



THE CORPORATION OF THE TOWN OF AMHERSTBURG

OFFICE OF DEVELOPMENT SERVICES

MISSION STATEMENT: *Committed to delivering cost-effective and efficient services for the residents of the Town of Amherstburg with a view to improve and enhance their quality of life.*

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| Author's Name: Melissa Osborne and Christopher Aspila | Report Date: September 13, 2023 |
| Author's Phone: 519 736-0012 ext. 2137 and 2124 | Date to Council: September 25, 2023 |
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To: Mayor and Members of Town Council

Subject: Options to Address Zoning By Law 1999-52 as amended by 2019-028

1. **RECOMMENDATION:**

It is recommended that:

1. Administration **BE DIRECTED** to initiate a Zoning By-Law housekeeping amendment to address the current issues with the Zoning By-Law 1999-52, as amended by 2019-028 and;
2. Administration **BE DIRECTED** that, upon completion of the Zoning By-Law housekeeping amendment, the owners of properties believed to be non-complying with Zoning By-Law 1999-52 are to be provided options they must take in order for their properties to be compliant with the By-law.

2. **BACKGROUND:**

In 1999 shoreline setback provisions were approved in a Comprehensive Zoning By-law 1999-52 by Council that blended Zoning By-laws from the former municipalities that amalgamated to become the geographic area currently identified as the Town of Amherstburg. Town staff consulted with the current CEO of the Essex Region Conservation Authority (ERCA) who provided historical insight into the reasons for the shoreline setback provisions. These included:

- Property owners were increasingly wanting build homes or accessory structures closer to the shorelines of the Detroit River and Lake Erie;

- Some property owners spent large amounts of money, in some cases into the millions of dollars to obtain engineering studies and legal counsel in support of their building desires;
- ERCA in consultation with Town staff and the Town Council at the time wanted to provide a level playing field and consistent approach for all shoreline property owners;
- The intent of the Zoning By-law provisions that are still in force today is to trigger a Zoning By-law amendment that would be considered by Council on a case-by-case basis based on consultation with ERCA to determine if development could be supported closer to the shoreline considering all applicable Federal, Provincial, Municipal and Conservation laws, regulations, policies, by-laws and guidelines.
- The Zoning By-law was further amended related to the shoreline setback provisions in 2019 by By-law 2019-028.

3. DISCUSSION:

The Zoning By-law provision does not state the size of a structure for which the provision would not apply. Monitoring of compliance to this Zoning By-law is challenged by two factors:

1. Structures that do not require a building permit would not be known to Administration and;
2. Structures are placed in the rear of the yard thus reducing the ability for them to be noticed for action to be taken.

Based on questions brought forward to Administration regarding the proximity of smaller structures to the shoreline, commenced a Geographic Information System (GIS) review of the area. This review identified several properties which are currently deemed non-compliant, 2 of which have submitted a Zoning By-law amendment application. In the case of the 2 properties which have put forward a Zoning By-law amendment ERCA has advised both properties, in writing, that given the structures in question are 100 sq ft or less, no ERCA permit is required for these structures.

It should be noted that the fee for a property owner to apply for a Zoning By-law amendment is \$3,953 for a minor amendment and \$6,755 for a major amendment. They may also be required to provide a Planning Justification Report (PJR) and or other studies as part of their submission. In light of the direction by ERCA for the 2 properties, coupled with the substantial cost for a Zoning By-law amendment, and challenges with managing non-compliance, Administration puts forth the following recommendation.

In order to effectively address the current situation of non-compliance and manage future challenges, it is recommended the Town prepare a Zoning By-law housekeeping amendment and bring forward to Council for consideration. The amendment would be to have the Zoning By-law be more reflective of the intent, which is to ensure ERCA has the opportunity to review and advise if a permit and provisions for the construction is required. Should ERCA not require a permit for the structure, then the Zoning By-law provision would not apply, if however, an ERCA permit is required then a Zoning By-law

amendment would also be required. This solution would be included as part of the Official Plan update as policies will also need to be set forth in the updated Official Plan as additional triggers.

Proceeding with this change would put actions on hold for the current properties deemed non-compliant until the Zoning By-law housekeeping amendment is completed. Provided it is passed, Administration would notify the existing properties deemed non-compliant to obtain confirmation from ERCA on whether or not they require a permit for their structure. Confirmation of ERCA's direction will need to be provided to the Town for record and where an ERCA permit is required the resident will have other options to proceed with a Zoning By-law amendment and ERCA permit, or to relocate their structure such that they compliant with the Zoning By-law.

Council could direct that the Zoning By-law remain in place and that current properties deemed non-compliant must proceed with a Zoning By-law amendment. Should this be the direction Administration recommends that all property owners be notified of the situation. The property owners would be afforded the opportunity to:

1. Provide a survey from an Ontario Land Surveyor that confirms the structure in question is compliant or;
2. Move the structure to be compliant with the Zoning By-law or;
3. Put forward a Zoning By-law application, providing all necessary information, inclusive of correspondence from ERCA on whether or not an ERCA permit is required.

Administration recommends that should this direction be pursued that all property owners that proceed forward with a Zoning By-law amendment be given the opportunity to do so collectively under once application so as to share the cost. Those who do not wish to jointly submit can certainly submit their own application.

Notwithstanding the recommendations above to amend the zoning by law to be more reflective of the intent, in all cases the size of the structure will be reviewed and considered. Should the structure have required a building permit appropriate actions will be taken and fees applied.

4. RISK ANALYSIS:

There is a risk that the housekeeping Zoning By-law amendment is appealed, which would delay the changes and may require the Town to revisit current properties deemed non-compliant.

5. FINANCIAL MATTERS:

The Town will incur costs should a Zoning By-law amendment decision be appealed to the Ontario Land Tribunal.

6. CONSULTATIONS:

Tim Byrne – CEO, Essex Region Conservation Authority

7. **CONCLUSION:**

Administration is requesting Council direction to amend Zoning By-law 1999-52 to update the shoreline setback provisions.



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Director Development Services**

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Report Approval Details

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| Document Title: | Options to address Zoning By Law 1999-52 as amended by 2019-028.docx |
| Attachments: | |
| Final Approval Date: | Sep 13, 2023 |

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



Melissa Osborne



Tracy Prince

No Signature - Task assigned to Valerie Critchley was completed by workflow administrator Kevin Fox

Valerie Critchley



Kevin Fox