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To: Mayor and Council

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RE: 617885 Ontario Limited o/a JEM Farms
1581 County Road 34 E
Part of Lot 9, Concession 2 ED

Report No.: PDS 2018-016

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 being 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 an 11.8 ha (29.2 ac.) farm parcel with approximately 5.78 ha (14.3 acres) of existing greenhouse. The property is part of a larger operation at 1583/1585 County Road 34 E on an 18 ha (44.4 ac.) parcel with approximately 5.74 ha (14.2 acres) of existing greenhouse. The proposal specific to the subject property at 1581 County Road 34 E is to establish a medical marihuana growing greenhouse utilizing the existing greenhouse in combination with 1583/1585.

In order for the proposal to proceed a zoning amendment is required to permit a medical marihuana production facility (MMPF) as an additional site-specific permitted use on the subject property. Secondly, grant partial or complete relief from certain provisions of Section 4.46 of the Kingsville Zoning By-law the details of which are outlined in the zoning section of this report.

The applicant has provided an outline of information specific to the proposed development which is attached as Appendix A. An overall layout of both affected properties is included as Appendix B and shows all of the applicable setbacks.

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. The addition of the new production facility would be supportive of the existing operation and consistent with a retrofit to the existing greenhouse.

4) Comprehensive Zoning By-law – Town of Kingsville

The lands to the south at 1583/1585 County Road 34 E were rezoned to a site specific 'Agriculture Zone 1 Exception 62, (A1-62)'. The proposed amendment would expand that same zoning to encompass the subject parcel with the same provisions and relief.

As was noted to Council at the March 12th meeting the application had to be presented in two separate reports because property owners within 120 m of the 1581 County Road 34 E had not been included in the original circulation for 1583/1585. Under the Planning Act 20 days notice is required to the affected neighbours and the omission was not realized until about 3 days past that requirement as such the omitted neighbours were circulated and the second part of the application deferred until March 26.

The specific zoning amendment required for the subject property must amend the zoning to:

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

Comment: The Official Plan amendment 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 growing facilities on the subject property will meet the 100 m setback requirement. However, the proposed new processing area will be located within 68 m of the nearest off-site residential use. 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 impact has become evident in the form of odour generation.

The applicant has outlined that odour can be controlled through the use of charcoal filtration on ventilation fans and openings and cloaking or scent masking can also be used in other areas. This can be employed most effectively in the production area which will be a new build and can take the necessary extra precautions based on the reduction in setback. Odour control in the growing area may not be 100% as such it is important for these areas to comply with the 100 m setback. If existing greenhouse growing areas are located less than 100 m from an off-site residential use these areas may have to remain dark or not utilized. The northwest corner of the existing greenhouse on this property would be partially impacted by the 100 m setback as such a small portion of this greenhouse will need to be let vacant.

- 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 rather 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 to the production of a single crop limit a growers ability to adapt to change and in fact actually run somewhat 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 require a minimum setback of 65 m from the processing portion of the MMPF to the nearest existing residential use but will continue to require a 100 m minimum setback from the growing area of the MMPF;
- iv) the by-law will also clarify between on-site and off-site residential uses and if the required setback applies.

This is the same zoning that was approved for the abutting property at 1583/1585 County Road 34 E and will cover both properties.

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 will be proceeding with the licensing process if the requested amendment is approved.

5) Site Plan Approval

As per Section 4.46 b) site plan control is to apply to MMPF. The property is subject to an existing site plan agreement which will require amendment as part of the overall approval. This amendment will address items such as fencing, odour control, lighting and landscaping as needed.

LINK TO STRATEGIC PLAN

Manage growth through sustainable planning.

FINANCIAL CONSIDERATIONS

The proposed development on the site will require a significant investment to retrofit the existing facility. The construction of the new processing building will increase assessment on the property and will require the payment of development charges as per the new Development Charges By-law applicable to non-growing areas.

CONSULTATIONS

Public 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.

Public comment was received as part of the initial part of this application that was presented to Council on March 12 regarding 1583 and 1585 County Rd 34 E. That correspondence is attached as Appendix D.

The issues of concern included, odour control, security, impact on property values, and the aesthetics of any required fencing. With the exception of property values each of these items can be addressed through the necessary site plan amendment that will be required as the next step in the process.

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 C • No objections
County of Essex	<ul style="list-style-type: none"> • The County will require that any new commercial buildings be located a minimum of 32 m (105 ft.) from the centreline of County Road 34 E.
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 the second part of Zoning application ZBA/01/18 to permit a medical marihuana property facility at 1581 County Road 34 E and address the required relief or exemption from Section 4.46 of the Kingsville Zoning By-law 1-2014 as outlined in the attached amendment and adopt the implementing by-law

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