

**PLANNING JUSTIFICATION REPORT**

**For**

**Roman Itskovich**

**Re:**

**Zoning By-law Amendment**

**8270 Regional Road Twenty**

**Part Lot 26, Concession 9**

**Parts 1, 2, 3, and 4, Plan 30R-10056**

**Roll Number: 2260203001139703**

**(Former Township of South Grimsby)**

**Township of West Lincoln, Regional Municipality of Niagara**



Prepared By:

Steven Rivers, MCIP, RPP

189 Clare Avenue

Port Colborne, Ontario L3K 5Y1

Phone: 905-834-7496

Email: [steven.p.rivers@gmail.com](mailto:steven.p.rivers@gmail.com)

2018-01-10

8720 Regional Road 20, Smithville



# PLANNING JUSTIFICATION REPORT

**Zoning By-law Amendment  
8270 Regional Road Twenty  
Part Lot 26, Concession 9  
Parts 1, 2, 3, and 4, Plan 30R-10056  
Roll Number: 260203001139703  
(Former Township of South Grimsby)  
Township of West Lincoln, Regional Municipality of Niagara**

## 1 SUMMARY

### 1.1 PURPOSE, LOCATION, AND DESCRIPTION

This purpose of the Planning Justification Report is to review a proposal to rezone an approximately 9,485 square metre Subject Parcel with about 118 metres of frontage on the south side of the road, at 8270 Regional Road 20 in the Township of West Lincoln, to permit a *medical marihuana production facility greenhouse agricultural use*. The proposal is reviewed against the policies of the: Provincial Policy Statement (PPS); Growth Plan for the Greater Golden Horseshoe (The Growth Plan); Region of Niagara Official Plan (ROP); and Township of West Lincoln Official Plan (WLOP) and the provisions of the Township of West Lincoln Zoning By-Law (WLZB).

The building that will house the *medical marihuana production facility greenhouse agricultural use* is approximately 490 square metres. No outside storage of is proposed.

There are several lease holders. The lease holders are not licensed producers but rather renting the facilities in order to grow medicinal marijuana for eight patients licensed through Health Canada to grow medicinal marijuana for their own personal use. There are two units at this location, with four growers assigned to each unit. One of these individuals, is an elderly woman with medical problems, which prevent her from conducting the production herself. This patient ONLY has a designated grower, to grow on her behalf. A leaseholder advises the total number of plants these eight patients can grow, combined, is 1448 but the patients do not intend on operating at full capacity.

The equipment being used is all state-of-the-art and in compliance with code. All the HVAC and electrical was completed by licensed specialist. Any air released from the rooms in order to depressurize them is fed through carbon filters and all ducts are lined with gel coating designed to eliminate odours. Each room is equipped with intelligent thermostat that has a built-in wifi system to warn against drastic temperature changes and commercial grade fire extinguishers.

There are security steel bars fastened at all openings to the building. Lastly, the building is equipped with HD cameras to ensure unauthorized access and trespassing.

Aside from the landlord (by appointment only) the only individuals on the site are the patients themselves. Harvest times are unknown at this time and tend to be sporadic. It would be speculative to provide exact times. Periodic harvests will not be simultaneous. Effectively each grower is responsible for their own harvest time.

Individual growers are responsible for their own plant care and harvest and therefore attend the units at their leisure. Minimal traffic is anticipated

Waste disposal is done off-site through a private and licensed third party in compliance with municipal requirements under their own liability.

The Subject Parcel, is Parts 3 and 4, illustrated in *Annex 1, Scan of Part of Plan 30R-10056*.

The grade at the Subject Parcel is relatively flat, with drainage by overland sheet flow to roadside ditches and an abutting tributary of the Twenty-Mile Creek.

There are several agricultural (barns), residential, and commercial buildings within one kilometre of the Subject Parcel. The adjacent uses are:

<b>Adjacent Land Use Schematic</b>		
Agriculture & Kennel	Agriculture & Dwellings	Agriculture
Dwellings	<b>Subject Parcel</b>	Commercial
Agriculture	Agriculture	Agriculture

## **1.2 POLICY REVIEW SUMMARY**

Good planning practice directs that the plan and its policies are not written in stone. Policies such as those of the PPS, the Growth Plan, the ROP, the WLOP, and the Niagara Peninsula Conservation Authority Policies, Procedures and Guidelines for the Administration of Ontario Regulation 155/06 and Land Use Planning Policy (NPCA Guidelines) reviewed here, are used to try to reach a goal. They are not to be used as a set of threshold measures where the inability to

meet every policy results in a proposal's failure. All of the policies may not be and, based on good planning practice, don't have to be, satisfied as though they are zoning by-law regulations. If, on the balance, the proposal satisfies most of the policies and moves the community towards its stated goals, then the proposal should be given serious consideration for approval.

**Land use planning in Ontario, Niagara and West Lincoln is about development.** Protecting and preserving resources is important but, land use planning is primarily about **promoting and encouraging appropriate development**. There are aspects of control to protect valuable and sensitive resources such as *prime agricultural land* and significant natural heritage features, from negative impacts from nearby uses but, the primary purpose is guiding development.

The philosophy of guiding development is evident starting with the *Planning Act*. The Citizen's Guide to Land-use Planning (the Citizen's Guide) states ***the Act, among other things promotes sustainable economic development*** in a healthy natural environment and provides for a land use planning system led by provincial policy. The Citizen's Guide further states, *the Act* provides the basis for preparing **official plans and planning policies that will guide future development**.

The Citizen's Guide states the PPS provides policy direction that will help **build strong communities by protecting, among others, agricultural resources**. Community planning is aimed at identifying common community goals and balancing competing interests of the various parties.

## 1.2.1 Planning Act

The Council of the Township has the authority under the *Planning Act* (Sections 34 and 39) to zone a property for a permitted use if it implements the policies of the OP. *The Planning Act* specifies factors which must be taken into account. It lists, in Section 2, topics which Council shall have regard to in the form of Provincial Interest. Section 3(5)a adds that the planning tools (zoning) available to Council must be consistent with the PPS. Section 14 of *the Places to Grow Act* says planning decisions must also conform to the Growth Plan. Under Section 24(i) of *the Planning Act*, by-laws must conform to applicable OPs like the Regional and the Township OPs.

## 1.2.2 Provincial Policy Statement

The PPS came into effect April 30, 2014 and applies to this proposal. It states, that in ***prime agricultural areas, permitted uses include agriculture-related uses***. Criteria for these uses are based on the Ontario Ministry of Agriculture, Food and Rural Affairs Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas (The OMAFRA Guidelines). **New land uses must comply with the *minimum distance separation formulae (MDS)*** (Policy 2.3.3.3).

The OMAFRA Guidelines are intended to help municipalities, decision makers, farmers and others interpret the policies in the 2014 PPS on the range of uses permitted in *prime agricultural areas*. **Both The OMAFRA Guidelines and the PPS define agricultural uses as the growing of crops** and associated on-farm buildings and structures.

### 1.2.3 Growth Plan

The Growth Plan for the Greater Golden Horseshoe (GPGGH), which took effect on July 1, 2017, is a 25-year plan to [among other things] enhance the long-term viability and productivity of agriculture by protecting *prime agricultural areas*. The policies of the Plan take precedence over the policies of the PPS to the extent of any conflict, except where the relevant legislation provides otherwise. The geographic continuity of the agricultural land base and the functional and economic connections to the *agri-food network* will be maintained and enhanced.

### 1.2.4 Official Plans

The review of the ROP and the WLOP has been combined for the review of this proposal. The relevant policies in these documents are very similar. The Region initiated working groups for this policy set to create draft policies for the lower tier municipalities so that the wording and permissions would be consistent throughout the Region.

The Objectives for Agricultural and Rural Areas in the ROP, is **to preserve Niagara's agricultural lands, provide for a limited amount of non-farm development in Rural Areas, provide an efficient and orderly pattern of land uses in the Agricultural and Rural Areas.**

**In Good General Agricultural Areas, the predominant use of land will be for agriculture.**

The WLOP designates the Subject Property **Good General Agricultural** which permits all types of *agricultural uses*.

### 1.2.5 Zoning By-Law

The Subject Property is **zoned “C3-37” and “EP”** in the Township’s Zoning By-law. Neither permit medical marijuana production facility.

The C3-37 Zone permits an *agricultural service and supply establishment, garden centre, ornamental concrete sales and manufacturing, retail store, and existing outside storage* as an *accessory use*, as per the parent zone regulations, except: Minimum setback to EP Zone for all buildings, structures, outside storage, development and site alteration: 15m.

No zone in the WLZB permits a *medical marihuana production facility*.

The following regulations apply to *medical marihuana production facilities*:

- a) All *medical marihuana production facilities* where permitted in Agricultural Zones shall have a minimum setback of 150m from all lot lines of other lots, except where specifically provided otherwise.
- b) All *medical marihuana production facilities* where permitted in **Employment Zones** shall have a **minimum setback of 45m from all lot lines abutting lots that are used or permitted to be used for a dwelling or an institutional use**, except where specifically provided otherwise.
- c) No outside storage or outdoor growing or production of medical marihuana shall be permitted.
- d) For any medical marihuana production facility building or structure that consists of more than 10% glass and where artificial lighting is required, a solid fence having a minimum height of 1.8 metres shall be provided and maintained along every lot line that abuts a lot that is used or permitted to be used for a dwelling or an institutional use.
- e) Notwithstanding Clause (c) of this Subsection, a security fence having a minimum height of 1.8 metres shall be provided and maintained around the entire perimeter of the area of a lot that is used for a medical marihuana production facility.

## 1.2.6 Groundwater Contamination

The Township Building Department requires the septic system be reviewed to ensure municipal requirements are satisfied if the proposed use has additional employees. Other comments can be implemented through site plan control.

There is little to no waste water discharged from this facility as the water is only applied to the soil in pots and is recycled.

## 1.3 POLICY EVALUATION SUMMARY

- **Regional Strategic Objectives are satisfied** including:
  - Efficient use of land; minimization of conflict between incompatible *uses*;
  - Selective rural development in areas of disturbed agricultural land where farming activities would not be adversely impacted; and
  - Minimizing the introduction of incompatible land *uses* within the *agricultural areas*.

- **The Township’s Vision of continued viability of agriculture on *prime agricultural lands* is not offended** because the impact on existing and potential agricultural operations is minimal.
- **The Township’s Goals and Objectives are satisfied** including:
  - Provision of an environment for sustainable agriculture and related activities through the protection of *prime agricultural lands* and by preventing incompatible land *uses*.
  - Promotion of *agricultural uses*, agricultural related commercial *uses* and secondary *uses* including value added operations and agri-tourism;
  - Recognition of the mixed *use* landscape of agricultural areas;
  - Ensure the long term sustainability of the Township by expanding the property tax base;
  - Support of a pattern of agricultural land holdings that increase the flexibility of agricultural operations and avoid the fragmentation of land ownership by developing undersized and underutilized rural parcels; and
  - Promoting small scale secondary *uses* compatible with and do not hinder surrounding agricultural operations.
- **NPCA Sensitive Ground Water Features and Township septic system concerns are satisfied**
  - ***Development* is restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improved or restored.**
  - **The production water used in the medical marihuana production facility is supplied by a local water hauler to the cistern on the Subject Property. The production water is filtered and then used for the plants. Any excess water is gathered and reused. Water use is a closed system with the exception of the water brought by a water hauler to the cistern - no water goes to the natural environment outside the building.**

## 5 COMMENT

The *medical marihuana production facility greenhouse* produces a crop and is therefore an ***agricultural use*** permitted in a ***prime agricultural area***. The WLZB has regulations for *medical marihuana production facilities* but the use is not specifically listed as a permitted use in any zone. A zoning by-law amendment is required to permit the proposed medical marihuana production facility greenhouse on the Subject Property.

Two of the M2 Zone regulations requires amendment:

- **the west side minimum *interior side yard* abutting the lot used for a dwelling needs to be amended from a minimum of 45 metres to 27 metres; and**
- **the east side minimum *interior side yard* abutting the lot used for a dwelling needs to be amended from a minimum of 45 metres to 12 metres.**

## 6 OPINION

The *medical marihuana production facility greenhouse agriculture use* of the land at 8270 Regional Road Twenty, **conforms to the policies of the: Provincial Policy Statement; Growth Plan for the Greater Golden Horseshoe; Niagara Region Official Plan; and Township of West Lincoln Official Plan.**

**There are no significant negative environmental, traffic, visual, agricultural or noise impacts.**

**The *medical marihuana production facility greenhouse agriculture use* is not a permitted use in the C3 Zone and does not comply with the *interior side yard* regulation.**

A zoning by-law amendment to an employment zone permits uses similar to the existing commercial use of the Subject Parcel and is compatible with the commercial uses on the abutting parcel to the east. With the exception of *mineral aggregate extraction* and *wayside pits or quarries* both types of use are similar in nature,

**The reduced minimum *interior side yards* adjoining the abutting *lots* used for dwellings from a minimum of 45 metres to 27 metres on the west side and 12 metres are minor amendments because there are no doors or loading docks on the west or east sides of the existing building and none are proposed that would require mitigation.**

## 7 RECOMENDATION

**A Zoning By-law Amendment is required to:**

- **Permit the *medical marihuana production facility greenhouse* on the Subject Property;**
- **Reduce the minimum west side *interior side yard* requirement from 45 metres to 27 metres; and**
- **Reduce the minimum east side *interior side yard* requirement from 45 metres to 12 metres.**

**A draft zoning by-law amendment and a conceptual site plan should be provided following the Statutory Public meeting and prior to Council's consideration of the staff recommendation.**

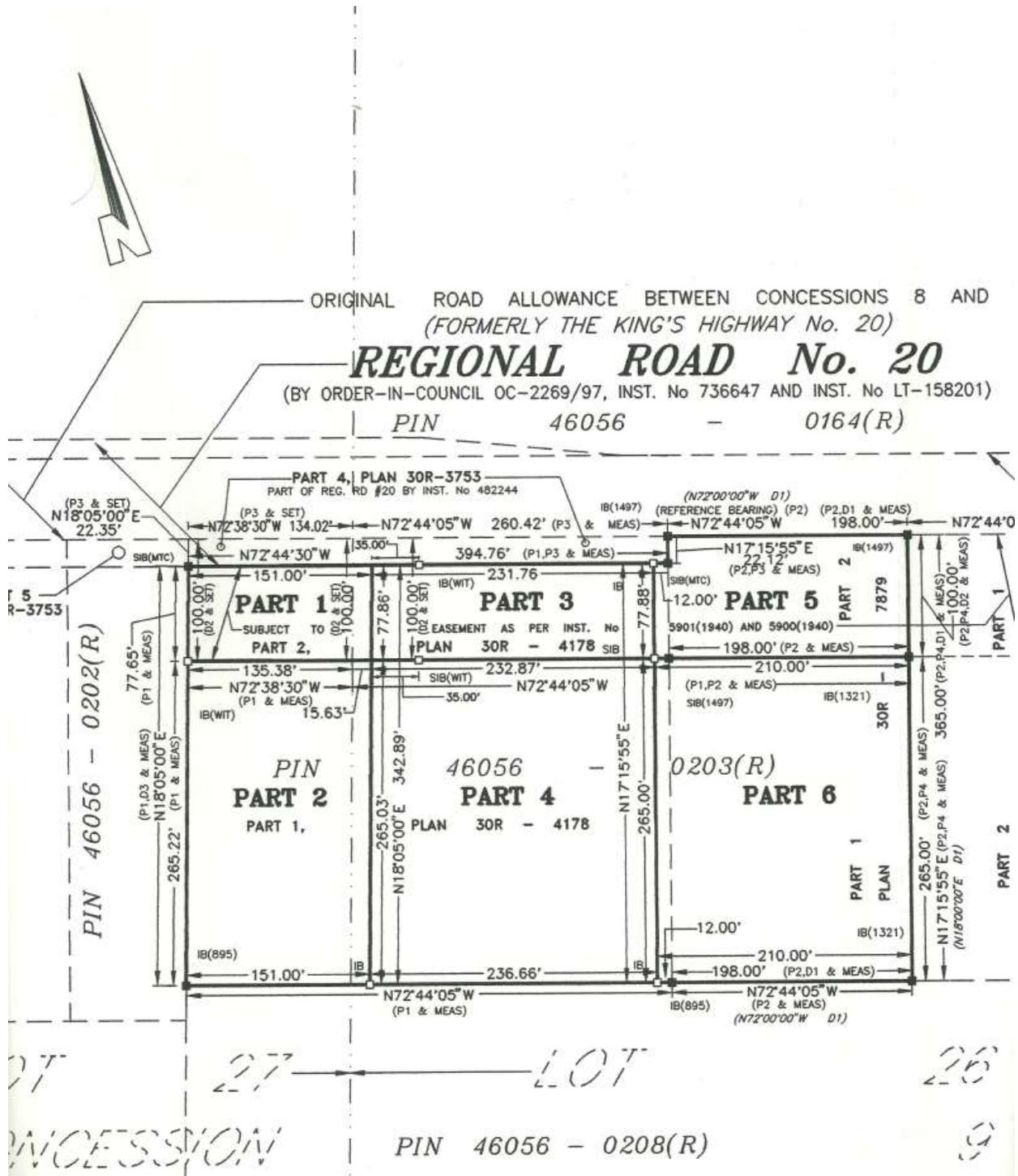
## *Steven Rivers*

Steven Rivers, MCIP, RPP  
189 Clare Avenue  
Port Colborne, Ontario L3K 5Y1  
Phone: 905-834-7496  
Email: [steven.p.rivers@gmail.com](mailto:steven.p.rivers@gmail.com)  
Web Page: <https://ca.linkedin.com/in/stevenprivers>

2017-01-10

# ANNEX 1

## SCAN OF PART OF PLAN 30R-10056



**ANNEX 2**

**EXCERPTS FROM RELEVANT DOCUMENTS AND COMMENTS**

**AVAILABLE UNDER A SEPARATE COVER UPON REQUEST**

**ANNEX 3**

**DETAILED POLICY REVIEW**

**AVAILABLE UNDER A SEPARATE COVER UPON REQUEST**

**ANNEX 4**

**RELEVANT MINIMUM DISTANCE SEPARATION GUIDELINES  
AND CALCULATIONS**

**AVAILABLE UNDER A SEPARATE COVER UPON REQUEST**

**ANNEX 5**

**NIAGARA PENINSULA CONSERVATION AUTHORITY  
POLICIES, PROCEDURES AND GUIDELINES FOR THE  
ADMINISTRATION OF ONTARIO REGULATION 155/06 AND  
LAND USE PLANNING POLICY DOCUMENT**

**AVAILABLE UNDER A SEPARATE COVER UPON REQUEST**