

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** April 25, 2017

**CASE NO.:** PL160759

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	William Brad Garbutt
Subject:	By-law No. 19-16
Municipality:	Township of Mulmur
OMB Case No.:	PL160759
OMB File No.:	PL160759
OMB Case Name:	Garbutt v. Mulmur (Township)

**Heard:** February 2, 2017 in Mulmur, Ontario

**APPEARANCES:**

**Parties**

William Garbutt

Township of Mulmur and  
Arnd Enderlein

**Counsel**

Self-represented

Harold Elston

**Participants**

Laura Wargel

Chris Sharkey

Stephen Garbutt

Self-represented

Self-represented

Self-represented

**DECISION DELIVERED BY JUSTIN DUNCAN AND ORDER OF THE BOARD**

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## **INTRODUCTION**

[1] This was a hearing in the matter of an appeal by William Garbutt (“Appellant”) from the decision of the Township of Mulmur (“Township”) to adopt Zoning By-law No. 19-16 (“ZBL”) to rezone Parts of Lots 21 and 22, Concession 8 EHS (“Subject Property”) from the Rural Zone to the Rural Commercial Exception Seven Zone to permit the development of a medical marijuana facility to be licenced by Health Canada on the Subject Property. Adoption of the ZBL follows from an application by Arnd Enderlein (“Applicant”), who proposes to operate the facility by way of agreement with the owner of the Subject Property.

[2] The Board added Laura Wargel, Chris Sharkey and Stephen Garbutt as participants to the appeal. All three participants lived in close proximity to the Subject Property and were opposed to the ZBL.

## **EVIDENCE**

[3] On consent of the parties, the Board heard from the Appellant and the participants first and then heard evidence from the Township and Applicant’s planner, Tracey Atkinson, in support of the ZBL.

[4] To begin, the Appellant explained that his main concern with the proposed medical marijuana facility is where it is proposed to be located. He explained that his property is located directly to the south of the Subject Property and the proposed facility could lead to security issues for him with people using his property as a potential access point to the Subject Property.

[5] The Appellant also expressed the view that the road on which the Subject Property is located cannot accommodate higher traffic. He also expressed the view that other facilities nearby are properly serviced similarly to industrial areas with adequate water access, paved roads and security. He explained that the Subject Property is surrounded by woodlands and emergency response in the case of a break-in or a fire would take a long time.

[6] The Appellant provided the Board with a series of media articles relating to break-ins at medical marijuana facilities. He believed these articles revealed that there was a threat of security issues arising from the facility and that this threat was high.

[7] The Appellant also explained that as each marijuana plant uses approximately six gallons of water daily, although he was not aware of how many plants would be cultivated, he was concerned that use of groundwater at the Subject Property to service the facility would result in adverse impacts to well users in the area.

[8] He also expressed the view that the road access to the Subject Property provides poor sightlines in both directions and that the 40 additional daily vehicles to be associated with the facility will be more than the road can handle and will result in additional accidents. He also explained that the Subject Property and the road floods regularly when it rains and during spring snow melt and that access will be an issue at these times.

[9] With two other similar facilities already located within eight kilometers of his property, the Appellant believed the Township needs to slow down and consider how best to service this growing business and decide where such facilities should be properly located.

[10] In cross-examination, the Appellant acknowledged that Health Canada regulations for the proposed facility require security measures be in place but he explained that he had no faith that these regulations could be followed given that internet access is poor in the area and there are no phone lines on the road. He also acknowledged that the media articles relating to break-ins that he provided to the Board related to dispensaries and not to a facility where medical marijuana is grown.

[11] Next the Board heard from Ms. Wargel. She explained that her property abuts the Subject Property. She explained that her main concern is that the proposed facility does not fit with the rural character of the area as it is an industrial operation. She explained that other municipalities have placed such facilities in areas zoned industrial in order to address servicing issues. She also reviewed the Health Canada regulations

and explained that she did not see anything in them relating to ensuring security on neighbouring properties. It was her view that the proposed facility would fit better on a site zoned industrial for various reasons, including the provision of passive security as a result of its location.

[12] Mr. Sharkey testified next and also expressed concern about security issues as his residence will be directly south of the proposed facility. In particular, he expressed the view that the facility should be located in an area that does not bring residential uses into potential conflict.

[13] Next the Board heard from Stephen Garbutt. Mr. Garbutt explained that he lives with the Appellant. He explained that the Subject Property is surrounded by rural properties that have residences on them. He also expressed the view that the proposal would be more appropriate on lands in the Township already zoned industrial since industrial lands are not typically surrounded by residential uses.

[14] Finally, the Board heard from Ms. Atkinson for the Township and the Applicant. The Board qualified Ms. Atkinson to provide expert planning evidence.

[15] Ms. Atkinson explained that in addition to adopting the ZBL, the Township adopted By-law No. 20-16 authorizing the Township to enter into a Site Plan Agreement with the Applicant and the owners of the Subject Property. Ms. Atkinson provided the Board with a copy of the Site Plan Agreement with her evidence and she explained that the site plan was developed in conjunction with the drafting of the ZBL.

[16] Ms. Atkinson explained that the Subject Property is not located within the Niagara Escarpment Plan Area but part of the Subject Property not associated with the proposed facility is regulated by the local conservation authority.

[17] Ms. Atkinson explained that the Subject Property is designated Rural under the Dufferin County Official Plan and the Township Official Plan and that it was also zoned Rural prior to the adoption of the ZBL at issue in this appeal. She explained that the ZBL would zone the Subject Property "Rural Commercial (RC) Exception Seven".

[18] Ms. Atkinson explained that the RC zone is used by the Township to recognize uses that arise as exceptions to the Rural zone. She explained that the Township has only recently started using the RC zone on a site-specific basis for commercial operations in the Rural zone.

[19] Ms. Atkinson explained that the Subject Property is irregularly shaped with frontage on a municipal road and that it extends towards an unopened road allowance to the rear. She explained that the owners of the Subject Property, William and Sherry Ratcliffe, currently have a residence, agricultural buildings and accessory residential structures on the Subject Property. She explained that the driveway access from the municipal road splits on the Subject Property and that an old agricultural road will extend from the front of the property where buildings are currently located to the rear where the proposed facility is proposed to be located.

[20] Ms. Atkinson explained that the surrounding land uses are residential and some cropping. She explained that there is not significant agriculture in the immediate area and minimum distance separation from livestock operations does not arise here. She opined that the proposed facility will be completely buffered visually from surrounding properties and the road as a result of its location on the Subject Property. She also explained that the facility is to be dark sky compliant and that significant lighting will only be used if a security issue arises.

[21] Ms. Atkinson explained that the facility proposed is 1,860 square meters (20,000 square feet) with a fenced compound area surrounding a windowless growing shed area with a single gated access point with employee parking inside the compound area. She explained that the site plan shows these details and also addresses lighting issues, hours of operation and other operational matters, including security. She also explained that the site plan also addresses public concerns about sight lines on the municipal road by requiring that the hill on the road in front of the Subject Property be shaved down to provide for adequate sightlines for vehicles entering and exiting the Subject Property.

[22] Ms. Atkinson explained that the site specific RC zoning proposed in the ZBL will only apply to the compound area and will not apply to the entirety of the Subject Property.

[23] Ms. Atkinson had conducted a site visit at an operating medical marijuana facility to understand such an operation. She explained how such operations are required to operate under Health Canada regulations, including the minimization of odour issues and implementation of security measures.

[24] Next, Ms. Atkinson considered the ZBL against the policies of the Provincial Policy Statement, 2014 (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). It was her opinion that the ZBL was consistent with various policies of the PPS relating to promoting value-added products, creating economic opportunities on rural lands, diversifying the rural economy, protecting agricultural operations and promoting long-term economic viability in rural areas. Additionally, she opined that the ZBL did not give rise to any areas of non-conformity with the policies of the Growth Plan.

[25] Ms. Atkinson explained that no issues of inconsistency arose with regards to the Dufferin County Official Plan as the County Official Plan merely mirrors Township Official Plan designations. Additionally, she was of the opinion that policies of the County Official Plan relating to diversifying the rural economy were met by the proposal.

[26] With regards to the Township Official Plan, Ms. Atkinson explained that the primary consideration was preservation of community character (policy 4.2.4). She explained that the Township Official Plan provides that development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted (policy 5.8). She opined that as the lands to be used for the proposed facility are rural non-agricultural lands and do not take lands out of agricultural production, as the proposal provides significant setbacks from surrounding properties, and since the building proposed is similar in character to newer chicken and dairy facilities, these policy requirements have been met.

[27] Ms. Atkinson also opined that various other Township Official Plan policies relating to the protection of public health and safety, development criteria, permitted small scale commercial/industrial uses in the Rural designation were also met in the circumstances.

[28] Ms. Atkinson also explained that the Township's parent Zoning By-law No. 05-2002, as amended, now provides at s. 3.40 that medicinal marijuana growing for medical purposes as authorized by the Government of Canada shall be considered a Rural Commercial use and shall be permitted only on a lot of 8 hectares or larger in size by amendment to the by-law. Section 3.40 further provides that such operations shall incorporate measures to provide for adequate security and they are subject to site plan control. Ms. Atkinson explained that s. 3.40 was added to Zoning By-law No. 05-2002 in 2013. She also opined that the ZBL meets the requirements of s. 3.40 of Zoning By-law No. 05-2002.

[29] Specifically in relation to sightlines, Ms. Atkinson explained that with the shaving down of the hill on the road, the minimum sightline requirement of 135 metres for vehicles traveling at 80 km/h contained in the Ministry of Transportation guidelines has been met.

[30] In relation to security specifically, Ms. Atkinson explained that although the Township relies heavily on the security measures in Health Canada regulations, the Township also considered specific additional security measures that have been incorporated in the site plan agreement.

[31] With regards to the concern about water consumption, Ms. Atkinson explained that the operation will take 3,000 litres of water daily of groundwater but that it will be returned to the ground through the on-site septic system.

[32] In cross-examination, Ms. Atkinson acknowledged that she was not aware of another medical marijuana facility similar to the proposal being surrounded by trees. She also acknowledged that facilities in other municipalities have been located on lands zoned industrial but it was her opinion that no servicing issues arise in this context.

## **ANALYSIS AND FINDINGS**

[33] Based on the evidence heard, the Board finds that the ZBL is consistent with the PPS and conforms to the Growth Plan. The Board has reviewed both provincial policy documents in detail in coming to this finding. Additionally, the evidence of Ms. Atkinson was uncontested on this particular point.

[34] Additionally, on balance, based on the evidence heard, the Board finds that the ZBL is consistent with the Regional Official Plan, the Township's Official Plan and the parent Zoning By-law No. 05-2002.

[35] In particular, the Board finds that the proposed facility is not constrained by servicing issues and that the detailed site plan tendered with the evidence of Ms. Atkinson will adequately address the issue of sightlines on the municipal road to improve safety at the entrance to the Subject Property.

[36] In addition, the Board finds that the proposed facility will not interfere with any agricultural operations in the area, and will not result in any unacceptable visual impacts. Additionally, the Board finds that the facility itself, assuming it is even visible to neighbouring properties, will appear similar to other modern rural commercial and agricultural operations. In other words, the operation will not appear out of character in this rural context.

[37] Finally, with regards to security issues, although the Board finds that security could be viewed as not being a legitimate planning issue as any commercial enterprise generating valuable goods could have the potential for security issues, the Board has considered this issue in detail. The Board finds that significant consideration has been paid to this issue by the Applicant and by the Township in developing the ZBL and the associated site plan. Additionally, the Board is cognizant of the fact that Health Canada regulations contain detailed requirements for security, including requirements for restriction of access and physical barriers, visual monitoring, intrusion detection, and monitoring by personnel that will have to be met by the Applicant to obtain a licence

from Health Canada. These requirements go well beyond what is normally implemented for a commercial enterprise.

[38] In conclusion therefore, the Board finds that the appeal should be dismissed.

**ORDER**

[39] The Board orders that the appeal against Zoning By-law No. 19-16 is dismissed.

*“Justin Duncan”*

JUSTIN DUNCAN  
MEMBER

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**Ontario Municipal Board**

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