



Village of Point Edward
PUBLIC MEETING MINUTES
Zoning Amendment Application No. 1 of 2006

Owner: 1317424 Ontario Inc.

*Re: Additional Permitted Use as Retail Warehouse at
200 Exmouth Street.*

Tuesday, January 10, 2006 at 6:00 p.m.
Point Edward Council Chambers, 135 Kendall Street, Point Edward, Ontario

All persons present were asked by Mayor Kirkland to sign the attendance sheet with name and address.

1. Introduction by Mayor Kirkland

The Village of Point Edward will be considering a Zoning By-law Amendment application submitted by 1317424 Ontario Inc. to add an additional permitted use as Retail Warehouse at 200 Exmouth Street. The Applicants are requesting a rezoning of this property to permit the additional use as a Retail Warehouse under the permitted uses of the Zoning By-law.

The Planning Act requires that a public meeting be held in order to allow the Council to receive input from the general public about the proposed Zoning Amendment. A notice of this meeting was placed in the Sarnia Observer on December 19, 2005.

Mayor Kirkland asked the applicant or agent to give an explanation of the Zoning Amendment.

2. Applicant Comments

Moved by Councillor Bourrie
Seconded by Deputy Mayor Robson
THAT Mr. Lasenby be invited within the Bar.

CARRIED.

Mr. Lasenby advised that the application that is before Council is very straight forward. It will add an additional permitted use. There has been direct contact with the Planning Department. He would ask that the Planner submit his report to Council and then if there are any questions from Council or the public that he be allowed to provide responses at that time.

3. Lambton County Planning Department Comments

Mr. Dave Posliff, Manager, Planning and Development, County of Lambton provided his report on the zoning by-law amendment, a copy of which is attached.

Councillor Bourrie asked if the various costs as mentioned in the City of Sarnia letter would be part of the new agreement that they mentioned. Mayor Kirkland responded that they would be covered through the boundary agreement.

It was confirmed that the agreement referred to in the City of Sarnia letter was for water.

Councillor Bourrie asked who pays for the studies that are mentioned.

Mr. Lasenby advised that an outside consultant is normally retained by the applicant to prepare an independent traffic study. The City of Sarnia is not raising any issues uncommon to what would be normal in the City. The City plans to go ahead next year and the traffic study should be dealt with this year.

4. Comments by General Public

C.A.O. Cramp was asked to read any written comments that have been received by the public.

C.A.O. Cramp read a letter from the City of Sarnia, a copy of which is attached. There was no further written correspondence submitted regarding the zoning by-law amendment.

Mayor Kirkland asked the audience if there was anyone who wished to provide any comment on the proposed Zoning amendment.

Moved by Councillor MacKenzie

Seconded by Councillor Bourrie

THAT Mr. Robert Gray be invited within the Bar.

CARRIED.

Mr. Gray advised that he was present on behalf of the D'Andrea Group Inc. To give some of the background in terms of the situation, at the present time, they are involved with the applicant in a law suit. The action is still outstanding. Ownership is important because it impacts on a number of things. There will be costs, for instance, the traffic study. Mr. Posliff has stated information relating to the sewers and water and so forth. His client at the present time has registered a Certificate of Pending Litigation against the property described in this application.

To provide public notice to anyone interested in the lands, that ownership issue is still outstanding. At the moment, before the Certificate was registered, 1317424 Ontario Inc. is the owner. That is what part of the issue is. His clients became aware in the advertisement that was placed in the Observer on December 19, 2005.

One December 23, 2005, he was in touch with counsel for the applicant. He wanted to know what the basis of the application is and he wanted background information. No information has been forthcoming. As a consequence, we are left this evening to deal with planning merits of the application in a vacuum. We can't properly evaluate our position. Until the ownership issue is resolved, there will be a potential prejudice to his client – it is the 'cart before the horse'. We are getting ahead of ourselves before it is dealt with. They want to be able to deal with their portion of the property and have recognition of their rights. As a result, he feels that this application is premature.

There is an indication in Mr. Posliff's report that there may be a question on the Official Plan. They have not had an opportunity to evaluate it. Until they know more about it, it is premature. Mr. Posliff indicates that the rezoning is not needed. I say fine then -- why deal with it. Why put the cart before the horse, to make a decision when someone does not have the entire information and subjects itself to a prejudice. There is talk of expenditures of money. Traffic studies are not insignificant -- design for sanitary sewers, etc. -- All of that goes back to rezoning and he may not want this rezoning if he has the ability to participate in the matter fully. If Mr. Posliff is right, there is no need for an application to proceed. The easy answer this evening is to decline to deal with it. If the applicants are insisting that it proceed, Council could have the matter adjourned for parties to litigate the outstanding issues or provide an opportunity if the parties themselves can reach an agreement. Mr. Gray asked that the matter be adjourned, not dealt with or denied.

Councillor Bourrie commented that he did not think it is this Council's position to deal with ownership issues. Council needs to look at the application and determine if they are for or against the development of this property.

Mr. Gray responded that the application is premature at this time as they are not an owner. It appears on the face of it that 1317424 Ontario Inc. would be the owner. However, there are two shareholders – the Chippewas and Mr. D'Andrea had obtained an interest.

Councillor Bourrie advised that it is his understanding that 1317424 Ontario Inc. is the owner, which is made up of the Chippewas and the D'Andrea Group.

Mr. Gray advised that his understanding is that 1317424 Ontario Inc. has shareholders with the Chippewas being 50% and then 1075111 Ontario Inc. being the other 50%. When the transaction was closed it appears as one owner but his clients that are shareholders of the owner did not receive full disclosure of what was going on. It was not sold at fair market value because Mr. D'Andrea retained an interest in it.

Mr. Gray advised that he had brought a copy of the Planning Act and Regulations under the Planning Act. He asked that Council review the sections relating to submission of an application. He referred to Section 10.1 of The Planning Act which requires "A person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section shall provide the prescribed information and material to the council."

Ontario Regulation 199/06 provides a schedule that includes information and material to be provided in an application under Subsection 34(10.1) of the Act, which includes Item 2 – "If known, the names and addresses of the holders of the mortgages, charges or other encumbrances in respect of the subject land." There is no question that the applicant knew that another person alleged interest. This, therefore, becomes an encumbrance. He does not feel that he has been given full disclosure or appropriate information as he feels it is very important and significant.

Councillor MacKenzie asked whose name appears on the title of the property. Mr. Gray responded that it is the numbered company 1317424 Ontario Inc., whose name is on title. However, there is also a Certificate of Pending Litigation on title where his client alleges an interest.

Mr. Lasenby asked if Mr. Gray was retained to represent the D'Andrea Group Inc and if he has a full written authority. Mr. Gray responded that he did and a written retainer.

Mr. John Kennedy commented that he was the unfortunate lawyer on the other side representing the Chippewas of the Thames. The D'Andrea Group has owned the land since 1989. He does not feel that Council is dealing with a premature application. Over that period of time, not much has been done to the property. An offer to purchase has been secured and he is looking to go ahead with it. It is a minor zoning by-law amendment to deal with a clarification to the by-law only. The legal issues do not involve the Chippewas, who have paid the taxes and exercised all incidents of ownership. There has been nothing from the D'Andrea Group for the entire time other than to allege that they may have an interest. This application is not premature. It is for a minor clarification. The issues between the D'Andrea Group and Chippewas will be resolved in court. The rezoning will allow the undeveloped land to move ahead. There is no prejudice to the D'Andrea Group.

Mayor Kirkland asked if there was anyone else who wished to speak to the rezoning by-law amendment.

There was no one present seeking clarification or objecting to the application.

5. Conclusion by Mayor Kirkland

Mayor Kirkland advised that Council may deal with this Zoning By-law amendment tonight immediately following this public meeting or they will deal with it at a future Council meeting.

Any person who wants further notice of the passage of the by-law should give their name, address and postal code to the Clerk prior to leaving the meeting.

All persons who have given the Clerk a request to be notified of the decision will be notified within 15 days of the date of the decision. There is a 20 day appeal period following the sending of the notice.

6. Meeting adjourned by Mayor Kirkland

Moved by Deputy Mayor Robson

Seconded by Councillor MacKenzie

THAT the Public Meeting for Zoning By-law Amendment Application 1 of 2006, be adjourned at 6:40 p.m.

CARRIED.

