

By-law Number 18-2016

Corporation of the Municipality of Chatham-Kent

Being a By-law to designate the Municipality of Chatham-Kent as a Site Plan Control Area pursuant to Section 41 of the Planning Act R.S.O. 1990, as amended

Finally Passed the 7th day of March, 2016

Whereas Section 41 of the *Planning Act* R.S.O. 1990, as amended, provides that where an area is described in the Municipality's Official Plan as a Site Plan Control Area, Council may, by By-law, designate such area as a Site Plan Control Area;

And Whereas the Official Plan for the Municipality of Chatham-Kent identifies lands in the entire Municipality as a Site Plan Control Area;

And Whereas Section 41 (13) of the *Planning Act* R.S.O. 1990, as amended authorizes Council to (a) define any class or classes of Development that may be undertaken without the approval of plans and drawings otherwise required under subsection 41(4) or 41(5); and (b) delegate to either a committee of the Council or to an appointed officer of the Municipality any of the Council's powers or authority under Section 41, except the authority to define any class or classes of Development as mentioned in clause 41 (13);

And Whereas Council deems it advisable to exempt certain classes of Development from Site Plan control, and further to delegate certain powers and authority to an appointed officer of the Municipality.

Now Therefore the Council of the Municipality of Chatham-Kent enacts as follows:

1. DEFINITIONS

In this By-law:

“Act” means the *Planning Act, R.S.O. 1990* as amended from time to time.

“Agricultural Uses” means the growing of crops, including nursery, biomass, mushrooms 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, greenhouses, 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. For the purposes of this by-law, a winery located on lands designated Agriculture in the Municipality's Official Plan will be considered an Agriculture-Related Use;

“Applicant” means the Owner of the property that is the subject of Site Plan approval or the person who is authorized in writing by the Owner to make an application for Site

Plan approval. Authorization is provided through declaration on the application form, which has been provided by the Municipality;

“Chief Building Official” means the Chief Building Official of the Municipality appointed pursuant to the *Ontario Building Code Act*;

“Conservation” means the management of natural resources for the protection and improvement of the resource to prevent exploitation, destruction or neglect;

“Council” means the Council of the Municipality;

“Development” means the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a parking lot or of sites for the location of three or more Trailers, or of sites for the location of three or more mobile homes as defined in the Zoning By-law, or of sites for the construction, erection or location of three or more land lease community homes as defined in the Act, but does not include the placement of a portable classroom on a school site of a district school board if the school site was in existence on January 1, 2007;

“Director of Planning Services” means the Director of Planning Services of the Municipality;

“Municipality” means the Corporation of the Municipality of Chatham-Kent;

“Municipal Engineer” means the Director of Engineering employed by the Municipality;

“Owner” means a person(s), corporation(s) or partnership who is the registered Owner of the relevant property, as recorded in the local registry office;

“Site Plan” means those plans and/or drawings as contemplated by subsection 41 (4) of the Act;

“Technical Advisory Committee” means a working group made up of Municipality staff or consultants that provides review and comment of a technical nature about an application for approval under this by-law;

“Trailer” means any vehicle constructed to be attached to and propelled by a motor vehicle for the transport of equipment, goods and materials, and includes a *trailer* that is capable of being used by persons for living, sleeping or eating, even if the vehicle’s running gear is removed, excluding a mobile home as defined in the Zoning By-law;

“Zoning By-law” means By-law No. 216-2009 of the Municipality and any successors thereto.

2. Interpretation

2.1. The requirements of this By-law are in addition to requirements contained in any other applicable by-laws of the Municipality or applicable provincial or federal statutes or regulations.

2.2. This By-law shall not be construed so as to reduce or mitigate any restrictions or regulations lawfully imposed by the Municipality or by any governmental authority having jurisdiction to make such restrictions or regulations.

2.3. Nothing in this By-law or in any Site Plan agreement entered into hereunder shall be construed as relieving any Owner of lands within the Site Plan control area from the obligation of complying fully with the provisions of the Zoning By-law, nor shall the Zoning By-law be construed so as to reduce or mitigate any restrictions or regulations lawfully imposed hereby.

3. Scope of By-law

3.1. The provisions of this By-law shall apply to all lands within the Municipality which are hereby designated as constituting a Site Plan control area pursuant to Section 41 of the Act.

4. Exemptions

4.1. The following classes of Development are hereby exempted from Site Plan control and may be undertaken without the approval of plans and drawings otherwise required under Section 5 hereof:

- (a) Single detached dwellings, duplex dwellings, semi-detached dwellings, and a garden suite, accessory buildings or an accessory residential dwelling unit related to these residential uses as defined in the Municipality's Zoning By-law;
- (b) Street row houses that have all of the following characteristics:
 - i. contains three (3) or more dwelling units, as defined in the Zoning By-law, whereby each dwelling unit is divided one from the other by an above grade vertical common wall;
 - ii. each dwelling unit fronts onto an open public road;
 - iii. each dwelling unit is a self-contained unit that could be considered for freehold tenure; and
 - iv. each row house may or may not contain an accessory residential dwelling unit.
- (c) Buildings and structures for Agricultural Uses and accessory buildings, structures and uses to these Agricultural Uses, excepting that this exemption shall not apply to large scale greenhouses as defined in the Zoning By-law, or mushroom production facilities. For the purposes of clarity:
 - i. an accessory use may include a home occupation or home industry, as defined in the Zoning By-law or an agri-tourism use as defined in the Provincial Policy Statement, provided that such use is clearly secondary and subordinate to the Agricultural Uses;
 - ii. Agriculture-Related Uses are not exempted from Site Plan control or the provisions of this by-law whether or not they are located on a farm or on a separately held parcel.
- (d) Site alteration where the conversion of vegetated or bare soil area to hard cover (gravel, paving, buildings) results in an increase of less than twenty percent (20%), calculated as the cumulative increase on the site since August 8th, 2000;

- (e) Additions to buildings or structures that do not exceed twenty percent (20%) of the existing gross floor area as defined in the Zoning By-law of said building up to a maximum of 500m², calculated as the cumulative area of all additions to said building since August 8, 2000;
- (f) Underground storage tanks and septic systems;
- (g) Tents, marquees, trailers and similar temporary structures to be erected for a period not exceeding 120 consecutive days;
- (h) Buildings or structures, and additions or alterations to buildings and structures, that are used for the purpose of enclosing staircases, passageways, entrances, porches, verandahs and similar structures; and mechanical equipment that is incidental or accessory to the main use;
- (i) Buildings and structures used for flood control, and preservation or Conservation of natural resources that are the result of an order, an approval or specific advisement of a Conservation Authority; or
- (j) Any addition required in order to comply with the *Fire Protection and Prevention Act* S.O. 1997, as amended.

5. Requirements for Site Plan Approval

5.1. No person shall undertake any Development, and no building permit shall be issued for any Development, within the Municipality's Site Plan Control Area unless Council or its delegate under Section 6.2 of this by-law has first approved, in writing, one or both of the following:

- (a) Plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works required under Section 41 (7) (a) of the Act, as amended from time to time, which at the time of passing this by-law are;
 - i. Widening of highways that abut on the land;
 - ii. Subject to the *Public Transportation and Highway Improvement Act*, facilities to provide access to and from the land such as access ramps and curbs and traffic direction signs;
 - iii. Off-street vehicular loading and parking facilities, either covered or uncovered, access driveways, including driveways for emergency vehicles, and the surfacing of such areas and driveways;
 - iv. Walkways and walkway ramps, including the surfacing thereof, and all other means of pedestrian access;
 - v. Facilities designed to have regard for accessibility for persons with disabilities;
 - vi. Facilities for the lighting, including floodlighting, of the land or of any buildings or structures thereon;
 - vii. Walls, fences hedges, trees, shrubs or other groundcover or facilities for the landscaping of the lands or the protection of adjoining lands;

- viii. Vaults, central storage and collection areas and other facilities and enclosures for the storage of garbage and other wastes material;
 - ix. Easements conveyed to the Municipality for the construction, maintenance or improvement of watercourse, ditches, land drainage works, sanitary sewage facilities and other public utilities of the Municipality or local board thereof on the land;
 - x. Grading or alteration in elevation or contour of the land and provision for the disposal of storm, surface and waste water from the land and from any buildings or structures thereon;
 - xi. Fire hydrants on the subject property and/or the closest fire hydrant(s) to the subject property.
- (b) Drawings showing plan, elevation and cross-section views for each building to be erected, that are drawings are sufficient to display:
- i. the massing and conceptual design of the proposed building;
 - ii. the relationship of the proposed building to adjacent buildings, streets, and exterior areas to which members of the public have access; and
 - iii. the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings,
 - iv. matters related to exterior design, including without limitation, the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design;
 - v. the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation, trees shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities; and
 - vi. facilities designed to have regard for accessibility for persons with disabilities.

5.2. Plans and Drawing Requirements

Plans and Drawings submitted in accordance with this By-law or under any Site Plan agreement are subject to the following:

5.2.1. Plans and Drawings may exclude the layout and design of interior areas, other than the interior walkways, stairs, elevators and escalators referred to in clause 5.1 (b) iii.

5.2.2. Plans and Drawings may exclude the manner of construction and standards for construction

5.2.3. All Drawings and Plans shall be submitted in a manner and a scale to show with clarity and accuracy all buildings, structures, facilities and works described in Section 5.1(a)

5.3. The Municipality may require an Owner or Applicant to produce studies, plans and calculations that validate the location, dimensions and nature of the buildings, structures, facilities and works proposed in Site Plans or drawings.

- (a) Such studies plans and calculations shall be completed by a qualified professional; and
- (b) The cost of any required studies, plans and calculations will be the responsibility of the Owner.

6. Site Plan Procedures Review and Approval

6.1. Site Plan Application Review

6.1.1. Pre-Consultation

Pursuant to subsection 41 (3.1) of the Act, Applicants are required to consult with the Municipality prior to submitting plans and drawings for approval.

6.1.2. Technical Advisory Committee

All Plans submitted in accordance with this By-law or under any Site Plan agreement required shall be reviewed by the Technical Advisory Committee and comments resulting from said review shall be provided in writing to the Director of Planning Services, the Owner and/or the Applicant.

6.1.3. Review of Site Plan

- (a) Site Plan review shall be coordinated by the Municipality's Planning Services under the direction of the Director of Planning Services.
- (b) A determination of forms and documents that may constitute a complete application will be at the discretion of the Director of Planning Services.

6.2. Site Plan Approval

6.2.1. Delegation of Site Plan Approval

For the purposes of this By-law, 'delegation' includes: approval of Site Plans; the imposing of conditions; and the approval of Site Plan control agreements and amendments thereto. The powers and authority given to Council under Section 41 of the Act, are hereby delegated to the Director of Planning Services for Site Plan Developments with an estimated construction budget of two million dollars (\$2,000,000) or less.

6.2.2. General Provisions of Delegation

The exercise of the powers, authority or appointment delegated in this By-law are subject to the following:

- (a) The Director of Planning Services shall provide a decision, in writing, to the Owner and/or Applicant, in respect of the application that is either:
 - i. Approval;
 - ii. Approval with Conditions; or
 - iii. Refusal.
- (b) The Director of Planning Services shall approve the plans and drawings referred to in Section 41 (4) of the Act except where, in the opinion of

the appointed delegate the proposed buildings, structures, facilities and works shown on the plans and drawings are not consistent with the Provincial Policy Statement, the Official Plan of the Municipality, and other policy and By-laws approved by Council, including but not limited to, the Zoning By-law.

- (c) The Director of Planning Services, may request that Council consider any given Site Plan application for approval.

6.2.3. Conditions of Site Plan Approval

As a condition to the approval of any plans and/or drawings referred to in Section 5, the Director of Planning Services may require that the Owner of the lands:

- (a) provide at no cost to the Municipality, any or all of the facilities and works required under Section 41 (7) (a) of the Act and listed in Section 5.1 (a) of this By-law;
- (b) Maintain to the satisfaction of the Municipality and at the sole risk and expense of the Owner any or all of the facilities or works mentioned in Section 5.1 (a) including the removal of snow from access ramps and driveways, parking and loading areas and walkways;
- (c) Enter into one or more agreements with the Municipality dealing with and ensuring the provision of any or all of the facilities, works or matters mentioned in Section 5.1 of the by-law or with the provision and approval of the plans and drawings referred to in Section 6 of this by-law
- (d) Enter into one or more agreements with the Municipality ensuring that Development proceeds in accordance with the approved plans and drawings
- (e) Convey part of the land to the Municipality to the satisfaction of and at no expense to the Municipality for a public transit right of way.

6.2.4. Appeals

Pursuant to Subsection (12) of the Act an appeal related to a decision, timing of a decision, or terms and requirements of any approval or agreement may be filed in accordance with the Act.

6.3. Fees

6.3.1. A fee for the review and approval of a Site Plan application is established by the Municipality through the User Fees By-law No. 28-2015 and any successors thereto.

6.3.2. Additional fees may be collected by the Municipality as reimbursement for the Municipality's costs for additional professional assistance, legal or otherwise incurred during the review of the Site Plan application. Owners and/or Applicants will provide acknowledgment of this reimbursement

through declaration on the application form, which has been provided by the Municipality.

6.3.3. Fees referred to in this section are non-refundable.

7. Administration of Approved Site Plans

7.1. Site Plan Agreements

7.1.1. Site Plan agreements entered into as a condition of Site Plan approval between the Owner and the Municipality, shall be in a registerable form and at the option of the Municipality may be registered against the land to which it applies, all at the expense of the Owner.

7.1.2. The Municipality may enforce the provisions of a Site Plan agreement against the Owner of the lands in respect of which such Site Plan agreement was entered into by the Municipality and, subject to the provision of the *Registry Act* and the *Land Titles Act* R.S.O 1990, and any and all subsequent Owners of the said lands

7.2. Site Plan Amendments

7.2.1. Notwithstanding any other provisions to the contrary, the Director of Planning Services shall be authorized to approve changes to the approved plans attached to a Site Plan agreement, where requested by the Owner of the lands in respect of which the said Site Plan agreement has been entered into by the Municipality. Such changes shall only be approved where they are considered by the Director of Planning Services and *the* Chief Building Official to be minor, which is determined in accordance with all of the following:

- (a) The amendment does not significantly alter:
 - i. The location, size or height of any buildings and structures;
 - ii. The design and appearance of the Development; and
 - iii. The location or function of any works required under Subsection (7) (a) of Section 41 of the Act.
- (b) There is no amendment to the Site Plan agreement;
- (c) There is no amendment to any conditions of the Site Plan approval; and
- (d) There is no change in the level of municipal servicing required by the Development.

7.3. Securities

7.3.1. Where a Site Plan agreement has been entered into, the Municipality may require that the Owner provide financial security to ensure the satisfactory completion of certain works required by the Agreement and approved plans listed therein. Securities shall be calculated and collected as follows:

- (a) The amount of securities shall be determined by the Municipality and be based on estimates of the works to be completed.
- (b) Prior to the issuance of a building permit securities will be collected that are equal to 100 percent of the estimated costs of structures, facilities and works to be completed on land owned by the Municipality.
- (c) Prior to the issuance of an occupancy permit securities will be collected that are equal to 100 of the estimated costs of any unfinished works the Municipality deems necessary that are within the site and have been identified in approved plans, approved drawings and the Agreement .

7.3.2. Securities will be presented to the Municipality as an irrevocable letter of credit, cash or cheque to the satisfaction of the Municipality.

7.4. Release

7.4.1. The value of the any remaining security plus any accrued interest deemed necessary by the Municipality shall be repaid to the Owner when, in the opinion of the Municipality all the terms and conditions of the Site Plan agreement have been fulfilled.

7.4.2. It shall be the responsibility of the Director of Planning Services to have discretion on the completeness of terms and conditions of the Agreement.

7.5. Rights of entry

Unless prohibited by law, the Owner signing each Site Plan agreement shall be required to agree to a provision whereby the Director of Planning Services, the Chief Building Official, or other person to whom the Director of Planning Services delegates the responsibility, may enter on land subject to the agreement to inspect same for compliance with the Agreement. Nothing in this provision authorizes the entry into any building. The right of entry described in this section is in addition to any statutory rights of entry the Municipality may otherwise specifically have.

7.6. Compliance and Enforcement

7.6.1. Concordance with Procedures

The provision of required facilities, works or matters shall be in accordance with the approved Site Plan and Site Plan Agreement.

7.6.2. Conformity to Plans

All buildings, structures, facilities and works shown on any Site Plans or drawings approved by the Municipality and attached to and forming part of a Site Plan agreement shall be provided, erected, constructed, used and maintained in good repair in accordance with such plans at the sole risk and expense of the Owner of the lands.

7.6.3. Failure to Comply

In the event that an Owner of lands in respect of which a Site Plan agreement was entered into, fails to comply with any of the provisions of such Site Plan agreement, then the Director of Planning Services may take any or all of the following steps:

- (a) Completion, to its satisfaction, any work required by the said Site Plan agreement;
- (b) Apply all or any portion of the money deposited by the Owner with the Municipality in accordance with Subsection 7.3 hereof towards the payment of costs and expenses for the completion of any works required by the Site Plan agreement on land owned by the Municipality; and/or
- (c) Collect reimbursement from the Owner, in a like manner as municipal taxes, any expenses paid by the Municipality to complete works, left uncompleted by the Owner, where said works are referred to in the Site Plans, drawings or agreement and located on the Owner's lands and necessary for the function of the related works on the Municipality's lands.

7.7. Abandoned Files

Site Plans, drawings and agreements with no action for a period of 12 months will be considered to be abandoned and subsequently closed by the Municipality, upon which written notice will be given to the Owner by the Municipality. Upon entering abandoned and closed status, a new application with applicable fees is required for future consideration of the Development.

7.8. Violations and Penalties

Every person who contravenes Section 41 of the Act, or its successors thereto is guilty of an offence, and upon conviction is liable to the fines set out in Section 67 (1) and (2) of the Act.

8. General Provisions

8.1. This By-law may be referred to as the Municipality's Site Plan Control By-law

8.2. If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the intention of Council that the remainder of the By-law shall continue to be in force.

9. Repeals, Amendments, Transition and Enactment

9.1. By-laws 204-2000 and 97-2011 shall be repealed on the date this By-law comes into force and effect.

9.2. Despite the repeal of the By-laws under subsection 9.1

9.2.1. The By-law shall continue to apply to proceedings in respect of offences that occurred before its repeal;

9.2.2. All approvals granted under the By-law that are in effect at the time of the repeal shall be deemed to be approved, with all necessary modifications, all the agreements, requirements and regulations established therein shall apply.

9.3. This By-law shall come into effect upon the finally passing thereof.

Read a First, Second and Third Time this 7th day of March, 2016.

Mayor – Randy Hope

Clerk – Judy Smith