

THE CORPORATION OF THE TOWN OF AMHERSTBURG

# OFFICE OF DEVELOPMENT SERVICES

*Mission Statement:* As stewards of the Town of Amherstburg, we strive to improve the quality of life of all residents through the delivery of effective, efficient, and affordable services.

Author's Name: Sarah French	Report Date: April 11, 2025
Author's Phone: 519 736-5408 ext. 2145	Date to Council: April 29, 2025
Author's E-mail: sfrench@amherstburg.ca	Resolution #:

## To: Mayor and Members of Town Council

## Subject: Zoning By-law Amendment ZBA-04-25 for lands severed from 5010 County Road 18

## 1. <u>RECOMMENDATION:</u>

It is recommended that:

 By-law 2025-019 being a by-law to amend Zoning By-law No. 1999-52, to amend the zoning for the subject lands known as the lands severed from 5010 County Road 18 be taken as having been read three times and finally passed and the Mayor and Clerk BE AUTHORIZED to sign same.

## 2. BACKGROUND:

The lands are the subject of a decision of the Committee of Adjustment for Application B/04/25, which approved a surplus dwelling severance with associated conditions. The rezoning of the subject property to A-49 is a condition of the consent decision. Condition (5) of the decision states:

5. That the retained farmland to be rezoned to ensure that no new dwelling units shall be permitted and the requirement for this non-development be registered against the title of the property. Additionally, that the rezoning restrict livestock within the existing accessory structure, at its current location, on the retained farmland.

The Town is in receipt of an application for a Zoning By-law Amendment to By-law 1999-52, as amended under Section 34 of the Planning Act, R.S.O. 1990 c.P. 13 from Robert Marc Knight, c/o Amanda Camlis. The subject lands affected by the proposed amendment are described as Concession 5, Part Lots 44 and 45, municipally known as the retained farmland severed from 5010 County Road 18. The residence and accessory structures which was the subject of the surplus dwelling severance is located at 5010 County Road 18 are not subject to this rezoning. At the conclusion of the severance, the remaining farm parcel subject of the Zoning By-law Amendment will have a total area of 21.05 hectares  $\pm$ .

A Statutory Public Meeting under the Planning Act was held on March 24, 2025, at which no comments were received from members of the community or Council.

In preparing this report to Council, administration has reviewed the submission and the following documents:

- Planning Act, R.S.O. 1990
- Provincial Planning Statement 2024
- County of Essex Official Plan (2014)
- Locally Adopted County of Essex Official Plan (2024)
- Town of Amherstburg Official Plan
- Town of Amherstburg Zoning By-law 1999-52
- Written and Oral comments received

# 3. DISCUSSION:

The proposed amendment to the Zoning By-law would change the zoning for the subject lands noted above from the "Agricultural (A) Zone" to "Special Provision Agricultural (A-48) Zone". The land is designated Agricultural in the Town's Official Plan. The parcel was the subject of an application for consent (File B/04/25) to sever a dwelling and accessory structures which are surplus to the needs of the farming operation. The rezoning of the subject property to A-48 is a condition of the consent decision.

The effect of the Zoning By-law Amendment will be to allow for general agricultural uses on the subject property and prohibit any new dwelling units on the land. In addition, the Zoning By-law Amendment will restrict the housing of livestock within the accessory structure located on the retained farmland. Due to the proximity of the farm building in relation to the dwellings at 5231 Concession 5 S, 5090 County Road 18 and the proposed surplus dwelling, the building would not be able to meet Minimum Distance Separation requirements for housing livestock. As an accessory building can be converted to house livestock without a building permit, it was recommended that the rezoning include a provision to restrict livestock within the structure at its current location. This will not limit the farmer from building a livestock facility that complies with Minimum Distance Separation, should he want to house livestock on the property in the future.

## PLANNING ANALYSIS

The submitted application is consistent with the Provincial Policy Statement and in conformity with the County of Essex Official Plan and the Town of Amherstburg Official Plan.

The following sections will identify the planning rationale to support the recommendation of this report.

## Planning Act (R.S.O. 1990)

The purposes of the Planning Act are;

*"(a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;* 

(b) to provide for a land use planning system led by provincial policy;

(c) to integrate matters of provincial interest in provincial and municipal planning decisions;

(d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;

(e) to encourage co-operation and co-ordination among various interests;

(f) to recognize the decision-making authority and accountability of municipal councils in planning. 1994, c. 23, s"

The proposal is consistent with Section 2 of the Planning Act which requires that the Council have regard to matters of provincial interest including (the following are excerpts from Section 2 of the Planning Act that apply to this development):

- the protection of the agricultural resources of the Province;

- the adequate provision of a full range of housing, including affordable housing;

- the appropriate location of growth and development;

The proposed amendment allows for the protection of the severed farm field by requesting that it be rezoned to restrict any new residential dwellings being built on the property. It also protects neighbouring properties from nuisance factors related to animal farming by ensuring that any structures built for the housing of animals will be required to comply with the Minimum Distance Separation (MDS) setbacks.

#### **Provincial Planning Statement 2024**

The Provincial Planning Statement was issued under section 3 of the Planning Act and came into effect October 20, 2024. It replaces the Provincial Policy Statement that came into effect on May 1, 2020.

The Provincial Planning Statement provides policy direction on matters of provincial interest related to land use planning and development. As a key part of Ontario's policy-led planning system, the Provincial Planning Statement sets the policy foundation for regulating the development and use of land province-wide, helping achieve the provincial goal of meeting the needs of a fast-growing province while enhancing the quality of life for all Ontarians.

When reviewing a planning application to determine if the requested Zoning By-law Amendment (ZBA) makes sound planning, it is imperative that the proposed development is consistent with the Provincial Planning Statement (PPS).

The PPS provides policy direction for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. The PPS recognizes that the wise management of development may involve directing, promoting, or sustaining growth. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs while achieving efficient development patterns.

The following policy excerpts from the PPS are particularly applicable to the subject application:

# 4.3 Agriculture

## 4.3.1 General Policies for Agriculture

- 1. Planning authorities are required to use an agricultural system approach, based on provincial guidance, to maintain and enhance a geographically continuous agricultural land base and support and foster the long-term economic prosperity and productive capacity of the agri-food network.
- 2. As part of the agricultural land base, prime agricultural areas, including specialty crop areas, shall be designated and protected for long-term use for agriculture.
- 3. Specialty crop areas shall be given the highest priority for protection, followed by Canada Land Inventory Class 1, 2, and 3 lands, and any associated Class 4 through 7 lands within the prime agricultural area, in this order of priority.

### 4.3.2 Permitted Uses

1. In prime agricultural areas, permitted uses and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses based on provincial guidance.

Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on provincial guidance or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.

- 1. In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.
- 2. New land uses in prime agricultural areas, including the creation of lots and new or expanding livestock facilities, shall comply with the minimum distance separation formulae.
- 3. A principal dwelling associated with an agricultural operation shall be permitted in prime agricultural areas as an agricultural use, in accordance with provincial guidance, except where prohibited in accordance with policy 4.3.3.1.c).

#### 4.3.3 Lot Creation and Lot Adjustments

1. Lot creation in prime agricultural areas is discouraged and may only be permitted in accordance with provincial guidance for:

a) agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations;

b) agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services;

c) one new residential lot per farm consolidation for a residence surplus to an agricultural operation, provided that:

1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and

2. the planning authority ensures that new dwellings and additional residential units are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new dwellings or additional residential units are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches that achieve the same objective; and

d) infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way.

The application is consistent with the Provincial Planning Statement (2024), specifically Section 4.3.3.1(c) which provides for lot creation for a residence surplus to a farming operation as a result of farm consolidation provided that new residential dwellings are prohibited on any vacant remnant parcel created by the severance.

## County of Essex Official Plan 2014

The County of Essex Official Plan was adopted on February 19, 2014 and was approved by the province on April 28, 2015. All lower tier Official Plans or amendments must comply with the policies of the upper tier Official Plan (County). The applicable County policies that should be considered when assessing the merits of the subject Official Plan Amendment include:

## 3.3 Agricultural

## 3.3.2 Goals

The following goals are established for those lands designated as "Agricultural" on Schedule "A1":

a) To protect prime agricultural areas for agricultural purposes to ensure the continued long-term availability of this resource.

*b)* To promote and protect agricultural uses and normal farm practices on lands within the "Agricultural" designation.

c) To allow and encourage farm operators to engage in a wide range of agricultural activities.

d) To restrict the type and amount of non-farm development in the "Agricultural" designation by encouraging non-farm uses to locate in the existing "Settlement Areas" identified on Schedule "A1".

e) To only permit the expansions of existing Primary Settlement Areas onto lands designated "Agricultural" where demonstrated need for such an expansion has been justified either through a Local Comprehensive Review or a comprehensive review.

f) To discourage lot creation in the "Agricultural" designation and establish a County-wide minimum farm parcel size that protects the agricultural land base from fragmentation. The minimum farm parcel size shall ensure that the size of new agricultural lots are appropriate for the type of agricultural use(s) common in the area and are sufficiently large enough to maintain flexibility for future changes in the type or size of agricultural operation.

g) To ensure new farm and non-farm uses comply with the Minimum Distance Separation Formulae, as amended by the Province from time to time.

*h)* To encourage the retention of woodlots as integral components of the farm operation for agroforestry and the other benefits woodlands provide.

#### 3.3.3.4 Lot Creation

The County shall undertake an Agricultural Lot Size Study to determine the minimum parcel size for all types of agricultural lots, including, but not limited to, new lots for agricultural uses, specialty crop areas, and agriculture-related uses. Until such time as this Study is approved by County Council and implemented by amendment to this Plan, existing agricultural lot creation policies at the local level shall remain in effect. However, lot creation in the "Agricultural" designation is discouraged and will only be permitted in accordance with Provincial Policy, local Official Plan policies and the following:

a) Lot creation to accommodate an agricultural use shall only be considered where the lots proposed are of a size appropriate for the type of agricultural uses common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations. These agricultural lots shall also comply with the Minimum Distance Separation Formulae.

b) Lot creation to accommodate an agriculture-related use shall only be considered where the use is compatible with surrounding agricultural operations and the new lot is limited to a minimum size needed to accommodate the use and appropriate sewage and water services. These agriculture-related lots shall also comply with the Minimum Distance Separation Formulae.

c) Lot creation to accommodate a habitable residence surplus to a farming operation as a result of farm consolidation is permitted subject to the local Zoning By-law being amended, to prohibit new residential dwellings on the vacant remnant parcel of farmland created by the severance.

In order to maintain County-wide consistency in the implementation of this policy, farm consolidation will be interpreted to permit both contiguous and non-contiguous farm parcel consolidations.

Local municipalities may establish a minimum lot size for the remnant farm parcel in accordance with this Policy.

d) Lot creation to permit new infrastructure uses is permitted where the facility or corridor cannot be accommodated through the use of easements or rights-of-way.

e) Lot adjustments for legal or technical reasons, such as for easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot are also permitted.

In order to maintain County-wide consistency in the implementation of this policy, lot line adjustments will be interpreted to prohibit the creation of new residential or non-farm parcels.

The roadside stand can be considered a secondary use on the property. Secondary uses can include uses such as home occupations. The roadside stand is considered a home occupation and is limited in size, does not hinder surrounding agricultural areas, clearly secondary to the main use on the site (the residence) and does not create a nuisance with regards to traffic due to the parking provided within the driveway on the site. It is the opinion of the author of this report that the proposed amendment is in conformity with the County of Essex Official Plan (2014).

The proposal is in conformity with the County of Essex Official Plan (2014), specifically section 3.3.3.4(c) which provides for lot creation due to a residence surplus to a farming operation. The rezoning will prohibit new residential dwellings on the vacant remnant parcel of farmland created by the severance.

## County of Essex Official Plan 2024

The County of Essex adopted a new Official Plan on November 6, 2024. The Official Plan is awaiting final adoption by the Ministry of Municipal Affairs and Housing.

All lower tier Official Plans or amendments must comply with the policies of the upper tier Official Plan (County). The applicable County policies that should be considered when assessing the merits of the subject Zoning By-law Amendment include:

#### Principle 3: Agricultural Sustainability

Agriculture is an integral component of the economy of the County and is the majority of the land base in the County. The agricultural landscape is a defining feature of the County. Sustaining the agricultural land base and growing the agricultural economy are priorities within the Official Plan. Included in the agricultural economy is ensuring appropriate housing for agricultural workers.

5.A.1 – General Agricultural Policies

The following general policies are established for those lands shown as "Agricultural" on Schedule "A1":

5.A.1.1 In Agricultural Areas, as shown on Schedule "A1", agricultural uses and normal farm practices will be promoted and protected.

5.A.1.2 The removal of land from the "Agricultural" designation shall only be considered for settlement area expansions, or identification of settlement areas and limited non-agricultural uses, provided that the following conditions are met:

a) the land does not comprise a specialty crop area;

b) there is a demonstrated need as part of a Local Settlement Area Review within the planning horizon for additional land to be designated to accommodate the proposed use;
c) there are no reasonable alternative locations which avoid the "Agricultural" designation;
d) there are no reasonable alternative locations in the "Agricultural" designation with a lower priority Canada Land Inventory soils classification; and,

e) impacts from any new or expanding non-agricultural use on surrounding agricultural operations and lands should be mitigated to the extent feasible.

5.A.1.3 Some of the policies contained within Section 5.B, Aggregates, of this Plan may also pertain to lands designated "Agricultural".

5.A.1.4 Normal farm practices, including but not limited to, agroforestry and spraying, are permitted on all lands designated "Agricultural". If tree harvesting is to occur it should be based on acceptable forest management practices. Advice from a qualified specialist and the use of woodlot management plans by landowners is required.

#### 5.A.4 – Surplus Farm Dwellings

5.A.4.1 The severance of a residence surplus to a farming operation may be permitted under the following circumstances:

- a) The surplus dwelling is at least 20 years old as of the date of adoption of this Official Plan;
- b) The size of any new lot shall be an area of approximately 0.4 hectares except to the extent of any additional area deemed necessary to support an on-site private water supply and private sewage disposal system as determined by Provincial and County requirements to a maximum of one hectare in lot area;
- c) Site constraints, such as, but not limited to, protection of the natural heritage system may be permitted to a maximum of one hectare in lot area;
- d) Proposals that exceed one hectare in lot area may be considered subject to an amendment to this Plan;
- e) To reduce fragmentation of the agricultural land base where a contiguous farm parcel is owned by the same property owner, the retained lot shall be merged with an abutting parcel. The retained farm parcel shall be zoned to preclude its use for residential purposes;
- f) The proposal shall meet the Minimum Distance Separation (MDS) Formulae established by the Province, as amended from time to time; and
- g) In order to maintain County-wide consistency in the implementation of this policy, farm consolidation will be interpreted to permit both contiguous and noncontiguous farm parcel consolidations. Local Municipalities may establish a minimum lot size for the remnant farm parcel in accordance with this Policy.

The proposed amendment is in conformity with the County of Essex Official Plan (2024) specifically policy 5.A.4 which provides for surplus dwelling severances. The rezoning will prohibit new residential dwellings on the vacant remnant parcel of farmland created by the severance. The rezoning will also ensure that the proposal complies with Minimum Distance Separation (MDS) Formulae by restricted the housing of animals within the existing accessory structure, due to its proximity to existing residential uses. The surplus dwelling property is approximately 0.4 ha (1 acre) in size.

# Town of Amherstburg Official Plan

The Official Plan currently designates the subject lands as Agricultural (refer to Appendix B). There are several applicable policies that can be referenced in discussion regarding the proposed amendment. These include:

## Section 3.2 Agricultural

3.2.1 Goals

The following goals are established for the Agricultural area:

(1) To preserve and enhance good agricultural land for agricultural purposes;

(2) To allow farm operators sufficient flexibility to engage in a wide range of agricultural activities;

(3) To restrict the type and amount of non-farm development in the agricultural area;

(4) To encourage the retention and enhancement of existing windrows, hedgerows, and small woodlots in order to protect the high quality of landscape, provide habitat for wildlife, mitigate wind erosion and protect surface and groundwater resources; and

(5) To direct non-agricultural development to Settlement Areas and to control the development of agriculturally related commercial and agriculturally related industrial uses.

3.2.2 Policies

(14) Where a habitable farm house existing as of January 1, 1978 is rendered surplus as a result of farm consolidation (the acquisition of additional farm parcels to be operated as one farm operation), a consent may be considered to sever the surplus dwelling from the farm unit, provided that, in addition to the general consent policies of this Plan, all of the following conditions are met:

a) the lot severed for the surplus dwelling is large enough to accommodate the use and on-site servicing (i.e. subsurface sewage disposal and well) while ensuring that as little acreage as possible is taken out of productive agricultural land and shall generally be less than one (1) hectare in size;

b) the Minimum Distance Separation Formulae can be met with the formulae applied as if the property severed for the surplus farm dwelling was zoned or designated as a residential lot; and

As a condition of the consent, the remnant parcel shall be rezoned under the Comprehensive Zoning By-law to ensure that no new dwelling units shall be permitted on it and a condition stating that 'no additional dwelling units shall be permitted on the remnant parcel' shall be registered on title. (Modification #27)

The proposed amendment is in conformity with the Town of Amherstburg Official Plan (2009). The rezoning will prohibit new residential dwellings on the vacant remnant parcel of farmland created by the severance. The rezoning will also ensure that the proposal complies with Minimum Distance Separation (MDS) Formulae by restricted the housing of animals within the existing accessory structure, due to its proximity to existing residential uses. The surplus dwelling property is approximately 0.4 ha (1 acre) in size.

## Zoning By-law 1999-52

The subject lands are zoned Agricultural (A) Zone in the Zoning By-law 1999-52, as amended.

All uses permitted within the Agricultural (A) Zone will continue to be permitted on the subject property with the exception of residential uses. Should the applicant wish to house animals on the farm they will be required to comply with the Minimum Distance Separation (MDS) setbacks as per the Zoning By-law.

## 4. <u>RISK ANALYSIS:</u>

There is a risk that a decision on a zoning matter is appealed to the Ontario Land Tribunal. The risks noted below provides further clarity on this depending on the recommendation and Council decision on the matter.

Administration's Recommendation	Decision of Council	Who can appeal the decision to OLT.*	Costs to the Town if Appealed
Recommend approval	Approve the Recommendation	The Applicant who requested the zoning amendment and the Minister.	Legal consulting and Administrative time to defend the decision before OLT.
Recommend to deny the application	Approve the Recommendation	The Applicant who requested the zoning amendment and the Minister.	Planning and legal consulting services to defend Council's decision and

Recommend approval	Refuse the Recommendation Note: The Planning Act defines a tied vote as a refusal.	The Applicant who requested the zoning amendment and the Minister.	legal consulting and Administrative time to defend Administration's recommendation before OLT. Planning and legal consulting services to defend Council's decision and legal consulting and Administrative time to defend Administration's recommendation before OLT.
Recommend to deny the application	Refuse the Recommendation Note: The Planning Act defines a tied vote as a refusal.	The Applicant who requested the zoning amendment and the Minister.	Legal consulting and Administrative time to defend the decision before OLT.
Recommend to approve (or deny)	Request to defer decision on the grounds of requiring additional information.	The Applicant who requested the zoning amendment and the Minister.	In this scenario it allows for the applicant to consider if the additional information requested by Council, rather than an OLT hearing is preferred. As OLT hearings are costly and time consuming the applicant may elect to provide the additional information. If that is the direction the Town may need to refund the application fee, noting the refund is also less costly for the Town than an OLT hearing.

## 5. FINANCIAL MATTERS:

All costs associated with the application are the responsibility of the Applicant. Should Council's decision be appealed to the Ontario Land Tribunal, the Town will incur costs, as noted above. OLT appeals of any nature can be costly with estimated costs of a hearing at \$6,000/day, noting that those daily costs will likely be higher if Town Administration is required to be before OLT as both witnesses for an Applicant and defense of a decision.

# 6. CONSULTATIONS:

The Notice of Public Meeting was published in the local newspaper and circulated to the required agencies, property owners and municipal departments in accordance with the requirements of the Planning Act, R.S.O. 1990, c.P. 13 and associated regulations. Extensive consultations and meetings have occurred with the County of Essex and the Essex Region Conservation Authority. The circulation map and list of properties within the 120m circulation radius are attached as Appendix F for information.

# 7. CORPORATE STRATEGIC ALIGNMENT:

environmental impacts of Town

Amherstburg Community Strategic Plan 2022 - 2026 PILLAR 1 PILLAR 3 **Deliver Trusted & Accountable Encourage Local Economic** Local Government **Prosperity**  $\Box$  Improve trust between council and staff, and residents, by strengthening governance and internal accountability □ Encourage development of commercial structures. and industrial lands. □ Deliver transparent and efficient financial □ Continue to promote local tourism management. industry, especially overnight □ Increase effective communication and accommodation. engagement with residents. □ Continue to facilitate downtown □ Develop our staff team, resources, and development for residents and visitors. workplace culture. □ Continue to leverage partnership ✓ Continue to deliver strong core municipal opportunities with other provincial, services. federal, and local governments, agencies, □ Ensure Amherstburg is an inclusive and organizations. accessible and welcoming community committed to reconciliation. PILLAR 2 PILLAR 4 **Invest in Community Amenities and** Shape Growth Aligned with Local Infrastructure Identity □ Define and communicate a vision for the □ Maintain safe, reliable and accessible municipal infrastructure and facilities. Town's future and identity.  $\Box$  Increase access to recreation □ Promote and plan for green and "climate opportunities for all ages. change ready" development. □ Finalize and execute plans for town-□ Review and implement policies that owned lands (e.g. Duffy's site, Belle Vue) promote greater access to diverse □ Create public access to water and housing. □ Protect the Town's historic sites and waterfront □ Prioritize opportunities to reduce heritage.

Vision: Preserving our past while forging our future.

# 8. <u>CONCLUSION</u>:

It is the opinion of administration that the Zoning By-law Amendment is consistent with the provisions of the Planning Act, is consistent with the policies of the Provincial Planning Statement 2024, conforms with the policies of the County of Essex Official Plan and the Town of Amherstburg Official Plan and maintains the intent of the Town of Amherstburg Zoning By-law.

Administration recommends that Zoning By-law 2025-019, be approved by Council, given three readings and finally passed and the Mayor and Clerk be authorized to sign same.

S. French

Sarah French Planner

## **Report Approval Details**

Document Title:	Zoning By-law Amendment ZBA-04-25 for 5010 County Road 18.docx
Attachments:	<ul> <li>Appendix A - ZBA-04-25 Application_RedactedRM.pdf</li> <li>Appendix B - ZBA-04-25 Aerials-RM.pdf</li> <li>Appendix C - Sketch of surplus lot-RM.pdf</li> <li>Appendix D - Site photo-RM.pdf</li> <li>Appendix E - B-04-25- Decision-RM.pdf</li> <li>Appendix F - Council Circulation List-RM.pdf</li> <li>Appendix G - Summary of Correspondence Received on ZBA-04-25-RM.pdf</li> <li>Appendix H - 2025-019-ZBA-Farmland Severed from 5010</li> <li>County Rd 18 DRAFT-RM.pdf</li> </ul>
Final Approval Date:	Apr 16, 2025

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

## No Signature found

Chris Aspila

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Tracy Prince

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Valerie Critchley

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Kevin Fox