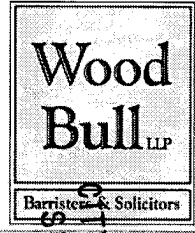


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MUNICIPAL, PLANNING & DEVELOPMENT LAW

26 March 2014

Sent via E-mail  
[clerk@toronto.ca](mailto:clerk@toronto.ca)

City Council  
City of Toronto  
City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

Attention: Clerk's Office

Dear Members of Council:

**Re: Proposed Zoning By-law Amendments regarding Medical Marihuana  
Production Facilities**

We are the solicitors for 8775842 Canada Inc. which operates an ongoing business located in Scarborough (the "Site"). We have been retained to advise our client in regard to the implications of the proposed zoning by-law amendments intended to regulate "*Medical Marihuana Production Facilities*".

***Background***

Our client's Site is licenced by Health Canada to produce medical marihuana pursuant to the "old" Marihuana Medical Access Regulations ("MMAR") and it has been licenced for some time. In order to comply with the provisions of the "new" Marihuana for Medical Purposes Regulations ("MMPR"), our client has undertaken significant renovations to the Site at considerable cost. These renovations are nearing completion.

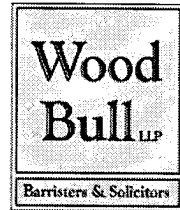
On February 27, 2014, the Planning and Growth Management Committee recommended that Council enact zoning by-law amendments to, among others, the former City of Scarborough Employment District Zoning By-law No. 24982 (the "Scarborough By-law Amendment") and City of Toronto Zoning By-law No. 569-2013 (the "Harmonized By-law Amendment") to regulate *Medical Marihuana Production Facilities*.

Our client occupies fully self-contained units on lands designated *Employment Districts* in the City's Official Plan ("OP") and zoned *Industrial Zone (M)* and *Vehicle Service Zone (VS)* in the former City of Scarborough Employment District Zoning By-law No. 24982. The Harmonized By-law Amendment does not apply to the Site as it is considered a "hole" under the parent City of Toronto Zoning By-law No. 569-2013.

Peter A. Gross Direct: (416) 203-7573 [pgross@woodbull.ca](mailto:pgross@woodbull.ca)

65 Queen Street West Suite 1400 Toronto Ontario M5H 2M5 T (416) 203-7160 F (416) 203-8324 [www.woodbull.ca](http://www.woodbull.ca)

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The Scarborough By-law Amendment provides in part:

**26. Medical Marihuana Production Facility Use in "E", "M", MG" and "MS" Zones**

*26.1 A lot with a medical marihuana production facility must be:*

- (a) at least 70 metres from a lot in any zone not an "E", "M", "MG" or "MS" Zone.*
- (b) at least 70 metres from a yulot with a:*

- school;*
- place of worship; or*
- day nursery.*

There are two aspects to the 70 metre setback:

- i. setbacks from other zones; and
- ii. setbacks from sensitive uses.

In our client's case, the Site is located within 70 metres of lots that are zoned *Industrial Commercial* (MC) and *Mixed Employment* (ME). The Site is not within 70 metres of a lot with a school, place of worship or day nursery.

Our client is concerned that the 70 metre setback requirement in the Scarborough By-law Amendment will compromise their ability to continue operations at the Site. It has been suggested by staff that the Site would be considered a legal non-conforming use. However, it is our client's position that it should be acknowledged as a legal conforming use in the Scarborough By-law Amendment.

Having reviewed the staff report dated September 24, 2013 (the "Report") in regard to the planning justification for the 70 metre separation distance from other zones or particular uses, we conclude that the reasons advanced by staff do not justify application of these setback requirements.

The Report states in part:

*MMPFs are intended to be highly secure areas under the MMPR. To assist in maintaining a higher level of security for these sites, it is recommended that they be separated from publicly accessible uses as well as residential areas. A 70 metre separation distance from lots with residential use and sensitive uses would satisfy this*

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*concern. This distance for a setback is based on the Provincial D-6 Guidelines for separation distance and is consistent with a Class II Industrial use. [emphasis added]*

The use by planning staff of the Ministry of Environment D-6 Guidelines to address an alleged security issue at sites of *Medical Marihuana Production Facilities*, is a misapplication of the guidelines and indicates an absence of appropriate consideration of the security measures applied to such facilities by the new federal regulations.

***Ministry of Environment Guideline D-6 - "Compatibility Between Industrial Facilities and Sensitive Land Uses"***

The objective of the D-6 Guideline is to address potential land use conflicts between industrial uses and sensitive uses due to possible adverse effects related to noise, vibration, odour, litter, dust, and other particulates and contaminants. It does not address "security" concerns.

Under the D-6 Guideline, the 70 metre setback is a "recommended" separation distance subject to variation under certain circumstances. In particular, section 4.10 of the D-6 Guideline provides a process whereby "incompatible" development may be permitted within the recommended separation distance after further study and taking into consideration mitigation measures.

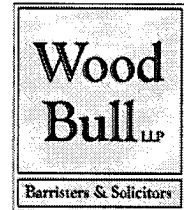
***Security Measures under the MMPR***

In the first instance, one may well ask "what is the nature of the security issue which is being addressed by a separation distance of any kind?". Furthermore, there is no evidence presented in the staff report as to how the application of a 70 metre separation distance addresses matters of security that are not already adequately addressed by the new federal regulations.

The staff report does not consider the provisions of the MMPR which are intended to address site security. In this regard, Division 3 of the MMPR requires:

- All production, packaging and labelling of medical marihuana must take place indoors.
- Medical marihuana may only be stored indoors.
- The site must be designed in a manner that prevents unauthorized access.
- The perimeter of the site:
  - must be visually monitored at all times
  - must be secured by an intrusion detection system activated at all times.
- Access to areas within the site where medical marihuana is present is restricted to persons pre-authorized and screened by Health Canada.
  - These areas are to be secured by physical barriers.

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- These areas are to be visually monitored at all times.
- These areas must be protected by an intrusion detection system activated at all times.
- A record of the identity of all persons accessing these areas must be kept.

Given the above rigorous federally mandated requirements, it is difficult to see how the imposition of a 70 metre setback from some other zones and some other uses serves any useful purpose, other than to arbitrarily limit the opportunities to establish *Medical Marihuana Production Facilities*.

### ***Inconsistency Between the Scarborough By-law Amendment and the Harmonized Bylaw Amendment***

As noted above, the Scarborough By-law Amendment imposes the 70 metre setback from lots zoned *Industrial Commercial* (MC) and *Mixed Employment* (ME) (the “Protected Zones”) among others. On the other hand, the Harmonized By-law Amendment does not require any setback from zones with the same uses (*Employment Industrial* (E), *Employment Heavy Industrial* (EH) or the *Commercial Local* (CL) zones with the exception of *Educational and Training Facilities* and *Vehicle Sales Operations*.

This inconsistency demonstrates the absence of a defensible planning rationale for the 70 metre setback from other industrial/employment zones.

### ***A “Medical Marihuana Production Facility” is not a Class II Industrial Use***

Even if it could be established that the D-6 Guideline is an appropriate surrogate guideline to use to address security concerns, staff’s categorization of *Medical Marihuana Production Facilities* as a Class II industrial use is incorrect.

According to the D-6 Guideline, Class II facilities are characterized by outdoor storage of wastes or materials, sound emissions occasionally audible off-site and odour emissions that are frequent and occasionally intense. Examples of such uses include paint spray booths, feed packing plants and magazine printing facilities.

Conversely, Class I facilities are distinguishable in that they do not allow for outside storage, are self contained, do not emit sounds audible off-site and odour emissions are infrequent and not intense. In this regard, the MMPR require that all activities occur indoors in fully secure, contained buildings with proper filtration to prevent odour emissions. Outside storage is not permitted.

Therefore, based on the security measures mandated by the MMPR, it is clear that *Medical Marihuana Production Facilities* lack the characteristic hallmarks of Class II industrial uses. The application of a 70 metre setback is inappropriate.

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### ***Unintended Consequences of the 70 metre Setback***

Staff do not appear to have considered that the requirement that a *Medical Marihuana Production Facility* be at least 70 metres away from specified sensitive uses has the effect of putting at risk a facility legally established under the Scarborough By-law Amendment if one of the specified uses ("*school, place of worship or day nursery*") obtains a building permit and establishes within the 70 metre separation distance.

The establishment of such a use which can occur "as of right" would have the effect of making the *Medical Marihuana Production Facility* a non-conforming use which is not legal under the by-law (since the non-conformity did not occur as a result of the enactment of a by-law; rather it occurred simply by the establishment of the new, permitted use within 70 metres).

Although this result is not intended, it is nevertheless a risk to the operator of a *Medical Marihuana Production Facility* and should not be included in the by-law.

### ***Conclusion and Requests***

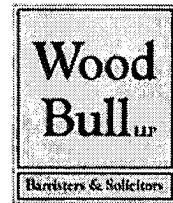
Based on the foregoing, it is our client's position that a 70 metre setback regulation in the various by-laws related to *Medical Marihuana Production Facilities* is an inappropriate regulatory requirement to address security concerns.

Under these circumstances, on behalf of our client, we respectfully request that Council remove the 70 metre setback from the Scarborough By-law Amendment, Harmonized By-law Amendment, and amendments to the Former City of Toronto Zoning By-law No. 438-86, Former City of North York Zoning By-law No. 7625, Former City of York Zoning By-law No. 1-83, Former Borough of East York Zoning By-law No. 6752, Former Borough of East York (Town of Leaside) Zoning By-law No. 1916 and Former City of Etobicoke Zoning Code.

If Council does not see fit to remove the 70 metre provision, we request that the Scarborough By-law Amendment acknowledge our client's site as a legal conforming use in the Scarborough By-law Amendment. We will supply our client's municipal address upon request to facilitate this request.

We request written notice of any decision of Council with respect to the Scarborough By-law Amendment be sent to us by email to the undersigned at [pgross@woodbull.ca](mailto:pgross@woodbull.ca) or mail to Wood Bull LLP, Suite 1400, 65 Queen Street West, Toronto, ON M5H 2M5.

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Should you have further questions regarding these submissions, please do not hesitate to contact the undersigned.

Yours very truly,

**Wood Bull LLP**

A handwritten signature in black ink, appearing to read "Peter A. Gross", is written over the typed name.

Peter A. Gross

c. Client/Councillor Thompson/Lorne Berg