

ZONING COMMISSION MEETING

MONDAY, JUNE 8, 2015

TOWN HALL 7:00 P.M.

Present: Chairman Don Truskauskas, David Mathes, Anne Marie Buonocore, Joseph Marzullo, Alternate Member Daniel Thurston, Alternate Member Lynne Steincamp, Alternate Member Michelle Rewenko and Land Use Coordinator Polly Redmond

Also Present: Town Atty. Michael D. Rybak

Absent: Todd Ouellette

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

1. OPEN HEARING – ESTABLISH QUORUM.

Chairman Truskauskas called the hearing to order at 7:00 p.m. All regular members present are seated with Alternate Member Daniel Thurston seated for Todd Ouellette.

2. PRESENT COMMISSION-INITIATED PROPOSED ZONING REGULATION AMENDMENTS AS FOLLOWS:

*ADD TO SECTION 2.3 DEFINITIONS:

Medical Marijuana Dispensary Facility means a place of business where medical marijuana may be dispensed or sold at retail to qualifying patients and primary caregivers and for which the Connecticut Department of Consumer Protection has issued a dispensary facility permit under Public Act 12-155, Connecticut General Statutes, Chapter 420f, and Sections 21a-408-1 to 21a-408-70, inclusive, of the Regulations of Connecticut State Agencies.

Medical Marijuana Production Facility means a secure, indoor facility where the production of medical marijuana occurs and is operated by a person to whom the Connecticut Department of Consumer Protection has issued a production facility permit under Public Act 12-155, Connecticut General Statutes, Chapter 420f, and Sections 21a-408-1 to 21a-408-70, inclusive, of the Regulations of Connecticut State Agencies.

*ADD TO SECTION 4 PERMITTED USES AND SPECIAL PERMIT USES FOR EACH ZONE (PRIOR TO SECTION 4.1): LAST PARAGRAPH TO READ:

Prohibited Uses: Medical Marijuana Dispensary and Medical Marijuana Production Facilities are not allowed in any zone.

Chairman Truskauskas explains the hearing process and procedures and asks that speakers keep their comments on point with the subject of the proposed amendment and not the validity of medical marijuana.

Legal opinion from Atty. Steven Byrne, Byrne & Byrne, LLC, Farmington, CT (Exhibit Y) dated 6/8/15 has been received. The opinion letter includes a copy of an opinion letter dated 3/13/13 from The Commonwealth of Massachusetts Office of the Attorney General, Martha Coakley, to Mary K. Galvin, Town Clerk, Town of Wakefield, MA. Copies have been distributed to Zoning Commissioners. The Massachusetts Attorney General's Opinion addresses the Wakefield, MA issue of "Whether the town meeting vote to completely ban medical marijuana treatment centers from a town conflicts with state law."

The answer provided by the Attorney General is that “such a ban would frustrate the purpose of Chapter 369 of the Acts of 2012, ‘An Act for the Humanitarian Medical Use of Marijuana’ to allow qualifying patients, who have been diagnosed with a debilitating medical condition, reasonable access to medical marijuana treatment centers.” Atty. Byrne states that the Massachusetts Attorney General goes on in stating that “The Act’s legislative purpose could not be served if a municipality could prohibit treatment centers within its borders, for if one municipality could do so, presumably all could do so.”

The question posed to Atty. Byrne was whether the proposed Harwinton Zoning Regulation amendments are preempted by state law and thus invalid with Atty. Byrne writing that “there is no precise Connecticut law on this issue except for a declaration by the Commissioner of the Department of Consumer Protection that municipal zoning ordinances are applicable to dispensaries and production facilities. However, state supreme courts in two states have issued decisions on this issue as has the State Attorney General of Massachusetts, providing guidance as to whether the proposed ordinance would be preempted by the Act.” Atty. Byrne, in his opinion letter, answers a second question as to whether a medical marijuana production facility would come within the definition of a farm or agricultural use. He writes, “This question is resolved by the Act and the state regulations adopted by the State Department of Consumer Protection in conformance with the Act. The relevant state regulations treat the production facilities as a pharmaceutical manufacturing facility and not as an agricultural use.”

Chairman Truskauskas also recognizes two emails that have been received in the Land Use office on 6/5/15. **Exhibit Z** is an email from Michelle Rewenko stating she is against production and distribution of medical marijuana in Harwinton. **Exhibit A1** is an email from Corey Rewenko stating he does not support bringing a dispensary into Harwinton.

Chairman Truskauskas opens the floor to public comment to which there is none at this time.

Commissioner L. Steincamp states that she has read the State of CT Regulation of the Department of Consumer Protection concerning Palliative Use of Marijuana and would like to point out that the regulation and requirements are very specific and the facilities are amazingly regulated. She encourages anyone with doubts to read the regulation. She notes that the facilities are government-regulated with strong security and serves patients who are registered with the state. She submits **Exhibit A2**, information she obtained from the internet, that is a report written by an Erin Delmore titled “*Study: Marijuana legalization doesn’t increase crime*”. She would like to encourage people to read studies from communities who have allowed medical marijuana facilities in their towns.

Public comment now begins.

Janet Burritt, 31 Whetstone Road, states her belief that each municipality should be able to regulate what is permitted and what is prohibited. She is disturbed to hear of thievery and break-ins of these clinics. She notes that the town’s budget is already pinched to support two troopers and questions whether the use of medical marijuana is to still be considered a criminal activity.

Alex Hasapis, 759 South Road, states that he doesn’t understand why this proposal is being debated. He believes Harwinton is basically a residential town and he would like to see it stay that way. He questions what the benefits would be to the town if these types of facilities were brought in and he states that any facility that has to be guarded can’t be good for this town.

Atty. Michael Rybak submits a copy of a newspaper article (**Exhibit A3**) from today published in today's Republican American titled '*We're not Colorado*' Connecticut responds cautiously to medical marijuana. He also submits **Exhibit A4**, information from the Department of Consumer Protection website providing medical marijuana statistics on the number of registered patients per county with prescriptions for medical marijuana in Connecticut and showing Litchfield County as having 235 patients as of 4/15/15. **Exhibit A4** includes DCP information on Dispensary Facility licensing non-refundable application, registration and renewal fees and Producer licensing non-refundable application, registration and renewal fees that include posting of a two million dollar bond. **Exhibit A4** also includes a printout titled *Department of Consumer Protection: Dispensary Questions & Answers for Applicants* and *Department of Consumer Protection: Producer Questions & Answers for Applicants*. Atty. Rybak state the reason he adds this to the record is because when he saw there was a two million dollar bond, he notes this is still legal under federal law and what happens if there's a prosecution? He states, if you read Atty. Byrne's opinion, one of the footnotes talks of the State of Washington where the governor vetoed a number of provisions in the bill and Atty. Byrne raised the question asking, would a local authority be in violation of the federal law by permitting this. This is something the commission should consider.

One of the Department of Consumer Protection questions for the Producer applicant is, "How is the State going to protect legal growers from federal prosecution? If the federal government decides to shut down a legal grow facility, what will happen to the two million dollar bond?" The answer given is, "DCP will enforce the medical marijuana regulations that are in place so as to assure that the rigorous requirements of the program are implemented, not just on paper, but in actual practice. Beyond that, DCP cannot influence federal prosecution decisions. Before any bond is payable to the State, the licensee would be given an opportunity to be heard at a hearing at which time the licensee could raise any defense it believes justifies an elimination of the bond obligation."

Another question is, "Is there any provision in the state application evaluation process for participation by either private citizens or municipalities?" The answer given is, "Application evaluations will be conducted by DCP staff only. Applicants, however, must provide documents sufficient to establish that state and local building, fire and zoning requirements and local ordinances are met for the proposed location of the production facility."

Atty. Rybak refers to the Dispensary Facility Questions & Answers for Applicants, and reads some of the questions and answers. One of questions asks, "What areas are currently designated/zoned for producer/dispensary facility within the state of CT?" The answer given is, "Each town sets its own zoning requirements and the department is not provided with such information." Another question is, and also highlighted by Atty. Byrne in his opinion letter, "What will happen if no dispensary receives local municipal approval?" The answer being, "The Department anticipates that some municipalities will permit a dispensary facility. In the event that no municipality approves a facility, the Department (DCP) will evaluate the situation at that time and take the steps it believes are necessary and prudent to assure that sufficient dispensary facilities are ultimately approved to meet patient needs."

Continuing on, Atty. Rybak states that a question in the Dispensary Facility Questions & Answers for Applicants is, "The language in the regulations suggests that a facility need only produce proof that it qualifies for local zoning approval, not that it actually has that approval in hand. What is the actual requirement?" The answer given is, "In accordance with Section B of the dispensary RFA, the applicant

must provide “documents sufficient to establish that the applicant is authorized to conduct business in Connecticut and that state and local building, fire and zoning requirements and local ordinances are met for the proposed location of the dispensary facility.” The exact form of the documentation is left to the discretion of the applicant and the local authority.” Another question is, “Many towns and cities have not approved zoning or declared appropriate zoning areas for dispensaries. Most towns claim that they are in the process and public hearings need to take place. This will occur after the November 15, 2013 application deadline. Does DCP have a list of approved towns for dispensary services or will “pending” be acceptable without penalty?” The answer given is, “The Department does not have a list of approved towns. An applicant may submit an application, pending zoning approval, on or before the November 15th submission deadline. If zoning approval is received after the submission deadline, that information should be immediately provided to the Commissioner in accordance with the Terms and Conditions of the RFA. Such subsequent information will be considered, or not considered, as part of the evaluation process the same as all other information that is submitted subsequent to the submission deadline in accordance with the Terms and Conditions.”

In the RFA documents for each the Production Facility and the Dispensary Facility, one of the extensive requirements is for information on Location and Site Plan found on the Producer License Information Form and the Dispensary Facility Information Form. The Information Forms ask for a map that identifies all places used primarily for religious worship, public or private school, convent, charitable institution, whether supported by private or public funds, hospital or veterans’ home or any camp or military establishment that are within 1000 feet of the proposed dispensary facility location. Atty. Rybak states that this comes straight out of the regulations and statutes which incorporates the old standard in the Liquor Control Act. (Atty. Byrne’s opinion letter notes that “unlike the State Liquor Control Act (specifically C.G.S. sec 30-9) that specifically grants a town the authority to prohibit the sale of alcoholic liquor within its borders, the Medical Marijuana Act contains no such grant of authority.)

Atty. Rybak states that this provides a little background for support of his own opinion, that he does not believe, contrary to Atty. Byrne’s opinion, who he has the greatest respect for, that local zoning regulations are preempted, or local zoning prohibition is preempted, because regulation to the enth degree *is* prohibition. Atty. Bryne quotes Martha Coakley, Massachusetts Attorney General, in his opinion letter which Atty. Rybak notes it is a little different in Massachusetts because they have a provision that allows the Attorney General to invalidate local laws that are passed, which is not the case in Connecticut.

Atty. Rybak states that he is not advocating for or against this proposed Zoning Regulation amendment to prohibit and advises the Zoning Commission to give considerable thought on how to justify and word their decision. He continues by stating that there was question of whether medical marijuana facilities can be permitted under a Retail Service zone as a pharmacy and Atty. Byrne pointed out that it can but will still require special permit control over the location of either a pharmacy or production facility. The next question was asked, if it was a medical marijuana facility today and if the state then decided, as Colorado did, that this could become a recreational marijuana facility, does that mean the medical facility, once sited, gets to stay as a recreational facility or can they be thrown out if it is anything other than a medical marijuana facility because that was not what the special permit was issued for? Atty. Rybak states that this has to do with vested rights and poses an interesting question of whether the state, in the adoption of legislation, could say yes, it preempts local zoning so that once having allowed a medical marijuana dispensary you must now recognize that location as a recreational dispensary and by allowing a medical

marijuana facility, you now have to recognize it as a recreational dispensary otherwise the state licensing scheme and regulating scheme would be thwarted.

Atty. Rybak states that no one is advocating against the medical use of this under very tight requirements. The question remains though, if it is able to locate in town as a medical use, will it be able to change to a recreational facility if the state changed the law and whether zoning can intervene at that time or not. He doesn't share the view that the town is totally preempted from regulating these facilities because clearly the state contemplates location regulations as a very big part of their application. But it has to be decided whether we want to get into the business of prohibition or do we want to say we'll treat it as any other use that has to be regulated as to location and if ever there were one (*medical facility*), where would it be allowed, given the limited amount of commerce space in town, and the uses that have to be consistent with the POCD.

Jim Lucas, 119 Woodchuck Lane, states that he understands Atty. Byrne was also consulted with and he questions why he is not in attendance tonight and asks where is his report. Commissioner Buonocore states that she would be happy to read Atty. Byrne's opinion letter out loud with Mr. Lucas not accepting that offer.

Janet Burritt, 31 Whetstone Road, states her belief that this is just the tip of the iceberg and that once you allow these uses in, the town will not be able to stop it. She believes that the townspeople should be able to run their own town here in Harwinton and that now is the time to push the state away and take care of our own town.

Commissioner Buonocore responds to Janet Burritt's comments and states that she understands there is fear and question on why the Zoning Commission is even proposing this and it is because medical marijuana has become legal in Connecticut. There are no more licenses being given out and the state does not expect to give out more for a very long time. However, if someone were to come before this commission to make application for a production facility or dispensary of medical marijuana, there aren't any Zoning Regulations on permitting and if we prohibit the use, the town can get sued because it is going against state law. She states that she will not vote for this proposed Zoning Regulation amendment, this prohibition, and refers to the letter she received from the South Windsor Chief of Police (presented as Exhibit O on 5/11/15) who stated in his letter that there has been no negative effects of Prime Wellness of Connecticut, a cannabis dispensing facility, in South Windsor. Commissioner Buonocore states that she understands the fear and misinformation and the myth that medical marijuana is addictive but in dealing with patients every day, she sees the benefits of medical marijuana and that patients prefer it to oxycontin or morphine use. She refers to and reads Atty. Byrne's conclusion in his opinion letter that reads, "All authorized licenses for the operation of a medical marijuana dispensary or a production facility have been awarded by the State Department of Consumer Protection, which is not considering increasing the number of these licenses. Thus, the adoption by this Commission of the proposed amendment to the zoning regulations will likely not face any legal challenges [nor will we be given any guidance by this state's courts] until further licenses are made available by the state. That being said, if a challenge was made, it is likely that this amendment would be invalidated for the reason that it is preempted by state law. The Palliative Use of Medical Marijuana Act was adopted not just to shield those engaged in the use, dispensing or production of this drug from civil and criminal ordinances and laws, but to provide access to this drug to qualified patients for the treatment of specified medical conditions. The state has established a comprehensive regulatory and administrative scheme to see that this purpose is carried out. The adoption of prohibition ordinances by

municipalities could frustrate this purpose and conflict with state law as it would prohibit what state law permits – access to medical marijuana to qualified patients.” Commissioner Buonocore states that speculation on what would happen if marijuana was legalized in Connecticut and the fear is just getting in the way of this Zoning Commission from making a reasonable decision about what they should do. She states that this Zoning Commission needs to find where in Harwinton these facilities would be allowed. It may only be in one place but we need to find where that place is and it is better than saying it is not allowed anywhere.

Commissioner Joe Marzullo asks Atty. Rybak “what is the definition of *reasonable access*?” Atty. Rybak states he was going to touch upon this and that he disagrees on this topic with Attorney Coakley of Massachusetts, and it is also where he disagrees with Atty. Byrne, in that the premise of their argument is, if one town can prohibit then all towns can prohibit and if all towns can prohibit then the care would be denied and if the care were to be denied it then frustrates the purpose of the Act. In an abstract sense that may be true, but what it fails to take into account is that the courts also take into account the practical application of the law not just the abstract, that every presumption is given in the favor of the validity of the municipal zoning regulations and two, if state policy is not being frustrated because there is adequate access at facilities in Bristol and Watertown, how will Harwinton’s prohibition be frustrating the state’s legislative intent? Atty. Rybak states that the DCP never said in their Q&A that it is preemptive.

Commissioner Steincamp believes there can be legal trouble by prohibiting these uses. She states that by default, the town is really safe from any applications and ultimately, locations are approved by the state. She believes that if this commission does nothing, they are “good to go”.

David Pandiscia, 375 Terryville Road, questions whether the town is going to get a kickback from allowing a facility here in town. He also notes that Harwinton is much smaller than South Windsor and that South Windsor has a bigger drug problem. He believes Harwinton does not need a dispensary and that if it were allowed the reality would be that at two a.m. you would get junkies coming into town and breaking into these facilities.

Lisa Sadler, 296 Scoville Hill Road, states that she is not fearful of the medical use of marijuana but is fearful that the town could be setting themselves up for the next fight of having to permit recreational marijuana dispensaries if the town allows medical marijuana dispensaries.

Commissioner Rewenko states that she has read the DCP Regulation and asks who will be doing the regulating? Her concern is also of breaking and entering into these facilities. She states that funds from these types of operations cannot be placed in a bank therefor, cash will be kept on site perhaps, causing security concerns.

Alex Hasapis, 759 South Road, believes that Janet Burritt said it best in that Harwinton should be the one who makes the decision on whether to permit these facilities in town. He believes the majority of Harwinton residents like the town the way it is. He states he would feel no differently if an application came before the Zoning Commission for a bowling alley or a CVS; he does not want either.

Atty. Michael D. Rybak states that if the commission's decision is not to proceed with the absolute prohibition, the issue still needs to be dealt with. It is a thin defense to state in the Zoning Regulations that what is not expressly permitted is prohibited. The commission has to decide whether to regulate or prohibit medical marijuana facilities and he reminds the commission that every regulation can hold a degree of prohibition. If the commission chooses to regulate these facilities, they must be clear on how to regulate and condition that the issuance of a permit is only in accordance with what the special permit allows or else the special permit would become null and void. He advises the commission that if they decided to not go through with this proposal to prohibit and to rather regulate, another public hearing must be held. He also advises that any motion to be made on a decision be mapped out in advance and he would be willing to review any decision made. He also suggests that Atty. Steven Byrne can also review.

3. CONTINUE OR CLOSE HEARING.

J. Marzullo motioned to close the hearing at 8:00 p.m., seconded by D. Thurston. Motion passed unanimously.

REGULAR MEETING

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Truskauskas called the meeting to order at 8:06 p.m. The same quorum exists.

2. APPROVE MINUTES OF PREVIOUS MEETING: 5/26/15

D. Thurston motioned to approve the minutes with amendment proposed by M. Rewenko to amend page 3, paragraph 6 where she comments on the article on Riverside, California (Exhibit X). She wishes to stress the point that the article stated the town of Riverside, CA was shutting down ten dispensaries due to complaints about crime near the clinics. D. Mathes seconded the motion and it passed unanimously.

3. PUBLIC COMMENT.

Jessica Genovese, 109 Scoville Hill Road, refers to the 5/26/15 Zoning meeting minutes where Don Truskauskas submitted to Zoning Commissioners copies of ZBA meeting minutes from June 11, 2014 and July 2, 2014 and then he stated that no complaints can be made against him because of the ZBA's decision that the use of his truck entering and exiting his 99 Scoville Hill Road property is legal. She states that Mr. Truskauskas failed to include copies of the September 2014 ZBA meeting minutes where, and she reads, Atty. Michael Rybak stated, "Yes, the use of the truck is grandfathered in but that it does not equate to doing business." Ms. Genovese states that the complaints she is submitting is not about firewood delivery to his property, it is about business activity with no work being done on his property. She states that Atty. Rybak also noted that non-conforming uses cannot be expanded. The October 2014 ZBA meeting minutes reflect Atty. Steven Byrne (attorney for Zoning Enforcement Officer David Perkins) stated that Mr. Truskauskas stated the truck was used for business. ZBA Chairman Tom Rotondo stated in those minutes that the truck was parked before Zoning Regulation 6.20 was added to the regulations but that it does not afford a blanket exemption on use of the truck. Ms. Genovese reads the minutes from the October 2014 ZBA meeting. She states that all of her complaints are legitimate and that Mr. Truskauskas' truck entering and exiting the property is in connection with his business and that she will continue to make complaints if she feels they are necessary.

4. **DISCUSSION/POSSIBLE DECISION - COMMISSION-INITIATED PROPOSED ZONING REGULATION AMENDMENTS ADDING DEFINITIONS OF MEDICAL MARIJUANA DISPENSARY FACILITY AND MEDICAL MARIJUANA PRODUCTION FACILITY AND TO PROHIBIT THE USE OF MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA PRODUCTION FACILITIES IN ANY ZONE.**

J. Marzullo **motioned** to table any discussion or decision until the next Zoning meeting on June 22, 2015, seconded by D. Thurston. Motion passed unanimously.

5. **MICHAEL GERRITY – APPLICATION FOR SINGLE FAMILY DWELLING AND 30' X 36' DETACHED GARAGE, 47 BUCKRIDGE ROAD.**

Regis Letourneau and his daughter, Amy Gerrity are present. Plans by Berkshire Engineering, dated 5/22/15, titled Septic System Design prepared for Michael Gerrity, Lot 2 Buckridge Road, are reviewed. TAHD and IWWC approvals have been received. E&S permit and driveway permit are on file.

D. Mathes **motioned** to approve the application, seconded by J. Marzullo. Motion passed unanimously.

6. **TOM GERMANO – APPLICATION FOR SINGLE FAMILY HOME, 24' X 24' DETACHED GARAGE AND 16' X 32' INGROUND SWIMMING POOL, 33 SILANO DRIVE.**

Mr. Germano is present. Plans by Berkshire Engineering, dated 4/23/15, revised 6/5/14 (should read 6/5/15) for revised house footprint, titled Site Plan Lot 1 Stone Subdivision prepared for Tom Germano 33 Silano Drive, are reviewed. IWWC approval has been received. E&S permit and driveway permit are on file. The property is served by sewer though TAHD approval is required for the inground pool. An application is pending with TAHD. A. Buonocore **motioned** to approve the application with the condition that TAHD approval is received for the inground pool, seconded by D. Thurston. Motion passed unanimously.

7. **HARWINTON LIBRARY BUILDING COMMITTEE – INFORMAL DISCUSSION OF ADDITION TO LIBRARY, 80 BENTLEY DRIVE.**

Leslie Flowers and other members of the Library Building Committee are present for this informal discussion. Representatives from Milone & MacBroom, Engineering Consultants are also present and provide a Site Organization – Revised Layout plan for viewing. Distances to the property line from the existing library measure 73 feet and the addition will have the same distance to that line. A part of the existing parking lot will be covered with the proposed addition but additional parking will be added with 13 diagonal parking spaces added to the south side of the library. The main entrance will be changed to the east side of the building via the new addition but the existing entrance will remain as an exit. There are 38 existing parking spaces for the library and the number will be increased to 43 parking spaces after the addition is complete. The CT State Library standards call for 3 parking spaces per 1000 square feet, equaling 36 parking spaces which the plan does exceed. Rain Gardens are being investigated for runoff from the parking lot. TAHD has been consulted with and has expressed no concerns. It is noted that the Fire Marshal will need to inspect the site plans and sign off on the site plans as well.

8. **COMPLAINTS/ENFORCEMENT ACTIONS.**

ZEO Perkins as sent notice that there are no enforcement actions to report.

He has contacted Borghesi Building & Engineering regarding the planting of trees at 529 Burlington Road and reports that they will be planted soon.

9. **ANY OTHER BUSINESS.**

None.

10. **CORRESPONDENCE.**

None.

11. **INVOICES.**

Invoice dated 6/1/15 from Atty. Steven Byrne has been received in the amount of \$2475.00 for services in relation to the Medical Marijuana Zoning public hearing. Chairman Truskauskas believes the Zoning

Commission should not be the commission that signs off on this invoice as they did not ask for Atty. Byrne's opinion but that it was suggested by Town Atty. Michael Rybak. He believes the Board of Selectmen should sign off on the invoice. After brief discussion, A. Buonocore **motioned** to approve the invoice with the stipulation that Chairman Truskauskas notes on the invoice that 'Under the authority of the Board of Selectmen to obtain the services of Atty. Byrne, the invoice is approved'. The motion is seconded by J. Marzullo and passed unanimously.

12. **ADJOURN.**

D. Marzullo **motioned** to adjourn the meeting at 9:05 p.m., seconded by J. Marzullo. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 6-11-2015 AT 3:25 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK