

July 6, 2020

Mr. Marvin Junkin and Members of Council
The Corporation of the Town of Pelham
20 Pelham Town Square
Fonthill, ON L0S 1E0

Dear Mr. Mayor and Members of Council:

Subject: Final OPA and ZBA for Regulating Cannabis in the Town of Pelham

As Council is aware, Council passed an Interim Control By-law (ICBL) 4046-2018 that applied to all lands within the municipality, except those that are under the Development Permit Control Area of the Niagara Escarpment Commission. The ICBL had the effect of restricting the use of all land within the municipality for any cannabis-related land uses for a period of one year. On September 23, 2019, the ICBL was extended to July 15, 2020. During this time, it was intended that the Town would develop an approach to regulating cannabis.

Following the passage of the ICBL, Town planning staff began conducting research on best practices to inform an approach to regulating cannabis in the Town with the intention of bringing forward amendments to the Official Plan and Zoning By-law to implement the recommended approach. In this regard and on September 10, 2019, a statutory Public Meeting was held to consider amendments to the Town's Official Plan and Zoning By-law prepared by the Town to regulate cannabis-related uses.

Following this, Town staff presented the Cannabis Land Use Report, dated February 2020 to Council on February 18, 2020. The covering Council Report indicated that the Cannabis Land Use Report served as the review and study of land use impacts and it recommended proposed policy changes and a regulatory framework for cannabis production and related

land uses in the context of the Town of Pelham.

In order to provide advice to the Town on this issue, Council formed an advisory committee known as the Cannabis Control Committee (CCC) to provide advice to Council, review options provided by the Town's Community Planning and Development staff and to conduct research. As part of their updates to Council, the CCC has prepared a number of Draft Recommendation Reports to Council. On March 23, 2020, the CCC presented a 3rd Draft Recommendation Report on Managing Cannabis Nuisances in the Town of Pelham (referred to hereinafter as the 'CCC Cannabis Report'). The CCC Cannabis Report covered similar topic areas as the Staff Cannabis Land Use Report, and included a review of regulatory considerations, public concerns and a brief overview of the planning context. Other sections in the CCC Cannabis Report also spoke to the Odorous Industries Nuisance By-law (adopted by Council on March 23, 2020), Noise Nuisance By-law (future by-law) and Light Nuisance By-law. The primary focus of the CCC Cannabis Report was on how the adverse effects of odour could be dealt with specifically.

In order to provide some additional expertise on developing an appropriate policy and regulatory framework, on January 13, 2020, the Town of Pelham retained my firm (Meridian Planning Consultants - MPC) to provide professional planning advice on the planning approach and planning instruments being proposed to regulate cannabis within the community. Since being retained, initial work carried out by MPC involved:

- Reviewing all available materials including the Staff Cannabis Land Use Report (which included a draft OPA and ZBA);
- Reviewing all available materials provided by the CCC and the Town;
- Reviewing other best practices;
- Meeting with the CCC on March 11, 2020 and then by phone on March 25, 2020; and,
- Preparing a draft report dated April 14, 2020 that incorporated elements of the Town's research and proposed approach along with a draft OPA and ZBA dated April 7, 2020 in consultation with the CCC.

The MPC OPA and ZBA dated April 7, 2020 were posted on the Town's website on April 17, 2020. In addition, notice was sent by email on April 16, 2020 to those who sent in comments on the previous drafts, spoke or signed a sign-in sheet at the public meeting as well as commenting agencies. The notice was also published in The Voice of Pelham on April 22,

2020. In total, notices were sent to 170 email addresses.

Following the release of the MPC OPA and ZBA, forty-four (44) comments from the public were received, and comments were received from the Niagara Escarpment Commission (NEC) and Niagara Region in addition to three letters from the industry. An overview of the MPC OPA and MPC ZBA dated April 7, 2020 along with a review of the comments received were reviewed in an Addendum Report dated June 22, 2020 (and revised on July 5, 2020).

In addition to carefully considering all of the comments received, three meetings with Niagara Region staff were held to discuss the MPC OPA in particular, with the product of these very fruitful discussions being a final version of the OPA that will be supported by the Region and exempted from their approval, as set out in their letter dated July 3, 2020 (discussed below). In the end, the Region is supportive of the Town's efforts to establish a planning process through the OPA to require proponents of new indoor cannabis and industrial hemp cultivation facilities to apply for and obtain a re-zoning before they can be established. As this was always in my opinion the end goal of this process, Regional support for this is very much welcomed.

In addition to reviewing the April 7, 2020 iteration of the MPC OPA and ZBA and reviewing the comments received, the Addendum Report also describes the rationale for all of changes made to the OPA and ZBA leading to the June 19, 2020 versions attached thereto. Final versions of each dated July 5, 2020 are now attached to this letter, with only very minor editorial changes made to the June 19, 2020 versions of the OPA and ZBA in response to additional comments submitted particularly by Aird & Berlis, who have been kept informed throughout the process, and in response to the comments in the Niagara Region letter dated July 3, 2020.

As noted in the final version of the OPA dated July 5, 2020, the purpose of the OPA is to establish permissions for indoor cannabis and industrial hemp cultivation in the agricultural area, subject to a zoning by-law amendment, and to establish the criteria to be relied upon when considering such applications. The OPA recognizes that as a consequence of the type of product being grown in these indoor facilities and the character of the odour, the potential for adverse effects from odour is significant and that as a first principle, the avoidance of adverse effects is preferred, however, if avoidance is not possible, adverse effects shall be minimized and appropriately mitigated.

The OPA also recognizes that the cultivation of cannabis is an agricultural use and is permitted in agricultural areas by the Provincial Policy Statement (2020), which indicates that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with Provincial standards. However, in the absence of Provincial standards on the adverse effects of odour from indoor cannabis and industrial hemp cultivation facilities, the OPA also recognizes that there is a need to control the siting of such uses in relation to sensitive uses as a result of the known adverse effects from the cultivation of cannabis.

There is already a precedent for the establishment of setbacks from sensitive uses for odour reasons in agricultural areas in the form of the Minimum Distance Separation (MDS) guidelines established by the Province. However, the MDS guidelines do not apply to cannabis and in the absence of Provincial guidance on this matter, it is up to local municipalities to establish a policy framework to avoid adverse effects, and if avoidance is not possible, to minimize and mitigate adverse effects through setbacks for indoor cannabis and industrial hemp cultivation from sensitive uses.

In this regard, the purpose of the OPA is to do just that, by establishing the study requirements to determine whether the avoidance of adverse effects is possible and if not, how adverse effects can be minimized and appropriately mitigated through the use of setbacks and other measures on a case-by-case basis.

Given the known adverse effects from these facilities in the Town, it is my opinion as a Registered Professional Planner that the OPA is an appropriate response to community concerns about this type of use, represents good planning and is in the public interest. It is also my opinion that the OPA conforms with and is consistent with Provincial Plans and policies and conforms to the Niagara Region Official Plan. In this regard, Niagara Region agrees by virtue of exempting the OPA from their approval. It is therefore recommended that Council adopt the OPA dated July 5, 2020. It is noted that the OPA dated July 5, 2020 has been modified to respond to comments made in the Niagara Region letter dated July 3, 2020 (attached) and in this regard, the final recommended OPA:

- Clearly indicates that the outdoor cultivation of cannabis and industrial hemp is not subject to the OPA, as this is already permitted in the Town's agricultural area;

- No longer includes a requirement for an agricultural impact study to be completed in support of a future application (it is noted that the required Emission Summary and Dispersion Modelling (ESDM) report will continue to require that co-existence adverse effects associated with drift of cannabis emissions on existing farming operations in the area be reviewed);
- Includes an additional criterion to consider if a component of a proposed facility is an agricultural-related use; and
- Includes wording that indicates that a future OPA would not be required if a component of a proposed facility was an agricultural-related use (this was always the case, but it has now been clarified).

An implementing ZBA has also been prepared and is recommended for approval. The effect of the ZBA dated July 5, 2020 is to create two new zones that would only be applied in the future to new indoor cannabis and industrial hemp cultivation facilities, subject to Council approval in accordance with the process and criteria established by the OPA.

These new zones would not be applied to the two existing facilities meaning they would become legal non-conforming uses in accordance with the Planning Act (a third facility in the Niagara Escarpment Area would not be affected since it is not subject to the Town's Zoning By-law). In this regard, it is noted that Section E2 of the Pelham Official Plan provides some direction on non-conforming uses. In particular Section E2.2 indicates that the Committee of Adjustment may allow for extensions to a non-conforming use with consideration given to:

- The size of the extension in relation to the existing operation;
- Whether the proposed extension is compatible with the character of the surrounding area;
- The characteristics of the existing use in relation to noise, vibration, fumes, dust, smoke, odours, lighting and traffic generation and the degree to which any of these factors may be increased or decreased by the extension; and,
- The possibilities of reducing the nuisances through buffering, building setbacks, site plan control and other means to improve the existing situation, as well as minimizing the problems from extension.

The standards proposed for new indoor cannabis and industrial hemp cultivation facilities in the ZBA are appropriate for these types of facilities. Also included in the ZBA is a setback of

300 metres for outdoor cultivation from sensitive land uses, which is based on best practices and is also appropriate.

I would like to indicate that it has been a pleasure working collaboratively with the CCC, Town staff and the Region on the preparation of an OPA and ZBA that in my opinion strikes an appropriate balance between the desire to encourage and promote agricultural uses while ensuring that adverse effects are avoided.

Yours truly,

MERIDIAN PLANNING CONSULTANTS

A handwritten signature in black ink that reads "Nick McDonald".

Nick McDonald, RPP
President

Enclosure: Niagara Region Letter dated July 3, 2020

Planning and Development Services

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free: 1-800-263-7215

Via Email Only

July 3, 2020

File Nos.: D.10.06.OPA-20-0009
D.18.06.ZA-20-0024

Ms. Shannon Larocque, MCIP, RPP
Senior Planner
Town of Pelham
20 Pelham Town Square
Fonthill, ON L0S1E0

Dear Mr./Ms. Larocque:

**Re: Regional and Provincial Comments
Revised Official Plan and Zoning By-law Amendment Applications
Town Initiated Amendments for Cannabis Policies
Town of Pelham
Town File No.: OP-AM-01-19 and AM-07-19**

Regional Planning and Development Services staff received and reviewed information circulated for the Town initiated Official Plan and Zoning By-law Amendments with respect to cannabis production, including the original draft amendments, and provided initial comments by letter dated May 5, 2020.

The draft Official Plan Amendment (OPA) has been revised to address Regional comments, and was circulated by email on June 22, 2020. The revised draft OPA proposes to:

- Establish permission for “indoor cannabis and industrial hemp cultivation facilities” on lands designated Good General Agricultural, Specialty Agricultural and Industrial.
- Establish the requirement for a Zoning By-law Amendment to establish a new “cannabis and industrial hemp cultivation facility”;
- Add development criteria to be considered when revising Zoning By-law Amendment applications for “cannabis and industrial hemp cultivation facilities
- Add criteria to be considered when “value-added components” are included in the proposed use;
- Identify the studies that are required to support the establishment of these uses;

- Establish guidelines on what setbacks will be considered for these uses through a Zoning By-law Amendment, which can be increased or decreased based on the merits of an individual application;
- Including policy for consideration for proposals within the Niagara Escarpment Plan (NEP) area;
- Indicate that Site Plan Approval would also be required for such uses.

The draft Zoning By-law Amendment (ZBA) proposes to:

- Add definitions for “cannabis-related use” and “industrial hemp-related use”, both indoor and outdoor, as well as “sensitive land use”;
- Establish Agricultural-Cannabis (A-CAN) and General Industrial-Cannabis (M2-CAN) zones to permit indoor cannabis-related and industrial hemp-related uses, with a prohibition for a retail store as an accessory use and regulations for minimum setbacks, lot area, frontage and coverage requirements.
- Establish a minimum setback for outdoor cannabis-related and industrial-hemp related uses from a sensitive land use.

Regional staff provides the following comments regarding Provincial and Regional policy to assist the Town in finalizing the amendments before they go to Council.

Provincial and Regional Policies

Provincial and Regional policies permit agricultural uses, agriculture-related uses and on-farm diversified uses within the Agricultural areas. The 2020 Provincial Policy Statement (PPS), 2019 Growth Plan for the Greater Golden Horseshoe (GPGGH), 2017 Greenbelt Plan (GP), 2017 Niagara Escarpment Plan (NEP) and Niagara Region Official Plan (ROP) all consider the growth and cultivation of crops (including cannabis) as well as associated on-farm buildings and structures to be an agricultural use, including value-retaining facilities. In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices, including growth/cultivation of cannabis, shall be promoted and protected in accordance with provincial standards.

The Niagara Region Official Plan also sets out a number of objectives aimed at maintaining a sustainable agricultural industry. The Plan notes that a wide range of crops are important in maintaining the agricultural industry’s diversity. Objective 5.A.7 supports uses that enable farming and farmers to:

- a) Become more competitive, sustainable and environmentally friendly;
- b) Adapt to new and changing markets;
- c) Diversify into and take advantage of new agricultural opportunities;
- d) Improve the understanding of agriculture by the general public; and
- e) Broaden operations to diversity economic activity and add value to their primary products.

Official Plan Amendment

The revised draft OPA (June 19, 2020) policies permit “indoor cannabis and industrial hemp cultivation” within the Good General Agricultural, Speciality Agricultural and Industrial designations of the Rural Area (i.e. outside the settlement areas). Regional staff understand from the Town’s planning consultant that outdoor cannabis cultivation is permitted as an agricultural use based on current OP policies; therefore, the OPA does not cover outdoor cannabis cultivation.

The PPS states that, in prime agricultural areas, permitted uses and activities are agricultural uses, agriculture-related uses and on-farm diversified uses. Provincial and Regional policies all consider the growth and cultivation of crops (including cannabis) as well as associated on-farm buildings and structures to be an agricultural use. Regional staff recommend against creating policies within the agricultural area that restrict and/or prohibit the types of crops that can be planted. Both Regional Council and the Region’s Agricultural Policy and Action Committee have been consistent with requests and comments to the Province that all commodity groups be treated equally. By creating policy sets that identify individual crop types, there can be implications that result in disadvantages to growers and operators within the agricultural sector.

Although the revised draft OPA is more in line with Provincial and Regional policy than previous drafts, Regional staff are still of the opinion that this amendment may disadvantage cannabis from other crop types and suggest the following minor modifications:

Outdoor Cultivation

Regional staff understand that outdoor cultivation would currently be permitted based on existing Town OP policies. Regional staff discourage the prohibition of outdoor cultivation in the Prime Agricultural Area, which should permit all types and methods of agricultural uses and production to be consistent with Provincial and Regional policy. The consultant should ensure that current OP policies clearly permit outdoor growth/cultivation of cannabis or this amendment should be revised to include those policies.

Agricultural-Related/On-Farm Diversified

The PPS states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards. The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) “Guidelines for Permitted Uses in Ontario’s Prime Agricultural Areas” (OMAFRA Guidelines) can be used by municipalities to assist in evaluating compatibility and appropriateness of agricultural uses. Cannabis processing may be considered an agriculture-related use, subject to meeting certain criteria. The revised draft OPA has removed the “processing” language from the additional permitted uses; however, criteria for “value-added components” is included in Policy B2.1.5.1(b) of the OPA. The draft should be revised

to permit these “value-added components” so that an Official Plan Amendment is not required to advance proposals that include processing. Furthermore, “value-added component” is not a defined term in the Town’s OP or in the OPA. To assist in implementing this policy, Regional staff suggest that the term “agricultural-related” or “secondary use”, which are both defined terms in the Town’s OP, be used instead of “value-added component”. Finally, one criteria for agriculture-related uses that is included in the Guidelines on Permitted Uses is missing from Policy B2.1.5.1(b), being that the use “shall be compatible with and shall not hinder surrounding agricultural operations”. Please add this to subsection (b).

Although Regional staff support the municipality’s ability to identify specific development criteria (such as odour and light mitigation systems, monitoring plans, setbacks from sensitive uses), Regional staff reiterate our position that these are most appropriately implemented through Zoning and Site Plan Control. With regard to the requirement for additional studies, the requirement for an Agricultural Impact Assessment is not appropriate for growth and cultivation, given cannabis is an agricultural use. This study should be removed from the list of required studies.

Zoning By-law Amendment

Provided the above mentioned revisions to the draft OPA are addressed, Regional staff generally does not object to the Zoning By-law Amendment (ZBA).

Some consideration should be given to whether additional regulations/provisions should be included relative to the agriculture-related uses contemplated in the draft OPA.

Staff notes that some of the detailed policies included in the draft OPA (i.e. specific numbers or references to specific crops) would be more appropriately included in a ZBA. It is noted that the minimum setback to sensitive land uses (i.e. residential) is significantly different between the draft OPA and the draft ZBA.

Regional Approval

In accordance with the *Planning Act* and Memorandum of Understanding, local Official Plan Amendments are generally subject to approval by Regional Council. The proposal may be exempt from Regional approval if Policy 14.E.7 of the ROP can be met.

Provided the comments relative outdoor cultivation and agricultural-related uses within the draft OPA are addressed, the OPA is exempt from Regional approval on the basis that a collaborative process has been undertaken between the Region and the Town and the majority of Regional comments relative to Provincial and Regional policy conformity have been addressed by the revised draft OPA. Regional staff would appreciate receiving a copy of the final draft considered by Town Council to confirm our position on exemption.

Conclusion

The Region appreciates the opportunity to review and comment on the previous and current draft amendments. As outlined above, Provincial and Regional policies permit the growth and cultivation of cannabis as an agricultural use and the draft OPA generally complies with these policies provided the above mentioned comments are addressed. Provided the final comments are addressed in the OPA that advances to Town Council, the amendment can be exempt from Regional Council approval in accordance with Policy 14.E.7 of the Regional Official Plan and the Memorandum of Understanding. Please forward a copy of the final draft OPA prior to consideration by Town Council.

If you have any questions about these comments or wish to discuss them further, please contact me at 905-980-6000 ext. 3432 or by email at Britney.fricke@niagararegion.ca.

Kind regards,



Britney Fricke, MCIP, RPP
Senior Development Planner

cc: Barb Wiens, MCIP, RPP, Director of Community Planning and Development,
Town of Pelham
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