

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 01, 2017

CASE NO(S): PL160749

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Anthony Tannous
Subject:	By-law No. 64-2016
Municipality:	Town of Kingsville
OMB Case No.:	PL160749
OMB File No.:	PL160749
OMB Case Name:	Tannous v. Kingsville (Town)

Heard: April 19, 2017 in Kingsville, Ontario

APPEARANCES:

Parties

Counsel

Anthony Tannous	A. Patton
Alfred and Lori Sauve	T. Sims
Town of Kingsville	D. Halliwill

DECISION DELIVERED BY S. JACOBS AND ORDER OF THE BOARD

INTRODUCTION

[1] Alfred and Lori Sauve operate an automobile repair business on their property located at 1319 Road 2 West in Kingsville (the “subject property”). The Town of Kingsville permitted the use of the Sauves’ property for the automobile repair business through a temporary use by-law for a period of one year, and subsequently

passed Zoning By-law No. 64-2016, an amendment to the Town's Zoning By-law (the "ZBA"), to permit the automobile repair business on a permanent basis. Anthony Tannous appealed the Town's passing of the ZBA to the Ontario Municipal Board (the "Board"), pursuant to s. 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (the "Act").

[2] The Board heard evidence from Karl Tanner and Robert Brown, both qualified to provide opinion evidence in the area of land use planning. Mr. Tanner testified in support of the appeal, while Mr. Brown testified in support of the ZBA. The Board also heard evidence from Mr. Sauve and three area residents in support of the ZBA—Christopher Lewis, David Kendrick, and Casey Versnel—who are also customers of the Sauves.

The Subject Property

[3] The subject property is located in an agricultural area, on the south side of Road 2 West, between County Road 23 and McCain Sideroad. It is 4,047 square metres ("sq m") in area and contains the Sauvé's single detached dwelling, personal garage, and auto repair shop, which operates in a 225 sq m building located at the rear of the property.

[4] While designated Agricultural in both the Town's Official Plan ("OP") and Zoning By-law ("ZBL"), the property, by all accounts, is primarily residential in use.

The Proposed ZBA

[5] The ZBA before the Board would create an exception in the Agricultural Zone such that the definition of home industry, as it applies to the subject property, would be expanded to include an automobile repair establishment. The Town's Zoning By-law defines 'automobile repair establishment' in s. 3.1.24:

Automobile Repair Establishment: *shall* mean an establishment for the repair or the replacement of parts in a motor *vehicle* and, without limiting the generality of the foregoing, includes the repair, replacement or reconditioning of mufflers, exhaust systems, shock absorbers, transmissions, gears, brakes, clutch assemblies, steering assemblies, radiators, heating or cooling systems, ignition systems, electrical systems, the installation of undercoating, engine turning, lubrication and engine conversion or replacement, a *vehicle body repair shop*, but does not include an automobile impounding *yard*, or an *automobile service station*.

[6] The ZBA limits the size of the establishment to 225 sq m and prohibits automobile body repair as well as storage of unplated or derelict vehicles. The Board notes that Mr. Sauve indicated that approximately 35 per cent of his business is repairing farm machinery, while the remaining 65 per cent is servicing other automobiles.

ISSUES AND ANALYSIS

[7] When considering a proposed ZBA, the Board must determine whether the ZBA is consistent with the Provincial Policy Statement, 2014 (the “PPS”), conforms with the OP (upper- and lower-tier, in this case), and whether the ZBA would result in any unacceptable adverse impacts. The Board heard no evidence to indicate that the Sauves’ business has caused any unacceptable adverse impacts; on the contrary, the area residents, including one immediate neighbour, who testified were quite supportive of the business in its current location. The issues in this case, rather, centre on the policy framework as set out in the PPS and the Town and County of Essex (the “County”) OPs.

I. Consistency with the PPS

[8] The subject property is in a prime agricultural area, as is the entire Town, as Mr. Brown pointed out. While the PPS is clear, in policy 2.3.1, that prime agricultural areas “shall be protected for long-term use for agriculture,” it does allow for limited farm-related uses in these areas:

2.3.3 Permitted Uses

2.3.3.1 In *prime agricultural areas*, permitted uses and activities are: *agricultural uses*, *agriculture-related uses* and *on-farm diversified uses*.

[9] There is no debate that an automobile repair establishment, as defined in s. 3.1.24 of the Town's Zoning By-law and modified by the ZBA, is not an agricultural use, agricultural-related use, or on-farm diversified use as defined in the PPS:

Agricultural uses:

means the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

...

Agriculture-related uses:

means those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

On-farm diversified uses:

means uses that are secondary to the principal agricultural use of the property, and are limited in area. *On-farm diversified uses* include, but are not limited to, home occupations, home industries, *agri-tourism uses*, and uses that produce value-added agricultural products.

[10] The Board notes that 'primary' activity, as referenced in the definition for 'Agriculture-related uses', does not necessarily require the majority of business activity to be farm-related. In this case, however, there is no evidence to indicate that the farm-related component of the Sauves' business (i.e., farm machinery repair) is a primary activity.

[11] The PPS, however, contemplates non-agricultural uses in prime agricultural areas in policy 2.3.6:

2.3.6 Non-Agricultural Uses in Prime Agricultural Areas

- 2.3.6.1 Planning authorities may only permit non-agricultural uses in *prime agricultural areas* for:
- a. extraction of *minerals, petroleum resources* and *mineral aggregate resources*, in accordance with policies 2.4 and 2.5; or
 - b. limited non-residential uses, provided that all of the following are demonstrated:
 - 1. the land does not comprise a *specialty crop area*;
 - 2. the proposed use complies with the *minimum distance separation formulae*;
 - 3. **there is an identified need within the planning horizon provided for in policy 1.1.2 for additional land to be designated to accommodate the proposed use; and**
 - 4. alternative locations have been evaluated, and
 - i. there are no reasonable alternative locations which avoid *prime agricultural areas*; and
 - ii. there are no reasonable alternative locations in *prime agricultural areas* with lower priority agricultural lands. [Emphasis added].

[12] In Mr. Tanner's opinion, the ZBA is not consistent with the PPS due to policy 2.3.6.1(b)(3), in particular. It is his opinion that there is sufficient land available in existing commercial and settlement areas in the Town for an automobile repair establishment, and therefore there is not an identified need for additional land to justify such a use on the subject property. Mr. Brown did not dispute this, however, he did note that the PPS is to be read in its entirety, and referred the Board, generally, to the policies that promote compact development and reduced vehicle use. In his opinion, there has been a shift to more regional businesses serving agricultural areas, causing an increase in vehicular travel. The Board heard this concern echoed by Mr. Versnel and Mr. Kendrick, who appreciate the short travel distance involved in bringing their farm equipment to the Sauves' for repair.

[13] The Board agrees that there are benefits to locating a farm machinery repair business in an agricultural area; in fact, such a use could easily fit within the defined permitted uses in s. 2.3.3 of the PPS. However, a farm machinery repair business is not the use before the Board in the proposed ZBA. The proposed ZBA permits an automobile repair establishment and, as noted earlier, this accurately reflects the majority of the Sauves' business. The Board therefore must be able to find

consistency with s. 2.3.6 to permit a non-farm related use in a prime agricultural area. While neither Mr. Tanner nor Mr. Brown conducted a comprehensive evaluation of all land available in the Town for an automobile repair establishment, the Board certainly heard no evidence of there being an identified need in the Town for additional land to be designated for such a use, as required by s. 2.3.6.1(b)(3).

[14] The Board also cannot accept Mr. Brown's contention that policy 2.3.6 is only meant to apply to land that is currently being used for agricultural and is proposed to be removed from agricultural use. While the Board agrees that this small property is not, and likely has not for many years, been farmed, it cannot ignore the direction of the PPS. The PPS defines prime agricultural areas based on soil classifications; all parties agree that this is prime agricultural land. The definition is not qualified by whether the property actually is being used for agricultural; rather, the policy direction of the PPS is to protect such land for the long-term, subject to limited exceptions in policy 2.3.6, which have not been established here.

[15] The Board therefore finds that the proposed ZBA is not consistent with the PPS.

II. Conformity with the OP

[16] While it is not necessary for the Board to address conformity with the OP, having found the ZBA is not consistent with the PPS, there was discussion at the hearing as to whether this application would also require an amendment to the OP. The Board will therefore address the evidence it heard regarding the County and Town OPs.

[17] The County, the upper-tier municipality, sets out policies for the protection of agriculture similar to what is found in the PPS. The County OP permits secondary uses in agricultural areas, which "may include, but are not limited to home occupations, home industries, and uses that produce value-added agricultural

products from the farm operation on the property.” While the County OP defines and sets limitations on home industries, it directs local municipalities to define specific criteria for secondary uses in their OPs.

[18] The Town’s OP acknowledges that all land in the Town is prime agricultural land as defined by the PPS and notes the importance of protecting such land in s. 3.1:

The purpose of the goals and policies of this Section are to protect prime agriculture lands for agricultural purposes while acknowledging that this community will continue to grow and prosper in an orderly and responsible manner. It is acknowledged that all of the land in the Town of Kingsville is prime agricultural land in accordance with Provincial Policy and accordingly, development in this area is strictly controlled and monitored.

The OP reiterates the goals of preserving prime agricultural land for agricultural purposes in s. 3.1(a) and restricting the type and amount of non-farm development in agricultural areas in s. 3.1(c).

[19] With these goals in mind, s. 3.1 of the OP establishes specific policies relating to the use of agricultural land:

Policies

The following policies shall apply to those lands designated “Agriculture” on Schedule “A” of this Plan:

- a) the predominant use of land shall be agricultural and associated uses, including growing of crops and raising livestock, forestry and conservation uses;
...
- g) small scale farm occupations, which are secondary to the farm operation and home occupations carried out for remuneration and as defined in the Zoning By-law, are permitted in the “Agriculture” designation;
- h) small scale commercial and dry industrial uses, as defined in the Zoning By-law, directly related to the farm occupation and that are required in close proximity to the farm operation and would include processing agricultural goods or servicing agricultural equipment or operations, will be permitted to locate along County Roads in areas, designated “Agriculture” subject to an amendment to the Zoning By-law. The by-law amendment will establish adequate setback and buffering requirements to ensure that any potential incompatibilities with surrounding uses are minimized;

[20] In Mr. Brown's opinion, the ZBA, which expands the definition of home industry to include an auto repair establishment, conforms with the OP, specifically policy 3.1(h), above. The Board must disagree, as it concurs with Mr. Tanner's opinion that the policy relates only to small scale industry that is "directly related to the farm occupation and that are required in close proximity to the farm operation." The Board also notes that the policy allows for such uses along County Roads, and Road 2 West, where the subject property is located, appears to be designated a Municipal Road as per Schedule "E" of the OP. Nowhere in s. 3.1 can the Board find a policy that addresses a use similar to the proposed automobile repair establishment. The Board therefore finds that the ZBA does not conform with the Town's OP.

CONCLUSION

[21] Having found that the ZBA is not consistent with the PPS and does not conform with the Town's OP, the Board will allow the appeal. It may be, as Mr. Tanner suggested, that the Sauves will require an Official Plan Amendment to allow their desired use, though the Board reiterates its findings with regard to the PPS, above. The Board is mindful of the comments of Mr. Brown and the residents who testified in support of the ZBA regarding the importance of having farm-related businesses located in agricultural areas, and agrees that the farm machinery repair component of the Sauves' business is fulfilling a need in the area. However, the Board cannot find the proposed ZBA, which allows the much broader use of an automobile repair establishment, to be consistent with the PPS or in conformity with the OP.

ORDER

[22] The Board orders that the appeal against By-law No. 64-2016 of the Town of Kingsville is allowed and the By-law is hereby repealed.

"S. Jacobs"

S. JACOBS
MEMBER

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Ontario Municipal Board

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