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**Date:** June 15, 2018

**To:** Mayor and Council

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Manager, Planning Services

**RE:** Application for Official Plan Amendment (OPA/02/18) & Zoning By-law  
Amendment (ZBA/06/18) by 2263391 Ontario Ltd.  
609 Road 3 E & V/L SS Road 3 E, Part of Lot 4, Concession 2 ED,

**Report No.:** PDS 2018-031

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## **AIM**

To provide the Town of Kingsville Council with information regarding a proposed Official Plan Amendment (OPA) to site-specifically permit the establishment of a new build greenhouse for the growing of medical marihuana and a Zoning By-law Amendment (ZBA) to add a medical marihuana production facility as an additional permitted use on the subject lands, in the Town of Kingsville.

## **BACKGROUND**

In April of 2014 Council approved new Official Plan policies to address the pending changes to Federal legislation governing the growing of medical marihuana which was transitioning from individual or designated growers to a commercial based industrial type of format. The initial version of these policies limited operations as-of-right to industrial properties subject to certain criteria designed to provide buffering from potentially land conflicts with sensitive lands uses such as residential, institutional or open space areas. As part of the public consultation process the agricultural sector presented interest in also being permitted to explore the establishment of MMPFs. Council supported this however with the limitation that development would be within existing greenhouse operations subject to individual site-specific zoning and site plan control. To date five such amendment have been approved however, none have been licensed by Health Canada or are in operation.

Much of the rationale for this approach was based on the perception at the time that cannabis production was viewed as an industrial use and not an appropriate use in the

agricultural areas. This situation has evolved since then with the input of OMAFRA and Ministry of Municipal Affairs providing feedback that the production of medical cannabis is considered an agricultural use. The industry itself has also recognized that the greenhouse setting is better suited to large-scale production as it takes advantage of natural sunlight, an existing infrastructure and knowledge base well suited to indoor crop production.

With the rapid development of interest in the establishment of cannabis facilities in Kingsville and other communities in Ontario there has been some hesitation both publically and by Councils to approve facilities, regardless of location, primarily because of odour generation issues. This aspect of the requested approval will be discussed in greater detail in the Discussion section of this report.

## **DISCUSSION**

### **1) Provincial Policy Statement (PPS), 2014:**

Both the Ministry of Municipal Affairs and Ontario Ministry of Agriculture, Food and Rural Affairs have recognized that medical marijuana production can be considered an agricultural use similar to a greenhouse or winery. As such the proposed Official Plan and zoning amendment would be consistent with Provincial Policy Section 2.3.

### **2) County of Essex Official Plan**

The County of Essex is the final approval authority for all Official Plan amendments. Information has been circulated to the County Planner for review however since the proposed amendment is related to local policy the County has no comment.

### **3) Town of Kingsville Official Plan**

The subject property is designated 'Agriculture'. The proposed application to rezone the parcel is for the retrofit or replace of an existing greenhouse operation which is consistent with the MMPF policies developed through Official Plan Amendment #3, however because the application is for a new build greenhouse a site-specific Official Plan amendment would be necessary. The applicant was required to provide a Planning Justification Report to address this change. The report is attached as Appendix A.

Comment: The main item that must be addressed in the requested amendment is to permit a new build greenhouse for use as a medical marijuana production facility. Specifically relief from Section 3.1 q) i). All other sections of Official Plan Amendment #3 would remain applicable to the development.

There are a number of advantages to a new build including:

- i) knowing that the use is for a MMPF setbacks and buffering are designed specific to the use rather than being adapted to an existing location;
- ii) use of new construction and implementation of best technology and design to address the principle odour control issue;
- iii) ability to provide added buffering and setback to mitigate potential impact;

One of the cautionary points from the development of OPA #3 was, 'having regard to limiting the amount of prime farmland being removed from typical agricultural production.'

Comment: The protection of prime agricultural lands is a principle hallmark of Provincial Policy which is echoed in both the County and Kingsville Official Plans. This point was raised in discussion with OMAFRA and MMA staff at a recent roundtable discussion. The comment which resulted was that greenhouses, regardless of the type of crops, represent a very small portion of the overall inventory of agricultural lands. (Kingsville – approx. 55,000 acres with 1,400 acres of greenhouse = 2.5%) Greenhouse production per acre in both value and quantity far exceeds that of traditional cash crop production. In addition, because greenhouses rarely rely on the soil on which they are built as a growing media they can be located anywhere and actually significantly add to the productivity per acre of traditionally lower quality soils.

#### **4) Comprehensive Zoning By-law – Town of Kingsville**

The subject parcel is zoned 'Agriculture Zone 1, (A1)' and Agriculture – Restricted Zone 2, (A2)' by the Kingsville Zoning By-law. The specific zoning amendment required for the subject property is as follows:

- i) permit medical marihuana as a permitted use in the agricultural zoning specific to the subject property;

Comment: The zoning amendment requested for the subject lands is necessary to address several items as follows:

- a) implement the requested Official Plan amendment to permit a new build greenhouse;
- b) amend the zoning to add a medical marihuana production facility as an additional site-specific use;
- c) zone the consolidated parcels which are the subject of these applications to a single zoning classification, and
- d) grant relief or exemption from the following Sections of 4.46 (Medical Marihuana Production Facilities - MMPF):
  - i. item c) which prohibits residential uses on lots having medical marihuana production facilities;

Comment: To prohibit a residential use on an agricultural lot which is operating an agricultural use is not standard practice save and exception the prohibition of dwelling on lands that have been the subject of a surplus dwelling severance. In similar fashion a residential use is not prohibited on a farm parcel with a livestock operation. The assumption in this case would be that the resident in the dwelling is either the farmer or farm help who are aware of the impacts of the use.

- ii. item d) which prohibits a MMPF as a secondary /accessory use;

Comment: Anything of an agricultural nature, growing crops, raising livestock etc. is not considered an accessory use or even secondary it is part of a diversified agricultural operation. However, since the applicant may continue to utilize the other greenhouse facilities in the interim for continued vegetable production it is important to clarify this point.

- iii. item e) outlines that secondary/accessory uses must be 100% associated with the MMPF;

Comment: By definition the proposed facility on the subject property will not have any secondary or accessory uses associated with the MMPF.

- iv. item g) which requires a minimum distance separation of 100 m (328 ft.) between a MMPF and any structure currently used for residential or institutional purposes (dwellings, schools, churches etc.)

Comment: The 100 m (328 ft.) setback was established based on an MOECC best practices standard for the location of light industrial uses which is 70 m (230 ft.) This was then rounded to 100 m as a precautionary measure given the absence of real world potential impact from a MMPF. As there has been some limited experience with Part 2 operations in Kingsville and the Aphria operations in Leamington the principle impact has become evident in the form of odour generation. This has more recently been further confirmed in consultation with other areas that also see interest in or development of medical marihuana facilities.

Because the development is a new build greenhouse the 100 m setback will be required from all surrounding dwellings.

- v. item i) require that the use of a MMPF on a lot not co-exist with any other use on the lot.

Comment: This is a limiting provision in the context of the definition of a MMPF. During the original development of the MMPF policies it was assumed that these facilities would be in industrial areas in large industrial buildings utilizing 100% artificial growing environments. These types of facilities draw a significant amount of energy through the use of grow lights. Now that greenhouse growing has become a possible alternative, utilizing nature light and supplementing with artificial it provides an alternative crop for greenhouse growers. However, as with any business, particularly farming, restrictions, which limit production to a single crop, limit the owner's ability to diversify the business. The limitation also would appear to be inconsistent with Provincial Policy that notes in Section 2.3.3 Permitted Uses, 2.3.3.1 states that, 'In prime agricultural areas permitted use and activities are: agricultural uses, agriculture-related uses and on-farm diversified uses. Section 2.3.3.2 also noted, '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.'

With the above items in mind the zoning on the property will be amended to permit a MMPF on the subject lands. The amendment will also address each of the provisions in Section 4.46 which require relief or amendment as follows:

- i) item c) will be amended to permit residential uses accessory to or supportive of the agricultural uses on-site, including a MMPF;
  - ii) item d), e) and i) will not be applicable to the subject property
  - iii) item g) will be amended to exempt on-site residential uses from the 100 m setback requirement.
- e) include odour control provisions as a requirement of any MMPF establishment on the site.

Comment: Based on recent input from neighbouring landowners and the experience of the Town with Part 2 operations it has been determined that there is a need to more directly address odour control as a requirement of zoning versus solely relying on site plan control or the Health Canada licensing requirements. Inclusion in the site-specific zoning amendment, particularly for MMPF establishments, will provide local input and enforcement without overstepping Federal regulations since Health Canada requires all Part 1 operations to maintain odour control of their operations. This approach was most recently utilized by the County of Norfolk who undertook consultation with MMA, OMAFRA and Health Canada in the development of an acceptable approach. Locally there has been consultation with both neighbouring residents and the interested growers to provide a local level of control and review specific to odour control. The two key issues are the establishment of odour control so that there is no perceptible marijuana odour escaping the property in question and how the odour control system(s) are designed by a qualified person specific to marijuana production.

The specific provisions in the by-law will require the installation of an air treatment control system that will incorporate the use of a combination of multi-stage carbon filtration, ozonisation, odour neutralization or similar technology. This must be designed by a qualified person and the owner must demonstrate that the system has been installed and is operational as per the design specification prior to the start of any growing operations. As part of the design process for the odour control the owner will also be required to provide a maintenance schedule for the system to insure that it remains operationally efficient.

As a final note regarding the zoning it is important to understand that the approval of the requested zoning on the property does not automatically permit a MMPF to start operations. Item a) of Section 4.46 requires the applicant to have a current valid Part 1 license issued by Health Canada prior to starting production. The applicants are aware of this and would need to proceed with the licensing process if the requested amendment is approved and they move forward with establishment of a MMPF.

### **Site Plan Approval**

Both the Site Plan Control By-law and Section 4.46 b) of the Kingsville Zoning By-law required site plan approval of the proposed development. A conceptual layout has been

provided. (See Appendix B). If the initial zoning and official plan amendment are approved the applicant would then be in a position to finalize the site layout and plans.

Although the odour control aspect of MMPFs will be specifically addressed and enforced through the provisions of the zoning the required design reports will a required appendices to the site plan agreement. In addition to odour internal greenhouse lighting has been raised as an ongoing item of concern with several operations in Kingsville. As we are aware that MMPFs will rely even more heavily on grow lighting the current wording in site plan agreements is no longer sufficient to address this issue. Moving forward with all greenhouse developments owners will be required to provide a lighting design and control plan to demonstrate that they will be dark sky compliant. This would include such details as the type of lighting along with both wall and roof shading that mitigates the impact on night sky.

## **LINK TO STRATEGIC PLAN**

Support growth of the business community.

## **FINANCIAL CONSIDERATIONS**

The proposed development will result in an increase in assessment along with collection of building permit fees and development charges applicable to the non-growing area of the greenhouse.

## **CONSULTATIONS**

In accordance to O. Reg 545/06 of the *Planning Act*, property owners within a minimum 120m (actually was 500 m) of the subject site boundaries received the Notice of Public Meeting by mail. Information of the proposed amendment was also posted to the Town website.

Consultation has been ongoing with the public in general on odour issues specific to the addition of a MMPF as a permitted use to several agricultural properties in Kingsville. These types of operations have also raised an issue that has been raised again related to light emissions from several existing operations.

Comment: Odour is a new issue related specific to the MMPFs. What is proposed to address this is a combination of zoning provisions which will require an air treatment control system that is engineered by a qualified person. As part of the design and installation of the control system it will be necessary to insure that it is reviewed prior to operations. This could include peer review of the design, review of any odour control agents being used and implementation of a maintenance schedule.

Lighting will be addressed directly through site plan control and will incorporate a rework of the current lighting provisions in the standard site plan agreement to more specifically outline the requirements.

Other items which have been raised that are more specific to greenhouse development versus that of the MMPF relate to traffic from the proposed operation on Road 3 E, increased land values and possible impact to taxes, safety of increased bike and

pedestrian traffic resulting from worker housing and impact to existing agricultural operations greenhouse versus traditional cash crop.

### **Agency & Administrative Consultations**

In accordance with O. Reg 545/06 of the *Planning Act*, Agencies and Town Administration received the Notice of Public Meeting by email.

| <b>Agency or Administrator</b>                        | <b>Comment</b>  |
|---|---|
| Essex Region Conservation Authority Watershed Planner | <ul style="list-style-type: none"><li>• Comment is attached as Appendix C</li><li>• The two items, sensitive ground water recharge area and natural heritage can be addressed at the site plan stage.</li></ul>   |
| County of Essex                                       | <ul style="list-style-type: none"><li>• The County as the Official Plan amendment approval authority was circulated but did not have any comment</li></ul>  |
| Town of Kingsville Management Team                    | <ul style="list-style-type: none"><li>• The Management Team has reviewed the requested amendment and has not expressed any objections. Items such as lighting, fencing location and landscaping will be addressed at the site plan amendment stage. Odour control requirements are outlined in the amending by-law.</li></ul> |

### **RECOMMENDATION**

It is recommended that Council:

Adopt Official Plan Amendment No. 7 (OPA 7) to establish a site-specific policy area to permit a new build greenhouse for the establishment of a Medical Marihuana Production Facility on the property currently known as 609 Road 3 E and V/L SS Road 3 E, Part of Lot 4, Concession 2 ED, Part 1, RP 12R 11488 and Part 1 RP 12R 22191, in the Town of Kingsville and direct administration to forward the policies to the County of Essex for final approval.

Approve Zoning By-law amendment application ZBA/06/18, to implement OPA 7 once final approval is granted by the County of Essex, permit a medical marihuana production facility and establish site-specific regulations for said medical marihuana production facility and adopt the implementing by-law.

*Robert Brown*

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*Peggy Van Mierlo-West*

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