



Report to Council

Department: Planning
Date: December 15, 2014
Prepared by: Jeff Watson, Policy Planner
Submitted by: Chris Nepszy, Director of Infrastructure and Development
Report Number: Planning 2014-54
Subject: Medical Marijuana Production Facilities
Policy Options
Number of Pages: 10

Recommendations

- That the following policies regarding medical marijuana, hemp and mushroom farm operations be adopted in principle:
 - Operations involving the production, storage and distribution of medical marijuana, hemp and mushroom products be subject to site plan control, under Section 41 of the Planning Act;
 - That operations involving the production, storage and distribution of medical marijuana, hemp and mushroom products be permitted in the A1.1, general agricultural zoning district, subject to a minimum separation of 150 meters from a dwelling and 350 meters from a residential zoning district;
 - That operations involving the production, storage and distribution of medical marijuana and hemp products not be permitted in the A1.2, restricted agricultural zoning district.

- That Planning be requested to report further on site plan control guidelines and zoning provisions for the siting and design of medical marijuana, hemp and mushroom farm operations in preparation for statutory public meeting.
- That, in accordance with the Planning Act, a statutory public meeting be held to seek public comment on the proposed Official Plan, Zoning and site plan control amendments.

Reason for Report

To outline options regarding the regulation of medical marijuana production in the Town of Essex so that Council may determine the preferred option.

Background

An analysis of the Federal government's new regulatory provisions for the production of medical marijuana, the implications of these on local municipalities and the actions taken by them are set out in a report by Town Planner Kim Darroch to the Council of the Town of Lakeshore. This report, dated October 21, 2014, which was previously distributed to staff and Council.

Rather than reiterate all that is stated in the report, Planning offers the following synopsis.

Since 1998, Health Canada has permitted the commercial production of medical marijuana, but over the years regulatory changes have taken place to address issues surrounding its production, generally related to overall quality control, site security, distribution and the location of production facilities.

The response to the 2013 announcement that locations were being sought was overwhelming. In fact some investors constructed facilities beforehand, in an effort to secure a license early in approval process. The Health Canada licensing procedures are stringent and there have been long delays in processing.

It was announced in the Windsor Star last Tuesday, December 2, that one local producer, Aphria Incorporated, a greenhouse operator in Leamington, has been licensed. They are one of several local companies seeking approval. One of them, Asia Farm 1668 Limited, is located in the Town of Essex at 3276 North Malden Road. To date, no other applications are filed for a property in the Town of Essex.

This long approval process gives municipalities the opportunity to address local concerns, if any, pending the final approval of licence applications. Municipalities may, through their Official Plan and or Zoning By-laws, regulate the location of such facilities and or introduce regulations governing them on a property. The Darroch report charts the response of a number of local municipalities as to how they have reacted to the new legislation and the potential for new establishments in their municipalities.

Municipal responses regionally have ranged from do nothing differently, on the grounds that this is a permitted agricultural use (Windsor Leamington), to limiting them to industrial zones (Kingsville) or to completely banning such production facilities, except by site specific rezoning (Tecumseh, Lakeshore, Chatham Kent). Some municipalities have incorporated setback provisions from residential zones and other sensitive land uses and most, including Windsor and Leamington, use site plan control to provide some oversight should a specific project be proposed.

Of note, the Provincial Ministry of Municipal Affairs and Housing (MMAH) and the Ministry of Agriculture, Farms and Food Production (OMAFRA) recognize medical marijuana production as an agricultural use along the same lines as a greenhouse or winery.

Comments

The Town of Essex has a strong agricultural history and it is a significant part of its current economic base and employment. The Official Plan and general zoning by-law, By-law 1037, recognize that and take active steps to preserve and to protect the agricultural industry. Under By-law 1037, marijuana production facilities are permitted in our two general

agricultural zones, A1.1 and A1.2, the latter being more restrictive in regard to intensive livestock farming and mushroom farms.

There are no special regulations governing marijuana production facilities. At present one such facility exists in the Town. It does not, from outward appearance, appear to meet the new standards set for the licensing of production facilities, and, at this point, it is unknown if it will be permitted to continue operation.

The Federal Government will be licensing facilities throughout the country so that they will be broadly distributed. Counter to that, greenhouse production is quite prevalent in the south part of the County, primarily in Leamington. Such a clustering is unique in Canada but successful because of the milder climate, access to international markets via a well-established transportation system and the synergies by association. One can only speculate whether or not such synergies would occur there for medical marijuana production.

However, the new Federal legislation is much more stringent than past legislation in regard to such factors as site security and the capture of odours. As stated in the Windsor Star article, Aphria invested \$6 Million in infrastructure for processing storage, ventilation, quality control and security systems to accommodate marijuana production in accordance to Health Canada licensing standards. These are not mom and pop operations, which characterized the previous means of production and which are no longer permitted.

Legislative Framework

Control of such operations locally would be through the local official plan and zoning by-laws, both of which must conform to the mandates of the Province, as set out in the Provincial Policy Statement (PPS).

The PPS, under **2.3 Agriculture**, states that “in prime agricultural areas, permitted uses and activities are: Agricultural uses, agricultural related uses and on-farm diversified uses. In prime agricultural areas, all types of, sizes and intensities of agricultural uses and normal farm practises shall be promoted and protected....”

As such, a complete prohibition of marijuana production facilities is contrary to the PPS. Rather, regulation of their location and site plan would range from our current liberal policies to site specific rezoning.

One could liken them to a greenhouse operation or to a mushroom farm. In terms of impact on sensitive land uses, like a dwelling, both have negative impacts, mushroom farms more so. Both can be large facilities with 24 hour operations, including truck transport. Both can be associated with external odours or the use of air borne pesticides. But the new licensing standards established by Health Canada are intended to mitigate the potential negative impacts of odours and other air borne pollutants.

As such, the potential negative impacts on adjacent land occupiers are likely to be more of a psychological or aesthetic nature.

In the Town of Essex Official Plan, under Section 4.6, Visual Amenity, a liveable community instills comfort and pride of place and visual amenities should be preserved and positively enhanced. On private lands new development should meet minimum property and site planning standards, have limited signage and good landscape design.

Section 4.7, Buffering, provides that buffering will be required “where there may be a conflict so that one use will not detract from the enjoyment of amenities and or hinder the proper functioning of the adjoining uses.” The proponent will satisfy Council that there is

appropriate buffering to reduce adverse effect or negative impact...Such buffering may include landscaping, screening and greater distance separation.

Regulatory Options for Discussion:

1. Maintain the status quo -

The A1.1, general agricultural and A1.2 restricted agricultural zones currently permit medical marijuana and hemp operations (production, storage and distribution) as of right, with no specific restrictions or special regulations regarding them. As well, as agricultural operations, they are exempt from site plan control.

Consequently, maintaining the status quo, would not address buffering and visual amenity concerns.

It should be noted that mushrooms farms and intensive livestock operations are not permitted in the A1.2 zone, as that zoning district is intended to be a buffer zone surrounding smaller urbanized areas like Gesto, the urban fringes around Harrow and Essex Center and the lakefront residential areas along CR50.

2. Incorporate regulations for separation from sensitive land uses (the recommended actions)-

Add to the A1.1 general agricultural zone a minimum land use separation from a Residential Zoning District. A mushroom farm is not permitted within 350 meters of a Residential District. The same restrictions could be applied to marijuana and hemp operations. Like mushroom farms, such operations should be prohibited in the A1.2, restricted agricultural zone.

Further, the City of Toronto identifies such facilities as Class 2 industrial uses under the Province's D-6 Guidelines for mitigating negative impacts on sensitive land uses. It recommends a minimum distance separation of 70 meters from a sensitive land use such as a dwelling, which Toronto has adopted. The City of Ottawa has a 150 meter minimum separation because of the publically perceived issues surrounding this type of activity. As the Town has a wide distribution of residential properties throughout the rural areas, a separation requirement within the A1.1 zone would also be appropriate.

3. Restrict medical marijuana production, storage and distribution facilities to site specific rezoning-

Each facility would be evaluated on its own merits according to locational advantages and disadvantages and potential impacts on adjacent land uses. This has the advantage of the giving of public notice to the immediate neighbours and a tailoring of the regulations and site plan approval to fit the specific project.

Once a preferred option(s) is selected, it will be necessary to add new Zoning By-law regulations and, likely, to amend the Official Plan to adopt them into law. The giving of public notice and the holding of a statutory public meeting(s) is required in accordance with the provisions of the Planning Act as is approval of an Official Plan amendment by the County. Once instructed by Council as to the preferred option to present to the public for consideration and comment, Planning will undertake the necessary steps to start the process toward the adoption of the amending by-laws.

Site Plan Control Provisions

Regardless of the preferred option selected, site plan approval by Council should apply to the construction of such facilities, including, as well, a mushroom farm and an industrial hemp production operation. There could be a huge variation in the look and impact of such

facilities. Our one existing medical marijuana facility and the potential operation in Lakeshore are shown in Appendix B.

The existing Asia Farm 1668 operation on North Malden Road is on a farm in a pole barn located parallel to and close to the road with no screening or restrictive fencing surrounding it. From all outward appearances, it does not appear to meet the newer, much stricter Health Canada licensing regulations.

The Gen Biotech facility in Lakeshore, which is not yet licensed for production, is a large sheet metal sided building on a large lot surrounded by a double fence with a patrol walkway between them. It has a stark, institutional look and is a topic of public speculation as to its purpose. It would be, in the opinion of this author, an unwelcome intrusion in our agricultural areas, especially given the level of residential development, heritage features, both manmade and natural, and popular tourist destinations located throughout the Town. The licensed Aphria operation in Leamington (not shown) is in a larger greenhouse complex resembling numerous other greenhouse operations in the area.

The Town of Lakeshore has implemented site plan provisions related to such matters as the provision of loading spaces entirely within the building, no outdoor signage or advertising, no outdoor storage. In order for us to do so, the Official Plan must be amended to require site plan control approval for such operations, namely, marijuana, hemp and mushroom production, storage and distribution facilities. Planning will provide a suggested list of site plan provisions at a subsequent meeting, once the preferred options are decided by Council.

Recommended Actions

If Council approves an option(s) in principle, Planning can convene a statutory public meeting of Council to hear public representations regarding this matter. The suggested actions are set out in the Recommendations above. The reasons for them are based on the Town's commitment to protecting and enhancing agricultural activities, but balancing this with our commitment to protect adjacent land uses, particularly residential land uses, and land users

by means of buffering, in accordance with the mandates and policies of our Official Plan and the PPS.

Financial Impact

None.

Reviewed by:

Russell Philips, Chief Administrative Officer - concurs

Chris Nepszy, Director of Infrastructure & Development – concurs

Appendix A



Asia Farm 1668 Limited, 3276 North Malden Road



Gen Biotech proposed medical marijuana production facility, Lakeshore