

**Planning Board
Lakeville, Massachusetts
Minutes of Meeting
Thursday, February 28, 2019**

On February 28, 2019, the Planning Board held a meeting at the Lakeville Senior Center. The meeting was called to order by Chairman Hoeg at 7:30 p.m. Ms. Murray, recording secretary, was audio recording, and LakeCAM was making a video recording of the meeting.

Members present:

Brian Hoeg, Chair; Sylvester Zienkiewicz, Vice-Chair; Peter Conroy, Barbara Mancovsky, and Janice Swanson

Nature's Remedy of Massachusetts, Inc. hearing, continued – 310 Kenneth Welch Drive

Mr. Hoeg opened the continued Nature's Remedy of Massachusetts, Inc. hearing at 7:31. Mr. John Brady was present. He stated that after the last meeting they had gone away with a list of items that needed to be addressed. He noted that everything that had been asked for had been taken care of and added to the Site Plan or supplemented to the booklet that had been presented. They will be seeking a Tier 4 license with the intention of increasing to 40,000 to 50,000 square feet of canopy. Mr. Carr said they had underestimated the parking so they did hire Azor to go through this. They have identified 83 parking spaces on the site.

Mr. Hoeg asked Board members if they had any comments. Mr. Zienkiewicz said that he had asked multiple questions at the last meeting, and he found that all of his questions had been answered and addressed. He wanted to make sure that all the additional information that had been submitted was attached and included in the packet. The only thing he would question is signing the document subject to the receiving of their license from the State. He noted that there were other conditions that should also be included with this Decision.

Town Counsel, Attorney Katherine Laughman, was present for the Board. She replied there had been an issue at the last meeting that was raised with respect to the question of whether or not the applicant needs to have received a provisional license from the Cannabis Control Commission (CCC) prior to coming to seek Zoning relief. That is a requirement of the bylaw but it had been discussed that a condition could be put on the Permit such that the Permit is conditioned upon them receiving that license. Atty. Laughman clarified; she had a conversation with the CCC regarding the point that had been raised that they were not allowing applicants to move forward with the State license process unless they had a Special Permit. She was told that is not true, and applicants can get their Provisional license before they go for zoning relief.

Mr. Hoeg said he would ask the Board if they would consider granting permission under the condition they come back in with a license. Board members were unanimous in having no objection to that condition. Mr. Hoeg asked if it was now in their purview to make a motion to

grant permission conditionally for the Special Permit. Atty. Laughman replied yes, and she believed that could be a condition of their approval. She thought the Board should now walk through the Special Permit review criteria and make determinations with respect to each of them. Mr. Hoeg asked if she could assist them as they were not yet familiar with the Special Permit process.

Atty. Laughman replied the Special Permit review criteria from the bylaw are applicable to all Special Permits including this type of use. The section she is referring to is 7.4. The Board will need to make findings with respect to each of the criteria. The first one is to determine whether or not the use is noxious, harmful or hazardous, is socially and economically desirable and will meet an existing or potential need. She would encourage the Board as they go through these findings to determine if there are issues with respect to meeting any of the criteria that could be conditioned in a way that would allow the condition to be met, then that would be an appropriate avenue of discussion at this time. For example, if they felt this would generate odor it would then be a good time to discuss whether or not they believe odor mitigation is appropriate and if there is a condition they would like to impose in respect to that.

Mr. Hoeg noted they would not know if this was noxious or emitting odors until operations begin. Ms. Mankovsky replied the applicant has spoken to their filtration systems and this business owner has been very cooperative. However, if there was a problem they would not want the neighbors to be impacted. Then they would not get their renewal, and they would lose their license. Atty. Laughman stated the State may not necessarily be considering the local impact of odor as part of its license renewal. There are some things that are under the umbrella of the local review. Ms. Mancovsky asked if an applicant would need to return to the Board for a renewal. Atty. Laughman replied only if they made the Special Permit subject to renewal.

It was asked if this was related to the Host Community Agreement (HCA.) Atty. Laughman explained the HCA is a separate document. It is a contract, executed by the Board of Selectmen and the applicant, which governs the financial terms and it may have other provisions. There may be some overlap in Permit conditions and the types of issues that are addressed in the HCA. HCAs are subject to renewal, at least with respect to the financial terms, but the Special Permit and the zoning relief that is required for the facility to operate is subject only to whatever conditions that have been imposed by the Board.

Mr. Zienkiewicz noted the bylaw states the facility shall not generate outside odors so they could have that as one of their conditions. Atty. Laughman replied that is a requirement of the bylaw and if there was an issue with odor you could come for enforcement under that. You don't have to list it separately; however, the Special Permit is an opportunity to provide some greater specificity as to how you might want to monitor that, how soon it needs to be addressed, if a peer review of the odor control system is required, etc. There are opportunities within that broader category to more specifically address how you might want to deal with the impacts. She advised that right now they haven't voted to issue the Permit so what the Board needs to do now is the following:

1. The Board needs to make findings with respect to the Special Permit criteria.
2. If the Board decides the findings have all been met, then they can determine to grant the Special Permit subject to the conditions they want.

Atty. Laughman continued there is a linking in the discussion as to whether or not the criteria have been met and the types of conditions they might want to impose. She thought the Board was aware that the Zoning Board of Appeals has granted a Special Permit with respect to the medical use and has imposed some conditions. The Board needs to be cognizant of what conditions have been imposed and if they want to incorporate those by reference into their Decision.

Ms. Swanson asked if Atty. Laughman had seen a condition of where reports would have to be handed in yearly concerning air quality or odor or if something happens and it has to be addressed within a specific time frame. Atty. Laughman replied that she had. Ms. Mancovsky said that if there was a complaint she would like to see a condition where an independent third party would be hired to provide a report of whatever issue they might be talking about. Ms. Rita Garbitt, Town Administrator, asked Atty. Laughman if she had assisted the Board of Health to establish regulations for this industry. Atty. Laughman replied she believed the Board had adopted some rules and regulations specific to marijuana. She advised that odor would definitely be an area that would be appropriate to condition.

Mr. Brady noted the air does not go outside but stays in the rooms, circulates, and goes through charcoal filters. Although they are completely enclosed, that is not to say they are perfect and there might not be an escape of odor at some point. His question would be when they get to this odor issue what measurement will be used. How will it be measured, and what is an acceptable level for a one time occurrence?

Mr. Mark Knox of 303 Kenneth Welch Drive asked if their findings on this particular item would carry over to other facilities, or if they would be independently handled. This system might be a good one, but he did not want to set a precedent for the person down the street that might not have a state of the art system. Mr. Hoeg agreed. Mr. Knox felt that some provision for odor should be included. Selectman Powderly noted they have spent a lot of time trying to understand Natures Remedy's system. He felt the way the bylaw was written "The Adult Use Marijuana Establishment or Marijuana Retailer shall not generate outside odors from the cultivation, processing or manufacturing of marijuana or marijuana products" was as stringent as it could be. He noted the Board of Health has gone to many meetings on this subject. There are meters that measure odors and types of odors but to Mr. Brady's point at what level is it unacceptable. He reiterated this was as stringent as it could be, and he would not be interested in changing that at all.

Ms. Swanson advised that it would be difficult for the Building Commissioner to enforce these types of things if there are no limits to them. Findings are needed to make it easier for their officials to enforce what is said. What will happen? Will they be shut down? How long will that be? After further discussion, Ms. Mancovsky pointed out they had been provided with a sample Special Permit Decision for the Town of Medway. In this Permit, they do list out the specifics, for example, for sound.

Selectman Powderly replied that is different as it is measurable. He felt they were safe in saying that odor is not allowed. Ms. Mancovsky said her original recommendation was if a dispute arises that at the business owner's expense, they hire a consultant to provide the scientific

information. She did not think they were in a position to start articulating the level of things that are in this particular plan. Atty. Laughman added that she was not suggesting the Board deviate from that standard in any way. Her suggestion was if a controversy arises, it makes sense to have a procedure in place for addressing it that the applicant has agreed to it. She could make the language specific to the terms that the Board would like to have in relationship to the procedure. Atty. Laughman noted the Board is still on Special Permit finding #1 and the Board needs to determine whether they have findings that support the use is not noxious, harmful, hazardous, is socially and economically desirable and will meet an existing or potential need. She advised there should be a discussion if they think this applicant has met the criteria and the facts they have in the record that would support that finding.

Ms. Swanson did not feel the use was harmful or hazardous. Mr. Zienkiewicz also felt the use was not noxious, harmful, or hazardous. Ms. Swanson noted they are talking about their findings but they are not talking about what they want to put in their Decision. Atty. Laughman replied they can go through all the Special Permit review criteria, find that they are all met, and then discuss conditions separate from the Special Permit criteria.

Mr. Hoeg then read 7.4.1.2 "The advantages of the proposed use outweigh any detrimental effects, and such detrimental effects on the neighborhood and the environment will not be greater than could be expected from development which could occur if the Special Permit were denied." Mr. Zienkiewicz said this was written for their residential Special Permits. It really was not written for a commercial use in an Industrial Park. Mr. Hoeg asked members if they agreed this did not apply. Mr. Conroy agreed. He did not have a problem with the growing but was more concerned with the retail aspect. Ms. Mancovsky was also okay with this.

Mr. Hoeg next read 7.4.1.3 "The applicant has no reasonable alternative available to accomplish this purpose in a manner more compatible with the character of the immediate neighborhood." Mr. Hoeg stated this was in an Industrial Park, and it was the area they identified for this type of use. Members agreed. Mr. Hoeg then read the next section, "The Special Permit Granting Authority shall determine that the proposal generally conforms to the principals of good engineering, sound planning, and correct land use, and that the applicant has the means to implement the proposal if a Special Permit is granted." All members agreed.

Mr. Hoeg read the final portion of the bylaw "The Special Permit Granting Authority shall have the power to impose reasonable conditions and modifications, including limitations of time and use, as a condition of a Special Permit, and may secure compliance or performance by requiring the posting of a bond or other safeguards." Mr. Hoeg believed that many of these compliance limitations had been applied by the Zoning Board of Appeals and the Board of Health. Mr. Hoeg believed this had already been dealt with or was not applicable. Mr. Zienkiewicz said he agreed with the bylaw as written.

Mr. Knox asked if all provisions provided by the Board of Health, as well the ZBA, will be included as a stipulation when they make their motion. Mr. Hoeg replied he thought there were several layers of oversight on this property. He asked Town Counsel if the motion should include those stipulations of the Board of Health so they are properly adopted. Atty. Laughman replied the Board of Health regulations exist independent of any of the zoning controls. The

Board of Health has independent jurisdictional authority to apply its regulations and enforce anything under its jurisdiction. The Zoning Board of Appeals has issued a permit for the medical portion and so to the extent that this Board would like to see those same conditions applied to the Adult Use or recreational component, they could vote to incorporate by reference all conditions imposed by the Zoning Board of Appeals in their Special Permit Decision. As the Special Permit Granting Authority for the Adult Use Recreational Marijuana, the Planning Board has the ability to impose any additional conditions beyond what the Zoning Board of Appeals has applied or to spell out or clarify anything they feel needs to be further addressed. For example, if they want to include something more specific on odor, sound, or traffic other than what was in the ZBA Decision, they have the ability to address that.

Ms. Mancovsky then read into the record the portion of a Decision from the Town of Medway which indicated there would be suitable mitigation measures. Atty. Laughman clarified in this instance they were expanding a facility where there had been odor complaints in the neighborhood. As part of the permitting, they required a supplemental odor mitigation plan that was going to be reviewed and addressed as the expansion occurred. Ms. Mancovsky said they could then condition their Special Permit upon if they find an issue with odor that mitigation will be taken by the property owner to address it and bring it into compliance with the bylaw. Is this redundant because the Board of Health is already doing this?

Atty. Laughman replied the Board of Health jurisdiction over odor has to do with public nuisance odor. There is a more stringent standard imposed in the Zoning bylaw in respect to absolutely no odor. She would be cautious about saying the Board of Health has jurisdiction over this as their jurisdiction is to public nuisance odor. The odor has to reach the level of a public nuisance before their jurisdiction comes into play. As the bylaw provides for no odor to escape, then you have tighter zoning controls and if there is an enforcement issue, it may be through the Building Department and the Zoning Enforcement Officer, rather than the Board of Health. However, if it reaches the level of a public nuisance then the Board of Health will have the ability to be involved as well.

Ms. Swanson noted that there should be something specific or a procedure. This gives the Building Commissioner the tools he needs in order to enforce this bylaw. Mr. Brady noted there will be three marijuana facilities in that area. How will they know which one the odor is coming from? He was spending a considerable amount on odor control but maybe other facilities were not. This is a concern of his.

Members then discussed odors that might possibly come from the kitchen. Ms. Mancovsky then read into the record the condition from the Town of Medway that dealt with odor and odor mitigation. Mr. Hoeg and Ms. Swanson both liked the way the condition had been written but pointed out that it should be specific to the odors generated from the plant and not kitchen odors. Mr. Conroy asked if it was feasible that they were going to have four large buildings in the Industrial Park growing marijuana, and they were not going to smell anything. Ms. Mancovsky replied it will depend on the investment the owners are putting into it. Mr. Brady's point was he is going in first. If his product works better, then his investment has paid off as the next applicant will have a bigger problem because the Town does not want odors.

Mr. Knox stated as an abutter he did not think it was reasonable to say no odor. He did speak out against this initially but understands this is happening. He thought there needed to be a reasonable standard. Mr. Conroy stated he did not say this lightly but the Town did vote to support this. At a certain point, you have to take some of the side effects with what are considered the benefits. Mr. Knox noted that Ms. Mancovsky had read a condition from the Medford Special Permit that spoke to an air filtration system. He suggested it be included that facilities must have air filtration or purification system. It would not be putting a burden on Mr. Brady as he has done it but it would set a standard for the rest of the facilities that are going in. Then if there is an issue with odor, those facilities would be held to the standard of repairing, upgrading, or fixing their air purification system so that odor is at a reasonable level.

Mr. Hoeg asked Atty. Laughman what their next step would be. She replied they had reviewed all the criteria so at this point they may want to close the public hearing. This means they will not accept any additional testimony, comments, or evidence. They will then vote on the Special Permit and discuss any potential conditions they may want to impose beyond what the Zoning Board has done. Ms. Swanson made the motion, seconded by Mr. Conroy, to close the hearing. The **vote was unanimous for.**

Ms. Mancovsky then made a motion, seconded by Ms. Swanson, to approve the Special Permit. The **vote was unanimous for.** The discussion then moved to the conditions the Board wanted to include.

Ms. Mancovsky made a motion that the Building Commissioner, in enforcing the conditions herein, may require additional odor investigations and/or odor mitigation measures or sound investigations or sound mitigation measures should legitimate concerns and complaints develop in the future about plant odor generation from the facility. The applicant may be further required to address such issues with the Board to its satisfaction. Ms. Swanson seconded the motion. The **vote was unanimous for.**

Ms. Mancovsky made a motion that the permit holder shall notify the Building Commissioner, Health Agent, Fire Chief, Police Chief, and the Board in writing within 48 hours of the cessation of operation of the marijuana business or the expiration or termination of the license holder's Certificates or Registration with the Massachusetts CCC. Mr. Conroy seconded the motion. The **vote was unanimous for.**

Ms. Mancovsky made a motion that this Permit does not authorize operation of a retail outlet for the sale of adult recreational marijuana products or the operation of testing facilities on the premises. Mr. Brady said they will be testing products for accuracy, THC content, etc. They are not certified by the State to publish that on their labels but it gives them an indication so they do have a testing lab as do most places. He just wanted to be careful of that condition, as no testing is rather broad. Atty. Laughman said that maybe they could talk about a general condition, and she could work on the specific language. She felt the intent is what is being permitted is what they have applied for a license to do which is product manufacturing and cultivation and whatever is inherent in those State license uses. The Board is not authorizing a retail operation or any other type of State licensed marijuana business. She did think the condition would need to be specific to that. Ms. Mancovsky said her motion would be contingent upon Atty.

Laughman modifying it to the specific needs of the Town of Lakeville. It was seconded by Ms. Swanson. The **vote** was **unanimous for**.

Mr. Hoeg asked if there were any other concerns. Mr. Conroy asked, when the parking was changed to add five spaces, what the affect was on the fire lane. Mr. Brady said he was unsure how to answer that. Mr. Conroy said he did feel the parking was well handled in that they could take the five spaces or even just three spaces back and allocate them. It might also be advisable to eliminate them. Mr. Brady said he would be happy to do that. If they made it a condition, they would remove them and give them a new set of stamped drawings.

Atty. Laughman said that she was willing to work on a draft decision and circulate it to the Board for their final approval that incorporates the findings, the conditions that were discussed this evening, as well as incorporating by reference the Zoning Board of Appeals decision if that is the Board's desire. Mr. Hoeg moved that they do as Atty. Laughman had suggested. Mr. Zienkiewicz seconded the motion. The **vote** was **unanimous for**.

Review the following petition from the Board of Appeals for:

1. Lemelin/Chappin – 31 Pilgrim Road

Ms. Mancovsky made a motion, seconded by Ms. Swanson, to make no comment on the Zoning Board of Appeals petition for Lemelin/Chappin – 31 Pilgrim Road. The **vote** was **unanimous for**.

New Business - Correspondence from Plymouth County Registry of Deeds

Mr. Zienkiewicz made the motion, seconded by Ms. Mancovsky, to take no action on the correspondence from the Plymouth County Registry of Deeds until after the April 1, 2019, election. The **vote** was **unanimous for**.

New Business - Review First Colony Development Decision

Ms. Murray advised this was just for informational review. This was a copy of the Zoning Board's Decision on 57 Long Point Road. She noted that one of the conditions imposed was Site Plan Review by the Planning Board.

Mr. Conroy also noted under New Business that something that had been added to be brought before ZBRAC was the bylaw regarding Special Permits for recreational marijuana. They are going to discuss this so please let him know if anyone has any thoughts or comments on this matter. He would welcome them to also attend this meeting.

Ms. Mancovsky advised the Board that the State is offering technical support for districts or large parcels of land that may be posing challenges to communities. She was going to share this information with one of the owners of the Hospital property but the request for support is due by

March 13, 2019. She had contacted the State to see if this was even an appropriate thing for her to do, but she has not yet heard back from them.

For the final New Business item, Mr. Zienkiewicz made a motion, seconded by Mr. Conroy, to send a letter to Ms. Garbitt requesting a Town Planner be added to the Planning Board's FY20 budget. The **vote** was **unanimous for**.

Adjournment

Ms. Swanson made a motion, seconded by Mr. Conroy, to adjourn the meeting. The **vote** was **unanimous for**.

The meeting was adjourned at 9:15.