



PEMBROKE PLANNING BOARD MINUTES

MONDAY, APRIL 3, 2017

PRESENT: Daniel Taylor (Chairman), Rebecca Coletta (Vice-Chairman), Thomas Irving (Clerk), Brian VanRiper (Board Member), Andrew Wandell (Board Member), Matthew Heins (Planning Board Assistant), Richard Wall (Chief of Police), Matthew Furlong (Board of Selectmen), Lisa Cullity (Health Agent), Gail McSweeney (Board of Health), Donna Bagni (Board of Health), Adam Silva (journalist), Mimi Walker (journalist), Debbie Cina, Stephen Kotowski (Webby Engineering), Robert Clarke (Conservation Commission & Conservation Agent), and John Kelley.

Chairman Daniel Taylor opened the meeting by reading the Chairman's statement.

PUBLIC HEARING FOR PROPOSED ZONING BYLAW TO PROHIBIT MARIJUANA ESTABLISHMENTS

Mr. Taylor opened the public hearing for the proposed zoning bylaw to prohibit marijuana establishments. The bylaw would prohibit all types of marijuana establishments as defined in G.L. c.94G §1(j), including marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses.

Matthew Furlong, of the Board of Selectmen, stated that the Selectmen believe the proposed bylaw would help Pembroke decide its own future, as to whether to allow marijuana-related establishments within the town.

Ms. Coletta questioned whether the proposed bylaw would affect the existing medical marijuana bylaw, and noted that the bylaw's broad language seems to encompass medical marijuana facilities. Chief of Police Richard Wall stated that the bylaw's intent is to prohibit retail and commercial marijuana operations, not medical marijuana uses. Mr. Wandell said the bylaw would prohibit medical marijuana inasmuch as it would affect cultivation, manufacturing and retail.

Mr. Taylor asked what the impact of not passing the bylaw (i.e., allowing marijuana establishments) would be on the town financially in terms of policing and public safety. Mr. Wall said it was hard to judge the full impact, but it could increase the necessity for additional police officers and create various security issues.

Mr. Irving and Mr. Wall discussed the issue of marijuana legalization. Mr. Wall noted that in the recent statewide referendum, a majority of the voters of Pembroke voted against marijuana legalization.

Ms. Coletta asked where things stand at the state level, in terms of regulating where facilities could be located, how licensing would be done, etc. Mr. Wall expressed his concern that the state has made little progress in this regard, and thus it made sense for Pembroke to exert local control over marijuana.

Mr. Wandell mentioned that a statewide moratorium has been put in place, and Mr. Wall clarified that it has been extended another six months. He explained that the state will be able to allow up to 75 licenses for both cultivation and retail, across the state. Potentially licenses could be issued and then regulated after the fact.

Ms. Coletta expressed her concern that by prohibiting marijuana establishments anywhere in the town, Pembroke could be vulnerable to litigation that would actually make the situation worse by forcing the town to accept these establishments everywhere. She asked if anyone had considered the idea of specifying certain parts of town, i.e., a permitted zone, to which marijuana establishments would be limited, and added that this might reduce the possibility of litigation.

Mr. Wall stated that, based on his knowledge and what he has learned, having prohibitions created both by the voters at town meeting (i.e., this proposed zoning bylaw) and through the ballot is the most certain path. He noted that the law currently has many gray areas, such as the drug awareness class, for those under the age of 18 caught with marijuana, which has not been developed yet. He expressed his concern about a situation where the town is not protected and the laws are determined later. He suggested that the best path is to let the town voters decide.

Ms. Coletta asked about amending the language of the proposed bylaw to exclude medical marijuana establishments, and Mr. Wall noted that the language comes from town counsel. Mr. Wandell said that a total prohibition might not hold up in court. He discussed the gradual process the board went through with zoning medical marijuana establishments. He stated that he feels this could be a similar situation, where it might make sense to avoid a total prohibition and consider creating zoning bylaws to specify where marijuana establishments can and cannot be located. This would also allow more time to see how the new state law evolves.

Mr. Wall explained that most control will reside at the state level, rather than local towns. In reply to a question, he said that the proposed prohibition would not affect people's individual right to possess marijuana. He also mentioned that a future issue will be retail establishments for the consumption of marijuana.

Ms. Coletta asked if the state board will put controls over the quality and safety of marijuana. Mr. Wall said he believes the accessibility of marijuana will rise greatly, but it's unclear whether or not it will become safer. He added that he believes the licenses will be coming out by 2019, whether or not the state has established rules, and so it would be wise for towns to be prepared and to make their own decisions.

Mr. VanRiper stated that he doesn't feel there is any need to react quickly, since the process will be gradual. He asked whether the bylaw would bar marijuana products from being delivered from outside Pembroke to customers in Pembroke, and Mr. Wall said it would not. Mr. VanRiper expressed his concern that the bylaw's language is excessively broad, and that it might restrict any marijuana businesses, and not merely limit retail establishments in town. He said that he is mostly

opposed to this proposed bylaw because it is too broad, precedes state regulation, and does not necessarily enhance public safety. He suggested that there is no reason for the town to act prior to the state regulations being established.

The board had a discussion about the procedures of the town meeting vote and the ballot vote, and considered the issue of whether the turnout at town meeting or the ballot would be a reasonable representation of town sentiment. Mr. VanRiper argued that the bylaw, if passed, will lead to further debates and counter-proposals in the future. He noted that the bylaw could limit the town's ability to receive tax revenue from marijuana sales.

The case of Colorado's marijuana legalization was discussed. Ms. Coletta suggested it might make sense to wait before making a decision.

Lisa Cullity emphasized that the town's residents should be able to learn about proposed bylaws at town meeting, and to express their own opinions—this being the purpose of town meeting. It would not be reasonable, she said, to prevent this from happening by blocking a proposal from getting to town meeting. She also explained that the legalization of marijuana could have a substantial impact on the Board of Health.

Mr. Wandell noted that previously when a proposed zoning bylaw to prohibit medical marijuana was presented, the board decided not to take it up at the time, in order to allow for more time to scrutinize the issue. Ultimately the board successfully created a new zoning bylaw to limit medical marijuana establishments to a certain zone. This kept the bylaws within the law, avoiding legal challenges. Since then, no medical marijuana establishments have been located in Pembroke.

Mr. VanRiper stated that he believes the proposed zoning bylaw merits further review, rather than a hasty decision.

Mr. VanRiper made a motion to continue the public hearing to a date certain, so as to collect more information and create a better zoning bylaw to propose at the fall town meeting. Mr. Irving seconded the motion.

Ms. Coletta asked what would happen to the ballot question if the board passes this motion. Mr. VanRiper said the ballot question would take place but become nonbinding. A detailed discussion ensued about this. There were some indications that a ballot vote alone might be enough to create a prohibition.

There was a discussion about the procedures that apply if the board takes no action and continues the public hearing to a date after town meeting. Mr. VanRiper said he believes that if this happens, there is no recommendation from the Planning Board before town meeting, and so the ballot question is not binding. But he added that this is something for the lawyers to determine.

In reply to questions, Mr. VanRiper explained that if the board takes no action, i.e., there is no recommendation from the Planning Board before town meeting (which would be a consequence of the motion he made), then the proposed zoning bylaw cannot be brought up at town meeting.

The board discussed the best date to continue the public hearing to, and settled on June 12, 2017 at 7:00 pm.

Mr. Wall asked if the board could do more research on the proposed bylaw's implications quickly, and thus be willing to allow the bylaw to go to town meeting. Mr. VanRiper stated that the state's process of decision-making, which is still unfolding, is what is especially relevant here. Mr. Wall urged the board to at least allow the proposed bylaw to advance to town meeting.

A discussion ensued about the state's current moratorium, and what will happen when it ends. Some board members expressed their resistance to putting this bylaw in place at such an early point in time, especially inasmuch as they feel it is written so broadly.

Ms. Coletta asked what the difference would be between passing the bylaw now versus doing so in the fall. Mr. Wall argued that it would be to the town's advantage to limit the possible impacts of the legalization of marijuana establishments, even if those impacts are uncertain at this time. He suggested that the town's voters should be allowed to make this decision. Ms. Coletta noted the advantages of waiting to gather more information, and expressed her opinion that nothing would be lost by delaying this to the fall town meeting.

Ms. Cullity and Ms. Coletta discussed the "smoke shops" and similar places, which Ms. Cullity said are preparing for the legalization of marijuana establishments. The date when the state legislature's moratorium will end was discussed.

Mr. Taylor noted that a motion was on the floor and had been seconded. The board voted unanimously in favor of the motion. Mr. Taylor explained that the public hearing had been continued to June 12, 2017 at 7:00 pm.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

Mr. VanRiper made a motion that the board accept the minutes of March 27, 2017 as presented, Mr. Wandell seconded the motion, and the board voted unanimously in favor.

Mr. Heins and the board briefly discussed his quarterly report of accrued and remaining time (for vacation time, personal time, floating holiday and sick time).

Mr. Heins explained that there is an article on the warrant for annual town meeting to consolidate several departments and/or offices, including the Office of the Planning Board, into a Department of Municipal Inspections. This is meant to create greater efficiency and coordination, and also a unified filing system. It would have an effect on how the Assistant to the Planning Board (i.e., Mr. Heins) works within the town's bureaucracy and interfaces with other offices, and it would adjust the relationship between the Planning Board and the Assistant to the Planning Board.

This article for a Department of Municipal Inspections is being submitted by the Town Government Study Committee. The board discussed the nature of the article and its implications for the Office of the Planning Board. The board also talked about the reference to a "town planner" in the article. The board members discussed the possible advantages and disadvantages of the proposed reorganization, which could streamline certain functions but also undermine the independence of some offices.

The board conversed about the need to learn more about this proposed reorganization, preferably from someone on the Town Government Study Committee. Mr. Wandell agreed to get in contact

with one of the members of the Town Government Study Committee. Mr. Heins and the board members talked about the agendas of upcoming board meetings, and tentatively decided to have this discussion at 8:00 pm on May 1.

Mr. Heins explained that the drawings and design for the Brisan Way Extension subdivision now meet Peter Palmieri's approval, for the most part, and so it now remains to write up the decision and conditions.

Mr. Heins and the board discussed the possible take-out restaurant in the Center Protection District, and whether it would require site plan review. They also talked about whether the engineering review balance for the condominium project at 590 Washington Street can be returned.

DISCUSSION OF POSSIBLE DEVELOPMENT OPTIONS FOR 19 AND 19A MATTAKEESETT STREET

Debbie Cina, a real estate agent who is handling the property of 19 and 19A Mattakeesett Street, came before the board to discuss some of the ideas that have been mentioned for the property, which is in the Center Protection District.

Potential buyers have inquired as to whether the site could contain residential condominiums, housing for the elderly, or a fast-food restaurant. Ms. Cina, Mr. Heins and the board discussed various possibilities for the property, and clarified how the zoning bylaw applies to the Center Protection District.

It became clear that the property is too small and has too little frontage to qualify for a mixed use project. It was explained that restaurants are allowed under a special permit, but solely drive-through restaurants are prohibited. An eldercare facility would not be an allowed use. The situation with the two existing buildings, and what could be done with them, was discussed. Another discussion followed about the complications of the current condominium setup, and how it fits within zoning requirements.

DISCUSSION OF SITE ON VALLEY STREET FOR WHICH A "FORM A" WAS RECENTLY PROPOSED

Stephen Kotowski (Webby Engineering) and Robert Clarke (Conservation Commission Agent and member of the Conservation Commission) came before the board to discuss a site on Valley Street for which a Form A was previously proposed. At that time, the board chose not to approve (endorse) that Form A.

Mr. Kotowski explained that his client, the property owner, had developed an alternative design for the property, since the Planning Board had not accepted his preferred design which was originally proposed. This new design, however, would necessitate filling in some wetlands, which the Conservation Commission would prefer not happen. Mr. Kotowski argued that, given this alternative, the Planning Board might be more sympathetic to the original Form A design. He showed the board a proposed design very similar to this original design.

An extensive back-and-forth discussion ensued, with many legal complications and nuances raised. The members of the Planning Board continued to oppose the proposed Form A design, for the same reasons as before. The layout of the proposed driveway—adjacent to an existing driveway—was one problem for the board. The board members suggested that building a cul-de-sac road, which would

create frontage, would be acceptable, but Mr. Kotowski argued this would be more expensive than a long driveway through wetlands. For the board, the basic issue of “illusory access” remains as before.

Mr. Clarke explained that the Conservation Commission is opposed to the alternative design, and the Fire Department probably would not allow it. In the following conversation, it was unclear whether this alternative design actually could be allowed or built, though Mr. Kotowski argued that it probably eventually could. Mr. VanRiper stressed the fundamental problem of illusory access. Ms. Coletta noted that the owner has already benefited from selling a buildable lot adjacent to this one.

The board members made it clear they were opposed to this proposed design, and would not be likely to accept a new Form A based on it.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

The board members and Mr. Heins discussed the proposed zoning bylaw changes for the Center Protection District, regarding the elimination of the mixed use option, and the extent of the zone being defined as exactly a 300-foot depth from the relevant ways.

The board members considered what verbiage they might use, in possible amendments to be introduced on town meeting floor, to adjust the proposed bylaws. The elimination of mixed use could be specified to take effect at a future date in 2018 or 2019. The specification of the fixed 300-foot depth could be changed to allow exceptions for currently existing parcels that extend further back, or it could be changed to specify a slightly larger depth such as 400 feet. At this time, the board did not make any decisions regarding what verbiage to use.

Mr. Irving made a motion to adjourn the meeting, Mr. VanRiper seconded the motion, and the board voted unanimously in favor.

The next regular meeting of the Planning Board will be held on Monday, April 24, 2017 at 7:00 pm.

Respectfully submitted,

Matthew Heins, Planning Board Assistant