

Town of Yarmouth

MINUTES OF THE PLANNING BOARD MEETING OF February 5, 2014

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The Yarmouth Planning Board held a business meeting at 5:30 p.m. on Wednesday, **February 5, 2014** in the Hearing Room at the Yarmouth Town Offices located at 1146 Route 28, South Yarmouth, MA.

Planning Board Present: Anthony Panebianco, Ken Driscoll, Norm Weare, Tom Roche and Brad Goodwin.

Planning Board Absent: Chris Vincent

Others Present: Kathy Williams, Town Planner; Linda Cipro; Charles Walsh; Christine Greeley; Jack Hynes; and Tom Sullivan

Planning Board Vice Chairman, Norm Weare opened the meeting at 5:32 PM.

1. PUBLIC HEARING: Draft Zoning Articles for 2014 Annual Town Meeting - Presentation & Public Comments:

- a. **Hearing Opening:** Norm Weare, Planning Board Vice Chairman opened the public hearing at 5:33.
- b. **Public Hearing Notice:** The attached public hearing notice which was published in the Register on January 16, 2014 and January 23, 2014 was read into the record. Norm Weare gave a brief outline of how the public hearing would be conducted.
- c. **Presentation:** Norm Weare gave the attached PowerPoint presentation outlining the six proposed Zoning Bylaw amendments for the 2014 Annual Town Meeting (ATM). Public comments were solicited after each Article.
- d. **Zoning 1 - Registered Marijuana Dispensaries (RMDs) Bylaw:** As part of the presentation, Norm Weare indicated that two provisional RMD Licenses in Barnstable County were issued by the DPH on January 31, 2014 in Dennis and Mashpee.

Public Comments:

1) Charles Walsh:

- a. Mr. Walsh inquired about the amount of traffic estimated for an RMD. Norm Weare indicated that approximately 1-2% of the population would be eligible for medical marijuana and the amount of traffic would not be significant. Brad Goodwin also pointed out that the close proximity to Route 6 exits will minimize the amount of traffic on Town Roads.
- b. Mr. Walsh also asked whether there were regulations governing the use of medical marijuana in the parking lot of an RMD. Norm Weare indicated that it cannot be used on the site. Brad Goodwin pointed out that the Planning Board's purview is siting and regulating the zoning for an RMD.

- c. Mr. Walsh also expressed concerns about the facilities being non-profit. The Board indicated lots of businesses that are non-profit can generate revenue; it just needs to go back into the business or for salaries.

2) Chris Greeley:

- a. Ms. Greeley thanked the Board for their work and felt the Board had undergone the appropriate process by instituting a temporary moratorium in order to get a thoughtful product for the community.
- b. Ms. Greeley questioned why the RMD Overlay District extended to encompass the access road for Flax Pond. Brad Goodwin indicated that the Board was trying to be sure the RMD Overlay District wasn't too small, RMDs may not be as big an issue as perceived due to the security measures required, and that the children stay on the Flax Pond property which has a large setback to the proposed RMD Overlay District.
- c. Ms. Greeley inquired about signage requirements. Norm Weare indicated there are signage restrictions in the proposed bylaw.
- d. Ms. Greeley inquired about why 100' setback from residential districts was chosen versus 200' or 300'. Norm Weare indicated that the Board started with 500', but it made the district too restrictive with 100' working in most areas, but that this issue was still open for discussion.
- e. Ms. Greeley commented that the smaller setback may be hard on homeowners, especially if an RMD can have a gross floor area of 20,000 square feet.
- f. Ms. Greeley indicated she was glad the agricultural exemption was not included in the bylaw. Norm Weare indicated that the Board had received Town Counsel's opinion that the cultivation of medical marijuana was not commercial agriculture. The Board concurred as it is more of a manufacturing process.

3) Tom Sullivan:

- a. Mr. Sullivan indicated that he was speaking against the article. He had personally been the victim of a car accident by someone smoking a joint while driving. By approving this bylaw the Town may be opening itself up to liability. Medical Marijuana is not approved by the FAA and doctors can't under federal law prescribe it. Brad Goodwin indicated that if the bylaw passes, the Town can restrict the location of an RMD. If it doesn't pass, then it could go everywhere.
- b. Mr. Sullivan inquired as to whether the bylaw was illegal. Brad Goodwin indicated that medical marijuana is a federally controlled substance, but the Planning Board's job is to find a zone to locate this use.
- c. Mr. Sullivan indicated that he would support a long term moratorium. Board members indicated that the Attorney General's office has ruled that moratoriums may not be extended beyond December 31, 2014.
- d. Mr. Sullivan asked if a log will be kept of all users. Norm Weare indicated that this is required by the Mass Dept of Public Health (DPH).
- e. Mr. Sullivan questioned the non-profit nature of RMDs when one individual has 15 % of the licenses and there are investors.
- f. Mr. Sullivan asked why not have a 1000' setback from residential zones and what about locating an RMD near a pediatric doctor's office. Mr. Goodwin indicated that if the setback were 1,000' it would seriously limit the locations available in town and the town cannot ban it or unreasonably restrict it. Mr. Goodwin indicated that children do not congregate at doctor's offices; they are typically brought there by an adult.
- g. Mr. Sullivan indicated that Barnstable County was approved for two RMD licenses, and wondered why we need more. Mr. Goodwin indicated that the county can have

up to 5 in the first year and that it could go higher in the future. Tom Roche indicated that the majority of residents voted to have medical marijuana and the Town's are required to allow them.

- h. Mr. Sullivan indicated that 90% of the voters didn't know what they were voting for and questioned whether marijuana was addictive and could lead to more drug use. Tom Roche indicated this was outside the purview of the Planning Board.

4) Linda Cipro:

- a. Ms. Cipro questioned the proximity of the RMD Overlay District to the future bike path which is a place children may congregate. She also suggested the 100' to residential zoning districts be increased to 500' from the bike path. Although she is aware her property abuts a B3 zoning district, she should have some say and would suggest no clear cutting to the property line, especially with a potential 20,000 square foot building and the potential light pollution into a residential area. She mentioned the letter she wrote to the Planning Board and noted the decrease in her property value since she purchased the home and her concerns about future devaluing. She suggested considering locating the RMD just in the Adult Entertainment District (AED) as it doesn't belong in a residential area. Norm Weare indicated that the Board would take her comments under consideration.

e. **Zoning 2 – Extension of Temporary Moratorium on Registered Marijuana Dispensaries**

Public Comments: After the PowerPoint presentation, there were no public comments on this article.

f. **Zoning 3 – Adoption of FEMA Flood Insurance Rate Maps (FIRMs)**

Public Comments:

- 1) Tom Sullivan: Mr. Sullivan mentioned concerns about the model used to develop the FIRM maps being based on Pacific coast data and indicated the Town should not adopt them until this issue is resolved as he has heard so many horror stories about the insurance rates of \$10,000 per year or more. Norm Weare indicated that the Planning Board does not have any say in the insurance rates. The new maps will be used whether we adopt them or not. The maps become effective on July 16, 2014.
- 2) Chris Greeley: Ms. Greeley indicated she was also troubled by the pacific data issue and that the maps may not match historical flooding. Appealing the maps and providing all the required data was too expensive for an individual to submit a viable appeal. People are stuck if they have a mortgage. The town needs to pass it, but she is supportive of Representative Keating's efforts on this issue. Norm Weare indicated that most towns don't have the resources to challenge the maps. Tom Roche mentioned that an affordability study was required as part of the Biggert Waters flood insurance reform, but was never done. He indicated many had no idea the costs would be so severe.

g. **Zoning 4 – Temporary Commercial Outdoor Display**

Public Comments: After the PowerPoint presentation, there were no public comments on this article.

h. **Zoning 5 – Zoning Map Housekeeping Amendment to the Revitalization Overlay Architectural District (ROAD) Limits:**

Public Comments: After the PowerPoint presentation, there were no public comments on this article.

i. **Zoning 6 – Modifications to Section 104.3.2(4) to require Design Review and Site Plan Review:**

Public Comments: After the PowerPoint presentation, there were no public comments on this article.

j. **Next Steps:** Norm Weare outlined the next steps including a Planning Board meeting on February 10th (special night) and a Board of Selectmen meeting on February 25th.

k. **Hearing Closed:** On a motion by Tom Roche and seconded by Ken Driscoll, the Planning Board voted (5-0) unanimously to closed the Public Hearing at 6:25 PM with Anthony Panebianco, Ken Driscoll, Norm Weare, Tom Roche and Brad Goodwin voting in favor.

2. **Planning Board discussion on public comments:** After the Public Hearing, the Planning Board discussed comments from the BOS, the public hearing, and other stakeholders. Kathy Williams had summarized comments received since the last Planning Board edits as shown in the attached February 5, 2014 summary.

a. **RMD Bylaw:**

- 1) **Limits of RMDOD and setbacks:** The Planning Board discussed additional setbacks from the railroad right-of-way and/or eliminating the Exit 8 RMD Overlay District and enlarging the Exit 7 RMD Overlay District as shown in the attached potential expansion map. After discussion, the Board tabled the issue until the February 10th meeting when Chris Vincent would also be present.
- 2) **Setbacks to Special Uses:** The board agreed to eliminate special use restrictions for rehabilitation centers and places that sell alcohol.
- 3) **Annual Report:** Agreed to clarify the bylaw to indicate that annual report is required every year.
- 4) **Marijuana Definition:** Board agreed to simplify the definition to reference the definition in MGL Ch 94C.
- 5) **Lockboxes:** Board agreed to add a requirement for fire department lockboxes in Site Plan Review to ensure access to buildings and site in case of an emergency.

b. **Temporary Commercial Outdoor Display:**

- 1) **Number of events per year:** After discussion, the Board agreed to limit the number of events to 3 times and keep the total limit of 17 days per year per parcel.
- 2) **Adequate Parking:** The Board agreed to identify adequate parking to be the minimum parking requirements per the bylaw.
- 3) **Use of proposed bylaw:** After discussion, the board decided to not restrict the use of this proposed bylaw to current on-going commercial retail businesses. It was felt that by limiting the events to 3 times per year, the opportunity should be open to all commercial establishments.

3. **Meeting Minutes:**

- a. **January 8, 2014:** On a motion by Brad Goodwin and seconded by Tom Roche, the Planning Board voted (4-0-1) to approve the Planning Board meeting minutes of January 8, 2014; with Anthony Panebianco, Ken Driscoll, Tom Roche, and Brad Goodwin voting in favor, and Norm Weare abstaining.

4. **ZBA Agenda & Decisions:** January 23, 2014 ZBA Agenda and ZBA Decisions 4484, 4495 and 4496 were sent via e-mail with no discussion.

5. **Correspondence:** The following correspondence was sent via e-mail with no discussion.

- 1) Barnstable Public Hearing Notice on Proposed Zoning Amendment on total area of signs.
- 2) Barnstable February 12, 2014 ZBA Legal Notice.
- 3) Ch 91 Waterway License application for 370 Long Pond Drive, dated January 27, 2014.
- 4) Chapter 91 Waterway License application for 138 Crowell Road, dated January 24, 2014.
- 5) DPH Summary of Phase 2 RMD Provisional Licenses.
- 6) Articles on Flood Zone Map delay for Plymouth County.

6. **Board Items:** None.

7. **Staff Update:** Kathy Williams mentioned the February 10th meeting will be full with a ROAD application and an ANR, in addition to reviewing the zoning articles. Board members agreed to start the meeting at 5 PM to accommodate the business items and Article review.

8. **Next Meetings:**

- a. Monday February 10, 2014 – **Special Planning Board Meeting at 5PM**
- b. February 19, 2014 – No Meeting currently scheduled
- c. February 25, 2014 – Board of Selectmen on Zoning Articles (second meeting)
- d. February 26, 2014 – Finance Committee

11. **Adjournment:**

VOTE: On a motion by Ken Driscoll and seconded by Brad Goodwin, the board voted (5-0) unanimously to adjourn at 7:15 p.m.

ATTACHMENTS:

- **Agenda February 5, 2014.**
- **Zoning Articles:** Public Hearing notice; Public Hearing sign-in sheet; February 5, 2014 Powerpoint presentation; January 30, 2014 Agricultural Exemption items; January 29, 2014 memo to BOS from Chris Vincent; Draft 2 of the RMD Bylaw and RMD Overlay District both dated January 16, 2014; Draft #1 of the Extension of Temporary Moratorium on RMDs dated January 13, 2014; Draft #2 on the FEMA FIRM Maps dated January 16, 2014; Draft #3 on the Temporary Commercial Outdoor Display dated January 16, 2014; Draft #2 on the Zoning Map ROAD Amendments dated January 16, 2014; Draft #2 of the Section 104.3.2(4) Amendment dated January 16, 2014; January 24, 2014 Memo from Kathy Williams summarizing Chamber meeting; December 13, 2013 DPH Guidance for Municipalities Regarding the Medical Use of Marijuana; Potential Expansion of Exit 7 RMD Overlay District Map; and February 5, 2014 list of discussion topics for Article edits.
- **Draft Meeting Minutes:** January 8, 2014 and January 15, 2014.

- **Miscellaneous correspondence** sent to the Planning Board via e-mail since the last Planning Board Meeting on January 15, 2014:
 - i. January 23, 2014 ZBA Agenda.
 - ii. ZBA Decisions 4484, 4495 & 4496.
 - iii. Barnstable Public Hearing Notice on Proposed Zoning Amendment on total area of signs.
 - iv. Barnstable February 12, 2014 ZBA Legal Notice.
 - v. Ch 91 Waterway License application for 370 Long Pond Drive, dated January 27, 2014.
 - vi. Chapter 91 Waterway License application for 138 Crowell Road, dated January 24, 2014.
 - vii. DPH Summary of Phase 2 RMD Provisional Licenses.
 - viii. Articles on Flood Zone Map delay for Plymouth County.

Approved on March 19, 2014

On a motion by Tom Roche and seconded by Ken Driscoll, the Planning Board voted (4-0-1) to approve the Planning Board meeting minutes of February 5, 2014; with Anthony Panebianco, Ken Driscoll, Tom Roche, and Brad Goodwin voting in favor; and Chris Vincent abstaining.