

THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON

AGENDA

PUBLIC MEETING



ZONING BY-LAW AMENDMENT 41
435 MERSEA ROAD 3
(1560987 Ontario Ltd. - Fausto Amicone)

MONDAY, JULY 11, 2011
COMMENCING AT 7:00 P.M.
IN THE COUNCIL CHAMBERS

ITEMS FOR CONSIDERATION:

1. Notice of Public Meeting
Pages 2-3
2. Report PLA 24/11 dated June 1, 2011 re: Zoning By-law Amendment No. 41- Proposed Greenhouse Development - 435 Mersea Road 3 (1560987 Ontario Ltd. - Fausto Amicone)
Pages 4-9
3. Comments received from the Essex Region Conservation Authority dated June 16, 2011
Page 10

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THE CORPORATION OF THE MUNICIPALITY OF LEAMINGTON
NOTICE OF PUBLIC MEETING
ZONING BY-LAW AMENDMENT
ZBA #41 - 435 Mersea Road 3

TAKE NOTICE that the Council of the Corporation of the Municipality of Leamington will hold a public meeting concerning a proposed zoning by-law amendment under the provisions of the Planning Act, R.S.O. 1990 on **Monday, July 11th, 2011 at 7:00 pm** in the Council Chambers at the Municipal Building.

The subject property is described as Concession 3, Lot 4 and 5, Parts 1 and 2 on 12R-20423 and locally known as 435 Mersea Road 3 in the former Town of Mersea, now a portion of the Municipality of Leamington (see key map).

The subject property is designated Agricultural on Schedule "A-6B" of the Official Plan. The subject property is currently zoned Agricultural Restricted Zone (A2) on Map 28 in Zoning By-law. It is proposed to change the zone to a defined Agricultural Restricted Zone (A2-5) to permit a site specific reduction to the required minimum rear yard from 15 m to 13.72 m and the minimum interior west side yard from 15 m to 5.9 m.

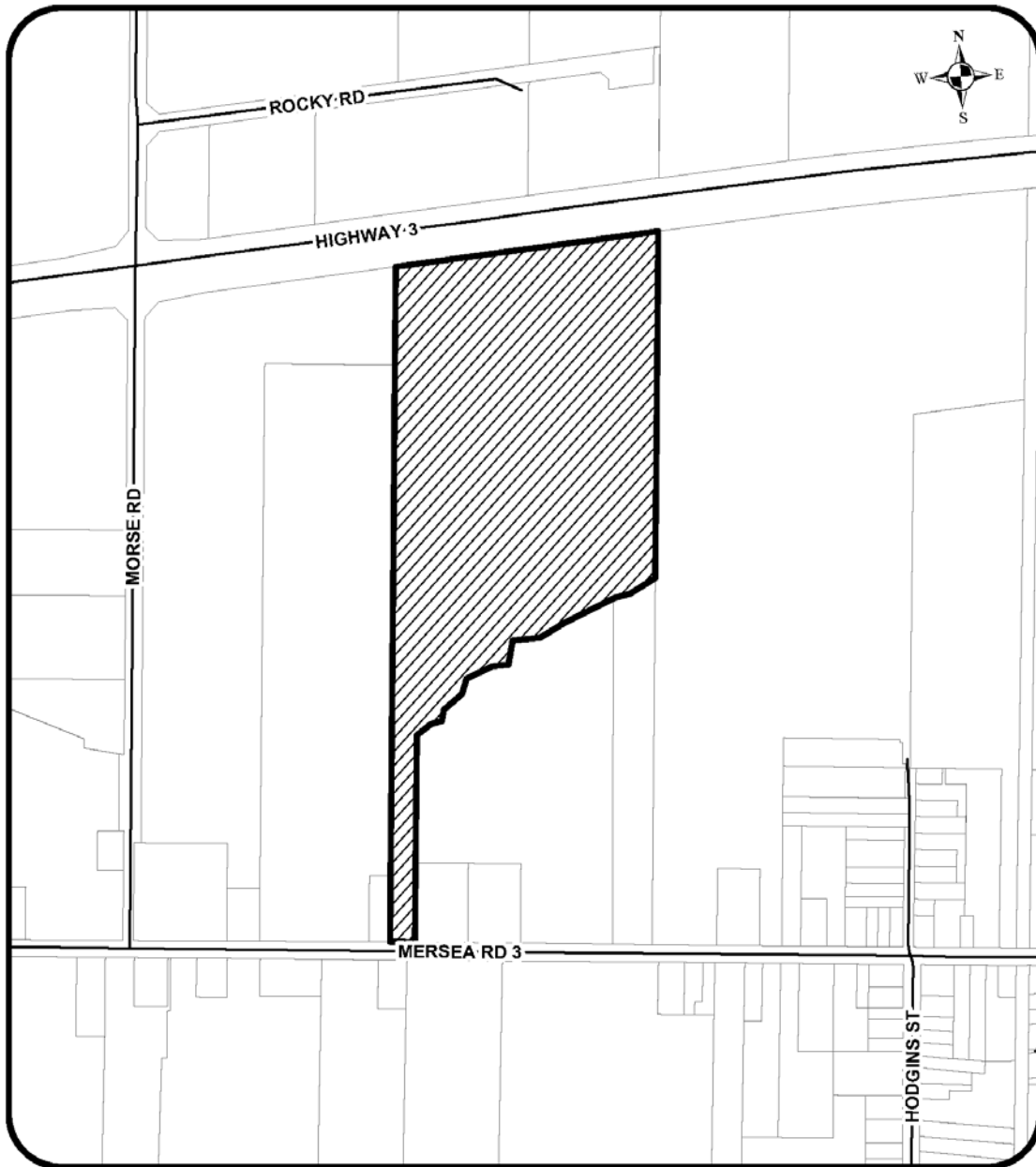
ANY PERSON may attend the public meeting and/or make written or verbal representation either in support of or in opposition to the proposed zoning by-law amendment.

If a person or public body that files an appeal to a decision of the Municipality of Leamington in respect of the proposed zoning by-law amendment does not make oral submission at a public meeting or make written submissions to the Municipality before the proposed by-law is adopted, the Ontario Municipal Board may dismiss all or part of the appeal.


ADDITIONAL INFORMATION relating to this matter is available for review at the Municipal Office for the Corporation of the Municipality of Leamington, during regular office hours. Please contact Tracey Pillon-Abbs, Manager of Planning Services, for further information.

DATED at the Municipality of Leamington this 15th day of June 2011.

BRIAN R. SWEET, CLERK
MUNICIPALITY OF LEAMINGTON
111 ERIE STREET NORTH
LEAMINGTON, ONTARIO N8H 2Z9
TELEPHONE: (519) 326-5761



Legend

 SUBJECT LAND

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Provided by the: Municipality of Leamington - GIS Services
111 Erie Street North, Leamington, Ontario N8H 2Z9
TEL: (519) 326-5761 FAX: (519) 326-2481

REPORT

TO: MAYOR AND MEMBERS OF COUNCIL

FROM: TRACEY PILLON-ABBS, MANAGER OF PLANNING SERVICES

DATE: JUNE 1, 2011

SUBJECT: ZONING BY-LAW AMENDMENT NO. 41
 PROPOSED GREENHOUSE DEVELOPMENT
 435 MERSEA ROAD 3 (1560987 ONTARIO LTD - FAUSTO AMICONE)

AIM:

To report upon a request to schedule the required public meeting to consider a proposed zoning by-law amendment for property located at 435 Mersea Road 3.

BACKGROUND:

Purpose of Application:

Staff has received an application for re-zoning by the owner(s) of the property, to amend the subject lands to reduce the required minimum interior side yard and rear yard setbacks in order to permit a greenhouse development (phase 3).

Property Description:

The subject property is described as Concession 3, Lot 4 and 5, Parts 1 and 2 on 12R-20423 and locally known as 435 Mersea Road 3 in the former Town of Leamington, now a portion of the Municipality of Leamington (see key map).

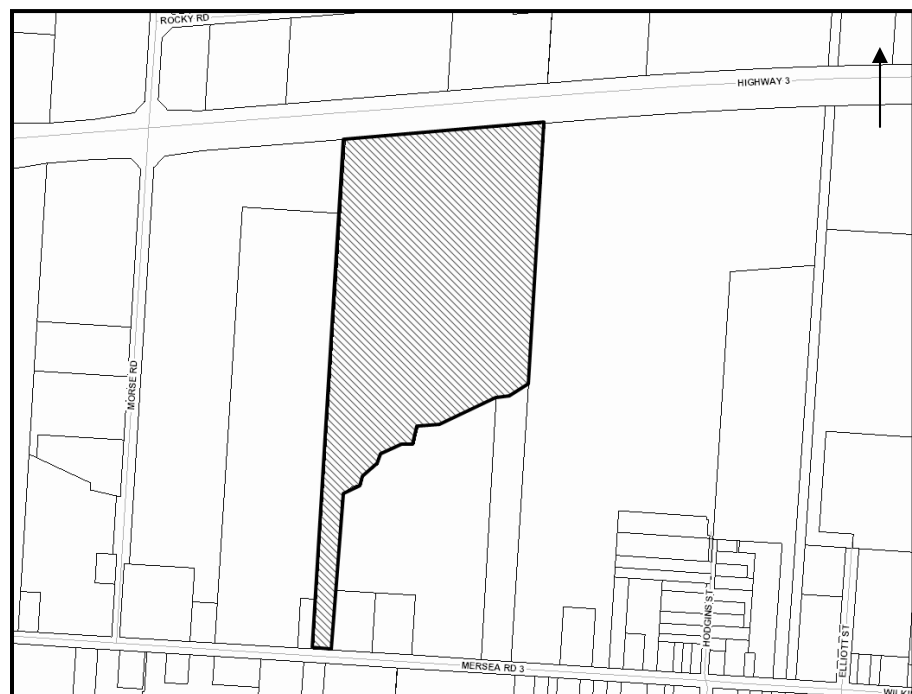
The parcel currently has a greenhouse operation with access to the property from Mersea Road 3.

The Sturgeon Creek runs through the south portion of the property.

COMMENTS AND ANALYSIS:

Provincial Policy Statement (PPS):

It is required that the Municipality 'be consistent' with the PPS. In reviewing the policies, the development can be supported.



Any proposed development will be subject to the other A2 regulations (ie front yard setbacks, lot coverage, parking), site plan control, approval from the Essex Region Conservation Authority (ERCA) and the required building permits.

CONSULTATION:

Administration has completed their review of the proposed application as part of the pre-consultation process.

Normally, the Committee of Adjustment for the Municipality of Leamington would consider allowing the relief under an application for minor variance. However, Council at a meeting held in 2010 set out the following guidelines:

When reviewing a minor variance application that seeks relief from the minimum side yard setback for a greenhouse of fifty feet as established in By-law 890-09, administration shall include comments based on the following factors:

- 1. The applicant must provide a reasonable explanation why complying with the setback is not possible or would create an undue hardship for the applicant. The explanation must be based upon the unique and specific circumstances of that property.*
- 2. When greenhouses are being constructed on two abutting lots of record that are registered in the same names or different names but effectively common ownership, then setbacks can be reduced or eliminated along the common lot line provided both lots are subject to a common site plan agreement.*
- 3. A greenhouse should not be constructed closer than fifty feet to an abutting property that is designated Agricultural Residential Zone (A5) or any Residential Zone, regardless of the ownership of the abutting lot.*
- 4. In any zone other than an A5 or a Residential Zone, a greenhouse should not be constructed within 70 feet of any legally existing residence on an abutting lot of record, regardless of the ownership of the existing lot.*
- 5. Subject to item 2, any variance of more than 50% will be deemed not to be minor in nature. An application to Council for rezoning would be the appropriate method of obtaining relief.*
- 6. Further to #3 & 4, legal non-conforming setbacks should be maintained and a 'average' setback can be allowed.*
- 7. Brand new greenhouses should comply with all setbacks.*

The Committee of Adjustment, in addition to the comments received through the present procedure, should also have regard to these factors when considering this type of minor variance application.

As set out in item #5, the variance requested for the minimum interior west side yard of the proposed phase 3 addition of the subject property is more than 50% and is deemed as not to be minor in nature.

The applicant has expressed some concerns with the manner in which he has been asked to proceed in this matter and has requested that the fee of \$2000.00 for the zoning application be reconsidered (see attached letter by the applicant dated May 6, 2011).

Administration does not recommend that the fees be reconsidered as the direction of Council in 2010 was to ensure that the implementation of the new zoning by-law was enforced in a fair manner to ensure that there would be no negative impact on existing and future farm operations and abutting land owners.

Further, regarding the applicants concern about previous site plan agreements, section 4.36 (Non-Conforming Uses) set outs the following:

a) Building Permit Issued

The provisions of this By-law shall not apply to prevent the erection or use of any building or structure for a purpose prohibited by this By-law of any building or structure the plans for which have been submitted no more than thirty days prior to the date of the passing of the By-law, and have been approved for zoning requirements by the Planner, so long as the building or structure when erected is completed in conformity with such plans and is used and continues to be used for the purpose for which it was erected and provided the erection of such building or structure commenced within two years after the date of the passing of the By-law and such building or structure is completed in conformity with such plans expeditiously after the construction thereof is commenced.

The site plan was approved 30 days prior to the date of the passing of the by-law, which was January 12, 2009 however the structures had to have been erected two years after, which was January 12, 2011. Therefore the applicants' previous site plan does not qualify for the exemption.

CONCLUSION:

As part of the new Bill 51 regulations of the Planning Act, pre-consultation was used to review all the 'prescribed information' and any 'additional information' required in order to consider the application complete. Prior to deeming the application complete, Section 34 (10.3) of the Act sets out that Council must receive all the information or material it needs to make a decision.

Administration suggests that this matter should now proceed to a public meeting. The date for the required public meeting is requested to be scheduled for **Monday, July 11, 2011 at 7:00 pm.**

Notice of public meeting will be circulated to all commenting agencies, municipal departments and abutting landowners within 120 m (400 ft) of the subject property. Notice will also be posted in the Leamington Post. As part of the new Bill 51, all information will be made available to the public and commenting agencies. A report by Administration will be presented to Council after the public meeting.

Once a decision for Zoning By-Law amendment has been made and notices sent out, there would be an appeal period in the case that there are any objections to the Ontario Municipal Board (OMB).

As set out under Bill 51 of the Planning Act, the OMB is required not only to have regard to Council's decision, but the basis on which the decision is made. In order to ensure that the OMB has regard to Council's decision, Council should be able to demonstrate that its decision was fully supported by relevant information and that the information was considered by Council.

RECOMMENDATION:

THAT Council declare that the application was reviewed and deemed to be complete pursuant to the requirements of the *Planning Act* to consider a zoning by-law amendment for property located at 435 Mersea Road 3 to change the zone from Agricultural Restricted Zone (A2) to a defined Agricultural Restricted Zone (A2-5) to permit a site specific reduction to the required minimum rear yard from 15 m to 13.72 m and the minimum interior west side yard from 15 m to 5.9 m., as outlined in Report PLA 24/11;

AND that Administration is directed to schedule the required public meeting for Monday, April 11, 2011 at 7:00 pm;

AND that Council refuses to reconsider the fee for the application for zoning amendment.

Respectfully submitted,

Tracey Pillon-Abbs,
Manager of Planning Services

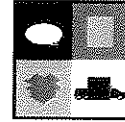
Douglas E. Morrish,
Director of Development Services

ATTACH

/tpa



P.O. BOX 61
LEAMINGTON, ON.
N8H 3W1



AMCO FARMS INC.
AMCO PRODUCE INC.
AMCO STORAGE INC.
AMCO EXPRESS INC.

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May 6, 2011

Municipality of Leamington
111 Erie Street North
Leamington, Ontario N8H 2Z9

RECEIVED
MAY 6 - 2011

RE: Application for Minor Variance & Official Plan and Zoning By-Law Amendment Application.

To Whom It May Concern:

We, Amco Farms Inc., are disputing the manner in which we have been asked to proceed in this matter and ultimately the costs associated with this application for the following reasons;

1. Amco submitted a site plan that provided for a greenhouse complex to be constructed in three (3) phases in 2005 of which the Municipality accepted through a revised site plan agreement.
2. Amco did not want nor did it ask for water rights as the company injected capital to drill (4) water wells and asked that the Municipality accept this method to irrigate the new facility.
3. Amco began to prepare the entire site for the greenhouse complex after the appropriate approvals and installed the drainage system to what was required to accommodate phase I and phase II and in turn constructed phase I.
4. Amco came back to the Municipality in 2010 to construct phase II and was instructed that Council changed its decision with respect to water rights and was asked to go through the approval process again. Amco was instructed to pay the proposed expenses to obtain water rights for phase II and that this cost was to be retroactive to apply to phase I also.
5. Amco reluctantly agreed.
6. Council changed its decision regarding set back allowance and Amco was instructed that a "minor variance" would now be required to construct phase III.
7. In 2011 Amco completed and submitted an application to ask for a minor variance to stay within the site plan design submitted in 2005.
8. The Municipality then informed Amco that the minor variance did not meet the minimum allowance as set forth by council and asked to rescind their application or move the greenhouse. Amco reviewed their options and it was determined that the greenhouse could not be moved to obtain the new setback minimum allowance but that it could be within 2 feet of this minimum allowance however this was rejected.
9. Amco was asked to complete a Zoning Bylaw amendment.
10. Amco submitted a Zoning By-Law Amendment Application to be considered by Council and learned that the costs associated with this application was \$2000.00
11. Amco has made every effort to stay compliant to accommodate the Municipality however we now feel that the manner in which this has progressed is not proper and ask for further consideration in the costs associated with the project from inception in 2005.
12. Amco is under the opinion that the site plan submitted in 2005 and the site plan agreement executed in 2005 should have carried president until the project was completed.

We therefore ask council members of the Municipality of Leamington take into consideration our dispute for the charge associated with the zoning amendment application and that further efforts be made to stay within a common set of rules and use better methods to inform its residents of such changes prior to initiating such projects.

Thank you,

Fausto Amicone
Amco Group, Inc
President/CEO



2011 Board of Directors June 16, 2011

Town of Amherstburg

Robert Pillon
John Sutton

Mr. Brian R. Sweet, *Clerk*
Municipality of Leamington
38 Erie St. N.

Town of Essex

Sherry Bondy
John Scott

Leamington ON N8H 2Z3

Town of Kingsville

Gord Queen
Tamara Stomp

Dear Mr. Sweet:

RE: Notice of Public Meeting to Consider Zoning By-Law Amendment (ZBA 41) - Lot 4, Concession 3; 435 Mersea Road 3; ARN: 370665000002500; PIN: 750960199; Applicant: 1560987 Ontario Limited C-O Fausto Amicone; Regulated Area: Sturgeon Creek.

Town of Lakeshore

Al Fazio
Len Janisse

Town of Lasalle

Sue Desjarlais
Ray Renaud

The following is provided for your information and consideration as a result of our review of the above referenced Notice of Public Meeting to Consider Zoning By-Law Amendment (ZBA 41).

Municipality of Leamington

Rick Atkin
Larry Verbeke

For the owner's information, we note that the central portion of the above noted lands, along Sturgeon Creek, are subject to our Development, Interference with Wetlands and Alteration to Shorelines and Watercourses Regulations under the *Conservation Authorities Act*, (Ontario Regulation No. 158/06). Prior to any construction or site alteration, or other activities affected by the regulations, the property owner will be required to obtain a Permit and/or Clearance from the Essex Region Conservation Authority.

Township of Pelee

Rick Masse

Town of Tecumseh

Joe Bachetti - Vice Chair
Cheryl Hardcastle

Based on our review, we have no objections to the application.

City of Windsor

Percy Hatfield - Chair
Al Maghnieh
Hilary Payne
Ed Sleiman

If you should have any questions or require any additional information, please do not hesitate to contact the ERCA office by phone at (519) 776-5209 or by fax at (519) 776-8688.

General Manager / Secretary Treasurer

Richard Wyma

Thank you.

Sincerely,

Member of



Rebecca Belanger, MCIP, RPP
Conservation Planner

/dl

C: 1560987 Ontario Limited C-O Fausto Amicone

