

MEMORANDUM

TO: Robert Brown, Manager of Planning Services

FROM: Jackie Lassaline, Principal Planner Lassaline Planning Consultants

DATE: May 02, 2018

REGARDING: OPA and ZBA Planning Justification

APPENDIX A – LOCATIONAL MAP
APPENDIX B – SITE AERIAL PLAN
APPENDIX C – MMPR OFFICIAL PLAN POLICIES
APPENDIX D – MMPR ZONE PROVISIONS

The subject property is designated 'Agricultural' in the Official Plan and has a dual zone of 'Agricultural (A1)' and 'Agricultural (A2)' in the Comprehensive Zoning By-law (CZB) for the Town of Kingsville.

The applicant has requested a site specific Official Plan Amendment (OPA) to recognize a licenced producer facility under the Access to Cannabis for Medical Purposes Regulations (ACMPR) in a new greenhouse facility on the subject lands. The new (ACMPR) federal legislation replaces the previous Marihuana for Medical Purposes Regulations (MMPR) federal legislation.

Municipal Official Plan policies (please refer to attached APPENDIX C) preceded the new Federal (ACMPR) legislation, resulting in a differential in the policy direction provided by the existing municipal policies and the new (ACMPR) legislation respecting the growing facilities for medical marijuana. The (ACMPR) allows for the growing of medical marijuana in a licenced facility while municipal (MMPR) OP policies require new growing facilities must be located in an existing greenhouse through retro-fit measures:

“Section 3.1 Agriculture - Council shall be satisfied that the following criteria is met:
i. that the proposed facility is replacing, or making retrofits to, an existing agricultural structure (excluding accessory structures), or a greenhouse structure;

A site specific OPA is required to permit the use of a newly constructed greenhouse on the subject site for a licenced growing facility. The site specific amendment will allow for the new greenhouse building as a licenced producer facility as controlled through the (ACMPR) under the Drugs and Substance Act.

The applicant has requested a (ZBA) to remove the (A2) zone on the west side of the parcel and apply the (A1) zone regulations consistently to the entire parcel.

DEVELOPMENT PROPOSAL:

The subject lands were merged in title to create a parcel with 490 m frontage on Road 3 East with 38.9 ha in area. The land owner is proposing the construction of a new, 21 ha greenhouse designed for the growing and production of cannabis for medical purposes as a licenced facility under the (ACMPR) legislation. The new greenhouse facility will result in 54 % lot coverage for the merged parcel.

The land owner owns the farmland known as 609 Road 3 East and 573 Road 3 East. The lands

(1) CONSISTENCY WITH THE PPS 2014:

When reviewing a planning application to determine if the requested official plan amendment and zoning by-law amendment makes sound planning, it is imperative that the proposed development is consistent with the Provincial Policy Statements (PPS): "The Provincial Policy Statement provides policy direction for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. It (PPS) recognizes that the wise management of development may involve directing, promoting or sustaining growth. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns."

"2.3.3.2 Agricultural Permitted Uses: *In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards." (PPS 2014)*

"2.1.1 PPS Criteria for Agricultural Uses (Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas: OMAFRA Publication):

The PPS criteria for agricultural uses recognize that these uses include the growing of crops and raising of animals. They may be of any type, size or intensity and should respect normal farm practices. Agricultural uses may also include associated on-farm buildings and structures.

- 1. The growing of crops, raising of livestock and raising of other animals for food, fur or fibre. (from the PPS agricultural uses definition)*

The PPS definition of agricultural uses is purposefully broad, with a range of examples provided.

*To qualify as an agricultural use, **crops generally produce a harvestable product** such as fruit, vegetables, mushrooms, field crops including cereal crops, corn, soybeans and forage crops, biomass, nursery crops, trees for harvest/agro-forestry, **medicinal herbs**, sod/turf grass and seeds.*

Crops may be used for a variety of purposes such as food for humans, livestock feed, bedding, medicinal purposes, bio-products, firewood and Christmas trees. Cover crops planted to improve soil health (e.g., reduce soil erosion, improve soil fertility) or reduce weeds or pests, may or may not be harvested. These are also considered crops under agricultural uses.

2. Includes 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. (from the PPS agricultural uses definition)

On-farm buildings and structures that are used for agricultural purposes and that are integral to the farm operation are agricultural uses. Such buildings and structures are used by the farm operator. Examples include livestock barns, manure storages, feed storages, silos, grain bins, drive sheds, tobacco kilns, farm implement buildings/drivesheds, greenhouses for growing plants, a primary farm residential dwelling and value-retaining facilities.

Value-retaining facilities located on farms serve to maintain the quality of raw commodities produced on the farm (i.e., prevent spoilage) to ensure they remain saleable. Value-retaining facilities may also include operations that provide a minimum amount of processing to make a farm commodity saleable, such as grading eggs, evaporating maple syrup and extracting honey. Agricultural commodities undergoing value-retaining processes are often shipped in bulk to value-added operations.”

OMAFRA considers a greenhouse an agricultural use that is supported in the agricultural areas of the municipality and permitted and protected use in the PPS for the ‘Agricultural’ designation. Though cannabis is not considered a food product, the function of growing cannabis in a greenhouse is considered by OMAFRA as an agricultural activity. Additionally, value added activities include use of a minimal amount of the buildings for processing and packing of the product for distribution to the market.

In light of the new (ACMPR) federal legislation and subsequent change in licensing facilities and producers for the growing of cannabis, the land owner is proposing the development of the site for a 21 ha greenhouse to contain the Mucci Group licenced cannabis production facility.

Greenhouses support the economy of the agricultural area while providing a diversification of land use and employment opportunities. The Owner owns approximately 82 ha of greenhouses within the area. As well, the MMPR facility will provide for a diversification of greenhouse operations with an additional crop for the Mucci Group, supporting a variety of crops rather than mono-culture.

The subject lands are located in the agricultural area within the Town of Kingsville. The new greenhouse will be utilized for a land use that is considered appropriate in the agricultural area of the municipality. The background information provided in support of OPA# 3, the policy framework for licenced facilities under the (ACMPR) identifies the agricultural area as an appropriate location for a licenced cannabis growing facility.

The requested OPA and the policy supporting the use of a newly constructed greenhouse facility for a licenced growing facility will support the diversification of land uses and employment within the agricultural area of Kingsville. In my professional opinion, the requested OPA is consistent with the PPS 2014 in supporting the development of the site for a (ACMPR) greenhouse facility.

(3) CONFORMITY WITH THE OFFICIAL PLAN:

OPA # 3 established a policy framework for Medical Marihuana Production Facilities (MMPR) within the Town of Kingsville.

The Background component to the OPA # 3 for MMPR directs new MMPR facilities to either Industrial designated lands or to existing greenhouse facilities within the Agricultural designation:

“The Amendment establishes policies that have regard to limiting the amount of prime farmland being removed from typical agricultural production. This is accomplished by requiring that such facilities replace or retrofit any existing agricultural building or take place in a greenhouse-type structure. (page 6, Background OPA# 3).”

This direction principally was to reduce the conversion of prime agricultural lands to MMPR greenhouse facilities. The subject lands were purchased with the intent of developing them for greenhouses as a component of Mucci Group. The establishment of an additional crop to the variety of crops presently grown by Mucci Group will support the diversification of crops for the farm holding.

Significantly, the removal of farmland for greenhouse development is a positive when addressing yield and the wise use and management of the prime land. It has been proven by farmers and OMAFRA that greenhouse production yields far exceed the yields from prime agricultural lands. The construction of greenhouses in prime agricultural areas is a supported farming practice.

The site specific OPA will address:

“Section 3.1 Agriculture MMPR policy: Council shall be satisfied that the following criteria is met:

- i. that the proposed facility is replacing, or making retrofits to, an existing agricultural structure (excluding accessory structures), or a greenhouse structure;”*

When addressing an OPA, the following criteria under Subsection 8.11.1 of the OP is used to evaluate the amendment:

a) *the need for the proposed use;*

The greenhouse is a permitted building and growing crops in a greenhouse is a permitted land use in the Agricultural designation.

Existing OP policies require licenced growing facilities to be located within an existing building as a retrofit. The subject lands are in close proximity to other Mucci Group greenhouses. Logically the crop will be grown in the new greenhouse to be constructed on the site for this specific crop.

The OPA will permit the new (ACMPR) growing facility in a newly constructed greenhouse that is built and designed to accommodate the licenced growing operation rather than retrofitting an existing greenhouse. A new greenhouse will be able to accommodate a licenced growing facility easier than trying to retro fit an existing older structure.

The licenced growing facility with the new crop will allow for the diversity of crops grown by Mucci Group.

The proposed greenhouse is best suited at this location outside of the urban area and in an agricultural area.

b) *the extent to which the existing areas in the proposed categories are developed, and the nature and adequacy of such existing development;*

The neighbourhood is comprised of agricultural land uses including cash cropping and greenhouses. The proposed greenhouse and subsequent (ACMPR) growing facility will be comparable to other neighbourhood greenhouse uses.

c) *the physical suitability of the land for such proposed use, and in the case of lands exhibiting a potential hazard, consideration shall be given to:*

The site does not have a natural hazard or feature located on the site or on adjacent lands.

The site is flat and well suited for a greenhouse. Adjacent lands contain Mucci Group greenhouses. The proposed greenhouse will be located within a neighbourhood of like and similar uses.

d) *the location of the area under consideration with respect to:*

i) *the adequacy of the existing and proposed highway system in relation to the development of such proposed areas;*

The proposed (ACMPR) licenced growing facility will be serviced by Road 3 East, a municipal road. The road is sufficient to accommodate the traffic generated by the greenhouse.

ii) *the convenience and accessibility of the site for vehicular and pedestrian traffic, and the traffic safety in relation thereto;*

On site traffic configuration will be designed and confirmed under a registered Site Plan Control (SPC) agreement.

iii) *the adequacy of the potable water supply and distribution system, sanitary sewage collection and treatment facilities, stormwater management facilities, and other municipal services in view of the policies contained in this Plan;*

Storm Water Management for the proposed greenhouse will be designed by Peralta Engineering and approved by ERCA and the Town of Kingsville.

A septic system will be designed for the site to accommodate the offshore housing and the greenhouse with office facility. A municipal permit will be obtained for the septic system.

Potable water will be provided through a municipal service line.

All services (water, hydro, septic, and storm water management) will be reviewed and approved under the SPC agreement.

e) *the compatibility of the proposed use with uses in adjoining areas;*

There are two residents on adjacent properties to the north that are greater than 100 m setback from the proposed greenhouse. This setback of 100 m is a minimum requirement established in the regulatory by-law. The separation distance will be in compliance with the by-law.

On adjacent lands to the south are existing greenhouses. Lands to the west are vacant lands used for cash cropping agricultural activities.

The proposed agricultural greenhouse is compatible with adjacent agricultural uses.

f) *the impact of such proposed use on the surrounding areas with respect to any possible depreciating or deteriorating effects;*

New greenhouse design and operational technology provides for a better air circulation system that does not involve open greenhouse ends. The result is that the greenhouse will not be blowing fumes into the neighbourhood and having a negative deleterious affect on the existing residences in the neighbourhood.

Retrofitting an existing greenhouse is not as positive as the construction of a new greenhouse range. An existing greenhouse range would utilize older technology and building features that may allow for outside emissions of noxious fumes, resulting in a negative impact on existing neighbourhood residences.

New greenhouse designs will allow for the new greenhouse MMPR facility to be located within the neighbourhood without negative affects.

g) *the potential effect of the proposed use on the financial position of the Town and its capacity to provide proper municipal services;*

The proposed (ACMPR) licenced facility will provide for an increase of taxes from the present cash cropping land use to a greenhouse facility. This will have a positive financial impact on the Town of Kingsville.

h) *the potential effect of the proposed use in relation to the intent and implementing regulations of the Environmental Protection Act, Ontario Resources Act, Pesticides Act, Safe Drinking Water Act and Environmental Assessment Act;*

The allowance of the proposed greenhouse to be used for a new licenced facility will not have a negative impact on these Acts.

j) *compliance with the general development policies and the more specific and relevant land use policies of this Plan, as well as the specific requirements for the particular use in the Zoning By-law;*

The greenhouse and agricultural land use are permitted uses of the 'Agricultural' designation. The owner has requested an OPA to allow for the (ACMPR) growing facility to be established in a new greenhouse facility, not be retrofit into an existing greenhouse. The use of new technology in a newly constructed greenhouse is a positive alternative for reducing impact on the residential neighbourhood than the retrofitting of an older greenhouse with antiquated technology.

k) conformity with the County Official Plan and Provincial Policy;

The proposed greenhouse building and use of the building for growing a crop is a permitted use in the 'Agriculture' area of the County of Essex Official Plan. Policies support the vital agricultural economy of the agricultural area of the County of Essex.

The requested OPA will recognize an (ACMPR) licenced growing facility use of a new greenhouse construction on a site specific basis for the agricultural lands. In my professional opinion, the requested OPA will allow the (ACMPR) licenced facility to access new technology within the new greenhouse to the betterment of the neighbourhood and existing residences.

(3) COMPLIANCE WITH ZONING BY-LAW:

With the merger of the title of the two parcels, the new subject property will be dual zoned with the west side zoned 'Agriculture (A2)' and the east side of the property zoned 'Agriculture (A1)'.

A rezoning to unify the zoning and apply one regulatory framework to the property is optimum for the administration of by-law regulations. The requested ZBA will rezone the lands to apply the '(A1)' zone category across the property rather than maintaining a dual zone.

Each portion of the subject lands must be in compliance with the respective zone category regulations in order to comply with the CZB. The portions of land presently comply with the (A1) and (A2) zone regulations respectively and the new greenhouse will comply with both the (A1) and the (A2) zone category provisions.

The (A2) zone is a zone category applied to properties that have received a consent and created a separate residential lot from the existing agricultural land holdings. The intent of the application of (A2) zone is to provide direction to future land owners and administrators of the by-law that a consent had been approved for these lands and additional residential buildings are prohibited on the (A2) lands.

The Owner has merged the properties together to create a unified parcel, effectively creating one agricultural parcel from two agricultural parcels. Changing the zone category on the west side of the property from (A2) to (A1) will create a singular zone that is easily administered.

The bunkhouses and one single detached residence are required for the greenhouses and are presently permitted on the (A1) portion of the subject lands. The by-law amendment to zone the entire parcel to (A1) will not be permitting any additional residential development than what is permitted presently on the merged parcel. This is consistent with the PPS and OP policies that direct that no new residential development in the agricultural area will be supported through the creation of additional residential (new) lots.

The change of the portion of lands from (A2) to (A1) will maintain the intent of the Comprehensive Zoning By-law by not permitting any further residential development on the subject lands than what is presently permitted on the existing (A1) portion of the property.

(4) APPROPRIATE DEVELOPMENT/SOUND PLANNING?

In my professional opinion, the requested OPA that will support the development of the subject lands with a new greenhouse to be utilized for a new (ACMPR) growing facility makes sound planning. The new (ACMPR) licenced facility will be accessing new greenhouse technology to the benefit of the neighbourhood and will be providing for a diversity of crops for a greenhouse growing organization.

CONCLUSIONS:

In my professional opinion, the proposed development, after adoption of the OPA and ZBA:

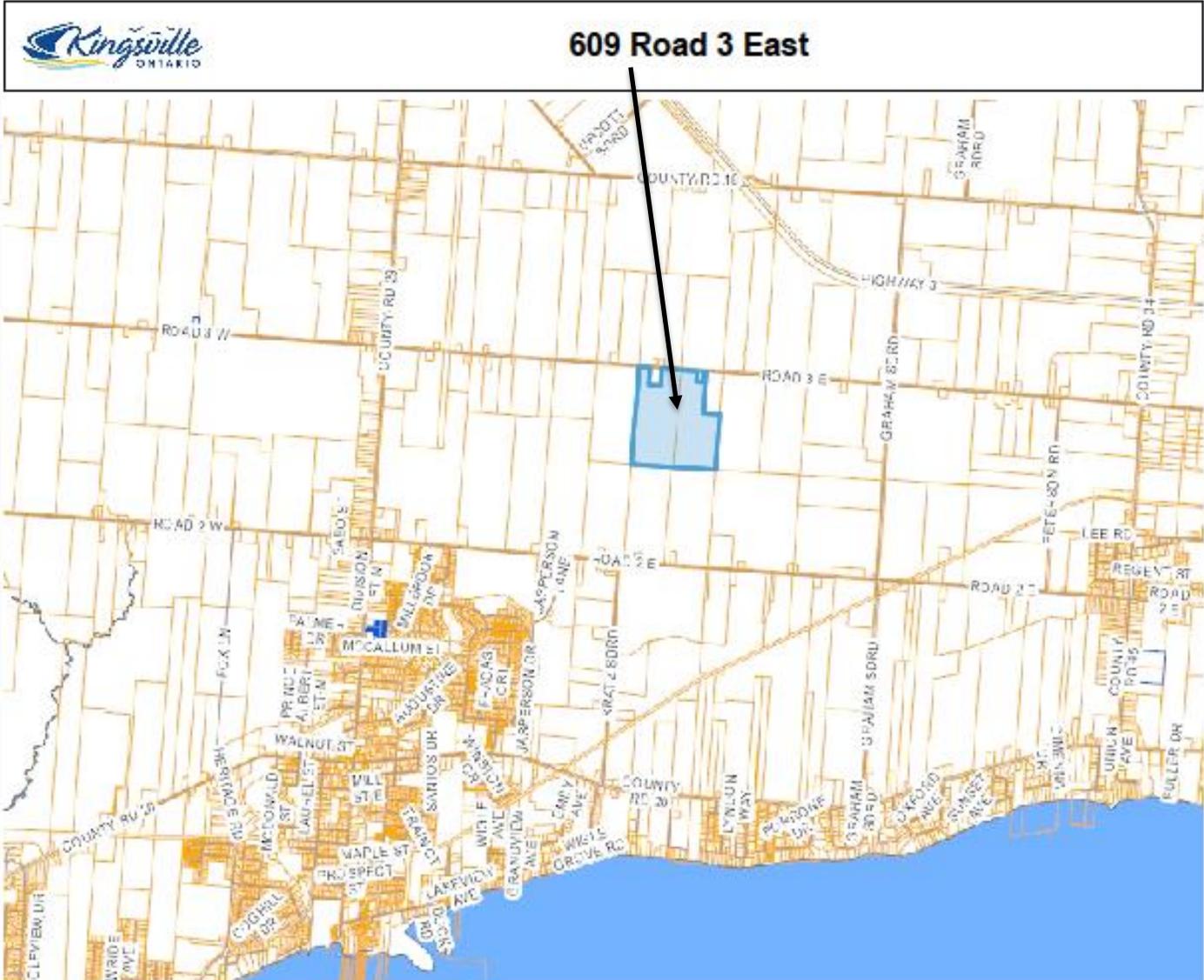
- i) is consistent with the PPS 2014;
- ii) will conform with the Official Plan policies;
- ii) will comply with the Comprehensive Zoning By-law;
- iii) makes sound planning; and
- iv) will allow for appropriate development.

Lassaline Planning Consultants



Jackie Lassaline BA MCIP RPP
Owner, Principal Planner

APPENDIX A - LOCATIONAL MAP



APPENDIX B - SITE AERIAL PLAN



609 Road 3 East, Kingsville



APPENDIX C - MMRP OFFICIAL PLAN POLICIES

APPENDIX D - (MMPR) ZONE PROVISIONS