillor Matyi

That Victor Anber be allowed to speak as a delegate.

Carried

Victor Anber, applicant, stated that he has addressed the issues regarding safety and that the Federal government has provided him a permit. He noted that the value of the land from last year to this year has increased by 24% and that he has done his best to comply with Council's original request to remove the fireworks in three years. He stated that his consumer products have

lowered greatly but the professional has not due to COVID-19. He explained that his inventory has not decreased as the Town of Essex had to cancel two or three times and that was multiplied by 120 times a year. He further explained that he needs a large setback distance and has viewed 50 to 60 places. He stated that he has worked out of his storage containers safely for the last 10 years and he is not disturbing the neighbours.

Council directed questions and comments to Mr. Anber and Administration.

Councillor Bondy asked if more containers were brought onto the property.

Mr. Anber explained that the Federal government required him move 10 shipping containers east but there is the same amount of shipping containers on the property.

Councillor Vander Doelen asked the minimum required distance is to store these fireworks.

Mr. Anber stated that the distance varies and increases as the quantity of fireworks increase. He noted that there are four classifications D1, D2, D3, and D4 with D4 being the worst scenario. He stated that he is required to be 59 meters away and 27 meters for consumer fireworks but is currently over 300 meters.

Councillor Vander Doelen asked if there were rules regarding climate change and reducing the CO2 footprint.

Ms. Jabbour stated that there are rules in the Provincial Policy Statement to assess any climate impacts when decisions are made on new development proposals.

Deputy Mayor Bjorkman asked if Council approved this by-law if the storage containers will be removed or grandfathered in as the by-law in 2018 states that only two shipping containers are permitted on a property.

Ms. Jabbour stated that the number of shipping containers that were on the property prior to the passing of that by-law would be grandfathered.

Councillor Verbeek asked if the Town of Essex often takes prime agricultural land and rezones it to industrial land. She noted that Ms. Jabbour stated that there were 28 storage containers but in 2019 there were 26.

Ms. Jabbour explained that the Town typically does not receive applications for rezoning of agricultural land for non-agricultural uses however the Official Plan allows for these types of applications to come before Council.

Councillor Garon asked where other firework companies store their fireworks in Ontario or other parts of the world.

Mr. Anber stated that there are two professional firework companies located in Quebec on farmland outside of the city and the consumer fireworks do not have a large setback distance.

Councillor Vander Doelen asked for the tax category and the cost if this amendment is approved.

Kate Giurissevich, Director, Corporate Services/Treasurer, stated that the property is currently taxed as farm and the Town will be presenting an

adjustment. She noted that she does not have the exact amount but could disclose it in the upcoming report.

Councillor Verbeek asked when Mr. Anber's home would be built on the property.

Mr. Anber stated that family matters and COVID delayed the building of his home, but he anticipates construction to take place in the next two years.

Penny Anger, delegate, stated that the petition in support was from houses that abut close to the subject property.

Councillor Bondy noted that the houses in support of the amendment are a section away from the subject property and requested that the petitions be presented online.

Councillor Garon asked if there were safety concerns with fireworks stored in shipping containers and fireworks in transit.

Mr. Anber stated that based on the Ministry of Transportation rules if he is carrying less than ten thousand pounds of consumer fireworks then he cannot have a placard however if he is carrying more such as a hundred pounds of professional fireworks then there are placards, and that each driver is licensed to carry explosives. He noted that the fireworks in the shipping containers are painted, have a foam for separation to eliminate sparks, have 12 vents per container to avoid pressure inside and only trained individuals are allowed near the fireworks.

Councillor Garon asked the likelihood of the fireworks exploding in the shipping containers and in transit if an accident occurred.

Mr. Anber stated that it would require pressure or flames for the professional fireworks to explode and is dependent on the type of firework.

Councillor Vander Doelen asked the distance the containers are from the nearest house and how many million pounds are stored on the subject property.

Ms. Jabbour stated that they are approximately 1000 feet from the nearest dwelling.

Mr. Anber stated that he is licensed for 88 000 gross KGS or 193 thousand pounds.

Councillor Vander Doelen asked where Mr. Anber's house will be located on the property.

Mr. Anber noted that it would be located at the front of the property about 150 to 170 feet from the 6th Concession.

Mayor Meloche asked if Mr. Anber could add more shipping containers or if he is limited to the ones on the property.

Ms. Jabbour stated that the number of shipping containers on the property when the by-law was passed is the number he can have on the property.

Lori Chadwick, Director, Infrastructure Services, stated that good planning merits and regulations should be considered during the decision-making meeting at the next Regular Council on April 19, 2022.

7. Adjournment

SP22-03-015

Moved By Councillor Garon

Seconded By Councillor Verbeek

That the meeting be adjourned at 6:46 PM.

Carried

Mayor

Clerk