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Date: September 26, 2019

To: Mayor and Council

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Manager, Planning Services

RE: Combined Applications for Official Plan Amendment OPA/2/19 &
Zoning By-law Amendment ZBA/14/19 by
Chris Chevalier (Applicant)
Charles and Shirley Chevalier (Owner)
318 County Road

Report No.: PS 2019-046

AIM

To provide the Mayor and Council with details regarding the combined application for Official Plan Amendment (OPA 11) and Zoning By-law Amendment on lands known as 318 County Road 8, in the Town of Kingsville.

BACKGROUND

The subject land totals 20.23 ha (50 ac.) and contains a single detached house and several outbuildings. The applicant is proposing to develop an internal growing operation for the production of cannabis (Cannabis Production Facility (CPF)). Under Section 4.46 of the Kingsville Zoning By-law an amendment would be required to permit a CPF subject to the provisions of that section. The Kingsville Official Plan limits consideration of zoning amendments for a CPF to replacement or retrofit of existing agricultural buildings or in a greenhouse-type structure. Since the proposed development is a new build an amendment of the Official Plan would be required to site-specifically permit a CPF.

If the requested amendments are approved the next step would be submission and approval of a site plan for the proposed building and site improvements as per Section 4.46.

DISCUSSION

1.0 Provincial Policy Statement

Both the Ministry of Municipal Affairs and Ontario Ministry of Agriculture, Food and Rural Affairs have recognized that cannabis production can be considered an agricultural use similar to a greenhouse or winery. As such the proposed Official Plan and zoning amendment would be consistent with Provincial Policy Section 2.3.

2.0 County of Essex Official Plan

The County of Essex is the final approval authority for all Official Plan amendments. Information has been circulated to the County Planner for review however since the proposed amendment is related to local policy the County has no comment.

3.0 Town of Kingsville Official Plan

The subject property is designated 'Agriculture'. CPF policies were developed through Official Plan Amendment #3. Since the proposed application is for a new cannabis growing building a site-specific Official Plan amendment is necessary.

Comment: The main item that must be addressed in the requested amendment is to permit a new purpose-built structure for use as a cannabis production facility. Specifically relief from Section 3.1 q) i). All other sections of Official Plan Amendment #3 would remain applicable to the development.

There are a number of advantages to a new build including:

- i) knowing that the use is for a CPF setbacks and buffering are designed specific to the use rather than being adapted to an existing location;
- ii) use of new construction and implementation of best technology and design to address the principle odour control issue;
- iii) ability to provided added buffering and setback to mitigate potential impact;
- iv) since this is an internal grow operation and not a greenhouse lighting control is limited to outdoor security lighting versus grow lighting;
- v) no passive ventilation as the internal environment is fully controlled;
- vi) scale of the operation in this case is limited to a grow area of not more than 200 sq. m (2,152 sq. ft.) as the applicant is seeking a micro license.

Comment: The type of operation being proposed in this case is both considerably different and smaller than what has been proposed or approved to-date. Indoor growing operations were the principle mainstay of the cannabis industry in the initial stages and still represent a significant portion of it at present. However, with the legalization and move toward greenhouse based growing new indoor growing operations are less common.

4.0 Comprehensive Zoning By-law- Town of Kingsville

The subject parcel is zoned 'Agriculture (A1)' by the Kingsville Zoning By-law. The specific zoning amendment required for the subject property is as follows:

- i) permit cannabis production as a permitted use in the agricultural zoning specific to the subject property;

Comment: The zoning amendment requested for the subject lands is necessary to address several items as follows:

- a) implement the requested Official Plan amendment to permit a new build cannabis production facility;
- b) amend the zoning to add a cannabis production facility as an additional site-specific use;
- c) grant relief or exemption from the following Sections of 4.46 (Cannabis Production Facilities - CPF):
 - i. item c) which prohibits residential uses on lots having medical marihuana production facilities;
 - ii. item d) which prohibits a medical marihuana production facility as a secondary/accessory use;

Comment: To prohibit a residential use on an agricultural lot 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 CPF 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 vacant farmland on the rest of the parcel for continued agricultural production it is important to clarify this point.

- v. item i) require that the use of a CPF 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 CPF. 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 notes, '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 CPF 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 CPF;
- ii) item d), e) and i) will not be applicable to the subject property

- d) include odour control provisions as a requirement of any CPF establishment on the site.

Comment: 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. A qualified person must design the system and the owner must demonstrate that the system installed 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.

- e) setback of proposed facility

The proposed location can be located a minimum of 180 m (623 ft.) from the nearest residential dwelling and is fully screened from view by an existing large mature tree row. The zoning specific to CPFs requires a minimum of 100 m (328 ft.).

It is important to understand that the zoning approval on the property does not automatically permit a CPF 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 applicant is aware of this and would need to proceed with the licensing process if the requested amendment is approved.

A requirement of the motion of approval from PAC was to provide Council with an outline as to how or if Council's directions to not approve further CPF zonings was intended to apply and how the proposed facility would differ from those approved to-date. In 2018 Council indicated that it would not support further zoning amendments to permit medical marihuana production facilities until such time as it had been demonstrated by one or more of the already approved facilities that odour and lighting were going to be controlled as per the zoning regulations and site plan provisions.

Staff believes that the facility in this case was not one that was anticipated at that time due to the fact that there have been changes to the legislation, in the form of the Cannabis Act, and the inclusion of different license classifications beyond Part 1 and Part 2. Much of the hesitation from Council to continue granting approvals was the untested nature of greenhouse cannabis growing. There are considerable differences between indoor grow operations and greenhouse grow operations that should be considered outside of Council's current direction.

The most basic difference is lighting. With the proposed facility the growing pods are totally enclosed (no glass or polycarbonate) and within a 100% enclosed building meaning that lighting control is achieved as per Council's direction.

Indoor cannabis growing actually has a more proven track record over greenhouse growing and has not been the central concern of odour issues unlike greenhouse growing has. For example indoor growing operations do not have the option of passive ventilation

or utilizing nature light. This operation is self-contained growing units within a main building. Each of these units within the main building has a fully controlled growing environment. The main building also has a controlled environment so you actually have layers of control. In addition this is a micro license limited to 200 sq. m (2,150 sq. ft.) of growing area. This further enables the ability to control all air movement out of the facility and as such closely monitor odour. Although the potential for odour is still present the likelihood is considerably reduced and more likely to be in compliance with Council's direction on demonstration of control.

5.0 Site Plan Approval

Section 4.46 b) of the Kingsville Zoning By-law requires site plan approval of the proposed development. A conceptual layout has been provided. (See Appendix A). If the initial zoning and official plan amendment are approved the applicant would then be in a position to finalize the site layout and plans.

Although the odour control aspect of CPFs 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. Since the applicant is proposing growing cannabis in an enclosed building, the light mitigation concerns are addressed. The site plan approval will still outline requirements for all exterior lighting control.

LINK TO STRATEGIC PLAN

Support growth of the business community.

FINANCIAL CONSIDERATIONS

Building permit fees will be applicable. There will be an increase in assessment once the development is complete.

CONSULTATIONS

Public Consultations

Property owners within 120m of the subject site boundaries received the Notice of Public Meeting by mail. The notice was also posted again to the Town website.

A Planning Advisory Committee meeting was held on September 17, 2019 with the following motion:

PAC Motion 11-2019:

- i) Moved by Deputy Mayor Gord Queen, seconded by Lorrie Mensch, that the Planning Advisory Committee approve the application for Official Plan Amendment OPA/02/19 and ZBA/14/19 subject to highlighting the difference between indoor and greenhouse growing operations and if Council's directions on prohibiting further CPF approvals would apply to the proposed facility.

Agency & Administrative Consultations

Municipal Staff and outside agencies have been provided with information on the proposal and their comment is outlined as follows:

Agency or Administrator	Comment
Essex Region Conservation Authority Watershed Planner	<ul style="list-style-type: none">• No concerns or objections.• See Appendix B.
Town of Kingsville Management Team	<ul style="list-style-type: none">• Site Plan Agreement required for new building.• Lot grading plan will be required.• New construction will have to comply with Ontario Building Code.• No municipal water available.
County of Essex	<ul style="list-style-type: none">• Engineering comments regarding setback from County Road 8.• After follow-up consultation with the County they have requested that the applicant provide a memo outlining the anticipated traffic/impact.• See Appendix C.

RECOMMENDATION

It is recommended that Council:

Adopt Official Plan Amendment No. 11 (OPA 11) to establish a site-specific policy area to permit a new build structure for the establishment of a micro licensed cannabis production facility on the property known as 318 County Road 8, Part of Lot 11, Concession 11, in the Town of Kingsville and direct administration to forward the policies to the County of Essex for final approval.

Approve Zoning By-law amendment application ZBA/14/19 to: implement OPA 11 once final approval is granted by the County of Essex; permit a cannabis production facility and establish site-specific regulations for said cannabis production facility; and adopt the implementing by-law.

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Peggy Van Mierlo-West

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