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Date: July 26, 2018

To: Mayor and Council

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Manager, Planning Services

RE: Zoning By-law Amendment Application ZBA/16/18 by
MOS Enterprises Ltd. – 1501, 1521, 1523 & 1527 County Road 34
Part of Lot 20, Concession 4 ED, Parts 1 to 8, RP 12R 14851,
Parts 1

Report No.: PDS 2018-044

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 is to add a medical marihuana production facility as a permitted use utilizing up to 11.7 ha (29 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. As supplementary information to the planning report the applicant has provided additional background in the form of a planning justification report (PJR) which is attached as Appendix B. The prospective operator of the greenhouse is also in the process of acquiring lands on the east side of County Road 34 which would operate in concert with the subject property. Those lands are part of a separate application for similar zoning approval.

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 replacement 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 dwellings 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 ongoing experience with ACMPR 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 have also seen interest in or development of medical marihuana facilities.

There is one dwelling at 1518 County Road 34 which could be located just within the required 100 m setback shown on Appendix C. All other dwellings in the immediate area meet or exceed the 100 setback requirement. (See Appendix D) As noted on past approval requests no reductions in the 100 m setback will be considered until such time as any given operation can clearly demonstrate that there will be no impact on an abutting use. Any potential reduction request would require additional approval through a public process.

Although Item f) of the MMPF provisions is not at issue in this case (100 m 328 ft. minimum distance separation from residential, recreational or institutional use) it is worth noting that the Orchard View Golf Course is located to the west of the subject property approximately 300 m (984 ft.). The golf course also owns lands abutting the golf course on the east side, currently used for gravel extraction, which could be converted in the future for additional golf course space. If this were to occur the golf course expansion would not be impacted as it would continue to remain outside the 100 m (328 ft.) 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 off-site dwellings if any 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.

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.

To address this the approach involves two steps. First to determine, as part of the odour control system design, if and what will be used for neutralization and second, 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. The subject lands do currently have an approved site plan and associated site plan agreement in place from 2011. As noted above the applicant does have a prospective purchaser for the property and will be proceeding with licensing, if approved. Once the formal licensing process is

started the applicant should initiate the site plan amendment process. At that time issues such as fencing, lighting, buffering, landscaping and location of ventilation equipment will be incorporated as part of the amending agreement along with consultation with surrounding land owners.

LINK TO STRATEGIC PLAN

Support growth of the business community.

FINANCIAL CONSIDERATIONS

There are no financial implications for the application at this stage.

CONSULTATIONS

In accordance to O. Reg 545/06 of the *Planning Act*, property owners within 120m of the subject site boundaries are to receive the Notice of Open House/ Public Meeting by mail. With the increased interest in these types of applications, the circulation was increase to 200 m. Information of the proposed amendment was also posted to the Town website.

At the time of writing, a number of public comments both written and verbal have been received about both this application and the associated Kapital Produce request. Odour, fencing and lighting continue to be the main concerns. As noted with past applications, odour will be a zoning requirement while lighting and fencing will be included as part of the subsequent site plan amendment that will be required.

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 E• No objections |
| County of Essex | <ul style="list-style-type: none">• The site has existing accesses to the County Road. Any modifications, changes or requests for new access will require County approval and permits |
| 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/16/18 to:

permit a medical marihuana production facility on property located at 1501, 1521, 1523 & 1527 County Road 34;

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.

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Peggy Van Mierlo-West

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Chief Administrative Officer