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To: Mayor and Council

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Manager, Planning Services

RE: Supplemental Report
Application for Zoning By-law Amendment ZBA/10/18 by
J.C. Fresh Farms Ltd. - 2415-2495 Graham Side Road
Part of Lot 6, Concession 3 ED, Part 1, PL 12R 24954

Report No.: PDS 2018-034

AIM

To provide Council with follow-up 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 inclusion of odour control provisions.

BACKGROUND

A report was originally presented to Council at the May 28, 2018 meeting. A number of comments from the public regarding the establishment of medical marihuana production facilities highlighted two concerns. The more prominent issue was odour emissions from the potential operations and how they would be controlled. The other item was related to the fact that the facilities in question require a greater reliance on grow lighting than much of the current vegetable production. While a similar application was deferred until additional information on odour control could be provided to demonstrate mitigation of the concerns this application was deferred until such time as an odour control by-law was developed for the Town.

DISCUSSION

The proposal specific to the subject property at 2415-2495 Graham Side Road is to add a medical marihuana production facility as a permitted use utilizing up to 19.3 ha (47.7 acre) of existing or approved greenhouse. (See Appendix A) The amending by-law has been updated to incorporate an odour control regulation that specifically outlines the

requirements as part of the requested zoning. Lighting will be addresses as part of the site plan approval.

Council's Motion to Defer

While it is understood that Council would like to see a Town wide comprehensive odour control by-law it was also noted that such a by-law would take several months to prepare. This is based on the fact that it would require Town wide circulation and consultation as it would have to be designed to address a very broad set of regulations to address a variety of different odour related circumstances. It is suggested that a two part approach, similar to that taken in Norfolk County, be adopted. Part 1 would directly address the request for approval of Part 1 MMPFs through provisions included in the zoning request for each property that speaks directly to how odour is to be controlled. Part 2 would undertake a review of existing odour control by-laws in other jurisdictions to potentially develop a draft by-law for consideration. As part of that review we could also determine if implementation of such a by-law would be able to address Part 2 operations both existing and new.

1) Provincial Policy Statement (PPS), 2014:

There are no additional issues of provincial significance raised by the proposed change to the requested amendment.

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 is one existing dwelling (1009 County Road 18, Road 4 E) located within the required 100 m setback from the existing greenhouse operations. 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 cloaking or scent smell masking can also be used in other areas. Odour control in the growing area may not be 100% as such it is important for these areas to comply with the 100 m setback. If existing greenhouse growing areas are located less than 100 m from an off-site residential use these areas may have to remain dark, not utilized, or demonstrate that minor reductions in the setback can be

appropriately mitigated. The existing greenhouse is impacted by two dwellings, one to the north and one to the northeast (See Appendix D). Both of these dwellings are within the 100 m setback requirement and would prevent growing operations in approximately 0.6 acres of the greenhouse

- 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.

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 implement 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 permit 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.

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 require site plan approval of the proposed development. The existing approved layout has been provided. (See Appendix A).

Although the odour control aspect of MMPFs will be specifically addressed and enforced through the provisions of the zoning the required design reports will be 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

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.

Input has been received from neighbouring landowners in the area of the subject property. The principle concern being a combination of appropriate setback and how the applicant's will control odour emissions to a level that will not negatively impact on the enjoyment of their property.

Comment: As noted in the original report Health Canada has outlined as part of the ACMPR that facilities are to be equipped with an air filtration system to prevent the escape of odours under Provision 61 of the ACMPR. An air filtration system using a H13 high-efficiency particle air (HEPA) filter is given as an example of such a system by Health Canada. As part a requirement of the zoning, if approved, applicants will be required to outline what type of system(s) will be used to control odour.

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.

Agency or Administrator	Comment
Essex Region Conservation Authority Watershed Planner	<ul style="list-style-type: none">• Comment is attached as Appendix B• No objections
County of Essex	<ul style="list-style-type: none">• The County has indicated that any new structures must be located a minimum of 85 ft. from the centreline of Cty Rd 18. Any new access or changes to existing access will require permits. (Appendix C)
Town of Kingsville Management Team	<ul style="list-style-type: none">• 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.

RECOMMENDATION

It is recommended that Council approve zoning by-law amendment ZBA/10/18 to permit a medical marihuana production facility on property located at 2415-2495 Graham Side Road and address the required relief or exemption from specific provisions in Section 4.46 of the Kingsville Zoning By-law 1-2014 and odour control provisions as outlined in the attached amendment, and adopt the implementing by-law.

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Peggy Van Mierlo-West

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