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August 31, 2018

Ida Bedoui  
 Legislative Coordinator  
 City of Hamilton  
 71 Main Street West,  
 Hamilton Ontario  
 L8R 4Y5

Dear Ms. Bedoui:

**ITEM 6.9, PLANNING COMMITTEE MEETING 18-013, SCHEDULED FOR SEPTEMBER 4, 2018.**

We represent the current owners of 286-288 Green Mountain Road East (Subject Property), 2128638 Ontario Inc, in the City of Hamilton. Our clients have submitted an application to Health Canada for a Licenced Producer permit for the Subject Lands. The application was submitted with plans to renovate the existing growing facility to comply with Health Canada regulations including noise, odour, and lighting. The subject lands have been lawfully used as a cannabis growing and harvesting facility under the prior MMPR Act and licenses by a prior owner. Our clients are aware of the criminal activity that occurred in conjunction to that prior use and have no connections to the prior owners, nor have any intentions to continue with any illegal uses. As the growing and harvesting of marihuana in the existing buildings on the subject site has been occurring for quite some time (and has been very publicly documented) and the intent of the current owners is to continue the use upon receiving permits under a new regulatory system, we contend that the use is a continuous use dating back to 2014.

The proposed Official Plan and Zoning By-law amendments seek to add a 150 metre setback from sensitive uses for Cannabis Growing Operations that will apply to new and existing buildings, and will treat any existing uses as Legal Non-Conforming Uses. The subject lands are a legal non-conforming medical marihuana growing and harvesting facility (MMGHF) as the agriculture buildings have lawfully existed prior to the current by-law (Zoning By-law 05-200) and the previous by-law (City of Stoney Creek 3692-92) and the MMGHF use has lawfully existed for several years.

The current Official Plan policies permit MMGHF in buildings existing on the date of the by-law [RHOP policy 2.1.1.4(a)]. The current Zoning By-law 05-200 includes policies that permits existing buildings, beyond the scale permitted for new builds, to be used for the growing and harvesting of medical marihuana [Policy 12.1.3.1 (m)(ii)]. The full text of these policies are included for clarification.

2.1.1.4 Medical marihuana growing and harvesting facilities are permitted in accordance with the regulations set out in the Zoning By-law and provided that the following conditions are met: (OPA(R)-9)

- a) a medical marihuana growing and harvesting facility is permitted in buildings existing at the date of the passing of the Zoning By-law;

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- b) The gross floor area for a new medical marihuana growing and harvesting facility shall not exceed 2000 square metres; Chapter D - Rural Systems, Designations and Resources D.2 2 of 7 Rural Hamilton Official Plan March 2017
- c) No retail sales are permitted;
- d) No outdoor storage is permitted; and
- e) The establishment of a new medical marihuana growing and harvesting facility or the expansion of an existing facility shall be subject to Site Plan approval to address the appropriate building size and location, set-backs, drainage and any other matters.

#### 12.1.3.1 AGRICULTURE AND VETERINARY SERVICE – FARM ANIMAL REGULATIONS

- m) Medical Marihuana Growing and Harvesting
  - 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. (By-law No. 15-173, July 10, 2015).

The zoning also permits existing buildings to be used for MMGHF, and the following vacuum clause eliminates the burden of proof required for the demonstration of legal non-conforming uses with respect to the siting of existing buildings or the size and shape of existing lots.

#### 4.12 VACUUM CLAUSE

- d) Notwithstanding any other provisions of this By-law, any lot within the Rural and Agricultural Zones of this By-law, and the location thereon of any building or structure, existing on the effective date of this By-law, shall be deemed to comply with the regulations for any required setbacks, front yard, flankage yard, rear yard, lot width, lot area, and building height and are permitted by this By-law.

A letter was submitted to the June 19, 2018 Planning Committee Meeting, by Meaghan Barrett, as item 6.6 (a) that states that the existing use has not been established as a Legal Non-Conforming Use. Our clients have received a zoning clarification that supports the status of legal non-conforming use, and the property file search contains documents demonstrating the prior use was legal non-conforming despite the associated criminal activity. Newspaper reports regarding the prior use also stated that the City and the Police had no legal recourse to shut down the operation of the prior owners as it complied with all municipal and federal regulations.

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The proposed amendments will apply to new and existing buildings (previously not used for marihuana growing and harvesting) but will not be able to apply to current medical marihuana growing operations. **We request that our continuous legal non-conforming use of the medical marihuana be acknowledged, as an existing use in the Zoning By-law 05-200, as an exception to both the RHOP and the By-law 05-200 proposed amendments for 150 metre setbacks as it should be treated like all other existing medical marihuana growing and harvesting uses.**

RHOP

Chapter F:

- 1.12.2 An existing use, identified as Protected Countryside area on Schedule A – Provincial Plans, that does not comply to or conform with the land use designations and policies of this Plan and/or the Zoning By-law, that existed prior to December 16, 2004 or any amendments may continue provided that:
- a) The non-complying use did not conflict with the Official Plan and Zoning Bylaw in effect at the time the use was established; and
  - b) The non-complying use has not been interrupted subsequent to the approval of this Plan.
  - c) The non-complying use was lawfully existing on or before December 15, 2004.
- 1.12.3 Where appropriate, the City may amend the Zoning By-law to recognize the non-complying use as an existing use provided that all the following criteria shall be met:
- a) The Zoning By-law shall permit only the existing use and the associated performance standards;
  - b) The use does not constitute a danger to surrounding uses and persons by virtue of their hazardous nature or by the traffic generated; and
  - c) The use does not pollute the air or water and is in compliance with appropriate provincial and municipal regulations.

Should the proposed amendments be approved and apply to the Subject Lands, the effect of this will eliminate current zoning permissions for a continuous legal-non-conforming use in contravention of the Chapter F: Policy 1.12.2. As the Federal Regulations require no air or water pollution, the use does not generate dangerous uses in of itself. The prior criminal activity was associated with the people involved in that MMGHF, not the use itself.

Should you have any questions, please do not hesitate to contact IBI Group.



Kristen Boulard MCIP, RPP

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