

Present: Chairman Don Truskauskas, David Mathes, Anne Marie Buonocore, Joseph Marzullo, Alternates Daniel Thurston, Lynne Steincamp, Michelle Rewenko, Land Use Coordinator Polly Redmond Absent: Todd Ouellette  
Also Present: Town Attorney Michael D. Rybak

## PLEDGE OF ALLEGIANCE

**1. OPEN MEETING -- ESTABLISH QUORUM.**

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

**2. APPROVE MINUTES OF PREVIOUS MEETING: 6/22/15**

J. Marzullo **motioned** to approve the minutes of the previous meeting, seconded by M. Rewenko. Motion passed unanimously with D. Mathes and A. Buonocore refraining from voting due to their absence at the previous meeting.

**3. PUBLIC COMMENT.**

None.

**4. CYNTHIA KASEY – APPLICATION FOR CHANGE OF USE, 15 BURLINGTON ROAD, ASSESSORS MAP C6-06-0004, TO ART GALLERY.**

Cynthia Kasey is present and provides an aerial photo of the property owned by Brett Stone with the parking area sketched out. She notes there are 19 parking spaces allocated for the retail businesses and that does not include tenant parking. The Torrington Area Health District and the Harwinton Fire Marshal have signed off on the use of the property. Ms. Kasey states that she has spoken to the neighbor of the property and informed him of her plans and that the neighbor is very supportive of the proposal. J. Marzullo **motioned** to approve the Change of Use, seconded by A. Buonocore. Motion passed unanimously.

**5. ZACHARY PRENOVEAU – APPLICATION FOR SINGLE FAMILY DWELLING, LOT 1A, SUMMIT RIDGE FARMS RESUBDIVISION, HILL ROAD.**

Zachary Prenoveau is present. Plans by Berkshire Engineering, dated 5/18/15, titled Septic System Design, are reviewed. IWWC and TAHD approval has been received. Erosion Control permit is on file. Per Mr. Prenoveau, the driveway opening onto a state highway (Route 222) has been approved by CTDOT. Chairman Truskauskas questioned whether the entire driveway will be paved with Mr. Prenoveau replying, yes. A. Buonocore **motioned** to approve the application, seconded by D. Mathes. Motion passed unanimously.

**6. 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. (PUBLIC HEARING CLOSED 6/8/15.)**

Chairman Truskauskas presents and reads an outline of potential reasons for the proposed regulation which remains on file. Atty. Rybak questions if it is the Commission's intention to discuss the proposed regulation tonight and not to act on it with Chairman Truskauskas stating, yes. Atty. Rybak reminds the Commission that at the last Zoning meeting, the Commissioners were asked to gather their thoughts and send them to LUC Redmond. He would like to hear the thoughts of all the Commissioners at this time. Commissioner D. Thurston states that if this Commission were to base their decision to prohibit medical marijuana facilities based on current law that law could change in the future providing to force a change of the Commission's position. He believes it may be a

better position to base a decision to prohibit on the desire to keep the town rural. Chairman Truskauskas reminds the Commission that the City of Shelton based their decision to prohibit based on federal law only and he used that reason and then broadened the reasons so as to not base any decision on one reason. Atty. Rybak states he is curious what other towns that have prohibited Medical Marijuana facilities based their decision on to do so. He went online to find towns, he believes there are six, that have outright prohibited Medical Marijuana facilities but he couldn't find wording in their regulations. Either they have not posted their amended regulations online or they are acting on the assumption that what is not explicitly permitted is prohibited. This type of prohibition is law but he feels in this case, it is risky because retail pharmacies are allowed and Medical Marijuana Dispensaries are dispensaries that are operated by a pharmacist. Upon questioning on whether the use of a pharmacy could be a prohibited use, he notes that it is rare to single out specific types of retail uses not wanted in town other than Adult Oriented Businesses and Sale and Service of Alcohol. He explains that with proposed Zoning Regulation amendments, the Commission starts with determining that the amendment is consistent with the Plan of Conservation and Development as to what kind of community the town wants, what uses and types of uses are wanted in town. Atty. Rybak explains that the next step is to look at the police power because zoning, if it is constitutional, it can only be constitutional as an exercise of the police power unless it's a protected zone of constitutional protection. Zoning looks at what is a rational reason given by the town for this regulation. Then you have to look out for equal protection, are you treating one particular class different from others and if so, why? What is the policy reason in treating one class differently from other classes? Atty. Rybak continues by stating this case gets even more complicated because unlike uses you can regulate in accordance with State Statutes, there are two levels of preemption above you, as Zoning Commissioners. There is the federal, which the state has and the federal government has interpreted as not being preemptive in this area. The reason why it's not preemptive, even though the production, sale, possession of a certain small amount, is a federal crime, the reason it's not enforced is a prosecutorial discretion memo that was issued out of the Washington's Justice Department, that says, in those states that have a robust system of regulation of Medical Marijuana, and if there is no evidence of organized crime infiltration in the production or distribution of Medical Marijuana, if it is purely a pharmaceutical program, then the government will not prosecute. Atty. Rybak states that next level, if it's federal law, why isn't it being enforced? He believes the federal government has decided in this case, it is not going to enforce, and that it has limited resources and it would be counterproductive to prosecute where the states are already regulating it under pharmaceutical.

Atty. Rybak continues by stating that the next level of preemption is, is there State preemption of town regulations? He reminds Commissioners that Zoning's authorization to regulate comes from the legislature. If it is not in the State Statutes, to allow zoning, it is not allowed. Chapter 124 of the State Statutes allows Zoning to zone and it also states what can't be done, what you can't zone against, such as mobile homes, day care centers, group homes, etc., but Medical Marijuana is not one of those listed that you can't zone against. He continues by stating, there is a comprehensive state program of licensing and regulations, probably more so than any other state in the country, and we need to look at where we are, which is at a very narrow intersection of the law with very little room for municipalities to regulate, but maybe just enough. Atty. Rybak states that this Commission has to decide on how to proceed at this point. They can continue on and prohibit Medical Marijuana facilities, they can implement a Moratorium for one year, or they can allow these facilities in certain areas of town by Special Permit with conditions of any approval.

Commissioner D. Thurston states that this Commission could establish regulations and determine where appropriate locations for such facilities could be located but security issues must be considered because Medical Marijuana Marijuana Dispensaries deal strictly in cash. He adds that there is an even greater issue of security for Medical Production Facilities.

Commissioner L. Steincamp reminds the Commission that the State Regulations for these businesses are very specific as to how these businesses are conducted and a lot of the question as to how it gets put into this town is well determined by the regulations that limits where it can be put. If one looked closely at the regulations and determines that within this town there is no suitable place for it because of setback distances, then it goes back to her point of the town not getting into possible litigation because the regulations themselves eliminate it as a possibility. She also notes that it is the businesses themselves that are responsible for their own security.

Discussion on retail/commercial zones within the town where such a facility could operate ensues and taking into account a 1000 foot separating distance from churches, schools, etc.

Chairman Truskauskas asks Atty. Rybak that, in speaking of preemption, what is the difference between allowing it in a certain zone and a complete prohibition if the state is preempting the town's ability to regulate? Does it make a difference if they're taking the regulation and saying 1000 feet from everywhere, does it matter one way or another on a legal basis? Atty. Rybak answers, yes it does to this extent. If it was a total Field Preemption, because there's nothing in state law that specifically preempts, then there's two ways of looking at preemption if there's no explicit preemption clause. There's Field Preemption, where the state so totally occupies the field of regulation it leaves no room for any other regulations, and that would be in the case of sale of firearms. Then there's those areas where the state has not occupied the entire field of regulation but something the town has done in that area not occupied by the state frustrates the intent or the policy of state government. That's the real gray area because if the law wanted to make it clear it would say so and in this case it doesn't. If the Zoning Commission were to adopt the same separating distances as the state has in its regulations, it would be consistent with the state law and not frustrating it.

Commissioner J. Marzullo states that legalization of recreational marijuana use is an area many are concerned about. He believes that is where Connecticut is heading and it won't be long before legal Medical Marijuana use will morph into legal Recreational Marijuana use and he questions how the town would then be able to regulate a Recreational Marijuana Facility if Medical Marijuana Facilities are allowed in. Atty. Rybak states there is not a clear answer to this question. If Medical Marijuana Facilities are allowed under Special Permit, meeting separating distances and obtaining a state license, and if the state law changed to allow for legal Recreational Marijuana distribution, the question remains, can the Commission then be able to say, "the use of the Special Permit issued by the town has exceeded what was permitted and the holder has violated the terms of the permit and loses the right to continue business." Atty. Rybak states that it is an interesting question and there are not a lot of cases on this in CT so it is unclear on how the state will be dealing with this; a permitted use that grows into something more than a permitted use because now, at the state level they are permitted to operate in a different way.

Chairman Truskauskas questions that if the state put wording in their legislature that allowed the Medical Marijuana facilities to become Recreational, would that wording possibly preempt anything that is put in a special permit? Atty. Rybak replies that perhaps they would so state that it preempts local zoning or that it cannot regulate beyond what it already has with Medical Marijuana. He questions why the state would license them with expensive licensing fees and bonding allowing Medical Marijuana, because a lot of towns that might allow the Medical Marijuana, as recognition that this is a medical prescription, might not and probably would not allow it as a recreational facility. The state knows that so why would they want to convert to Recreational Marijuana and end up with those those licenses for Medical Marijuana in jeopardy?

Commissioner D. Thurston states that when you get down to it, the question is, would prohibition be a good thing for the Town of Harwinton and where do we want our town to be ten years down the road?

Commissioner A. Buonocore reminds Atty. Rybak and Commissioners of her stand on this proposed regulation and her belief that it is wrong to prohibit compassionate care.

Chairman Truskauskas states that he feels comfortable putting this regulation into place at this time and if the Commission needs to go the route of a Moratorium, the Commission will change course.

Atty. Rybak again informs the Commission on options that include Plan A, which is to prohibit, which could invite possible litigation, Plan B, which would permit Medical Marijuana Facilities with condition that retail of Medical Marijuana is all that can be done, explicitly not allowing Recreational Marijuana to be sold or Plan C, which is to impose a Moratorium. Atty. Rybak offers to write up a draft of regulation wording on prohibiting Medical Marijuana Dispensaries and Medical Marijuana Production Facilities at the request of the Commission and he will send it to the Land Use office within the next two weeks.

**7. COMPLAINTS/ENFORCEMENT ACTIONS.**

None.

**8. ANY OTHER BUSINESS.**

Commissioner J. Marzullo asks that Chairman Truskauskas step down at this time in order for him to discuss a matter concerning the Chairman. Commissioner D. Mathes is seated as Chairman. J. Marzullo reads a prepared statement regarding complaints received in the Land Use office concerning activity on Chairman Truskauskas' residential property located at 99 Scoville Hill Road. He states that the Zoning Board of Appeals has made their decision that allows Mr. Truskauskas to use his dump truck on the property and he believes no more time should be spent on complaints that come in regarding this. He asks that the Zoning Commission make a motion tonight that all future complaints regarding the use of the dump truck by Mr. Truskauskas on his property be marked as invalid by the ZEO and on the ZEO Worksheet. Commissioner D. Mathes states that all complaints should be acknowledged and heard. No motion is made.

Chairman Truskauskas is reseated.

**9. CORRESPONDENCE.**

None.

**10. INVOICES.**

None.

**11. ADJOURN.**

J. Marzullo motioned to adjourn the meeting at 8:15 p.m., seconded by D. Mathes. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator