

Minutes of Planning Board Meeting  
Town of Whately, MA  
Town Offices Building, 4 Sandy Lane  
April 17, 2018

Members Present: Don Sluter, Judy Markland, Nicholas Jones, Sara Cooper  
Members Absent:: Helena Farrell

Attending:

Jessica Atwood, FRCOG, 12 Olive Street, Greenfield; Tom Lesser, 39 Main Street, Northampton;  
Robert F. Smith, 303 Long Plain Road; Theresa Billiel, 190 Christian Lane; Dan Denehy, 330  
Haydenville Road; Fred Orloski, 154 Christian Lane; Diana Braman, 123 River Road; Christine  
Doktor, 87 Potash Hill Road, Cummington.

I. Call to Order, 7:01 p.m.

The meeting was not recorded.

II. Approval of Minutes

Minutes of March 29, 2018: Judy moved to accept the minutes.

Sara seconded, and the motion carried unanimously.

Minutes of March 27, 2018: Nicholas moved to accept the minutes with Judy's amendments.

Don seconded, and the motion carried unanimously.

III. Old Business

Presentation: A Vision for Economic Development

Jessica Atwood, of the Franklin Regional Council of Governments (FRCOG), referenced a powerpoint presentation previously emailed to the board and described the past and present efforts to create an economic development vision for Whately. Saying she was looking for feedback from the public about what was needed, she explained how she would present the information and run small group exercises to determine the mission statement and areas that could benefit from development. Judy suggested the commercial/industrial area across from the industrial park, and the other industrial area. Jessica also said she would like the board's thoughts about a presentation date, and time of day or evening. The rest of the discussion was postponed until later in tonight's meeting, after the public hearing.

IV. Public Hearing:

Adult Use Recreational Marijuana and Farmer Breweries Bylaws

The board distributed printed copies of :

- the Meeting Notice and Agenda
- the Public Hearing Notice

- the proposed Temporary Moratorium on Adult Use Recreational Marijuana Establishments
- the Proposed Adult Use Recreational and Medical Marijuana Bylaw Changes  
Section 171-8 Table of Use Regulations and  
Section 171-28 Adult Use Recreational and Medical Marijuana Establishments
- the Power Point presentation, “Proposed Adult Use Marijuana & Farmer Brewery Bylaws”

Don ran the Power Point presentation, taking questions and comments from the audience throughout.

Marijuana bylaw discussion points included:

- Existing building re-purposing  
The board wants to enable this, but an audience member commented that growers are not likely to be interested in a greenhouse if concrete floors are not permitted, since they are used to prevent mold problems. Regarding square footage, Judy mentioned that the town can’t challenge it. While it’s true that the state says the standard agricultural building can’t be challenged, when the crop is marijuana it’s handled differently because marijuana is not considered agriculture by the state’s definition. Judy also noted that many towns won’t allow open cultivation or cultivation outside of industrial areas. When the board was asked whether existing building conversion is still limited to 4,000 square feet, the answer was, no.
- Clarification of zone AR/1’s location  
A map was passed around the audience to show this, and some attendees discussed the number of feet from their property lines).
- Stores for selling marijuana are separate from growing facilities
- Possible moratorium  
Board: If the proposed bylaw doesn’t pass town meeting, this may be necessary until a subsequent version of the bylaw can be voted on at town meeting – and that might not happen until 2019. An audience member noted that the market is so hot right now that farmers may miss out if they have to wait. Judy answered that the Selectboard likes all such votes to take place only at regular, annual town meetings.
- What would happen if the bylaw passes town meeting, but the attorney general doesn’t approve it?  
Board: Sometimes, parts of a bylaw aren’t approved and if that should happen we would have to live with it and respond to it. A moratorium would provide some time for that. A town can’t refuse to permit marijuana in a town that has voted for it, as Whately has; it must find a way to do it that is appropriate to the town.

— Limits for growing facilities

The board has tried to write guidelines for size and appearance depending on which zone the facility will be in. The town negotiates a host agreement with a grower and the state must approve it. A bylaw will bolster the town's position for state approval.

— Treatment of marijuana compared to other crops and products

An audience member asked why beer and wine are sold after 8:00 pm, but marijuana is proposed not to be sold later than that. Don explained that the board's opinion is similar to that of the audience member questioning the difference. But, he noted, many towns won't vote for marijuana at all if it's treated the same as alcohol, and the board wants a bylaw that will pass.

— Greenhouse shielding.

An audience member commented that black was used to shield her house from the open, clear greenhouses of her neighbor and that it has worked beautifully, providing privacy and no light pollution.

— 5-year review. The board noted that at the end of five years there will be a review about whether to renew the bylaw "as is" or require changes.

— Large vs craft cultivators.

An audience member who represents some dispensaries said that most growers would want 30,000 – 40,000 square feet, unless they are craft cultivators. Judy responded that the board is planning on mostly craft cultivators – with the bigger ones going to the industrial areas. Bob Smith, of the Zoning Board of Appeals (ZBA), noted that a grower could apply for a variance. Judy described craft cultivators as those who are allowed by the state to form a co-op, essentially, to share costs of administration, overhead, etc. (as Cabot does for dairy farmers). Nicholas noted that it's unknown at this time whether this approach would work.

— Comparison with solar projects

An audience member warned of setting precedents, noting that all Whately solar power generation plant proposals have been built despite objections of neighbors. Marijuana may go the same way, he said. Bob Smith, of the ZBA, said that when considering whether to permit a solar project he looks at the land, and the use of the land, according to the bylaws – and that's it. He added that people who move next to farms shouldn't be shocked at what is farmed. Nicholas explained that with solar, the planning board can't legally deny it either – it can only set restrictions. Judy noted that it's compromise so it can't please everybody, but that the board has tried to consider workable restrictions.

— Effect on real estate

The board said it can't tell whether marijuana cultivation will have an effect on home sales or prices, since there is no Massachusetts experience yet.

4.

— 50% onsite electrical power generation requirement – where feasible

An audience member asked how feasibility will be determined, and how the requirement will be enforced (before the 5-year review). Judy explained that the state allows towns to regulate only “where practicable”, and that, of course, nobody knows what that means. She said that the Building Inspector is the enforcement agent. The town can hire an engineer to review the *plan*, she noted, and the Building Inspector can enforce the *conformance* of the things that are built to match the approved plan. She added that anyone can complain to the building inspector. When asked whether there is a special permit for existing buildings, she replied that it was on the handout, “Table of Use”.

— Noise and odor

Nicholas explained that both the Planning Board, in its site plan review, and the ZBA, in its special permit process, write specific restrictions that the Building Inspector can enforce. Bob Smith noted that the ZBA ordered Yankee Candle (at the old Merillat location) to use state-of-the-art scrubbers to handle the odors.

— Water use

The grower must get Water Department certification for planned use of public water.

— 50-foot setback for retailers

An audience member asked about variances regarding the 50-foot setback. Judy noted that the board had originally thought to write the bylaw as, “50-foot setback for retailers, less with a variance”, but Peggy Sloan of FRCOG had cautioned against using that language because variances are very specific to each case. Bob Smith noted that variances are very hard to get, since state guidelines provide only three reasons for granting one (two reasons are topography limitations and hardship; Bob couldn’t remember the third at the moment). The only other exception allows the ZBA to grant a reduced setback distance *if* that is already typical of the area. Another audience member voiced concern that the town would be grandfathering some existing buildings, but not enough to get flexibility through the use of variances.

As a result of this discussion, Judy moved to add the following language to the “Proposed Adult Use Recreational and Medical Marijuana Bylaw Changes”, section C (7): “except marijuana retailers shall have a 20-foot rear and side setback in the Commercial District”. Nicholas seconded, and the motion carried unanimously.

— Night-use lights and cameras

Judy: Night-use cameras have been required in order to keep the number of lights down. Security cameras are all designed to aim outward so as to identify people, and this may be worrisome to people who don’t want their yards photographed. In that case, plantings would be required for screening.

Farmer breweries bylaw discussion points included:

Don noted that a person doesn't have to be a farmer to satisfy the state requirements – one doesn't have to grow anything. Judy and Don defined Tasting Room (where customers taste the beer, buy it, and take it away to drink) and Tasting Room with Pouring Permit (where customers taste the beer, buy it, and then consume it on the premises). Don read an undated letter from Geneva Pedersen of Hitchcock Brewery, which states her reasons for feeling that “ a ‘Farmer Brewery Tasting Room with pouring permit’ under Agriculture/Residential 2 should be changed to SP from a N”.

Selectboard member Jonathan Edwards said he thinks Ms. Pedersen's letter has a great idea, that they are a great company, and that we want to encourage that. An audience member asked whether the ZBA can deny an application for a bar, or for a farmer brewery with a tasting permit. Bob Smith said yes, there is some subjectivity. He explained that the ZBA's aim is to judge suitably for the neighborhood and that, when granted, the special permits usually always say that the permit is “in keeping with the area”.

Jonathan Edwards asked whether the ZBA can just limit the number of drinks that can be served, noting that a bed and breakfast might file a similar application. Judy and Bob said that would require some research – that it might be OK for a special permit as an analogous use. Bob stated that he agreed with Jonathan Edwards and with the letter writer, saying it is best to leave it up to the ZBA to grant or deny an application. He used Quonquot Farm as an example of a farm improving its finances by becoming an event venue that includes the serving of alcohol, noting that this kind of approach could save failing farms.

Sara called attention to the Whately Zoning Bylaws Section 171-8 Table of Use, Commercial Uses, “Eat-in restaurants, bars or lounges for serving food or drinks inside the building”. The Table of Use shows this use is allowed with a special permit in all zoning areas except Agricultural/Residential 2. An audience member said that the town may be able to handle most potential problems by setting restrictions, in order to be less restrictive overall.

In response to this discussion, Nicholas moved to change “N” to “SP” in the proposed Table of Use, for Farmer Brewery Tasting Room with pouring permit in zoning area Agricultural/Residential 1. Sara voted No; Nicholas, Don, and Judy voted Yes and the motion carried.

Judy then moved that the board approve the warrant wording with the changes in the farm brewery pouring permit and the changes in the retail marijuana setback to be presented as amendments on the floor at town meeting. Nicholas seconded, and the motion carried unanimously.

IV. Old Business (resumed from agenda item III, above)

Presentation: A Vision for Economic Development

The board resumed its discussion with Jessica Atwood from earlier in the meeting. Ms. Atwood said she is hoping to present her information to the public before June 30. It was suggested a weekend might be better than during the week. Ms. Atwood will revise her map to reflect the commercial/industrial zone as well as the industrial park.

V. Other

Christine Doktor introduced herself as a candidate for State Representative and had an informal discussion with the Board.

Sara raised the matter of the AC/DC power question contained in the letter from Building Commissioner James Hawkins discussed at the March 27 meeting, asking about the resolution. The Board said it must be addressed by changing the zoning bylaw.

VI. Planning Board Mail

The Board reviewed the mail.

VII. Next Meeting – May 27, 2018 (if necessary)

VIII. Adjournment: At 9:48, the board voted to adjourn.

*Documents Reviewed (kept in the Planning Board files)*

1. An 8-page document, Proposed Adult Use Recreational and Medical Marijuana Bylaw Changes  
Section 171-8 Table of Use Regulations and  
Section 171-28 Adult Use Recreational and Medical Marijuana Establishments
2. An 3-page Power Point presentation, “Proposed Adult Use Marijuana & Farmer Brewery Bylaws”
2. An undated letter from Geneva Pedersen of Hitchcock Brewing Company

Mary McCarthy  
Secretary  
Planning Board  
Town of Whately, MA