

AIRD BERLIS

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June 13, 2018

Our File No.: 144890

BY EMAIL

Mr. Stephen Robichaud
Director, Planning & Chief Planner
Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Mr. Robichaud:

**Re: Objection to Proposed New Marihuana Growing and Harvesting Facility
286-288 Green Mountain Road East, Stoney Creek**

We represent the owners of 284 and 294 Green Mountain Road East in the City of Hamilton. Our clients reside immediately adjacent to the new proposed marihuana growing and harvesting facility at 286-288 Green Mountain Road East in Stoney Creek (the "**subject property**").

We are writing to advise City Staff of our clients' concerns regarding the proposal and to formally request that the City require the owner of the subject property to provide detailed evidence to support any claim that the proposed facility as a legal non-conforming use. In our submission, the owner of the subject property should also be subject to the site plan approval process to ensure that the building size, location, setbacks, drainage and other matters are all properly addressed before a building permit is issued for this project.

Background

For years, our clients and their neighbours have faced significant challenges with the subject property's use as an illegal and then later "legalized" facility to grow medical marihuana.

Earlier this year, our clients became aware that the subject property had been acquired by a new owner who intended to grow, harvest and produce marihuana on the site (the "proponent" and the "proposal"). We have been advised that the proponent is of the view that a medical marihuana greenhouse is a legal non-conforming use of the subject property.

In April, our clients contacted the proponent's agent, Mr. John Ariens of IBI Group, to share their concerns about the proposed use of the subject property, including but not limited to:

- odour from production and harvesting;
- noise from generators as well as from the operation of the facility;
- light pollution from general operation of the facility;
- light pollution from outdoor security lighting as required by Health Canada for all licensed medical marijuana production facilities;

- privacy impacts from video surveillance and similar, as required by Health Canada;
- health impacts from use of pesticides; and
- *increased traffic and other related impacts such as the number of access points to the site and parking for employees and other visitors to the facility.*

We have been advised that the proponent will be hosting a community meeting to discuss its proposal following a preliminary discussion with City staff, but no such meeting has yet been scheduled.

Our clients are not the only neighbouring residents voicing concerns about the proposal on the subject property. A petition (attached) evidences the level of concern in this community about the impacts of permitting the proposed facility on this site and about the precedent that it will set in the area.

The existing building is too close to the property line for a medical marihuana facility

As you are aware, medical marihuana growing and harvesting facilities are permitted in the Agricultural (A1) zone under the City's Zoning By-law No. 05-200 (the "**Zoning By-law**"). The subject property and our clients' properties are located within the Agricultural (A1) zone. Agricultural uses are permitted in the Agricultural (A1) zone and agricultural uses are defined in section 3 of the Zoning By-law to include medical marihuana growing and harvesting facilities.

Section 12.1.3.1 of the Zoning By-law sets out regulations applying to agricultural uses, including medical marihuana growing and harvesting facilities. In addition to prohibiting outdoor storage and retail sales, this section sets a maximum gross floor area of 2,000 square metres for facilities (although there is an exception for existing buildings) and requires all buildings and structures to be set back a minimum of 20.0 metres from any lot line:

12.1.3.1 AGRICULTURE AND VETERINARY SERVICE – FARM ANIMAL REGULATIONS

m) Medical Marihuana Growing and Harvesting Facility

- i) The maximum gross floor area for all new buildings and structures devoted to a Medical Marihuana Growing and Harvesting Facility shall not exceed 2,000.0 square metres;
- ii) Notwithstanding Section 12.1.3.1 m) i) above, existing buildings may be used for a Medical Marihuana Growing and Harvesting Facility;
- iii) Notwithstanding Sections 12.1.3.1 b), c) and d) above, all buildings or structures associated with the use shall be set back a minimum of 20.0 metres from any lot line;
- iv) Notwithstanding Sections 12.1.3.1 f) i), ii) and iii) above, outdoor storage shall not be permitted;

v) Notwithstanding Sections 12.1.3.1 i) i), ii), iii) and iv) above, retail sales shall not be permitted.

Medical marihuana growing and harvesting facilities were added as a permitted use within the Agricultural (A1) zone in 2015 by By-law 15-173. The specific regulations applying to medical marihuana growing and harvesting facilities, including the mandatory 20 metre setback from the property line, were added to the Zoning By-law at the same time.

The attached photographs show the immediate proximity of the subject property to our clients' homes. Photographs 1 and 2 show that the current building on the subject property is setback less than 2 metres from its property line, and is virtually in one client's backyard. The existing condition clearly does not comply with the 20 metre setback required under s. 12.1.3.1(m) of the Zoning By-law.

The Zoning By-law recognizes medical marihuana growing and harvesting facilities as being different from and requiring supplementary regulations as compared to other agricultural uses. On this basis, a facility growing medical marihuana must be treated differently than a facility growing other types of agricultural uses.

The proponent has not established that the proposal is a legal non-conforming use

The proponent has advised our clients that it will proceed as a legal non-conforming use under the general Agricultural (A1) zone and, therefore, that the mandatory 20 metre setback mandated in the Zoning By-law does not apply to the subject property. However, the proponent has provided no evidence to substantiate this claim.

To be a legal non-conforming use, the use at issue must have been legal at the time it commenced. Clause 34(9)(a) of the *Planning Act* provides that a use prohibited under the Zoning By-law may continue as long as the "land, building or structure was lawfully used for such purpose" on the day the by-law was passed:

Excepted lands and buildings

34 (9) No by-law passed under this section applies,

(a) to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose; (emphasis added)

Under the *Planning Act*, the proponent bears the burden of establishing that prior to the introduction of medical marihuana growing and harvesting facilities as a permitted use in the Agricultural (A1) zone and corresponding s. 12.1.3.1(m) of the Zoning By-law, that the medical marihuana facility:

- was legal (i.e. all required licenses were in place);
- complied with the applicable zoning regulations in force at the time (including mandatory setbacks); and

- has been continuous.

Additionally, the proponent has provided no information about the scale and intensity of the use proposed on the property, nor information on any increased scale of production anticipated by the proponent.

The proponent is obligated to provide all such information to the City in support of its claim that the proposal is a legal non-conforming use; we ask that we also be provided with this information.

Adverse impacts cannot be sufficiently mitigated in this context

The proposed medical marihuana growing and harvesting facility is too close to our clients lands to allow for any measures to adequately mitigate impacts from the facility.

The new owners have promised to "fully comply" with all regulations and to employ an air lock entry system and pressure system to control odour, but our clients have learned from the experience of others living in close proximity to such a facility (but none as close as our clients) that such measures are not effective.

As stated above, our clients have a number of concerns about the proposal in addition to odour, many of which are linked to the proximity of the subject property to nearby residential homes. Even though the properties along this section of Green Mountain Road East are zoned Agricultural (A1), this area functions as a residential street. Accordingly, what is effectively proposed on the subject property is a medical marihuana facility in the middle of a residential neighbourhood.

Submission

On behalf of our clients, we respectfully request that City Planning carefully scrutinize any assertion that the proposal is a legal non-conforming use. The existing location of the building for the proposed use is unacceptably close to neighbouring residents, which close proximity will result in significant negative impacts on neighbours including but not limited to impacts from odour, light and reduced privacy. Additionally, we ask that the proposal be subject to the City's site plan approval process to address appropriate building size, location and mitigation of impacts.

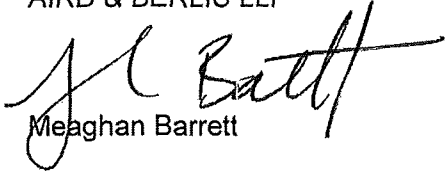
We are aware that the City is considering amendments to the prevailing zoning regulations and to the Rural Hamilton Official Plan in respect of medical marihuana growing and harvesting facilities. While we have only had the opportunity to briefly review these proposed amendments, our clients are pleased to see that they are proposing to provide greater protection for residents in Hamilton's rural areas, and better address the significant adverse impacts created by the incompatibility of marihuana production facilities next to residential uses. These new policies and standards should be applicable to the facility proposed on the subject property.

Should you have any questions, please do not hesitate to contact the undersigned.

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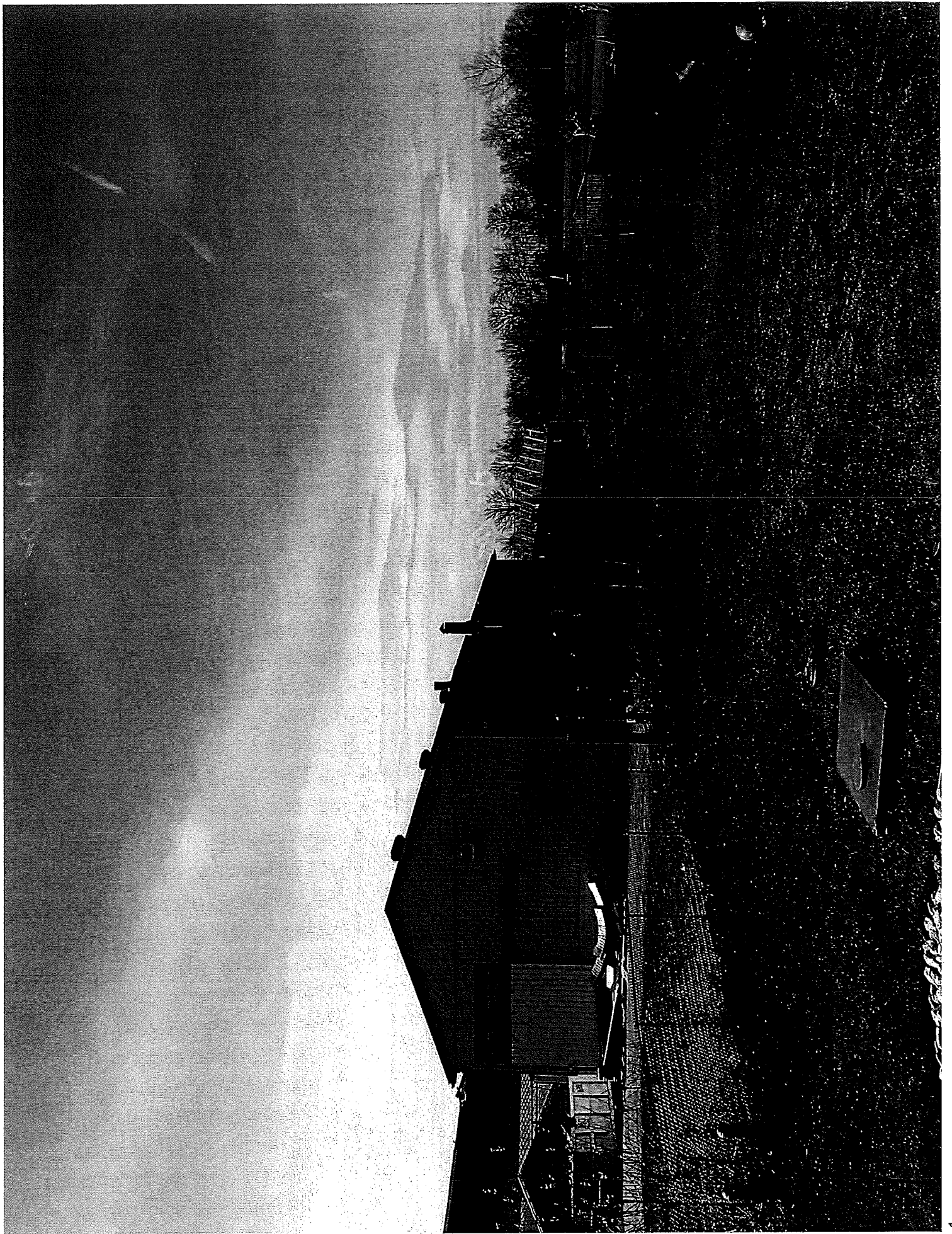
Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read "Meaghan Barrett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

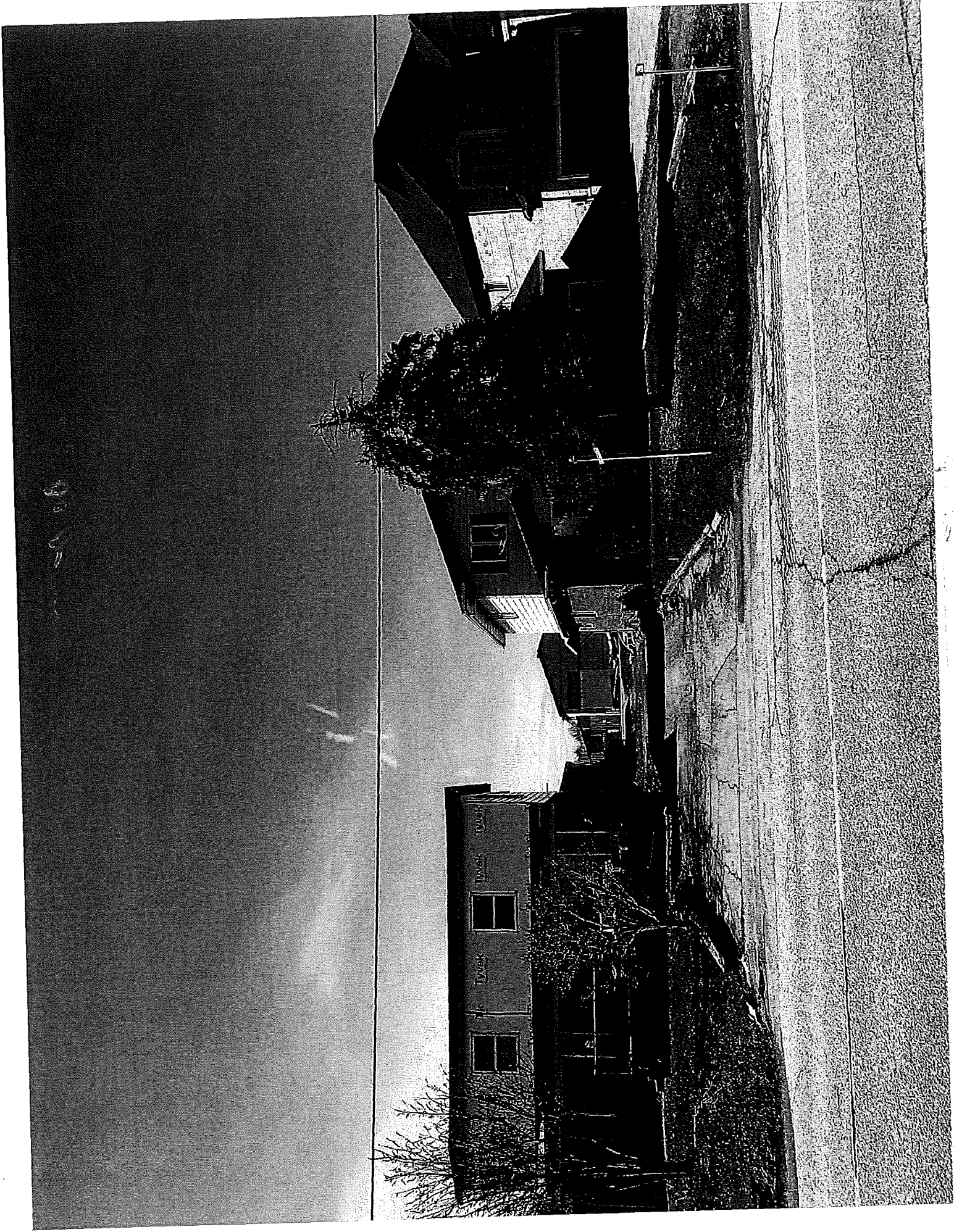
Meaghan Barrett

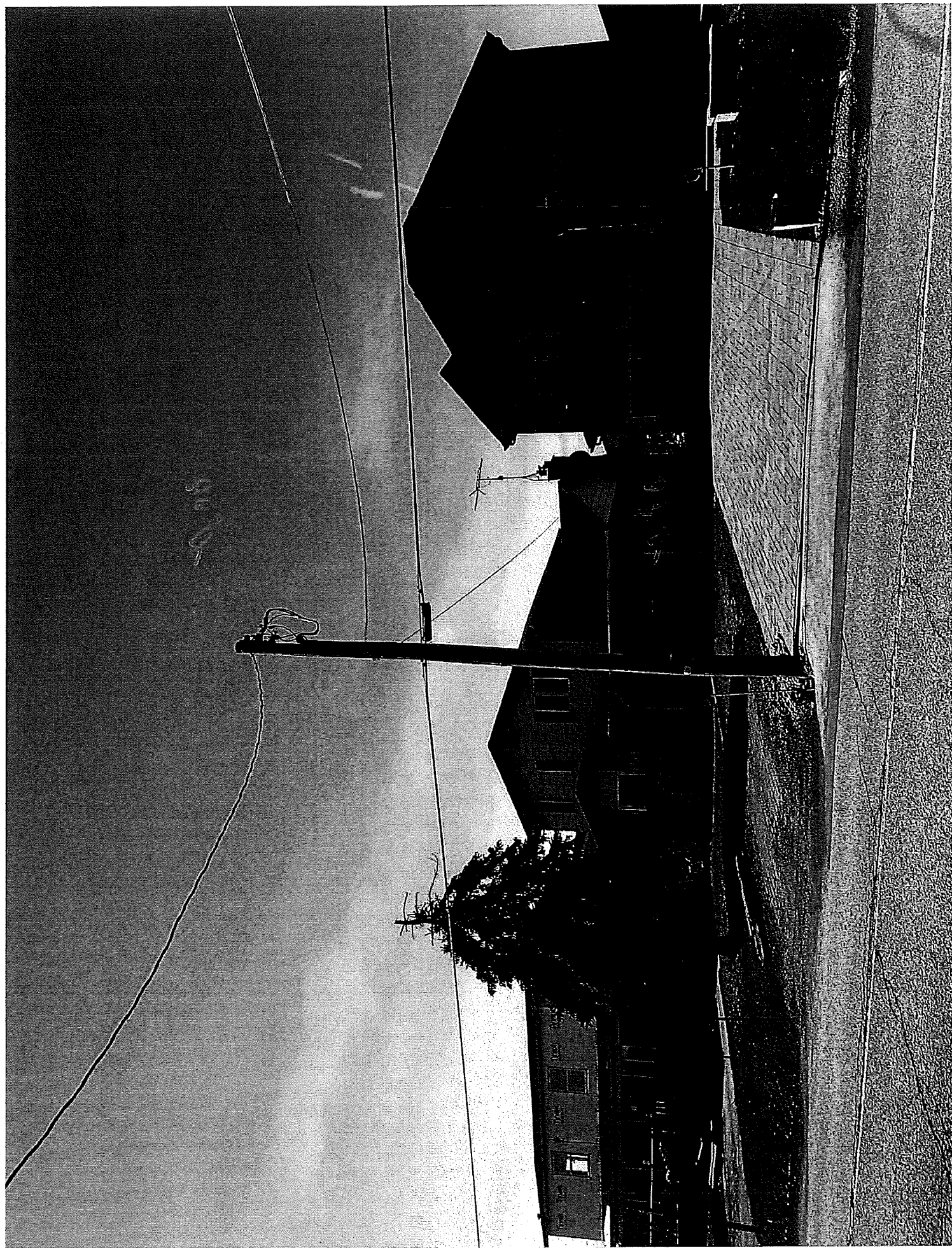
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From: Lisa & Tony _____
Date: May 11, 2018 at 14:53:17 EDT
To: NoPot286288GMR@gmail.com
Subject: Fwd: Issue with 286 and 288 Green Mountain Road

My wife Lisa and I live at 309 Green Mountain Rd. East Stoney Creek

We moved here Aug 2016 from Heritage Green Area of Upper Stoney Creek . We were excited to have property in the country , as we previously lived in a subdivision .

We had the option to move to Burlington , Waterdown or Grimsby ,- as my job and our personal life would allow this.

We chose to stay in the Upper Stoney Creek area . We knew that it was the right area to purchase our final home. It was a big investment at over \$1 million dollars (we also pay \$7656 in taxes)

We were confident the investment would grow based on market activity and our real estate agent feedback. We live in the fastest growing ward in Hamilton , which is one of the fastest growing cities in Ontario.

We saw this as a solid investment , and a quality of life we can enjoy until we cannot maintain the property any longer , which is many years away .

This home allows us the living space and property to entertain family and friends which we enjoy doing .

The peace and quiet I did look forward to as I work long hours and different shifts in a stressful environment managing a multi million dollar business with 275 employees . I also struggle with sleeping disorder affected by any night distractions .

We previously lived on a bus route that had buses run throughout the day and night .

We have two daughters that are 23 and 25 that live in Toronto and do come home frequently. They are planning to have family in the future , which we look forward to having visit and stay .

The neighbors we soon found have lived here for many years and are very respectful and caring .

We do have a "neighbor" at 286 and 288 Green Mountain Road that has shown disrespect to their neighbors and the law . We live Northeast of this address . Many times the wind blows in our direction .

We try to have friends and family over and the smell of marijuana coming from this address is embarrassing and revolting . There are days and nights we need to close the windows to keep the smell out of our home , which it still permeates. Drive down the street with your windows closed and it will come right into your car , as witnessed and communicated to me personally by Brenda Johnston.

This became evident very early when we moved in . The frequency and the height of the odor increased as did the traffic to that address.

While sleeping on April 17 2017 gun shots were heard . This was a result of the illegal activity that was happening at 286 and 288 Green Mountain Road the police personally informed us as they asked for video footage . A search warrant was performed on the two addresses with in a week.

I respect the intention of the Company that wants to set up a Grow Operation as I am sure they are business minded individuals who see a loophole in the agriculture permit to set up a Marijuana Grow Op , but I will not support it be located at 286 and 288 .

The logic is very simple ;

Growing fruits and vegetables does not incite gun violence and turf wars .

Growing fruits and vegetables does not require extensive camera surveillance in order to discourage criminal activity and protect the what is grown .

The result of the marijuana grown at this address also prompted the police to commit to more police presence in our neighborhood . This was a direction and a commitment by the Hamilton police at community meeting on Thursday May 18 . This meeting was a result of community pressure and Brenda Johnson's commitment to do the right thing in addressing an illegal activity for her constituents and her own morals . She grew up in this area.

Growing fruits and vegetables does not require us to avoid entertaining friends and family due to the smell of marijuana .

Growing fruits and vegetables will not impact the value of our home and neighborhood - as much as 20% .

I trust the right decision will be made and there will be no permit issued for this address to be come a Marijuana Grow Operation . This is a residential area with young families and young children .

Tony Gibbings

From: "Tawny Sayegh"
Date: May 18, 2018 at 02:06:10 EDT
To: "nopot286288GMR GMR Neighbours" <nopot286288gmr@gmail.com>
Subject: Re: Petition

I'm over at 298

Sent: Friday, May 18, 2018 at 1:50 AM
From: "nopot286288GMR GMR Neighbours" <nopot286288gmr@gmail.com>
To: "Tawny Sayegh"
Cc: _____com
Subject: Re: Petition
Thank you Tawny.

May I ask your house number?

The new owner's consultant is going to be hosting a public meeting at the open house. We will keep you updated on the date and time. Please come and be loud in opposition.

I have cc'd some neighbours who are supporting this cause with us and the "founding members" who delivered the flyers.

Sasha
284 GMR

Sent from my iPhone

On May 18, 2018, at 1:31 AM, Tawny Sayegh ·

I am firmly against this grow op because of all the trouble and danger this property has already brought to this neighbourhood. I don't need bullets flying at me or my family just because some greedy person thinks a residential neighbourhood is a good place to make a buck. Shootings have already happened because of this grow op, and the wrong houses have already been targeted. This could just as easily be my house. It doesn't matter how "state of the art" they make this building, or even if they hire a small army of security guards, people will still try to break into this grow op to steal weed, and it's very likely they'll be carrying and firing weapons. We don't need this danger and violence here.

I don't know for certain if it's related, but a group of teens ran away from the grow op and through my own property to the street last spring. They turned on our outdoor faucet and left it running on full blast. This is a huge problem not only because this is trespassing, but because we don't have city water here. My family has to pay to have water delivered to our house to fill our cistern. With the cost of water being as high as it is, and the current issues facing this neighbourhood with the problems the water haulage company have been giving us (very long delivery times, people having to go without any water for days, being forced to stay in hotels due to lack of water, etc.), we can't afford to have trespassers wasting our water.

Besides the shootings and trespassing is also the disgusting stench grow ops on that property have forced on us for the past few years. We can't even open our windows without making our house stink like a horde of skunks. Some days it's so bad you can't breathe when you're outside, and you can smell it for a kilometre around.

This is simply the wrong neighbourhood for something like this, and it needs to stop. To allow this grow op to open here is completely unfair to the families who live here, some of whom have small children, others who have lived here for decades, and most of whom can't afford to move to get away from the drugs and violence. Let them find somewhere else to make their money, and leave the dozens of innocent people in this neighbourhood in peace. It's much easier to relocate the grow op than it is to relocate all the families on Green Mountain Road.

From: Agao Robbins
Date: April 30, 2018 at 23:05:23 EDT
To: NoPot286288GMR@gmail.com
Subject: Against Grow-Op

To whom it may concern,

As a mother of two young children, living in close proximity to 286/288 Green Mountain Rd. E., I am completely against this property becoming a legal grow-op. Marijuana grow-ops should never be allowed in residential areas for MANY obvious/common sense reasons. The health and safety of my family is my priority and feel grow-ops should only be located in non-residential areas.

Here are just a few questions I have, which may have already been considered:

If this grow-op is allowed...

1. Will the tax department reduce our property taxes?
2. Will Environment Canada collect air samples on a regular basis to ensure clean air quality?
3. Will Health Canada inspect this grow-op regularly to ensure it functions in accordance with Health Canada regulations?
4. How will Hamilton Police ensure the ongoing safety of residents surrounding this property?
5. Will the City of Hamilton ensure that by-laws are being met (e.g., property not littered by garbage, etc)?

Sincerely,
Agao R.

357 3rd Rd
Stoney Creek

From: "Paul Horn"
Date: May 8, 2018 at 20:57:54 EDT
To: [NoPot286288GMR@gmail.com](mailto:<NoPot286288GMR@gmail.com>)
Subject: no Pot

Yes We would like to like to join the petition to stop the commercial operation of grow op in our residential neighbourhood. This is an extremely bad idea and should be stopped now. Let us know what we can do to help eliminate this situation. We will be contacting our councillor

Thank you for bring this to our attention.

Debbie and Paul Horn
231 Green Mountain Rd East
Stoney Creek

From: don robbins
Date: April 30, 2018 at 22:28:14 EDT
To: "NoPot286288GMR@gmail.com" <NoPot286288GMR@gmail.com>
Subject: No way

This cannot happen in a residential neighbourhood. We've already seen the shady business associated with this place. Government or not this is not a location suitable for this. We have rights and pay a lot of taxes to this city. Thx for getting this info out. How shady is our own local office. Sincerely Don Robbins.
Sent from my iPhone

357 3rd Rd
Stoney Creek

From: days4 days4
Date: May 9, 2018 at 07:30:53 EDT
To: nopot286288GMR GMR Neighbours <nopot286288gmr@gmail.com>
Subject: Re: pot
Reply-To: days4 days4

247 GMR

----- Original Message -----

From: nopot286288GMR GMR Neighbours <nopot286288gmr@gmail.com>
Date: May 8, 2018 at 7:35 PM

Thanks for the response.
Where do you live on GMR?

Sasha

Sent from my iPhone

On May 8, 2018, at 4:54 PM, days4 days4

No I do not want a pot grower on my street

From: Fred Mattiuz

Date: May 10, 2018 at 10:16:52 EDT

To: nopot286288GMR GMR Neighbours <nopot286288gmr@gmail.com>

Subject: Just the beginning

By the end of the month there will be a town meeting in regards to the growing of Federally licensed marijuana in our neighbourhood. This will be presented by the IBI business investment group. Be prepared for an outlandish brainwashing of how this project will be good for the neighbourhood. You will be told of how this overwhelming upgrade to this now depleted property will be great for the community and city. Keep in mind, that the investors have already put out a large amount of money on speculation. An unlikely investment for even the most modest businessman. What do they know? What we know is that this property has had a history of neglect. It has caused years of hardships for the surrounding neighbours. It has been a safety risk because of the run down and unhealthy buildings. It has brought crime including violence and gunfire. It has brought empty promises from elected officials to deal with these issues. It has brought a decline in property values.

There is a better way. While many of us are indifferent regarding the legalization of marijuana, and some support it, Why is there a need to use this property that has already caused stress to the residents nearby and create financial hardships to the homeowners in a normal sought after neighbourhood? As homeowners we are investing our lives to provide for our families and live in a community that is safe and comfortable for our families to grow. We have watched a city of factories become barren and unproductive. The following link shows a better way. Everyone is winners. If these investors want to do what is right, perhaps they should have done their research before investing in this property. You will also see that because this industry is growing so fast, there is an immediate need to expand. What does that mean for us? Obviously the size of this property won't accommodate growth for this endeavor. Once they have the go ahead it won't be long before they are applying to expand. Traffic will increase, pollution will increase and they will infringe even closer to our homes.

What can we do?

- Contact our councillor Brenda Johnson brenda.johnson@hamilton.ca

Brenda was onboard with support during the shooting crisis of 2017 but now has reserved her opinion and refuses to get involved.

- Contact the mayors office mayor@hamilton.ca

The mayor unfortunately has had to take a back seat regarding conversations and decisions in this matter

- Contact the Ombudsman for Ontario <https://ombudsman.on.ca/home>

- We have already submitted a formal complaint for the lack of interest by city council to defend our rights. There has been no response as of yet. It is believed there is strength in numbers and the complaint will only be reviewed when there is a volume of complaints.

- Contact the media - several attempts have been made to local reporters to investigate and report, however, only the Stoney Creek news has had the courtesy and interest to get involved.

Follow this link to view the proper way to grow....(for the benefit of the investors, I just googled it. I didn't hire an investment group)

<https://www.theglobeandmail.com/report-on-business/industry-news/property-report/with-the-marijuana-industry-blazing-production-space-is-hard-to-find/article33827458/>

Please contact our councillor and mayor. If you don't get any answers, please file with the Ombudsman. If you are fortunate enough to get any answers, please share using this email.

Lets put a stop to this

#GMRstrong

rom: "bonnie" >
Date: May 9, 2018 at 14:09:24 EDT
To: "NoPot286288GMR2gmail. com" <NoPot286288GMR@gmail.com>

Hello there

I received your letter regarding your petition to prevent grow up in your area.

I totally am on board with the area surrounding this "business".

We are located at 605 Green Mtn. Road so much further east between 5th and 6th but also have a home just west of me that grows marijuana. This is definitely a problem.

How can I sign this petition or be of assistance to you. My neighbor east of me would like to sign as well.

Truly

Bonnie Kesimaat