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To: Mayor and Council

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RE: Medical Marihuana Policy Options and Review

Report No.: PDS 2018-043

AIM

To provide the Mayor and Council with information on the following:

- 1) Development of an interim control by-law to place a hold on further zoning amendments to permit medical marihuana production facilities as per Council motion 456-2018;
- 2) Provide policy option alternatives to an interim control by-law, and
- 3) Request additional input and/or direction from Council on the specific issues and/or concerns related to medical marihuana production facility development.

BACKGROUND

The Town of Kingsville has experienced a considerable level of interest from several local greenhouse operations on the establishment of medical marihuana production facilities. To-date a total of 16 applications have been filed with the Town. Council has approved nine and deferred three. Of the nine approved eight have been for use of existing greenhouse operations and one for a new purpose built operation.

As the number of applications coming forward has continued Council and the public have raised several concerns as to the impact of these operations on the community. These concerns have included:

- potential odour
- aesthetics
- possible light pollution

- impact on the image of the Town particularly from a tourism standpoint
- impact on quality of life for abutting landowners and impact on sensitive land uses such as parks, schools and recreational areas.

The concerns raised have resulted in additional research and review by planning staff. Several affected neighbors have also participated in discussions that have lead to the development of additional regulations being added. With the co-operation of both pending and approved applicants these regulations now apply to all Part 1 MMPFs.

The approval process to secure a license under the Part 1 regulations of the Access to Cannabis for Medical Purposes Regulations. (ACMPR) is a lengthy process that involves approximately six different steps. Only about half of the approved property owners are actively engaged in the licensing process. At the Town level they will still be required to undertake a site plan amendment or approval process that will outline the complete details. This will include the odour control system and address direct site plan issues such as landscaping, fencing, ventilation outlet locations and lighting. With these approvals in place the applicant is still not at the final stage and must pass a number of inspections prior to receiving a license. This license must be provided to the Town as the final step in satisfying the zoning requirements.

DISCUSSION

As with all new industry there is a certain degree of concern raised when there is a high level of interest in a short timeframe. There is also a certain level of doubt surrounding the day-to-day operational impacts on surrounding land uses. One of the key goals of land use planning is to minimize or eliminate land use compatibility conflicts.

Land use planning in agricultural areas is one of the most challenging of all balancing acts. Based on local and provincial policy the protection and use of agricultural lands for all agricultural purposes is to take priority over all other land uses. Agricultural lands are for the use and support of the agricultural industry.

On a very basic level good planning typically does not support the mixing of residential and industrial uses. Agriculture is an industry. The rural area, however provides an attractive alternative to the fast paced, close quarter living of the urban environment. Unfortunately due to more liberal severance policies of the past, such as retirement lots and random strip development a large number of existing or potential land use compatibility issues have resulted.

This has been demonstrated repeatedly over the years with conflicts between rural residents and regular cash crop farmers and more recently with large-scale greenhouse operations, livestock facilities and less traditional farming operations such as mushroom producers. Add also into the mix agricultural innovation such as biomass, aerobic digesters and organic farming and the opportunity for conflicting land uses gets worst.

Medical marihuana production and eventually recreational production in October of this year are simply one more crop added to the mix. The up side of this introduction is that some degree of regulation is being incorporated on a precautionary basis to give municipalities which act the ability to safeguard surrounding land uses.

Item 1 – The Motion

Motion 456-2018, “That Council ask Administration to develop and present an interim control by-law that would place on hold any further or future zoning changes related to medical marihuana growing applications until such time as the Council of the Day can actually see and smell the success of the 'no smell' and 'no night light effects' at property lines as promised in current applications.”

After additional research into the use of an interim control by-law it was concluded that this is not an option. A medical marihuana production facility is not a permitted use in the Kingsville Zoning By-law. Interim control by-laws can only be used for the purpose of prohibiting a permitted use where there is concern that it's continued permission will have negative impacts on a particular area or the municipality as a whole. An example of this would be if there was a considerable amount of development in say the bed and breakfast industry. A good example of a potential issue might be on-street parking demand. In this case the Town might enact an interim control by-law to review the parking regulations and even the number of B & B units permitted per dwelling to help mitigate parking problems with future B & B development.

Even if interim control could be utilized the Town must be prepared to undertake a study to address whatever issue or issues are related to the need for the by-law. For MMPFs the odour and light issue has already been reviewed and an action plan outlined to move forward. Odour is addressed in the zoning specific to the proposed use and lighting will be addressed as part of the amending site plan agreement. These are not promises of the property owners; these are requirements of the zoning by-law and site plan control process.

Item 2 – Policy or Direction Options

Are there alternative actions that Council can take? Yes.

Option 1 - Not approve any additional applications to add MMPF as an additional permitted use based on the grounds that the merits of the land use are under review. This would require Council to commission a review to be undertaken.

Comment: This option would immediately halt further approvals but is not guaranteed to prevent applications being filed and would likely result in appeals to the Local Planning Advisory Tribunal. (LPAT) The appeal would likely be in part due to the fact that Council has already approved several applications. It is also important to keep in mind that Council established policies in the Official Plan and Zoning By-law to permit MMPFs via a zoning request.

Option 2 – Amendment of the Official Plan and Zoning By-law to rework the current policies to revise and update the regulations. This could include increasing setbacks from sensitive uses, requiring that an application for licensing has actually been submitted to Health Canada or even reviewing the type of greenhouses that can be used (new build versus existing).

Comment: Council will recall that a review of this action was presented to Council to address a motion at that time. The resulting recommendation was that the policies remain

as is given the timeline on the introduction of recreational marihuana, the possible need to update the regulations at that time and the fact that the policies were untested to-date. At the time that was the recommended action and I continue to agree with that based on the information available at that time. As applications have continued to come forward the policies are under constant review. Other municipal regulations are reviewed and noted for future consideration moving forward.

Option 3 – Continue forward cautiously, adapting and updating policies to reflect changes in technology and legislation. Continue ongoing research, consultation and involvement of the public and industry.

Comment: Stopping further approvals is not a guarantee that anything will change once the first facility is licensed and under operation. Granting further approvals is also no guarantee of increasing the odds of multiple licensed facilities in Kingsville or any other municipality. Because there is so much interest in this industry, there is a very intensive level of ongoing research and learning. Things change on an almost daily basis and keep it forefront in everyone's mind.

Council has been very proactive in both establishing the initial policies in 2014 and supporting the more recent updates to safeguard residents and address the potential odour issues. The process involves multiple steps and what can be considered a very detail oriented route to final approval and operation of these facilities.

Although it seems to be happening at a faster pace, the interest and potential level of development of the medical marihuana industry is no different than the explosive growth in the large scale vegetable greenhouse industry of the past 15 to 20 years. There were a considerable number of unknown impacts at that time such as storm water management, water usage, impact on traffic, impact on rural residential uses, lighting etc. Over time, lessons were learned, and the review and approval process has taken harder looks at some developments and approval processes have evolved. The key take away is to use that knowledge to structure the approval process for this use to minimize potential issues and hold the industry responsible for addressing the concerns at the front end.

Item 3 – Council input and direction

Council shares one main concern with the public in terms of this proposed use, uncertainty. Policy was established in 2014, nothing came of it initially and now suddenly upward of 20 property owners are seeking approval to potentially grow medical marihuana. With no good example of an operating MMPF in Kingsville it is difficult to be certain that we are covering all the bases. However, Council, the neighbouring lands owners and the applicants do seem to understand what needs to be addressed and the safeguards and rules laid out in clear language. So, if a sufficient level of caution is taken to move forward, what remains in doubt?

Comment: In order to formulate a recommendation to Council I believe that it is very important to understand what Council sees as outstanding. On the surface the motion seeks to have an MMPF established and operational to demonstrate that the requirements in the zoning and subsequent site plan amendment process are or can be achieved. The regulations in the zoning and provisions in a site plan approval do not require a property owner to "promise" to comply; they are clear requirements for that development. If the

Town's expectation is made clear to any property owner, regardless of the type of development, then there is no excuse for a failure to comply.

LINK TO STRATEGIC PLAN

Manage growth through sustainable planning.

FINANCIAL CONSIDERATIONS

This will be dependent on the option selected for moving forward. Option 1 has costs associated with potential appeals of non-approval and consulting costs for reviewing the merits of the land use. Option 2 has some cost associated with it as it would take time to review and update the policies which will involve public consultation. Option 3 is less likely to have immediate implications and cost associated with additional review for a specific application would be the responsibility of the applicant.

CONSULTATIONS

Management Staff, CAO

Comment: The following items were discussed as part of the review:

Current setback requirements for MMPF's
Setback requirements for all greenhouses
Existing MMPF odour and lighting control regulation
Effective and strong enforcement of both the odour and lighting regulations
Other possible regulatory mechanisms i.e. Minimum Distance Separation

RECOMMENDATION

It is recommended that Council receive the report reviewing medical marihuana policy options for information purposes and direct administration to pursue one of the three options presented to address future approval of Medical Marihuana Production Facilities.

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