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**Date:** March 4, 2019

**To:** Mayor and Council

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Manager, Planning Services

**RE:** Application for Zoning By-law Amendment ZBA/04/19 by  
Great Northern Seedlings  
1507 Road 3 E  
Part of Lot 9, Concession 2 ED, Parts 1 & 2, PL 12R 16606

**Report No.:** PDS-2019-011

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## **AIM**

To provide the Mayor and Council with details on a proposed zoning amendment to add the H- Holding provision to the subject property to prohibit a medical marihuana production facility in exchange for relocating it as a new purpose built facility to 1270 Road 3 E.

## **BACKGROUND**

A zoning amendment application for the subject property was originally presented to Council in May of 2018 however was deferred because of concerns with odour control and lighting. In addition, there was also some concern with its proximity to and impact on Colasanti's Greenhouse. The applicant provided additional detail and information on the issues of concern and approval of an amendment to permit a medical marihuana production facility on the subject lands in the existing greenhouse was granted in July of 2018.

The same owner later purchased a property located at 1270 Road 3 E and filed application for a zoning amendment to permit a medical marihuana growing facility but as a new build operation. That amendment was refused by Council in October of 2018 and the owner appealed Council's decision to the Local Planning Appeal Tribunal (LPAT).

## **DISCUSSION**

The appeal of an approval authorities' decision is never the outcome that is anticipated regardless of who the appellant is. The former process under the Ontario Municipal Board

and now under LPAT has always looked to encourage both affected parties to explore possible solutions in an effort to avoid the lengthy and expensive hearing process. This is a position shared by all municipalities because of the time, expense and resources. Every opportunity to openly review and discuss options with an appellant should be explored. With that in mind administration, the appellant, and outside legal counsel have discussed a possible resolution which would lead to the withdrawal of the appeal, if approved.

The original planning report, attached as Appendix A, outlined in detail the planning rationale for the recommendation of approval on the subject lands and that remains unchanged. The issue at hand now is the location of the existing permission at 1507 Road 3 E. As both the Town and greenhouse growers learn more about cannabis production it has been suggested that new builds rather than retrofits offer a better opportunity to ensure odour control and are constructed for the sole purpose of cannabis production.

Since the applicant's other property at 1270 Road 3 E would be a new purpose build facility and is located further away from a more concentrated area of residential uses and Colasanti's Greenhouse it is felt that this would ultimately be a better location. The suggested course of action would be to amend the existing zoning at 1507 Road 3 E by adding the H-Holding provision. This would not remove a medical marihuana production facility as a permitted use long-term but would prohibit its use until such time as the applicant can demonstrate that all applicable regulations including odour and lighting control are maintained for a period of not less than one year at 1270 Road 3 E. A new zoning application would then need to be submitted for consideration at 1270 Road 3 E to permit a medical marihuana production facility. If both applications are approved then the LPAT appeal would be withdrawn.

## **LINK TO STRATEGIC PLAN**

Manage growth through sustainable planning.

## **FINANCIAL CONSIDERATIONS**

LPAT appeals are time consuming and require both legal counsel and additional planning input depending on who has filed the appeal. In this situation, since Council's decision was not in favour of administrations recommendation an independent planner must be hired to assist legal counsel in defending that decision. Planning staff took this into consideration during the development of the 2019 budget and has allocated approximately \$20,000 toward the appeal in this case. If the appeal were withdrawn, only the legal costs to date would result.

## **CONSULTATIONS**

In accordance to O. Reg 545/06 of the *Planning Act*, property owners within 120m of the subject site boundaries are required to receive the Notice of Open House/ Public Meeting by mail. Given the interest in this particular land use issue an enhanced circulation radius of 250 m was used providing all landowners on Road 3 E between County Road 34 and Graham Side Road along with several on the east side of County Road 34 with notice. Information of the proposed amendment was also posted to the Town website.

The minutes from both the May and July meeting are attached as Appendix B.

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>• No objections based on the July application</li></ul>
County of Essex	<ul style="list-style-type: none"><li>• No comment was received from the County as part of the July application</li></ul>
Town of Kingsville Management Team	<ul style="list-style-type: none"><li>• The Management Team reviewed the requested amendment during the original application and there is no change. Items related to odour, lighting buffering etc. will be addressed during the site plan approval phase</li></ul>

### **RECOMMENDATION**

It is recommended that Council approve zoning by-law amendment ZBA/04/19 to amend the existing site-specific 'Agricultural, (A1-66)' to add the H-Holding provision to prohibit a medical marihuana production facility until such time as it has been demonstrate, to the satisfaction of the Town, that odour control, lighting abatement and items directly related to the operation of a medical marihuana production facility have been in full compliance with the applicable regulations for a minimum of one year on property located at 1270 Road 3 E.

Robert Brown

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Manager, Planning Services

Peggy Van Mierlo-West

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