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To: Mayor and Council

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Re: Shipping Container Regulations - Present

Aim

To provide Council with information on the current regulations in place for shipping containers in other communities across Essex County.

Background

At the June 25, 2016 Council meeting administration was directed to review the current regulations for shipping containers in other Essex County communities. The basis of the direction was the result of two items:

- 1) a property owner seeking approval of a site plan amendment to permit the development of an outdoor storage area for several shipping containers to be utilized as storage for his disaster restoration business, and
- 2) presentation of a report by the Chief Building Official on shipping containers and several issues of concern related to, negative aesthetics, lack of building permits or any building code review, are not subject to municipal property assessment, and fire safety.

Discussion

The report presented by the CBO was accurate and raises many of the same issues raised in reviewing the information for this report and the situation at 60 Wile, however it is also important to keep in mind the context of the report which was to reinforce the continued prohibition of shipping containers in residential and commercial zones. With Council's direction and endorsement of this report is helped to bolster enforcement of the existing regulations within these zones.

What the report did not directly address was the issue that shipping containers are indirectly permitted in a zone which permits outdoor storage. Outdoor storage is permitted in industrial zones including the M1, M2, and M3 and the Agricultural zones both A1 and A2. In these zones shipping containers are typically being used for storage or for their intended use as a

mode of shipping product either in or out. They do serve a purpose, the issue is where you locate and how you are permitted to use a shipping container. Complete prohibition on shipping containers could have a negative impact on certain local industry however very clear regulations need to be developed to address the where and how in order to mitigate impact on the Town as a whole and on abutting uses, particularly residential. Things such as surface treatment, density (total number permitted on a lot dependent on size), safety aspects re: fire, requirement of foundations, issuance of permits and treatment as structures can be incorporated into zoning and implemented through site plan control.

The fire safety aspect of the CBO's report was something that raised a particular degree of concern at Council as well it should. However, it is important to note that all structures pose a degree of unknown risk as what is behind a closed door is often unknown to first responders. Since the risk factor of a shipping container and its potential contents are documented it is something that could be addressed through appropriate zoning regulations or through the Building Code if they are treated as structures.

Shipping container use and regulation is not a particularly new item and research of the issue notes that 10 to 15 years ago it was becoming an item that many municipalities had to review as they had either no regulations or unclear regulations. In reviewing the seven local communities in Essex County it came as a rather unpleasant surprise that specific regulation for shipping containers or their use was limited. (See Table 1 for details) Part of this can be attributed to the use of a common clause in many of the by-laws which notes that uses not listed or not defined are generally not permitted. *"Uses not listed as permitted uses in a zone or defined area in this By-law shall be prohibited in such zone or defined area."* Unfortunately this blanket type of assumed prohibition can often be challenged as the shipping container itself is not really considered a "use". On the other hand the storage of shipping containers would be considered a "use." The other approach is to treat the containers as a temporary use and regulate through existing provisions in that by-law. Expanding the review of the communities was moderately more productive but even those communities that had directly addressed shipping containers had primarily focused on temporary regulation in residential zones as this was the problematic area.

TABLE 1

| Community | Regulations | Defined in Zoning By-law | Specifically Prohibited | Outdoor Storage Setback |
|------------------|--|---------------------------------|---|---|
| Kingsville | Indirectly as part of outdoor storage & fence by-law | No | Yes – but only in zones which do not permit outdoor storage | 7.5 m |
| Leamington | Indirect – regulated as a temporary bldg. | No | No | No |
| Lakeshore | Yes but only in residential zones | No | Yes – in or abutting residential zones | Based on required side yard or rear yard requirements |
| Essex | No | No | No | 50 m |
| Amherstburg | No | No | No | 15 m |
| Tecumseh | No | No | No | 18 m |
| Lasalle | No | No | No | 3 m |
| Windsor | Yes but only in residential zones | Yes | No | 3 m |

Kingsville in this regard is one of the more progressive communities in that the use of shipping containers is directly addressed however, it is agreed that there is potential for improvement to the current regulations as they are somewhat fragmented. The current regulations prohibit shipping containers in all zones, unless outdoor storage is permitted, so then we look to the outdoor storage regulations in the by-law, which then require inclusion on an approved site plan, except in Agricultural zones. Finally we also need to consider the Fence By-law as it also factors into the equation in terms of type and height of any required fencing/screening.

Shipping container use in Agricultural areas, to date has not presented any significant issues. Use in industrial areas is not particularly widespread however improvements in the clarity of the current regulations, to safeguard ongoing and future use, are important.

1) Provincial Policy Statement (PPS), 2014:

There are no issues of Provincial significance raised by the status report.

2) Official Plan

If it is assumed, for the purpose of this report, that shipping containers should be considered an accessory industrial or agricultural use then any potential changes to the zoning regulations would need to be in compliance with both the industrial and agriculture designations.

3) Comprehensive Zoning By-law

Based on the review of local zoning by-laws and a wider review of other municipal by-laws it has become clear that shipping container regulations are not commonly found and even in those by-laws with shipping container regulations they are most often directed toward the prohibition or limitation within residential areas. The current regulations in the Kingsville Zoning By-law prohibit shipping containers unless outdoor storage is permitted within a particular zoning classification. A1 and A2 Agricultural and M1, M2 and M3 Industrial all permit outdoor storage. Outdoor storage itself is also regulated which outlines the particulars including setbacks, height, lot coverage and location in areas abutting residential zones. Site plan control also plays a role in that outdoor storage areas have to be indicated on approved plans and any fencing over 1.8 m (6 ft.) in height must be shown on an approved site plan drawing.

It is not uncommon for there to be more than one section in a by-law regulating a particular use. With that said, is there a need to refine or clarify the regulations for shipping containers in a specific standalone section of the by-law? If that is the direction that Council is seeking I would suggest different options in moving forward.

Option 1

Immediate housekeeping amendment to address only shipping container regulations

Comment: This would be a full review of the regulations with an amending by-law to outline specific regulations for shipping containers with no cross regulation by other sections of the Zoning By-law. All necessary provisions for shipping containers would be outlined in one new section of the by-law. In addition shipping containers used as permanent storage would be treated at structures and subject to the Building Code and applicable zoning regulations.

Option 2

Housekeeping Version II

Comment: Since the Comprehensive Housekeeping By-law was approved by Council in February of 2016 a number of additional minor items have been identified that should be addressed in a future housekeeping amendment. Shipping container regulations could be amended at that time either in the same fashion as Option 1 or as the less involved manner under Option 3.

Option 3

Amendment/Clarification of existing regulations

Comment: This option would simply rework and clarify any issues of concern with the current format with the possible addition of added provisions if deemed necessary.

Option 4

Status Quo

Comment: Based on the review of other municipalities this is a viable option as there are regulations in the existing Zoning By-law which do not foster the widespread, unregulated placement of shipping containers. This affords the time to review, consult and develop regulations that consider a comprehensive approach to regulation.

Public Consultations

As required under the Planning Act any amendment to the zoning by-law will require public notice. The extent of public consultation on the issue at hand would be dependent on the option chosen. Option 1 would potentially need a more direct consultation with potential stakeholders while Option 4 requires no input.

Ontario Building Code (OBC)

The OBC has not definitively defined shipping containers as structures in certain circumstances including shipping containers being used individually as an accessory structure, collectively for storage or used to form the walls of a larger structure. The OBC has however been clear that shipping containers used to form a dwelling are structures and must comply with the Code. The OBC does include wording under the definition section of the Code that does allow for some leeway in what is defined as a building or structure. If the Town is comfortable with taking the position that shipping containers used for purposes other than short-term storage or the shipping of goods then it is possible for the Building Department to require permits adding an additional layer of regulation to shipping container use and placement within the Town.

External & Administrative Consultations

The draft report was circulated to Managers for comment and discussed at the bi-weekly Managers meeting. Consultation with the seven Essex County communities and associated planners was undertaken and included a review of their zoning by-laws, consultation with all of the planners via e-mail in terms of existing or potential regulations related to shipping containers. There was also a comment made at the July 25 Council meeting by the planner for the neighbouring property owner regarding regulations being developed by other Essex County communities. In consultation with the other communities the only recent new regulation was in Windsor to address shipping container use in residential areas.

Link to the Strategic Plan

N/A

Financial Implications

Amendment of the Zoning By-law involves varying amounts of staff time to research and develop which takes time away from other projects however does not result in a direct cost. Comprehensive amendment to the By-law does require a community wide notice which includes advertisement in the three local papers both for the notice of public meeting and notice of passing. This typically costs approximately \$2,300 which would apply to three of the four options however option 2 would include other necessary amendments making this option the most cost effective.

As noted in earlier reports to Council shipping containers are not considered structures, do not require permits and are not included in the MPAC assessment of a property. However, if the direction is to consider and treat shipping containers used as permanent storage as structures then there would be the potential for inclusion in property assessment which would be triggered by the permitting process. Consultation has been undertaken with MPAC to determine if they have had any experience with valuation of shipping containers used as or considered as structures.

Recommendations

It is recommended that Council:

- 1) Direct administration to undertake review of the current shipping container regulations and make any necessary draft revisions consistent with Option 2 of this report and present said draft revisions to Council for consideration, and
- 2) Direct administration to undertake public consultation specific to shipping container use in the Town of Kingsville and provide such details along with the draft regulations.

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