



BARNSTABLE
TOWN CLERK

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**Town of Barnstable
Planning Board
Minutes
February 25, 2013**

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Not Present
Patrick Princi - Clerk	Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Present
Stephen Helman	Not Present

Also in attendance were Art Traczyk, Regulatory Review Planner, JoAnne Buntich, Director Growth Management, and Ruth Weil, Town Attorney.

Planning Board Workshop:

7:00 P.M. to 7:30 PM:

Zoning Amendment 2013-055 Medical Marijuana Treatment Centers and 2013-065 Temporary Moratorium

The Planning Board will hold a workshop to review and discuss proposed zoning amendments to Chapter 240 of the Code of the Town of Barnstable: Medical Marijuana Treatment Centers and a Temporary Moratorium on the Establishment and Permitting of Medical Marijuana Treatment Centers and Associated Activities. The Town Attorney and the Growth Management Director will participate in the workshop.

Ruth Weil, Town Attorney. The temporary moratorium has moved to Town Council and is scheduled to be addressed next Thursday. The zoning amendment and the proposed overlay district, cannot do anything until some direction is promulgated from the state. The Town's task, if Town Council passes the temporary moratorium, would be to undertake a fairly extensive study as to what other states have found/information for this issue. A professional should be hired to conduct the study. Thinks that there is merit in not taking action on the overlay district at this time. Awaiting to see if the Town Council adopts the temporary moratorium, then look at the merits of the study to help inform what the best location would be for the town to take once the study is completed.

Felicia Penn asks how would the Planning Board find such an expert since this is a brand new issue in Massachusetts?

Ruth Weil answers that 17 other states have passed this law. A planner or a lawyer could look at what's happened/models in the other states.

David Munsell makes comment/asks why this issue has come upon us so quickly? He makes reference to the Town Council Summary notice dated November 28, 2012, from Fred Chirigotis (Exhibit A). Why and how did it get to Town Council so fast? How much research has actually been done?

Ruth Weil answers that a town can obtain certain protections by placing a publication for the first hearing for a zoning amendment. The passage probably caught people off guard, but when state legislation passes, the Town Council and the parties involved want to be proactive. The town did the public notice for protection of someone trying to assert that they can open a dispensary. It was to protect the planning process.

Ruth Weil states that we are more protected than any other town on the Cape. We are not vulnerable because we publicized it. Trying to help the town plan for this use in the best way legally, smart planning in order to regulate the use.

David Munsell doesn't know if that was a good idea. Some of the older people don't understand. He makes reference of the tobacco ban at drugstores and now we have marijuana coming legally.

Ray Lang states that this particular operation is a Planning Board job/problem. What is going to come down from the state or legislature, to allow or disallow?

Ruth Weil states that the deadline for Department of Public Health is May 1, 2013, from the state, they may not be able to meet that deadline. There are a lot of unanswered questions. The Attorney General has the town of Wakefield's petition for a ban. Two towns have proposed a total ban. Whatever is supported can be challenged. There will be some direction from the Attorney General's Office.

Ray Lang states how can anyone get a handle on drug distribution without having a document that we can react to? How would this be determined unconstitutional? We cannot make a decision with what we have now.

Patrick Princi asks Ruth Weil about the Attorney General's Office and how long can we keep continuing this until more direction/information and more case law is obtained?

Ruth Weil recommends continuing the public hearing for the overlay district to a date certain and as soon as information is received get it to the Planning Board.

Matt Teague asks, in reference to establishment in the zoning overlay district, for some explanation as to why can't it be an allowed dispensary use as one of the allowed uses in an existing district?

JoAnne Buntich answers that there is a caveat that states that this dispensing can only take place through a not for profit. When looking at that aspect and the linkage to prescription drugs, the safest would be to allow the use in a specific location. We have been operating in the dark, with little assistance, poorly played out, The State is finally starting to understand the community's difficulty and confusion. The Planning Board has done the right thing by delaying the moratorium. This is a unique type of retailing that has not been seen before. This is set apart from any other land use. The study will be helpful in revealing information for this.

Matt Teague comments that this will be a special permit request and wherever this ends up, regardless of the location, we will run into serious abutter/public reaction. Possible court challenges and further issues down the road.

Ruth Weil states that is why we need more time.

Felicia Penn comments that she is not an opponent or proponent. More research needs to be done. This is quite a business. People have figured out how to create things in different forms. Things that are controlled and would not effect others. It's a medically described business. We have not discussed the benefits that it has for the patients.

Ray Lang comments that he has some ideas of his own as to the zoning and the efforts towards this issue.

Matt Teague closes the Workshop.

Subdivisions:

7:00 P.M. Public Hearing

Proposed Definitive Subdivision No. 820, Wayside Lane Ext. Stephen E. Wallace et al.

To all persons deemed interested in the Planning Board acting under the General Laws of the Commonwealth of Massachusetts, Chapter 41, Sections 81A, through 81GG, Subdivision Control and all amendments thereto and the Town of Barnstable Chapter 801, Subdivision Regulations of the Code of the Town of Barnstable you are hereby notified of a Public Hearing to be held to consider Subdivision No. 820. The plan for this subdivision is entitled "Definitive Plan of Land in West Barnstable, MA "Wayside Lane Ext."" as prepared for Stephen E. Wallace et al. The plan proposes the division of 5.84 acres addressed 0 High Street, West Barnstable into two developable lots and the extension of Wayside Lane to serve the new lots. The subject property is shown on Assessors Map 110 as Parcel 007.

Ray Lang moves to open the Public Hearing, seconded, so voted to open the Public Hearing.

Patrick Princi abstains. He excuses himself from this matter as he lives on Wayside Lane.

Dan Ojala in attendance. He explains the proposed subdivision and refers to the plan (Exhibit B). Legal frontage. Mapped for rare and endangered species habitat, box turtles.

They plan to file this week with the Barnstable Conservation Commission. Possible offer to dedicate/donate to Town, c/o Conservation Commission, 100 ft. to .95 acre parcel. They have been before the Board of Health and they have approved the amended plans for the relocation of a well.

Request for waivers for reduction in the pavement and reduce the impervious area to maintain the rural character of the neighborhood. Dead end road, only serves two homes.

David Munsell comments on the previously submitted preliminary plan. Is it common to locate a house on the proposed plan? Wouldn't just the lot be sufficient?

Dan Ojala answers he wouldn't feel right if it didn't reflect and show the potential of the lot. It's a unique lot.

David Munsell confirms waiting for conservation to see package for this.

Ray Lang asks about easement arrangements. Is this satisfactory, proper and recorded?

Dan Ojala answers no. It is carefully drafted. They will work with Staff to draft some language regarding the right of way.

Ray Lang asks if Wayside Lane will be a private way?

Dan Ojala answers yes. It will remain private and they will be responsible for maintaining it, not the Town .

Ray Lang asks if the Town has the right of way along the cart path to get to the conservation land that is contemplated being given to the Town?

Dan Ojala answers that he will work with Staff on the 20 ft. right of way in order to get a solid right of way.

Ray Lang asks if the Fire Chief has confirmed there is sufficient water?

Dan Ojala answers that there is a tank, buried and a second 20 thousand gallon tank an eighth of a mile away.

Art Traczyk asks if there is a third lot here? Sheet C (3 of 5) (Exhibit C) shows a Lot 1, diamond shaped, near the railroad, wetland.

Dan Ojala answers that he could not find a deed/ownership of this parcel. Don't know who owns. Assessors couldn't identify it.

Art Traczyk confirms that this is not part of this subdivision. Would like total acreage with this area removed.

JoAnne Buntich would like a narrative explanation for the record to reflect this going forward.

Art Traczyk would like the documents from conservation/easement information needed. He would like Ruth Weil to get this information as well.

Dan Ojala stated he has sent this information via email, tonight, in a draft form.

Matt Teague asks if there is any public comment?

Matt Teague asks about if an extension will be needed?

Art Traczyk states that Ruth Weil and the Legal Dept. will need some time to review as well.

Dan Ojala agrees to do an extension, he could use two months.

Matt Teague entertains a motion to continue this to April 22, 2013, at 7:00 p.m., so moved by Ray Lang, seconded by Felicia Penn, so voted unanimously

Regulatory Agreement Pubic Hearing:

7:00 pm Public Hearing – Continued

**Third Modification to Regulatory Agreement 2007-02,
89 Lewis Bay LLC - Property at 89 Lewis Bay Road and 42
South St., Hyannis**

89 Lewis Bay, LLC has filed an application to modify and amend the existing Regulatory Agreement No. 2007-02, as modified. The applicant seeks to modify and amend the existing Regulatory Agreement authorizing the rehabilitation and expansion of a structure at 89 Lewis Bay Road with related parking at 42 South Street, Hyannis. The existing Regulatory Agreement granted relief from density, parking, setbacks, building height and lot coverage

requirements to allow 42 residential units in $\pm 60,000$ sq.ft and $\pm 20,000$ sq.ft of ground floor space for medical offices and all other uses permitted in the Medical Services District. A modification of the Regulatory Agreement was granted to allow educational uses, including culinary arts, in 8,000 sq.ft of ground floor space. The Applicant presently seeks to modify the Agreement to construct an accessory one-story 12-bay detached garage of $\pm 2,960$ sq.ft. The accessory garage is proposed to be located at the rear west end of the parking lot on 42 South Street. The subject properties are addressed 89 Lewis Bay Road and 42 South Street, Hyannis, MA as shown on Assessor's Map 327 as Parcels 223 and 241. The property is zoned Hyannis Village Medical Services District and Harbor District. (Precinct 9)

Opened November 26, 2012, continued January 14, 2013, January 28, 2013, February 11, 2013, and to February 25, 2013.

Attorney David Lawler in attendance representing the Applicant, 89 Lewis Bay LLC. He states that some of the condominium fees weren't paid due to a change in conveyance in council in 2011 (401, 202, 212, and 312), clerical error. He hands out a draft (Exhibit D) Substantial Amendment Request. Reference is made to revised landscape plan (Exhibit E), handed to Chair, which notes 6 trees and 24 bushes to be added.

Ray Lang refers to item 3 of the Agreement/Amendment Request (Exhibit D) and asks if this extends the original agreement?.

David Lawler states no, not in this respect. They are in full compliance with the 2007 agreement. This amends the language.

David Munsell states that this should move to Town Council.

Matt Teague suggests that consultation be made with the Planning Board for the plantings (trees and bushes) and arrangement of such.

Attorney Lawler agrees.

Matt Teague asks if there is any public comment?

None.

Matt Teague entertains a motion to close the public hearing, moved by David Munsell, seconded, so voted unanimously.

David Munsell makes a motion to recommend approval of the amendment to Town Council, seconded by Felicia Penn, so voted unanimously.

Zoning Amendments:

7:00 P.M. Public Hearing - Continued

Zoning Amendment 2013-055

Medical Marijuana Treatment Centers

The Planning Board of the Town of Barnstable, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will hold a public to take comment upon the following proposed amendment to the Code of the Town of Barnstable, Chapter 240, the Zoning Ordinance. Amendments to Chapter 240 include: Section 240-6 Zoning Map to include a Medical Marijuana Treatment Centers Overlay District; adding to reserved Section 240-30 Medical Marijuana Treatment Centers Overlay District Special Permit; and Section 240-128 Definition to add definitions pursuant to the Medical Marijuana Treatment Center Overlay District.

This hearing opened January 14, 2013, continued January 28, 2013 and to February 25, 2013, continued for further review

Ray Lang moves to open the public hearing, seconded by Patrick Princi, so voted unanimously.

Matt Teague asks if there is any public comment?

Christine Greely, of Glenwood Street, West Yarmouth, member of Hyannis Park Civic Association in attendance. Hyannis Park Civic Association's view is yes to the moratorium and no on current site as proposed. Updates are that the Town of Yarmouth has placed a moratorium on their warrant for town meeting for this spring with unanimous support of their Planning Board, going to Board of Selectman this coming week, where it is anticipated to be supported. DPH is really struggling with issues presented by this law, they are unsure if there are going to be dates (with information) in May. It took 3 years for the state of New Jersey to have a dispensary. She suggests looking at a regional approach, i.e., Mashpee which would encompass several towns within 15 mile radius. Suggests conversations with other communities to meet the mandates of this law

Ann Canedy in attendance. She makes reference to her email letter dated February 21, 2013, (Exhibit F). Would like allowance of the moratorium to be considered by the Town Council. She has suggested to table the zoning ordinance. She encourages the postponement. She believes that the Planning Board, Town Council, Dept of Health, and Cape Cod Hospital should be involved. She suggests the moratorium go through and then revisit this as a task force planning approach. She would hope that other abutters are included in the process.

Matt Teague entertains a motion to continue this public hearing to May 13, 2013, at 7:00 p.m, so moved by Ray Lang, seconded by Felicia Penn, so voted unanimously.

7:30 P.M. Public Hearing

Proposed Zoning Amendment 2013-060 – Prohibiting Use Variance within 300 feet of Route 6A

The Planning Board of the Town of Barnstable, acting under Chapter 40A, Section 5 of the General Laws of the Commonwealth of Massachusetts, will hold a public hearing on Monday, February 25, 2013, at 7:30 p.m. in the Hearing Room of the Barnstable Town Hall, 367 Main Street, Hyannis, MA. The purpose of this hearing is to take comment upon a proposed amendment to the Code of the Town of Barnstable, Chapter 240, The Zoning Ordinance, Article XII, Administration and Enforcement, Section 240-125B (1) Zoning Board of Appeals, General Powers, Paragraph (e) Use Variance. The amendment proposes to prohibit the granting of Use Variances within 300 feet of Route 6A in West Barnstable and Barnstable Village. This proposed amendment was referred to the Planning Board for a public hearing by Town Council Item No. 2013-060.

Matt Teague entertains a motion to open the public hearing, so moved by Ray Lang, seconded by Felicia Penn, so voted unanimously.

Nancy Trafton, Chairman of the West Barnstable Local Planning Committee in attendance. She hands out copies of the West Barnstable Village Comprehensive Plan, pgs.16 and 17 (2 pgs.), to the Board (Exhibit G). She gives a brief history of their involvement and is in support of this amendment. She refers to correspondence from June Daley and the LCP (Local Comprehensive Plan) (Exhibit H).

JoAnne Buntich comments that previously, in the comprehensive plan, there was recommendation that use variance be deleted from the ordinance. It is not something that is in broad demand.

Felicia Penn asks about Route 6A being in the Old King's Highway area and how would this dovetail with their regulations? Isn't it a legal right to seek a variance? Zoning along Route 6A from Yarmouth to Sandwich is residential, with exception of the Village Centers?

JoAnne Buntich answers that OKH is a design review committee and makes decisions on how things look not on how things are used. A variance is not a legal right, it depends on how zoning is written, enabled by State law. The zoning is mostly residential, there is some business (village centers).

Felicia Penn asks about a Bed & Breakfast and how would that be done?

Art Traczyk answers that there is a special permit process for these.

Matt Teague asks for clarification of an example of a use variance?

JoAnne Buntich replies that a use variance would be for a change in the use of the property, other than what it is zoned for. Principal/primary uses, not home occupations or accessory use.

Nancy Trafton comments that West Barnstable Village District does not allow use variances. There is already a physically large business district here already.

JoAnne Buntich comments that any of the established businesses that are there now would not change at all.

Ann Canedy comments that the Civic Association and the marine sector have also endorsed this.

Matt Teague entertains a motion to close the Public Hearing, so moved by Patrick Princi, seconded by Ray Lang, so voted unanimously.

Matt Teague entertains a motion for recommendation to the Town Council, so moved by Ray Lang, seconded, so voted unanimously.

Correspondence:

Federal Emergency Management Agency (FEMA) notification of Discovery Meeting (Work Map Meeting) to introduce FEMA's Risk MAP (Mapping, Assessment & Planning) Program and review of community work flood risk maps. This meeting will be held in Barnstable Town Hall, 2nd Floor Hearing Room, Monday, February 25, 2013 from 9:00 AM to 10:00 AM (copy of FEMA letter enclosed).

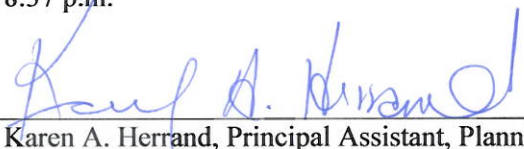
JoAnne Buntich comments that this FEMA notice is to inform that they are just starting the preliminary work for Barnstable County.

Future Meetings: Regularly Scheduled Board Meetings: March 11, 2013, and March 25, 2013 @ 7:00 p.m.

Matt Teague entertains a motion to adjourn, so moved by David Munsell, seconded by Ray Lang, so voted unanimously to adjourn

The meeting adjourned at 8:37 p.m.

Respectfully Submitted


by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on

June 24, 2013

Further detail may be obtained by viewing the video via Channel 18 on demand at
<http://www.town.barnstable.ma.us>

Listing of Exhibit Documents

- Exhibit A – TC Summary Notice – Zoning Amendment File 2013-065
Exhibit B – Definitive Plan dated Jan. 11, 2013 - Subdivision No. 820
Exhibit C – Definitive Plan dated Jan. 11, 2013, Sheet C, 3 of 5 – Subdivision No. 820
Exhibit D - Agreement/Amendment Request, Item 3, dated Feb. 19, 2013 – Reg. Agrmt 2007-02 Third Modification
Exhibit E – Revised Landscape Plan , dated Aug. 13, 2012 – Reg. Agrmt. 2007-02 Third Modification
Exhibit F – Letter from Ann Canedy dated Feb. 21, 2013, Zoning Amendment 2013-055
Exhibit G – West Barnstable Village Comprehensive Plan, pgs. 16 & 17, dated July 2005-Zoning Amendment 2013-060
Exhibit H – Letter from June Daley, dated Feb. 25, 2013, - Zoning Amendment 2013-060