

CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2004-54

Being a by-law to amend Zoning By-law No. 1999-52

WHEREAS By-law 1999-52, as amended, is a land use control by-law regulating the use of lands and the character, location and use of buildings and structures within the Town of Amherstburg;

AND WHEREAS the Council of the Town of Amherstburg deems it appropriate and in the best interest of proper planning to amend By-law 1999-52, as herein provided;

AND WHEREAS this By-law conforms to the Official Plan for the Town of Amherstburg;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:

1. Schedule "A", Map 25 of By-law-1999-52, as amended, is hereby amended by changing the zone symbol on those lands shown as "ZONE CHANGE FROM A TO RE-5" on Schedule "A" attached hereto and forming part of this By-law from "Agricultural (A) Zone" to "Special Provision Recreation (RE-5) Zone".
2. That Section 19(4) of By-law 1999-52, as amended, is hereby amended by adding a new subsection (d) as follows:

"(d) RE-5

Notwithstanding any other provisions of this by-law to the contrary, within any area zoned RE-5 on Schedule 'A' hereto, the following special provisions shall apply:

(i) Uses Permitted

- (a) An 18 hole ~~executive~~ golf course; amended as per OMB decision of July 4, 2005,
- (b) An existing single detached dwelling. Order No. 1708, File No. R040147

(ii) Other Provisions

- (a) a minimum setback for buildings and structures of 200 metres shall be required from the lot lines of the existing Girl Guide of Canada camp;
- (b) a minimum setback for buildings and structures of 200 metres shall be required from existing dwelling units on adjacent properties;
- (c) site plan approval shall be required to address matters relating to the layout and design of the golf course, the location of buildings and structures and providing adequate servicing, including the preparation of a drainage study by a qualified hydrologist demonstrating that: (1) there will be no impact on the drainage of adjacent properties; and (2) there will be no run-off from the golf course lands onto adjoining properties or into the drain along Howard Avenue; and (3) the soil composition/profile and geology of the site will allow for the accumulation of water on the site and will prevent the infiltration of pesticides and fertilizers below the water table; and (4) water accumulated in the proposed ponds will be sufficient to serve as the sole water supply for the irrigation of the golf course."

3. That all other appropriate regulations for the use of land and the character, location and use of buildings and structures conforms to regulation of the Recreation (RE) Zone, as applicable and all other general provisions or regulations of By-law 1999-52, as amended from time to time.

4. This By-law shall take effect from the date of passage by Council and shall come into force in accordance with Section 34 of the Planning Act, R.S.O. 1990.

Read a first, second and third time and finally passed this 28th day of June, 2004.



Mayor



Clerk

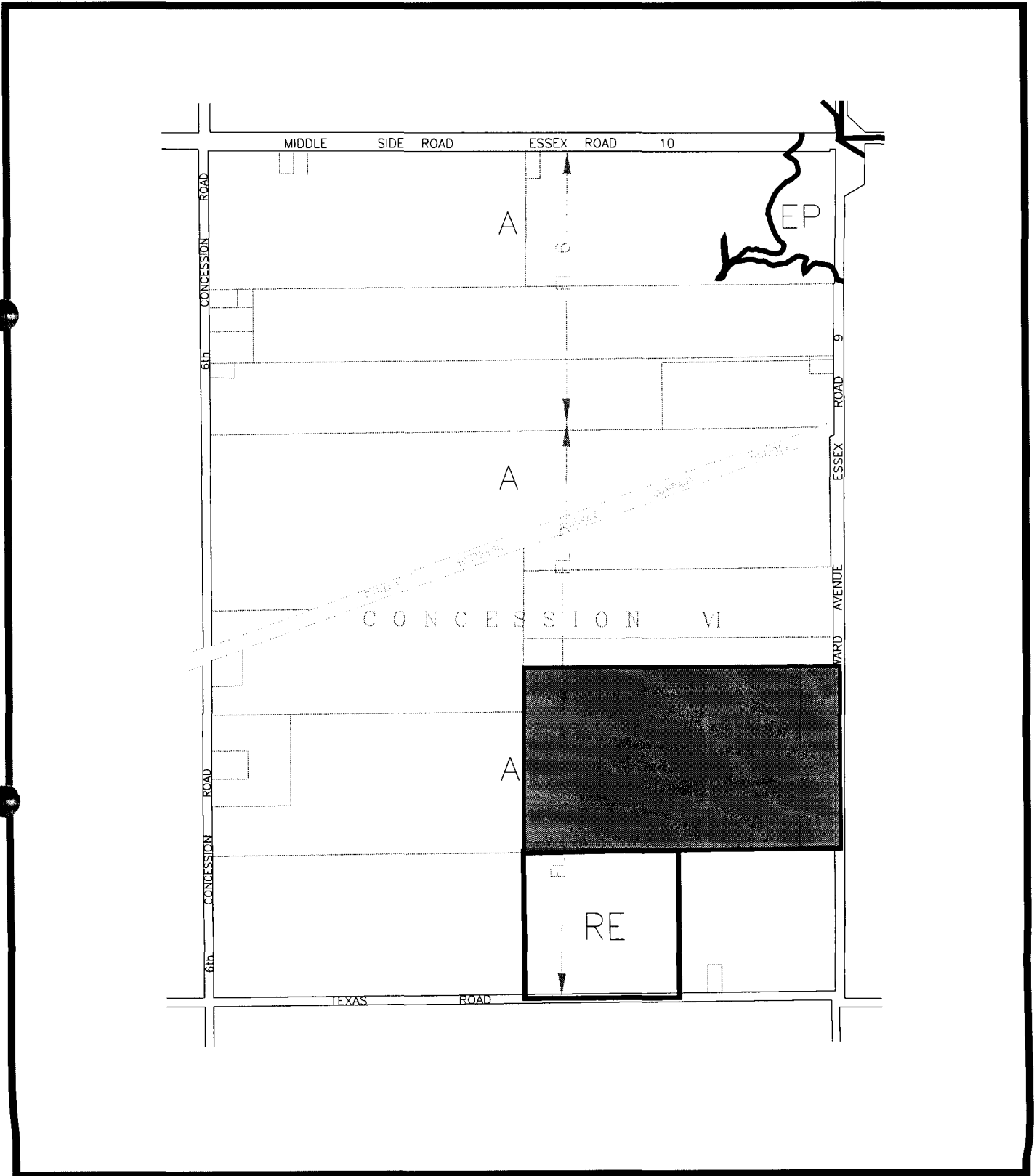
TOWN OF AMHERSTBURG

SCHEDULE "A" TO BY-LAW No. 2004-54
A BY-LAW TO AMEND BY-LAW No. 1999-52,

PASSED THIS 28th DAY OF JUNE 2004

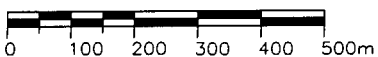
Walne Steel
MAYOR

D. McAllister
CLERK



KEY MAP No. 25

SCALE



ZONE CHANGE FROM
A TO RE-5

SCHEDULE 2

EXPLANATORY NOTE

The subject lands are located on the west side of Howard Avenue (County Road 9) north of Texas Road. The Zoning By-Law Amendment changes the zoning of the lands from the "Agricultural (A) Zone" to a site-specific "Recreation (RE-5) Zone" to permit an 18-hole executive golf course in addition to the existing dwelling on the property. The site-specific provisions would require that any buildings or structures associated with the proposed golf course are subject to a minimum setback of 200 metres from the existing Girl Guide of Canada camp and 200 metres from existing dwellings on adjacent properties. Site plan approval is also required for the subject lands.

ISSUE DATE:

JULY 4, 2005

DECISION/ORDER NO:

1708



RECEIVED

JUL 07 2004 PL040702

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Henry Schmidt, Helen Schmidt and the Girl Guides of Canada have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 2004-54 of the Town of Amherstburg
O.M.B. File No. R040147

APPEARANCES:

Parties

Town of Amherstburg

Henry and Helen Schmidt

The Girl Guides of Canada

Frank Cerasa

Counsel

A. F. Deluca

G. Wellman

G. Wellman

K. Savi-Mascaro

DECISION DELIVERED BY J. A. SMOUT AND ORDER OF THE BOARD

Frank Cerasa is the owner of the property described as Part of Lots 4 and 5 Concession 6 in the geographic Township of Anderdon and known municipally as 7348 Howard Avenue (the "Property"). Mr. Cerasa applied for an amendment to the Zoning By-law so as to permit a golf course on the Property. The Town of Amherstburg (the "Town") passed By-law 2004-54. Adjoining property owners Henry and Helen Schmidt and The Girl Guides of Canada (the "Girl Guides") appealed.

Background

The Property is located on the west side of Howard Avenue (County Road 9) north of the intersection with Texas Road. The Property has an area of approximately 28.8 hectares. The site has a long history of use for agricultural purposes. With the exception of a new single-family home at the northeast corner of the Property, the land continues to be used for agricultural purposes.

All of the surrounding uses are predominately agricultural with the exception of the property owned by the Girl Guides, used as a Guide camp. Mr. and Mrs. Schmidt own the property to the north. They live in the home on the Property and rent the rear portion for crops.

development" the question becomes what would constitute development beyond this "limit". In addition, she notes that other golf courses in the Town are in a Recreational land use designation. In contrast, the Official Plan permits churches and schools in various designations. On this basis, she suggests that the proper interpretation is to consider "limited new development" to refer to new churches or schools and not an 18 hole golf course. Finally, she notes that other Official Plans in Essex County do not permit golf courses in the Agricultural land designation and therefore is unaware why Amherstburg should be viewed differently.

While Ms Prince has extensive experience in this geographic area and has authored most of the Official Plans and Zoning By-laws in Essex County, in this instance, the Board prefers the evidence of Ms Montieth. She is the author of the Town's Official Plan and the Comprehensive Zoning By-law and has provided professional land use planning advice to the Town since 1976.

Ms Montieth testified in detail about section 3.2.2 (6) of the Official Plan. She noted that the Plan was developed as a result of the amalgamation of several communities and after the release of the 1997 Provincial Policy Statement (PPS). She noted that all of the lands in the Town of Amherstburg are, with the exception of some wetland areas, Class 1-3 soils and therefore all prime agricultural lands under the PPS. There are no areas in the Town that would constitute rural areas as defined in the PPS. In drafting the Plan, the decision was made to designate existing recreational and institutional uses only. Rather than predesignating new areas for recreational or institutional uses, the decision was made to allow some of these uses in the Agricultural designation and to deal with them on a case by case basis. She testified that the policy was written intentionally to require a zoning by-law amendment only and not an Official Plan amendment. The phrase "limited new development" allows for the evaluation of each application to determine if there was a pattern or number of similar requests or, in her words, "a run on" applications for a certain type of use.

During the detailed review of section 3.2.2 (6) of the Plan the issue was raised as to whether, using Ms Montieth's interpretation, it has regard to the PPS. Ms Prince is of the opinion that it does not. The legitimacy and relevancy of this issue is addressed in two ways. Firstly, the Town's Official Plan was approved by the Minister with no objections or amendments to section 3.2.2 (6). The only evidence before the Board is

Mr. Wellman did not call Mr. Johnson as a witness primarily because of the cost involved but produced a letter written by him and a copy of a short form resume of his experience. Ms Prince testified that she did not undertake a needs analysis, but discussed this application with Mr. Johnson and based her conclusions with respect to the demonstrated need on her discussions with him. His conclusion is that there is no need for a golf course in this area other than a very high-end course that would cater to a niche market such as corporate outings and tourists. The course as proposed in this instance would not qualify as such.

Ms Montieth completed a thorough review and analysis for the Town and determined that there is a need for an additional golf course of the type as proposed in this application. Ms Montieth has extensive experience in this area and noted that over half of her current practice is devoted to developing recreational master plans for communities. She has prepared several golf course feasibility studies for municipalities across the province and has extensive experience in trend analysis for sport and recreational uses. Her analysis was conducted using conservative approach in terms of the population, age and demographic profiles and the number of rounds played in this area. Even with such a conservative approach and without accounting for any population growth, she concludes that there is a demonstrated need for an additional golf course in the area.

Having considered very carefully all of the evidence on the issue of demonstrated need, the Board prefers the evidence of Ms Montieth. In reaching its conclusion the Board has carefully considered the evidence of Ms Prince including her account of her discussions with Mr. Johnson, his letter and short form resume. The Board recognizes the hardship for a volunteer organization such as the Girl Guides and a single appellant summoning in the financial resources to produce a witness such as Mr. Johnson. Even according the evidence of Ms Prince, and in particular the opinion of Mr. Johnson spoken through both her and his letter, more weight than would normally be attached to it, the Board still prefers the evidence of Ms Montieth. In this regard it notes that her experience in this area, the conservative approach adopted in her analysis and that she was subject to a very thorough and detailed cross-examination during which her evidence was not successfully challenged on this issue.

In conclusion, on the evidence of Ms Montieth and Mr. Cerasa the Board is satisfied that there are no other reasonable locations and that this application has had proper regard for the PPS.

Is the proposed use compatible with uses in the area and does the By-law represent good land use planning?

There were several witness who testified as to the potential impacts from the proposed use. Caroline Ngui testified on behalf of the Girl Guides who own and operate Camp Bryerswood located along a portion of the southerly boundary of the Property. The Girl Guides purchased this property in 1992. Prior to that it had been used as a KOA campground. With a considerable amount money and hard work, they have transformed the property into an important, functional, attractive and much loved guide camp that is actively used all year round. There are several buildings, campground areas, trails and a newly established wetland area.

The main concern for the Girl Guides is the privacy and safety of the campers and other users of the facility. In this respect, there is a concern that a golf course will bring more people to the area and increase the likelihood of trespassers entering their camp particularly from the north boundary. There is a concern with golf balls landing on the property. Finally, they submit that a golf course will interrupt what is a peaceful and quiet wilderness environment. Noise will be generated from maintenance vehicles, lawnmowers and from golfers using the facility.

The Girl Guides' concerns arise from experience with Camp Dahinda, a Guide camp in the Arkona area that is adjacent to a golf course. Heather Pearce, the Lambton Board Chair for Camp Dahinda, testified at the hearing and described in detail some of the issues that have arisen since the golf course was built next to the camp. These include noise from maintenance machinery that operates at very early hours in the morning and golf balls landing in the camp. The most disruptive impact is from golfers using loud and sometimes offensive language, urinating along the fence and climbing the fence to retrieve a ball or to use the washrooms on the camp. Despite numerous attempts, the Girl Guides have been unsuccessful in convincing the golf club to address their concerns.

satisfied on the evidence of Ms Montieth that this can be mitigated through the site plan approval process by the positioning of the holes and fairways and with the use of berms, landscaping and fencing.

Connie Carnahan owns the farm parcel on the other side of Howard Avenue as well as other farms in the area. She and her husband are concerned with the traffic on Howard Avenue. In particular, she is concerned that an increase in traffic on Howard Avenue will make it more difficult and dangerous for farm vehicles using Howard Avenue. This concern was also raised by Julien Papineau, President of the Essex County Federation of Agriculture. There was no evidence to suggest that Howard Avenue is operating such that it cannot accommodate the existing traffic nor was there any evidence to suggest that the addition of the golf course would alter the existing situation such that a traffic study would be required.

Timothy Stratichuk owns the farm parcel to the south of the Property, adjacent to Camp Bryerswood. He is concerned with golf balls landing on his property and damaging his crops. Again, the Board is satisfied that this can be dealt with through the site plan process.

Mr. Stratichuk raises two other concerns. Firstly, he is in the process of flushing his land so that he may use it for organic crops. He is concerned with the pesticides and fertilizers used on the golf course and that these may travel to his farm and impede his efforts for organic certification. This concern was also raised by Mr. Papineau. Secondly he would like to establish a sheep operation on the property and has concerns with the MDS requirements. This was also raised by Gayle Bogart from the Ontario Federation of Agriculture. It was noted at the hearing, that despite his participation in the process, it was not until this hearing that Mr. Stratichuk raised either of these issues.

Mr. Papineau spoke at some length about the use of pesticides and fertilizers in farm operations. He discussed the risks associated with them including the danger or harm to the users, crops, adjoining lands and the environment. The use of these products is carefully regulated. Proper training is required. Care must be used in their application. Mr. Stratichuk and Mr. Papineau both acknowledge that they are confident that good farmers will use these products properly. They express some doubt that a golf course operator may not but offered nothing to substantiate this view. To his credit, Mr. Papineau noted that farmers have a greater variety of products to chose from, than do