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**Date:** June 26, 2018

**To:** Mayor and Council

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Manager, Planning Services

**RE:** Zoning By-law Amendment Application ZBA/14/18 by  
Allegro Acres Inc. – 1851 Peterson Lane  
Part of Lot 8, Concession 2 ED, Part 1, RP 12R 11577 &  
Parts 3 & 4, RP 12R 23455

**Report No.:** PDS 2018-036

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## **AIM**

To provide Council with information regarding a request for a zoning amendment to permit a medical marihuana production facility as a permitted use, address relief or exemption from certain provisions under Section 4.46 of the Kingsville Zoning By-law and establish odour control provisions.

## **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 ultimate intention of the change was to provide better quality control and reduce the amount of 'surplus production' from the individual or designated growing be diverted to the illegal drug trade. This change in the legislation was eventually challenged by individual and designated growers as reducing access to medical marihuana. The courts ruled in their favour and the Federal government was forced to amend the new legislation to incorporate regulations for both the new commercial production, or Part 1 licensing and individual or designated growers, or Part 2 licensing under what is now referred to as the Access to Cannabis for Medical Purpose Regulations (ACMPR).

Under the ACMPR Part 1 regulations anyone seeking to obtain a Part 1 license must get confirmation from the municipality in which they are proposing to locate that the production of medical marihuana is a permitted use and will be in compliance with any applicable regulations that the municipality has established for such a use. In Kingsville, Official Plan

Amendment No. 3 established policies in the Official Plan for consideration of medical marihuana production. The implementing zoning by-law (129-2015) outlines the specific regulations but only for a Part 1 license.

Part 2 licensing under the ACMPR does not require any confirmation from local municipalities regarding the growing of medical marihuana by an individual or designated grower regardless of location.

## **DISCUSSION**

The proposal specific to the subject property at 1851 Peterson Lane is to add a medical marihuana production facility as a permitted use utilizing up to 12.5 ha (31 acre) of existing greenhouse. (See Appendix A) For the proposal to proceed a zoning amendment is required to first permit a medical marihuana production facility (MMPF) as an additional site-specific permitted use on the subject property. Secondly, based on a review of the requirements under Section 4.46 of the Kingsville Zoning By-law partial relief or exemption is required from certain provisions, the details of which are outlined in the zoning section of this report. Lastly, the amendment will include odour control provisions that require a professionally designed system to be installed and operational prior to the start of growing.

### **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 marihuana production can be considered an agricultural use similar to a greenhouse or winery. As such the proposed zoning amendment would be consistent with Provincial Policy Section 2.3.

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

There are no issues of County significance raised by the application.

### **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 develop through Official Plan Amendment #3.

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

The subject parcel is zoned 'Agriculture Zone 1, (A1)' 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 Official Plan Amendment #3 specific to MMPF outlined that for an existing greenhouse facility to be used for medical marihuana production a site-specific zoning amendment would be required to permit that use. The Kingsville Zoning By-law was specifically amended as part of the implementation of the MMPF Official Plan policies to clearly outline in the Zoning By-law that medical marihuana production was

not included as an agricultural use. Therefore, an amendment is necessary to add it to the specific zoning on the subject property.

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.

There are four existing dwellings which are or could be located within the required 100 m setback. The dwelling at 1975 Peterson is under the ownership of the applicant and as such would be exempt as part of the amending by-law. Based on consultation on similar applications it has been outlined that odour can be controlled through the use of charcoal

filtration on ventilation fans and openings and odour neutralization can also be used in other areas. Odour control in the growing area may not be 100% as such it is suggested that the 100 m requirement for off-site dwellings not be reduced unless it can be demonstrated that there will be no impact on neighboring dwellings or other sensitive uses. Any request of a reduction would require Planning Act approval including notification of the impacted neighbours.

Mapping has been provided (Appendix B) which shows the impact of the 100 m setback on the existing greenhouse. There is some limited impact however many of the larger operations have indicated that they will only be converting a portion of the facility for the growing of cannabis so it can be located in an area not impacted by the required setback.

- 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 and any off-site dwelling under the same ownership as the subject property.

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.

In addition to the amendment to Section 4.46 the zoning on the property will include odour control provisions as a requirement of any MMPF establishment on the site.

Comment: 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 implemented as part of a recent request on Road 3 E for similar approvals.

The specific provisions in the by-law will require the installation of an air treatment control system that will incorporate the use of a multi-stage carbon filtration, 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.

An additional aspect of odour control for MMPFs is the use of odour neutralization systems which are added to exhaust areas to supplement the main control system. As part of the ongoing public discussion there was some concern expressed about the possible control agents used to neutralize odours and what long-term impact they may have.

The approach being suggested on this item is to take a two-part approach. First to determine, as part of the odour control system design, if and what will be used for neutralization and secondly to require in the zoning provision that no transmission of odour control agents be permitted beyond the property line of the subject facility. This would apply to all control agents and would require that the products being used are approved for use by Health Canada or can demonstrate to the satisfaction of the Town that there will be no negative impact.

### **Site Plan Approval**

As per Section 4.46 b) site plan control is to apply to MMPF. As noted above the applicant is not proceeding at the present time with a MMPF but rather planning for the future. Once plans are in place and the licensing process started the applicant should initiate the site plan amendment process. At that time issues such as fencing, lighting, buffering and landscaping will be incorporated as part of the amending agreement.

## LINK TO STRATEGIC PLAN

Support growth of the business community.

## FINANCIAL CONSIDERATIONS

There are no financial considerations for this application at this time.

## CONSULTATIONS

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

At the time of writing, no public comment has been received.

### **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>• No objections</li></ul>
County of Essex	<ul style="list-style-type: none"><li>• No comment is expected from the County</li></ul>
Town of Kingsville Management Team	<ul style="list-style-type: none"><li>• The Management Team has reviewed the request amendment and has not expressed any objections. Any new items such as lighting, odour and fencing location will be addressed at the site plan amendment stage.</li></ul>

## RECOMMENDATION

It is recommended that Council approve zoning by-law amendment ZBA/14/18 to:

permit a medical marihuana production facility on property located at 1851 Peterson Lane;

address the required relief or exemption from specific provisions in Section 4.46 of the Kingsville Zoning By-law as detailed in the amending by-law;

add odour control provisions as outlined in the attached amendment, and

adopt the implementing by-law.

*Robert Brown*

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*Peggy Van Mierlo-West*

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Peggy Van Mierlo-West, C.E.T.  
Chief Administrative Officer