



2021 Division Road North
Kingsville, Ontario N9Y 2Y9
(519) 733-2305
www.kingsville.ca
kingsvilleworks@kingsville.ca

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To: Mayor and Council

Author: Robert Brown, H. Ba, MCIP, RPP
Manager, Planning Services

RE: Medical Marihuana – Policy Review

Report No.: PDS 2018-017

AIM

To review the current Town of Kingsville Medical Marihuana policies and provide Council with the implications of any suggested changes and provide recommendations on any proposed changes to the current policies.

BACKGROUND

The use of medical marihuana in Canada has been in place since 2001 with the implementation of the Medical Marihuana Access Regulations (MMAR). These regulations permitted an individual or a designated person, with the authorization of their health care practitioner, to produce limited quantities of dried marihuana. In 2013, new regulations, in the form of the Marihuana for Medical Purposes Regulations (MMPR) were created for the establishment of a commercial industry responsible for the production and distribution of marihuana for medical purposes. As part of these new regulations Health Canada also included provisions for local municipalities to implement protocols on the location of commercial growing operations which had not previously been the case with the MMAR regulations.

What resulted from this was a wide variety of different regulations ranging from nothing, to permitted as-of-right in industry zones to requiring a zoning amendment subject to certain criteria. For those municipalities that did address the issue one common element in the regulations was a need to maintain some degree of minimum setback from residential uses, areas or zones and a setback or prohibition in proximity to other sensitive uses such as parks, schools and churches.

The regulations that were developed for Kingsville were what one could refer to as a middle-of-the-road approach. The initial draft suggested that licensed facilities would be

permitted in all industrial zones subject to certain setback requirements from sensitive uses. During the public consultation phase there was feedback from the agricultural sector that suggested a need or desire by the industry to also include the ability for greenhouse operations to have the opportunity to be MMPR producers. Ultimately, the Council of the day agreed and the current Medical Marihuana Production Facility (MMPF) regulations were adopted via OPA #3 and the Comprehensive Kingsville Zoning By-law was amended to add Section 4.46.

DISCUSSION

At the March 12, 2018 Council meeting Motion 222-1018 was brought forward and approved as follows:

That Administration review the Town's existing policies, by-laws and the Official Plan in relation to the production of medical marihuana and provide a report back to Council to provide recommendations as to whether Council should:

- Amend The Zoning By-law to allow for the production of medical marihuana in newly-constructed greenhouses that have proper odour control and security facilities, and if so, what is the process, the cost to undertake said amendment, and the implications of such an amendment; and
- Consider medical marihuana as a legitimate greenhouse crop.

Comment: The original intent behind limiting the establishment of MMPF's to existing greenhouses was not so much about the growing of the plants themselves but more about the processing of the plants into their final usable format. The growing and maintenance of a marihuana plant is very similar to that of vegetable crops however once the plant is to be processed the similarity ends. Vegetable crops are very much pick, pack and ship to the end user. Marihuana must be harvested, dried and processed into its final form which can be dried product or oil which can also be further used in other forms such as edibles or infused products. This processing aspect for an end user product then starts to resemble an industrial form of use which is not intended for location on Agriculture designated lands. While the Zoning and Official Plan do permit agricultural processing there is a limit to the level of processing. Packing and selling bulk carrots is far different than manufacturing baby food from those same carrots.

The first part of the motion asks about permitting new greenhouse builds for MMPF's subject to certain requirements. It is actually not the Zoning By-law which currently limits MMPF establish to existing greenhouses but rather the Official Plan. Amendment of the plan is certainly a possibility however is it necessary. Much of the current interest and demand in MMPF's has been for the use and conversion of existing greenhouses and can be monitored, reviewed and regulated through the required zoning amendment process. This does not mean that new build greenhouses are prohibited it simply means that there is an extra step in the approval process and a need for added justification in the form of a site-specific Official Plan amendment.

The other question that has some merit is why is there a significant desire to add medical marihuana production as a permitted use? Many of the operations that have come forward or will be coming forward in the coming months are smaller older greenhouses. These

operations, based on comments I have hear over the last several years, are becoming less and less viable as the overall average size of operations continues to increase. If the current policy helps to encourage reuse and redevelopment of the existing greenhouse stock perhaps that should be the initial consideration before opening the policy to as-of-right new builds.

Does leaving the policy unchanged place the Town at a competitive disadvantage? In general I do not believe that the requirement for any appropriate approvals places a community at a disadvantage. Failing to work with any developer, greenhouse or otherwise, is what generally impacts a proponents decision to locate in one community over another. Locally the greenhouse industry is far more impacted by the availability of services, increased taxes (cap and trade), hydro costs, gas cost, lands costs, labour supply and lack of available land.

On the other hand changing the policy perhaps creates a lack regulation or oversight creating an environment for too much development of MMPF's. Although you might consider medical marihuana a crop it is also one more pressure on limited agricultural lands. Even current cash crop production is increasingly redirected away from food production, corn for ethanol, fibre crops for automotive parts production etc.

The second part of the motion asks to consider medical marihuana as a legitimate greenhouse crop.

Comment: At present the Zoning By-law does not include a MMPF as an agricultural use. I don't believe that this was intended to not recognize the growing portion as a legitimate crop but rather was based on the commercial industrial direction that the legislation was taking at the time. In addition OMAFRA and MMA have both concluded that the growing of medical marihuana can be considered an agricultural use. This aspect of the overall policy really only represents a very small part of the whole consideration. Whether it is marihuana for medical purposes or recreational use it will continue to be a controlled substance not unlike the sale of alcohol.

LINK TO STRATEGIC PLAN

Support growth of the business community.

FINANCIAL CONSIDERATIONS

If the policy remains unchanged then there is no financial implication for the Town as there is no amendment process required and no public consultation or public meetings. Should the policy be amended then there is the cost of public notification for the entire Town. At minimum two to three circulations would be necessary at approximately \$1,000 each. There is also the added cost of staff time to address an amendment which may actually be premature because of pending changes due to the legalization of marihuana later in 2018 and a possible duplication of review as a result of the current 5-year Official Plan review.

CONSULTATIONS

Administration

Planning staff had the opportunity in late March to attend an information session and round table discussion hosted by OMAFRA and the Minister of Municipal Affairs. The general consensus from attendees at the meeting was that we are still in a learning phase of how to best address planning regulations related to the production of medical marihuana. One of the lead municipalities in regulating this use has been the County of Norfolk. Much of the interest in this area has been driven by the need to find an alternate crop to replace tobacco production. Norfolk has a great deal of greenhouse space that was once used for growing of plug tobacco plants. From a regulation standpoint the two main issues are odour control and is this truly an agricultural use.

Conclusions

To date Council has approved three applications for existing greenhouses to permit a medical marihuana production facility. It is likely that in the coming months Council will be asked to consider several more including a new build greenhouse. There has not been any significant public objection to the proposal save and except some uncertainty of the full impact that the use may or may not have on the area. Medical marihuana production regulation has been in a state of flux for much of the last 15 years and will continue to be until we see what impact legalization for recreational use will have.

Kingsville was one of several municipalities in Essex and across Ontario to take action and development some form of regulatory framework around medical marihuana production in 2013. Until recently those regulations were untested. Until a production facility begins operations and until we see what type of regulations will be applicable to recreational marihuana use and production any change to our current Zoning By-law or Official Plan policies is pre-mature. A site-by-site assessment and justification for a new build greenhouse are important safeguards until more experience is gained.

RECOMMENDATION

It is recommended that:

Council receive the report on Medical Marihuana Policy Review for information purposes;

Council direct the Manager of Planning Service to include a discussion and review of the current Official Plan policies on Medical Marihuana Production Facilities in the 5 year Kingsville Official Plan Review;

Council endorse the continued use of the existing Medical Marihuana Production Facility regulations in the Kingsville Zoning By-law and Kingsville Official Plan, and

Council direct the Manager of Planning Services to review and research the use of zoning regulations in combination with site plan approval to bolster odour regulations for medical marihuana production facilities.

Robert Brown

Robert Brown, H. Ba, MCIP, RPP
Manager, Planning Services

Peggy Van Mierlo-West

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