

Zoning for Marijuana on Denman

Although I am tempted to lead into this article with a funny quote from Cheech and Chong, I will resist. Although stoner humour may always be part of our culture, right now on Denman Island it's time to take a sober look at the regulatory and community issues raised by legalization of medical (and potentially recreational) marijuana.

To this end, the Denman Island Local Trust Committee has been discussing options for regulating marijuana growing. Here's some background information:

What do federal laws permit?

This is complicated. The current Marijuana for Medical Purposes Regulations (MMPR) came into force on April 1, 2014, creating a system for federally-licensed production facilities. These are large (from several thousand to 50,000 square feet) fully-enclosed buildings that include security features such as continual visual monitoring of the perimeter of the site, and prevention of any unauthorized access. Small-scale production of medicinal marijuana for personal use or provision to friends and family is *not* allowed under these regulations.

So far, so good, but here's where it gets complicated: the MMPR replaced something called the Medical Marijuana Access Regulations (MMAR). These were Canada's first foray into legalizing medical marijuana. Unlike the newer MMPR, the MMAR enabled licenses for small-scale home-based production and sale. The new MMPR was meant to replace the MMAR and put an end to these smaller operations. However, the issue has been clouded by court rulings which have cast doubt on the constitutionality of the new regulations and the repeal of the old provisions. For now, people producing medical marijuana under the MMAR can continue to do so, but no new licenses of this nature are being issued and the exact legal situation remains ambiguous.

To notch up the complexity, we have a new federal government which intends to legalize recreational marijuana.

What is the Local Trust Committee's role?

The DILTC is a land use authority and thus can control elements of marijuana production through zoning – things like where it is allowed, building size and height, set-backs, parking, lighting, screening, and other practical, measurable considerations. It does not control or enforce Health Canada or Criminal Code rules, or have anything to do with licensing. It does not regulate noise or odour concerns but can design zoning regulations intended to keep these to a minimum.

Another addition to the mix is the Agricultural Land Reserve (ALR). Approximately 46 per cent of Denman is in the ALR and according to ALR rules, marijuana production is considered an agricultural use, and therefore it is permitted. Local zoning can't over-ride this.

What is the current zoning status of marijuana growing operations?

Denman Island's zoning, as defined in the Land Use Bylaw, does not mention marijuana, but since it is a plant, it falls under the definition of horticulture and agriculture, which are currently allowed on all lots on Denman, except for parks.

Why do we need zoning regulations for marijuana production?

Medical marijuana production, once it moves beyond small-scale, typically involves semi-industrial processes. Experience from other municipalities has shown that this can cause problems. Facilities generally use copious amounts of water and chemicals, and as a result produce large amount of run-off. Another big concern is smell. As well, the DILTC has also heard concerns about night-time lights, fire safety, noise (from ventilation systems) and the visual impact of buildings.

Because of these concerns, marijuana production may not be appropriate for all lots and neighbourhoods on Denman. The DILTC, through an amendment to its Land Use Bylaw, can restrict where marijuana production can occur, create guidelines for acceptable scale, and/or enact provisions (set-backs, building size and height, screening, etc.) to minimize impacts.

On the flip side, zoning is also a way to enable things. Marijuana production, if practiced in a way that respects the environment and neighbourhood, can have economic and/or medical benefits. Providing clear guidelines will help define a viable path for anyone interested in pursuing this activity.

What are other local governments doing?

Local governments all over Canada are busy adopting bylaw amendments to address the new federal regulations. Some are banning marijuana production outright; some are allowing it in industrial and agricultural zones, including setbacks and minimum parcel size in the regulations.

How can the DILTC deal with the ambiguity created by changing federal regulations?

Right now no-one knows what will become of the laws on small-scale medical marijuana growing operations (as per the old MMAR), and no-one knows if the promised outright legalization of pot will occur, let alone what it would look like.

At its last meeting (Oct. 27), the DILTC talked about focusing on scale of production rather than type of licensing or intended use. Our rationale was that regardless of whether the licence is MMAR, MMPR or some kind of yet-to-be-created new option, it is generally the size of the operation that creates the impacts.

If the DILTC adopts new regulations, how will that affect any current production facilities on Denman?

If new regulations come into place, current facilities would become “legal non-conforming,” as defined by the provisions of the *Local Government Act*, which means that (subject to certain conditions) they would be allowed at the current scale and intensity, but if the use is discontinued for six months, this use will no longer be permitted on the property. This is a way of honouring the fact that the activity taking place was lawful when initiated.

What next?

At about the time you’re reading this, the DILTC will be considering a staff report outlining options for creating a bylaw amendment to limit marijuana production based on the scale of operation (by number of plants) and zoning. I can’t predict what direction we will decide to move towards, but I encourage you to watch your Grapevine for a meeting report by Trustee Critchley. As the discussion moves towards a decision, we will schedule and advertise opportunities for public input.

You are welcome to attend our meetings, email us, or, for a more informal conversation, give one of us a call. (lbusheikin@islandstrust.bc.ca / 250-218-3216; dcritchley@islandstrust.bc.ca / 250-250-3244); for the DILTC as a whole deltc@islandstrust.bc.ca)