

Minutes of Zoning Board Meeting  
Town of Whately, MA  
Town Offices Building, 4 Sandy Lane  
December 20, 2018

Members Present: Roger Lipton, Bob Smith, Debra Carney  
Members Absent::Kristen Vevon, Fred Orloski

Attending: Scott Remer, 722 Preston Ave., Ste 122, Charlottesville, Virginia; Meredith Savage, 15 Research Dr., Amherst; Chet Wroblewski, 55 North St.; David Berson, 6 South East St., Amherst; Stephen Herbert, 81 Shattuck Rd., Hadley; Scott J. Soares, 39 Albemarle Rd., Longmeadow; Michael Herbert, 4 Keefe Ave., Holyoke; Susan & Fred Baron, 120 North St.; Judy Markland, 106 North St.; Christine Belder & Brian Belder, 68 North St.; Dianna Williams & Dave Williams, 69 North St.

At 7:45 p.m. Chair Roger Lipton opened the meeting.

Roger moved to begin by approving the minutes of December 6, 2018, and working from them during this part of the hearing. The board voted to approve the minutes as amended.

Public Hearing Deliberation and Voting: Continued from meeting of December 6, 2018  
Application by Wayne M. Hutkoski and Scott Hutkoski for a special permit to use the existing greenhouses on their property at 149 Christian Lane for licensed marijuana cultivation (no retail), and for a variance from side setback requirements. The proposed establishment will be run by its legal owners and licensees, who comprise Urban Grown, INC.

At the December 6, 2018 meeting the public comment portion of the hearing was concluded and officially closed. Tonight's continuation of the hearing will comprise the board members' discussion of the issues among themselves, and their vote on whether to grant the special permit sought by the application.

Turning to the Town of Whately Zoning Bylaws, Roger covered the requirements of ~ 171-28.6 Adult Use Recreational and Medical Marijuana Establishments one by one, while referring to two copies of a surveyor plan (one stamped and one not stamped) dated November 19, 2018, and submitted at the 12/6/18 meeting, and also to an updated (but undated) plan labeled "Figure 14 Urban Grown Inc., Hutkowski – Long Plain Farm Site Plan Amended", showing the shortened and relocated greenhouses within the 50' setback envelope, the location of the Harvest Building, and the security fence.

From ~ 171-28.6 B., Definitions, Roger read the definition of a greenhouse. As directed by ~ 171-28.6 C. Requirements regarding the Allowed Locations for Marijuana Establishments, he read the referral (in No. 1) to ~ 171.8 Table of Use Regulations, for locations for permitted Marijuana Establishments. In that section, under the column Agricultural Uses, he read "Indoor Marijuana Cultivator in Agricultural buildings and Greenhouses in existence on April 24, 2018."

2.

Roger then read from ~ 171-28.6 C 2, which deals with situations that trigger the requirement for a 500' setback. He stated that a 500' setback from the elementary school was required in this case and that the requirement had been satisfied.

The remaining requirements in the section were handled this way:

3. Marijuana Establishments shall not be located within 500' from any public recreation area or park: requirement satisfied.
4. Marijuana Establishments shall not be located within 500' from any existing church: requirement not applicable.
5. Marijuana Establishments may request a waiver from the setback standard of 500 feet required by Sections C. 2 – 4: requirement not applicable.
6. No Marijuana Establishment shall be located inside a building containing residential units, including transient housing such as motels and dormitories: there are no residential units; not applicable. ‘
7. Marijuana establishments shall have a minimum 50' setback from all property lines except marijuana retailers shall have a minimum 20' setback from rear/side property lines in the Commercial District: not applicable.

From the December 6, 2018, ZBA meeting minutes Roger read the seven Conditions that the Planning Board had imposed upon its site plan approval of December 4, 2018.

From ~ 171-28.6 D, Site Development, Permitting Standards & Application, Roger read the introductory paragraph as well as numbers 1 through 15, which the board discussed or commented on.

1. Dimensional Requirements
2. Parking and Loading Requirements: Referred also to ~ 171-13. Not a problem; there are six acres.
3. Site Screening: Security fence will have slots for screening
4. Lighting and Security: If a special permit is granted, the project should comply with all the zoning bylaw requirements, or the building inspector may have to enforce compliance.
5. Odors and Noise: The planning board condition requires at least one odor scrubber to be operated in each greenhouse. The board referred to Debra's copy of a New York Times article which reported California residents' complaints of heavy skunk odor during the bloom time of marijuana flowers. Roger stated the need to review the project no longer than one year from its start of operations, and suggested making it a condition, if a special permit should be granted, that the board would receive notice inviting it to visit the site some weekend during bloom time, before the review is held.
6. Energy Efficiency: The board will neither waive this, nor make it more strict.
7. Water Efficiency: The water source is a private well. The bylaw covers this sufficiently.
8. Hazardous Materials: The bylaw covers this sufficiently.
9. Signs: There won't be any signs, since the company does not want to advertise what is grown there.
10. Greenhouses: The bylaw covers this sufficiently.

11. Buildings: No problem here.
12. Marketing: This is sufficiently controlled by Whately's bylaw and by the Cannabis Control Commission
13. Hours of Operation: The bylaw states no deliveries or truck traffic after 8:00 p.m. or before 7:00 p.m. Compliance with that requirement will be sufficient.
14. Retailer Limits: Not applicable.
15. Applications: The required information (a through e) is provided by the narrative.
16. Site Plan Review: The planning board handles the site plan.
17. Reporting: The bylaw covers this sufficiently.
18. Change in License or Owner: The bylaw covers this sufficiently.
19. Change of Ownership: No problem here.
20. Host Community Agreement: No problem here.

In ~ 171-28.6 E, Roger read, and the board discussed, the requirement that a special permit to operate a marijuana establishment shall expire after five calendar years but shall be renewable for successive five-year periods thereafter. The board discussed the imposition of a one-year period in addition to the five-year one in the bylaws.

Roger explained that in order for a special permit to be granted, the board must vote unanimously to approve it or the permit must be denied. He said that he has concerns about the project and has heard the concerns of others, and that they are legitimate. Yet, he said, Massachusetts voted to allow this type of agriculture, Whately is an agricultural community, and this project is a farm. He said that he is leaning toward approval but first wants to hear the other board members' opinions.

Bob Smith agreed, especially since those involved have been open about their plans, and have put in considerable time and effort to adjust and redesign their project to fit the town's requirements. He endorsed the idea of visiting during bloom time to assess odor, and of imposing a condition regarding odor control. Bob also suggested outreach by the corporation regarding education, suggested the board make a statement about lighting, and commented that property line questions have now been resolved.

Debra Carney said she is also leaning toward approval, and is intrigued by the educational outreach idea. Regarding that idea, the board discussed how to handle any such education, and whether it might be better not to raise the issue with the school children at all. It was noted that liquor stores are not "explained". The board decided to table this item until after the one-year review.

The board then composed a list of conditions to be imposed if the special permit is granted.

### **LIST OF CONDITIONS**

1. Greenhouses must conform to Figure 14 on the undated approved plan submitted at the December 6, 2018 meeting, titled at top left,  
“Figure 14. Urban Grown Inc. Hutkowski – Long Plain Farm site plan amended”
2. Members of the Zoning Board of Appeals will visit the greenhouses during each of the first two blooming cycles, to assess odor. Twenty days before each of the first two bloom times, Urban Grown, Inc. will send to the Town Clerk and to the Chair of the ZBA a notice to visit on the first and second weekends after the 20-day notice. The board shall endeavor to send at least one representative. The visit will be restricted to ZBA board members.
3. The year that will determine the date of the one-year review will start once Cannabis Control Commission approval is received. Urban Grown, Inc. must notify the Chair of the ZBA in writing that CCC approval has been received. The one-year review will be an advertised public hearing at the board’s first regular meeting that falls at least 12 months after CCC approval. At the review hearing, the board will hear residents’ comments, concerns, complaints, evidence, and testimony, and may impose any new conditions.
4. All lighting on the property must be directed downward onto the ground.
5. At least one odor scrubber is to be operated in each greenhouse.

Roger moved to approve the special permit subject to the above five conditions, and the board voted unanimously to approve it with the conditions. The board will write the decision at a later date.

#### Public Hearing: Continued from meeting of December 6, 2018

Scott Remer, of Hexagon Energy LLC, has applied for a special permit to construct the Juniper Solar Project, a 500 kW AC large-scale ground-mounted solar facility on 5.77 acres of a 36 acre parcel within the A/R 2 zone, on premises located at E/S North Street (south of and adjoining 68 North Street) and owned by Chester Wroblewski, Jr. Access to the parcel will be from an existing farm road (to be improved) with entrance onto North Street. The applicant also seeks a variance allowing the project to shift 1.52 acres of project area/solar panels out of Natural Heritage and Endangered Species Program Estimated and Priority Habitat (NHESP) and into the A/R 1 zone in order to avoid a designation by NHESP of a “take” of rare species.

At the December 6, 2018 meeting the public comment portion of the hearing was concluded and officially closed. Tonight’s continuation of the hearing will comprise the board members’ discussion of the issues among themselves, and their vote on whether to grant the variance and special permit sought by the application.

Chair Roger Lipton informed those in attendance that the Agricultural Commission had sent a letter to the Zoning Board of Appeals regarding this application, but that since it was received after the official closing of the public comment period the board would not consider it.

Addressing the variance first, Roger noted that solar farms of this size are not allowed in Agricultural/Residential Zone 1, where a portion of the project is planned to be built, and that the applicant has applied for a variance from this restriction by claiming a hardship. Roger commented that where variances are concerned the state is strict, and that Whately's bylaws mimic that. He read from Whately Zoning Bylaws ~ 171-33. Variances, A., numbers 1, 2, and 3, about the qualifying requirements that must be present in order for the board to grant a hardship variance. In particular, he mentioned ~ 171-33. Variances, A. (2), which describes a hardship that "is owing to circumstances relating to the soil conditions, shape or topography of such land or structure and especially affecting such land or structure but not affecting generally the zoning district in which it is located." He noted that in this case, nothing about the land is unique or presents a problem. He also referred specifically to ~ 171-33. Variances, A. (3), which reads, "Desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this chapter." Here, Roger noted that the intent of the bylaw is to locate solar power plants back and away from the road, and that allowing a variance in this case would establish a precedent that might cause problems in the future. He added that it was the people of Whately who voted the bylaws the way they did.

Roger explained that from the information he has gathered and considered over the course of the hearings and readings, he is inclined not to grant the variance for the reasons noted above. He noted that regardless of how the board votes on the matter of the variance, they will also vote separately on the matter of the special permit.

Debra Carney voiced her concern that the town has been insistent on *not* having big solar projects way up front. Bob Smith said that he is also inclined not to approve the variance, and that his reasons have been stated at the previous hearing sessions. He agrees that granting such a variance would be precedent-setting, and that there is a lot of A/R1-zoned property in town that might be affected by such a decision in the future.

Roger moved to deny the variance and the board voted unanimously to deny it.

Moving on to the special permit, the board referred to Whately Zoning Bylaws ~171-28.5 Solar Generating Facilities. Noting that there is no large number of paragraphs to consider for solar power plants specifically, Roger read from ~171-28.5 A. Purpose, ~171-28.5 A. (1) Applicability, ~171-28.5 B. General Requirements for all Large Scale Solar Ground-Mounted Solar Electric Installations and ~171-28.5 B. (1) Compliance with Laws and Regulations.

From ~ 171-31. Special Permits, Roger read from A., which states in part that "Special Permit review is intended to ensure that any proposed use of land or structures will not have an adverse effect on other uses in a neighborhood or on the town and that the use is in harmony with the intent and purpose of this chapter." He noted that he and other residents love North Street and its view. The board next considered ~ 171-31. F. Criteria., and moved through (1) (a), (b), (c), (d), and (e) without comment.

~ 171-31. F. (1) (f) reads, "The project shall be compatible with existing uses and other uses allowed by right in the district and shall be designed to be compatible with the character and scale of neighboring

properties. The board considered what would be compatible. Debra's answer was a location where the project can be screened, as has been done with other solar farms.

~ 171-31. F. (1) (g) reads, "the design of the project shall minimize the visibility of visually degrading elements and protect the neighboring properties from potentially detrimental or offensive uses through the use of screening or vegetated buffer zones." Here, Roger said he felt torn, noting that other solar projects have also had heartfelt objections made against them, but that in those cases screening was more effective. It was noted that screening could not be effective in this location because the installation would be below road level and people could not avoid looking down on it. Roger did note that not *all* of North Street has the downward-looking situation. Bob agreed that in some spots, screening could make some difference.

~ 171-31. F. (1) (h), (i), (j), and k were deemed not applicable in this case.

~ 171-31. F. (2), (3), (4) were deemed not applicable in this case.

~ 171-31. G. Conditions, safeguards and limitations. The board reviewed the first paragraph, which explains how the ZBA may impose such restrictions on special permits which it approves. It also reviewed the seven types of such restrictions listed in this section of the bylaw, which notes that the ZBA is not limited to these particular examples.

Roger asked about the removal process, and the board referred to ~ 171-28.5 Solar Electric Generating Facilities, K. Abandonment or Decommissioning, to read about (1) Removal Requirements, (2) Abandonment, and (3) Financial Surety.

The board then considered ~ 171-15. Environmental performance standards. Roger read ~ 171-15. A. Purpose, then worked through the categories of ~ 171-15. B., a list of nine environmental controls to be enforced by the building inspector throughout the life or use of the structure. Most of the items caused no concern.

~ 171-15. B. (5), regarding direct or reflected glare, caused a comment that because movable solar panels would be used to track the sun there might be a chance of some glare.

~ 171-15. B. (8), regarding surface water runoff, caused Bob to mention that when he visited the site after a big rain he saw a tremendous amount of flooding. He noted that there are ditches there, and asked the applicant how the panels could be installed without disturbing the ditches. Meredith Savage replied that one of the three fields is connected to an existing culvert for drainage and the second field has no need for any connection. The third field's culvert has collapsed but they plan to re-establish it, she said.

Roger commented that in the past, objections to the visual impact of solar power generation installations has been to screen the view. But in this case, he said, the project can't be fully screened. He said he was leaning toward possibly allowing the project, but wanted to hear the opinions of the other board members.

Bob said he was not leaning toward approval, citing detrimental impact, the inability to screen the view properly, compelling arguments by groups who have spent time preserving historical and other

important sites in town, and by the fact that the Belders' farm – the only operating dairy remaining in Whately – would have to close if it can no longer grow hay for its herd on the land it rents from Chester Wroblewski.

Debra said she is torn. She described listening to the audiotape of the December 6, 2018 hearing session, hearing Judy Markland talk about the open space plans over the years, and said she believes that given citizens' oft-stated desire to preserve the open space of North Street that this project doesn't belong there. She noted that the ZBA has approved several large solar installations and is hardly anti-solar. In fact, Whately is very welcoming of solar energy. As a result, she believed that in this particular case, a denial is justifiable.

Roger moved to approve the Special Permit. Bob and Debra voted against approving it, and the permit was denied. On January 3, 2019, at 6:10 p.m. Roger and Debra will meet to write the decisions.

At 8:30 p.m. the board voted to adjourn.

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

1. Two copies of a surveyor plan (one stamped and one not stamped) submitted at the 12/6/18 meeting
2. An updated (but also undated) plan labeled  
 "Figure 14 Urban Grown Inc., Hutkowski – Long Plain Farm Site Plan Amended",  
 showing the shortened and relocated greenhouses within the 50' setback envelope, the location of the Harvest Building, and the security fence.

Mary McCarthy  
 Secretary  
 Zoning Board of Appeals  
 Town of Whately, MA