



Report to Council

Department: Development Services
Division: Planning
Date: April 19, 2022
Prepared by: Rita Jabbour, Manager, Planning Services
Report Number: Planning-2022-12
Subject: Site Specific Zoning Amendment for 6954 6th
Concession Road (Ward 3)
Number of Pages: 15 including attachments

Recommendation(s)

That Planning report Planning-2022-12 entitled Site Specific Zoning Amendment for 6954 6th Concession Road prepared by Rita Jabbour, Manager, Planning Services dated April 19, 2022 be received, and

That Bylaw 2149, Being a Bylaw to Amend Bylaw 1037, the Comprehensive Zoning Bylaw for the Town of Essex, be adopted to permit the storage of professional display fireworks at 6954 6th Concession Road in a maximum of twelve (12) storage containers, and,

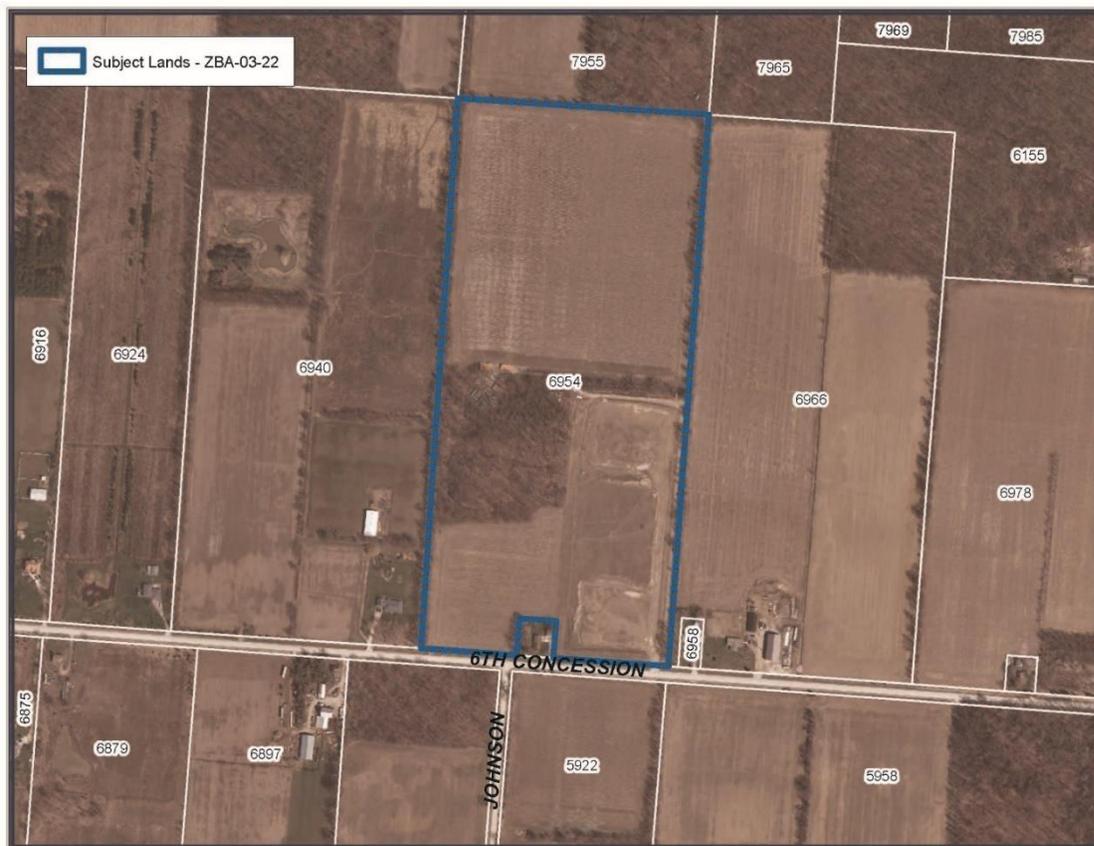
That Bylaw 2151, being a Bylaw to Amend Bylaw 1037, the Comprehensive Zoning Bylaw for the Town of Essex, be adopted for a temporary period of one (1) year to allow for the storage of consumer fireworks in the ten (10) existing storage containers.

Purpose

To recommend adoption of a site-specific zoning amendment to allow for the storage of fireworks at the property municipally known as 6954 6th Concession Road in the former township of Colchester South (Ward 3).

Background and Discussion

An application for a site-specific zoning amendment to the Comprehensive Zoning Bylaw, Bylaw 1037, was received by the Municipality for the agricultural lands located at 6954 6th Concession Road in the former township of Colchester South (Ward 3), herein referred to as the "Subject Lands". Victor and Deborah Anber, herein referred to as the "Applicants", are the owners of the Subject Lands. A location map of the Subject Lands is provided below:



The Subject Lands measure +21 hectares in total land area. The Lands are designated “Agricultural” on Schedule A-3 of the Town of Essex Official Plan and are zoned Agricultural District 1.1 (A1.1) for general agriculture and farm production support activities on Map 12 of Bylaw 1037. There is also a Natural Heritage Overlay affecting +2.8 hectares of the subject lands identified in the Zoning Bylaw. This overlay is designated as an area of Natural Heritage in the Official Plan but is not identified as an area of natural and scientific interest or significant woodland designated for protection and preservation by the land owner or the Town.

The subject lands are located within an agricultural district where the predominate land use is agricultural but may include agricultural-related land uses such as:

- wineries,
- breweries,
- marijuana production facilities, and
- farm equipment sales and service establishments.

Other permitted land uses recognized by the zoning bylaw for the A1.1 zoning district that are not directly related to agriculture but that are permitted on prime agricultural lands under Provincial policy include:

- petroleum and natural gas extraction facilities and,
- when in combination with an agricultural use, on-farm diversified uses which may include: a retail or wholesale store, take-out food outlet, workshop, or other home industry.

Other than accommodations for farm labourers, residential land uses are not considered an agricultural use under Provincial policy in prime agricultural areas. Consequently, Bylaw 1037 restricts residential development in agricultural districts to one (1) single detached dwelling with allowances for one (1) second dwelling unit per lot, to provide a residence for those persons who wish to live on lands they farm. As a result, the Subject Lands are neighboured by residential dwellings to the North, South, East, and West.

The Subject Lands are used primarily for agricultural purposes. The Subject Lands are also occupied by twenty-eight (28) storage containers for the following purpose:

- Twelve (12) storage containers are used for the storage of professional display fireworks,
- Ten (10) storage containers are used for the storage of consumer fireworks, and,
- Six (6) storage containers are used for the storage of personal items and equipment related to the agricultural use and maintenance of the lands.

The storage of fireworks is related to the Applicant's business, K & H Distributing Fireworks. K & H specializes in the wholesale of consumer fireworks at their principal retail outlet in Tecumseh, Ontario, and in the planning of professional fireworks and pyrotechnic displays. In Canada, the manufacture, testing, acquisition, possession, sale, storage, transportation, importation and exportation of explosives and the use of fireworks is regulated under the *Explosives Act* administered by the Federal Ministry of Natural Resources.

The Applicants are licensed by the Ministry and are members of the Canadian National Fireworks Association and Pyrotechnic Council.

The Proposal

The Applicants are requesting a site-specific zoning amendment to Bylaw 1037 for the permanent storage of professional display fireworks in the existing storage containers at the Subject Lands.

In 2019, the Applicants requested a site-specific zoning amendment to allow for the permanent storage of fireworks in a pole barn on the Subject Lands. The request was necessary because land uses (residential and institutional) that neighbored the Applicant's existing operations in Tecumseh affected the Applicant's ability to store products at the site in a manner that would meet the federally regulated minimum distance separations. The request for zoning amendment was ultimately denied by Town of Essex Council. The Applicants were

however granted a temporary site-specific zoning bylaw amendment to allow for the storage of fireworks for a three (3) year period until May 6, 2022 to provide for reasonable opportunity to relocate the storage activity (File No. ZBA-03-19).

Since 2019, the Applicants have managed to reduce the volume of *consumer fireworks product* to a level that is manageable to remove from the property, pending the purchase of lands that are appropriately zoned and can accommodate the federally regulated setbacks. Limitations on gatherings due to the Covid-19 pandemic, which was declared in March 2020, has had an impact on business operations relating to professional fireworks displays. In turn, the Applicants have not been able to reduce the quantity of *professional display fireworks product* to a level that would enable them to more readily find a site that would meet federal regulations.

A site-specific zoning amendment is required because the temporary use bylaw will expire on May 6, 2022 and because the storage of fireworks is not a permitted use in the agricultural district. Although the storage and transport of fireworks is regulated federally, land use is a municipal matter.

Although Bylaw 1037 limits the number of shipping containers to two (2) on an agricultural lot, the number of storage containers on the Subject Lands are legally recognized under the zoning bylaw because they have been in existence since before amendments respecting the number of shipping containers were adopted in the zoning bylaw in 2018.

In accordance with the Planning Act, a Zoning Bylaw may be amended to allow for uses that are not permitted in the respective zoning district so long as the new use is permitted under the Town of Essex Official Plan for the area in which the subject property is designated and so long as the amendment is consistent with the Provincial Policy Statement (PPS) and the County and Town of Essex Official Plan.

Proposal Conformity

In prime agricultural areas, the Provincial Policy Statement (PPS, 2020) directs that permitted uses be limited to the following:

- Agricultural,
- Agricultural-related, and,
- On-farm Diversified uses.

Other uses, such as the storage of fireworks, must be directed to settlement areas such as Essex Centre and Harrow, **unless it can be justified under policy 2.3.6 of the PPS**. Similarly, the Town of Essex Official Plan permits an existing dry industry which is *inappropriate within a settlement area* and is to be relocated as part of a municipal initiative, to be permitted in an agricultural district by site-specific Zoning By-law amendment. A *dry industry* is defined as a use that does not require water for cooling, washing, and processing and whose subsurface sewage disposal systems are used solely for the domestic waste generated by employees.

In evaluating a proposal's conformity with Policy 2.3.6, a Planning Authority must ensure that all the following criteria are demonstrated:

- The land does not comprise a Specialty Crop Area
- The Proposed Use Complies with Minimum Distance Separation Formulae
- There is an identified need within the Planning Horizon for additional land to accommodate the proposed use
- Alternative locations have been evaluated, and,
 - There are no reasonable alternative locations which avoid prime agricultural areas, and,
 - There are no reasonable alternative locations in prime agricultural areas with lower priority agricultural lands

In evaluating the proposal for the storage of fireworks, all criteria were demonstrated, as outlined in the **attached public presentation**.

March 28, 2022, Statutory Public Meeting

A statutory public meeting was held on Monday March 28 through virtual means to hear public comments on the application prior to Council rendering a decision on the application. **A copy of the public presentation is attached to this report for reference.**

Seven (7) comments and one (1) petition of support were received in advance of the meeting. Six (6) comments were also received from circulated agencies in advance of the meeting. Six (6) delegations, including the Applicants, presented oral comments with respects to the proposal at the public meeting. A summary of the written and oral comments from agencies, the public and Council, and responses thereto, are provided below:

Agency	Agency Comments
Building and Bylaw Enforcement Division	<ul style="list-style-type: none"> • No complaints received regarding this property since Zoning amendment in 2019
Essex Fire Services	<ul style="list-style-type: none"> • Applicant has provided a fire safety plan as required by the Explosives Act • No containers have been moved since 2019
Ministry of Natural Resources, Manager, Senior Inspector of Explosives	<ul style="list-style-type: none"> • Cannot comment on Municipal affairs regarding zoning • K&H had and still has a valid federal licence for the storage of fireworks in multiple storage containers on this property • Site follows all regulations for the storage of fireworks including the minimum distance requirements to inhabited buildings (such as dwellings) and public roads
Essex Region Conservation Authority (ERCA)	<ul style="list-style-type: none"> • Recommended deferral until such time an Environmental Impact Assessment (EIA) has been completed

	<ul style="list-style-type: none"> • A Permit/clearance is required prior to any site alteration or construction activity affected by Section 28 of the Conservation Authorities Act
Town of Kingsville	<ul style="list-style-type: none"> • No objection

Public Comments	Responses from Administration
<ul style="list-style-type: none"> • Applicant follows rules and regulations with vigor and always errs on the side of caution • Applicant is current on legalities and regulations concerning the fireworks industry • Applicant’s business is vital to the local entertainment industry 	<ul style="list-style-type: none"> • Applicant provides display fireworks training and supervision • Applicant conducts 75% of the fireworks displays in the region and 90% in Essex County, dominating the market service area for this industry in Southwestern Ontario • Applicant employs over 60 seasonal employees
<ul style="list-style-type: none"> • Applicant has added more storage containers since 2019 	<ul style="list-style-type: none"> • No additional storage containers have been added since 2019. • In 2019, twenty-six (26) storage containers were used for the storage of fireworks. In 2022, twenty-two (22) storage containers are being used for fireworks storage. • Twenty-eight (28) is the total number of storage containers on site used for fireworks storage and personal storage.
<ul style="list-style-type: none"> • Business has been operating illegally for seven (7) years 	<ul style="list-style-type: none"> • The business was operating against Town of Essex Zoning Bylaw • The applicant has not been operating without a federal licence for this site.

<ul style="list-style-type: none">• Concerns with impact to nature, agriculture, residents, fire safety, road infrastructure and road safety due to transport	<ul style="list-style-type: none">• The transportation of fireworks is regulated under the Explosives Act. Traffic to and from the site is limited to trucks accessing the fireworks or delivering them. Such activity varies seasonally but generally does not exceed one (1) truck per day.• The Applicant has submitted a Fire Safety Plan to Essex Fire Services as is required under the Act• No further agricultural land will be impacted by the rezoning. The storage containers are located in an area on the farm that is not cultivated. Farming operations have continued unhindered on the property since the zoning amendment in 2019• The applicant holds a licence with the Ministry of Natural Resources that prescribes several regulations including a setback between the storage containers and dwellings and public roads to minimize the risk to area residents• There is no advantage or disadvantage to locating the explosives in the natural heritage feature other than for buffering purposes and the potential absorption of energy in the event of an incident.• The storage containers cannot be located outside of the woodlot without contravening
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	<p>federal setbacks and/or impacting viable agricultural land.</p> <ul style="list-style-type: none"> The natural heritage feature is not identified as being provincially significant however no Environmental Impact Assessment (EIA) has been completed to determine impact
<ul style="list-style-type: none"> Possible contamination of soil and groundwater 	<ul style="list-style-type: none"> No fuel storage is proposed on site This use is a dry industry meaning it does not require water for cooling, washing, and processing and no subsurface sewage disposal systems
<ul style="list-style-type: none"> Concerns with loss of farmland 	<ul style="list-style-type: none"> The zoning amendment is supplementary. It will be an additional use that is limited in area. The agricultural designation will not be affected by the zoning amendment.
<ul style="list-style-type: none"> Proposal is precedent setting Only 8 acres of the farm is unfarmable. Proposal has no impact on the ability to farm the lands 	<ul style="list-style-type: none"> Each site-specific zoning amendment is evaluated based on its own planning merits

Council Comments	Responses from Applicant and Administration
<ul style="list-style-type: none"> Will the existing storage containers need to be removed now that only 	<ul style="list-style-type: none"> The number of storage containers- not the fireworks- are recognized as legal non-conforming uses

<p>two (2) storage containers are required per lot</p>	<ul style="list-style-type: none"> When storage containers are removed from the property, they cease to be recognized as legal non-conforming
<ul style="list-style-type: none"> What is the minimum distance required from a dwelling based on quantity 	<ul style="list-style-type: none"> 59 metres for profession display fireworks, 27 m from commercial fireworks for the quantity currently stored on site. The current setback is 300m from nearest dwelling
<ul style="list-style-type: none"> Is this type of application common? 	<ul style="list-style-type: none"> There have not been many examples of these types of applications in agricultural areas in Essex because they are only justified when there is a use that does not fit in a settlement area. The government encourages the preservation of farmland but also allows for these types of proposals to be considered
<ul style="list-style-type: none"> Where do suppliers with larger quantities of fireworks store their product? 	<ul style="list-style-type: none"> Most are in Quebec in rural areas, 45 minutes from Montreal
<ul style="list-style-type: none"> What are the tax implications? 	<ul style="list-style-type: none"> Loss of \$80 per year if fireworks storage is permitted to continue on a permanent basis because the property was successful in receiving Farm Status through an Agri-Corp application process until 2022. As a result, the commercial assessment decreases, and the farm use assessment increases. This could change based on

	<p>whether they continue to receive farm status.</p>
<ul style="list-style-type: none"> Why hasn't a home been built here as was previously noted in 2019? 	<ul style="list-style-type: none"> There has been a significant loss of income due to the pandemic. the Applicant has expressed intentions to do so when the situation stabilises The Applicant notes that the neighbours' dislike of him and his operations has also impacted his decision to build his residence here
<ul style="list-style-type: none"> What is the safety risk of the containers when in transit? 	<ul style="list-style-type: none"> Containers with professional fireworks have a foam liner to seal them. There are no lighters and no other ignition or other electronic devices allowed in them. Canada has some of the strictest regulations respecting the storage and transport of fireworks
<ul style="list-style-type: none"> How much fireworks is stored on site and what is the distance between the closest dwelling? 	<ul style="list-style-type: none"> 88,000 kilograms. Nearest dwelling is approximately 1000 feet (304 m)
<ul style="list-style-type: none"> Is there a provincial initiative towards the mitigation of climate impacts and if so, is there a definition of climate impacts? 	<ul style="list-style-type: none"> Yes. The Provincial Policy Statement requires regard to <i>impacts of a changing climate</i> when considering new infrastructure and public service facilities and the use of land, resources, and development patterns Impacts of a changing climate means the present and future consequences from changes in weather patterns at local and

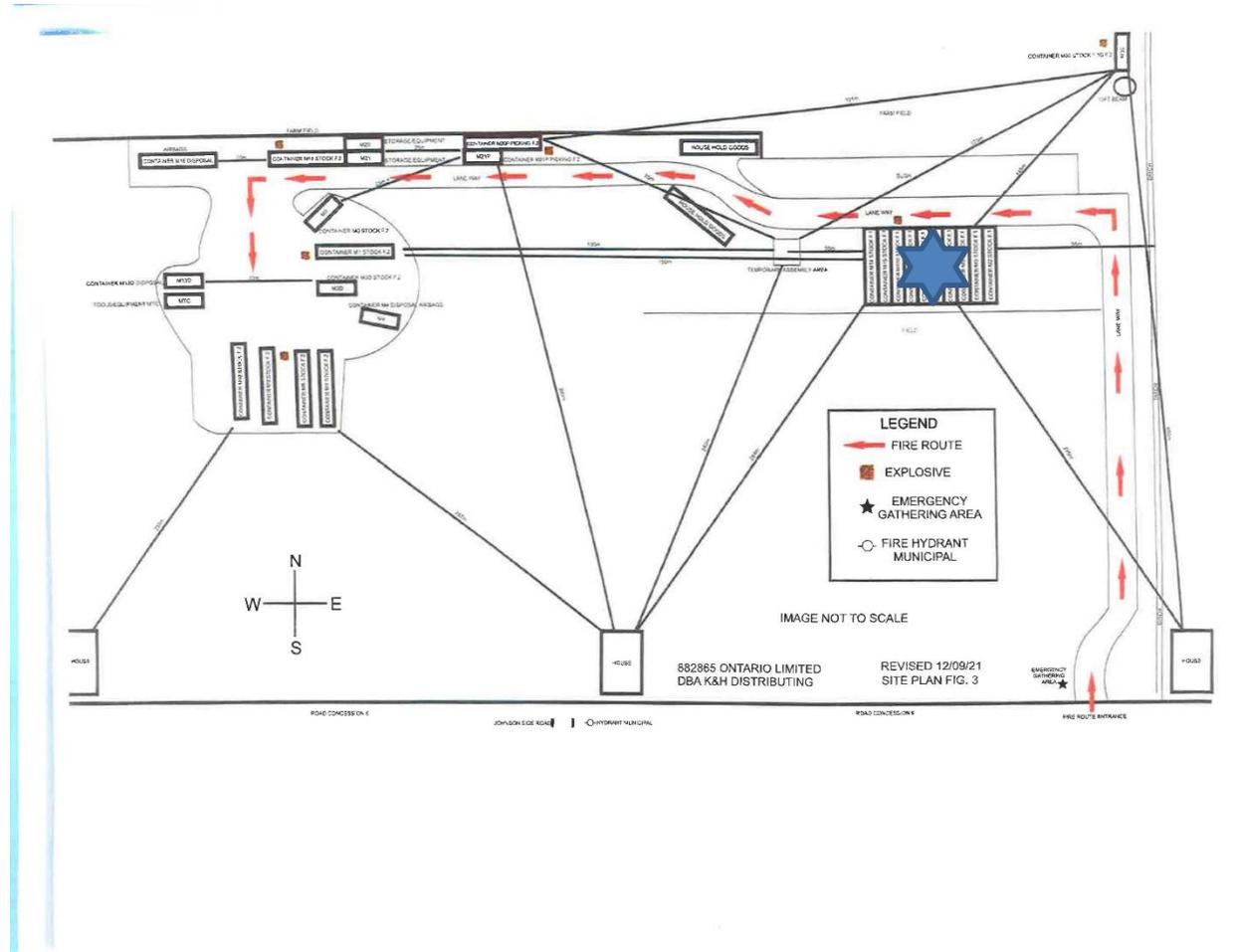
	regional levels including extreme weather events and increased climate variability.
<ul style="list-style-type: none"> • Can a map be created to show location of supporters and objectors 	<ul style="list-style-type: none"> • A Map has not been included as it has no bearing on the planning merits of the application. • Council must use the criteria identified in the report as per the PPS and Town Official Plan, to make their decision, with regards to the public's comments.
<ul style="list-style-type: none"> • Will this be a reconsideration vote? 	<ul style="list-style-type: none"> • No. the original action that took place, namely the decision to allow for the three (3) year deadline, cannot be reversed which is one of the criteria for a reconsideration vote

Bylaw 2149 and Bylaw 2151

Bylaw 2149 allows for the permanent storage of fireworks on the Subject Lands but places a limit on the number of storage containers to twelve (12) for the purposes of storing the professional display fireworks. The applicant has demonstrated that there is a hardship in securing land in settlement areas for this classification of explosives due to greater federal distance requirements. Limits on the number of shipping containers is required to ensure no additional quantity of explosives is stored on site.

Bylaw 2151 allows for the temporary storage of the consumer fireworks in the existing ten (10) shipping containers for a period of one (1) year. The applicant has noted that the volume of consumer fireworks has been reduced enough to adequately secure land for the purposes of storage for this classification of explosives. The applicant anticipates the purchase of land and removal of the consumer fireworks within the year, further reducing the quantity of explosives on site.

The location of the storage containers holding the consumer fireworks are identified on the site plan below with a blue star, as a grouping of ten (10) storage containers located to the immediate East of the Subject Lands:



Financial Impact

All costs associated with the processing of this request for site specific zoning amendment are recouped 100% through the application fees (\$2610).

After consulting with the Municipal Property Tax Assessment Corporation (MPAC), it is estimated that if approved, the proposal could result in an estimated loss of tax revenue of \$80 per year. This is because the residential assessment would shift to a commercial assessment at a lower assessment amount and the farm assessment would then become higher. The

property was successful in receiving Farm Status through the Agri-Corp application process until 2022. This could change depending on whether they continue to receive farm status in the future and pending the final assessment conclusion from MPAC.

Consultations

Notice of the application for zoning bylaw and site plan control amendment was circulated to all persons and public bodies require to be notified under subsection 5(9) of Ontario Regulation 545/06, including staff members from each Town of Essex department.

Link to Strategic Priorities

- Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Site Specific Zoning Amendment for 6954 6th Concession Road 6 - Planning-2022-12.docx
Attachments:	- Bylaw 2149.docx - By-law 2151.docx - Presentation (6954 6th Concession Road).pdf
Final Approval Date:	Apr 13, 2022

This report and all of its attachments were approved and signed as outlined below:



Lori Chadwick, Director, Development Services - Apr 13, 2022 - 11:47 AM



Doug Sweet, Chief Administrative Officer - Apr 13, 2022 - 11:51 AM