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Date: February 27, 2018

To: Mayor and Council

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Manager, Planning Services

RE: Zoning By-law Amendment ZBA/02/18
Rico Roots Plant Farm Inc. (Enrico & Anna Mastronardi)
Part of Lot 7, Concession 3 ED
NS Road 3 E

Report No.: PDS 2018-012

AIM

To provide Council with information regarding a request for a zoning amendment to permit the growing of medical marihuana as a permitted use and address relief 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 contains three greenhouse tracks with a total of approximately 11.7 ha (29 acres). The proposal for this parcel on the north side of Road 3 E is to establish a medical marihuana growing greenhouse utilizing the existing 1.61 ha (4 acre) track of greenhouse located in the southeast corner of the lot. (See Appendix A)

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

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 and consistent with a retrofit of the existing greenhouse.

4) Comprehensive Zoning By-law – Town of Kingsville

The subject parcel is zoned 'Agriculture Zone 1, (A1)' by the Kingsville Zoning By-law which specifically does not list medical marihuana production facility as a permitted agricultural use. Therefore an amendment is required to address the following:

- 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 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 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 for any off-site residential uses. However, there is a residential use on a lot at 1158 Road 3 E which will not meet the setback required but this dwelling is owned by and used for working housing by the applicants. As such it is recommended in the amending by-law that item g) not apply to this dwelling.

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 be remain dark or not utilized.

- 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 100 m minimum setback from the growing area of the MMPF to any off-site residential use and exempt the growing area from item g) for a dwelling located at 1158 Road 3 E, owned by the applicants.

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. As with most newer greenhouse operations there is an existing site plan agreement in place on the subject property. If the requested zoning is approved the applicant would be required to request an amendment to update that agreement to address issues such as fencing, lighting and odour control. Appendix A outlines the location of the proposed conversion and the setback to the nearest off-site dwellings.

LINK TO STRATEGIC PLAN

Support growth of the business community.

FINANCIAL CONSIDERATIONS

The applicant is only planning the conversion of one 4 acre track of greenhouse to medical marihuana at this time which will require retrofit versus any new construction as such there will be limited assessment impact.

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.

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	<ul style="list-style-type: none"> • Comment is attached as Appendix B • No objections
County of Essex	<ul style="list-style-type: none"> • The property is not on a County Road so no comment is expected
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 zoning by-law amendment ZBA/02/18 to permit a medical marihuana production facility on property located on the north side of Road 3 E and address the required relief or exemption from specific provisions of Section 4.46 of Kingsville Zoning By-law 1-2014 as outlined in the attached amendment and adopt the implementing by-law.

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Peggy Van Mierlo-West

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