2021 Division Road North
Kingsville, Ontario N9Y 2Y9
(519) 733-2305
www.kingsville.ca
kingsvilleworks@kingsville.ca

Date: **August 15, 2018**

To: **Mayor and Council**

Author: **Robert Brown, H. Ba, MCIP, RPP**
Manager, Planning Services

RE: **Application for Zoning By-law Amendment by Sunquest Farms Ltd.**
1254 Road 3 E
Part of Lot 7, Concession 3 ED

Report No.: **PDS 2018-047**

AIM

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

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 subject property is located on the north side of Road 3 E, east of Graham Side Road. It is a 10.05 ha (24.85 ac.) farm with an existing 3.8 ha (9.5 ac.) greenhouse with associated support facilities, a bunkhouse and single detached dwelling. The applicant is seeking a zoning amendment to add a medical marihuana production facility as an additional permitted use utilizing the existing on-site greenhouse. (See Appendix A). Relief from certain provisions of the Medical Marihuana Production Facility regulations of Section 4.46 in the Kingsville Zoning By-law will be required, the details of which are outlined in the zoning section of this report.

In order to address the motion of Council to investigate the possible use of an interim control by-law to prohibit further approvals of MMPF's a report is currently being prepared to outline various options and will be presented September 24th. However, it is worth noting that regardless of the recommendation of that report or Council's preferred actions the Town is required to assess planning applications based on the policies in affect at the time of the application submission. Any new policies that might be developed and/or approved would only be applicable to applications submitted after such new policies were adopted.

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 no existing off-site dwellings located within the required 100 m setback from the existing greenhouse operations. The closest single detached dwelling is approximately 170 m southeast of the existing greenhouse. There is also a bunkhouse located approximately 138 m to the southwest. In addition the on-site dwelling and bunkhouse also comply with the minimum 100 metre setback requirement as such no relief will be necessary from item g).

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

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

As per Section 4.46 b) site plan control is to apply to MMPF. The applicant is not engaged in the MMPF licensing process at present but rather planning for the future. Once plans are in place and the licensing process started, the applicant will need to initiate the site plan approval process for the property as there is currently no site plan approval or agreement in place. At that time issues such as fencing, lighting and odour control 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.

Agency or Administrator	Comment
Essex Region Conservation Authority Watershed Planner	• Comment is attached as Appendix B • No objections
County of Essex	• No comment is expected
Town of Kingsville Management Team	• 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/19/18 to:

permit a medical marihuana production facility on property located at 1254 Road 3 E;

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

Robert Brown, H. Ba, MCIP, RPP
Manager, Planning Services

Peggy Van Mierlo-West

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