



**Town of Barnstable
Planning Board
Minutes
August 26, 2013**

BARNSTABLE TOWN CLERK

2013 OCT 30 PM 1:28

Matthew Teague – Chairman	Present
Paul Curley – Vice Chairman	Present
Patrick Princi - Clerk	Present
Felicia Penn	Present
Raymond Lang	Present
David Munsell	Present
Stephen Helman	Present

Also in attendance were Art Traczyk, Regulatory Review Planner, JoAnne Buntich, Director, Growth Management, and Ruth Weil, Town Attorney.

Workshop: Medical Marijuana Treatment Centers Workshop

- *This workshop is intended to bring the Board up to date on what has occurred on this topic. It is expected to take some 45 minutes.*

JoAnne Buntich gives a brief history/update and reviews the Staff Report (Exhibit A). Moratorium and Overlay District (2 issues) to be addressed. Many studies were submitted and interviews have been conducted with various people/stakeholders. There will be a report forthcoming.

Ruth Weil, Town Attorney in attendance. Recommending that an ordinance be put forward in order to extend the Moratorium to May 19, 2014. Would like to propose something to Town Council for first reading on September 12, 2013, and then the Joint Public Hearing with the Planning Board on extending the Moratorium, on September 19, 2013.

JoAnne Buntich hands out copies of the draft proposed order for Town Council (Exhibit B)

Patrick Princi asks/refers to the Town of Wakefield case and if they chose a neighboring location.

Ruth Weil answers/explains/refers to what the Attorney General found in disapproving the Town of Wakefield is that a complete prohibition is inconsistent with the state law, conflicts with by-law.

The Attorney General's opinion in the Westborough case was approved in part. Their by-law has language to the effect that if the use is Federally prohibited than it cannot go forward.

Her opinion is that the Town would be less vulnerable if it was regulated and consistent with the state law.

Felicia Penn asks what additional information would be needed to put into the study?

JoAnne Buntich answers that they might not conclude the public process in time for the moratorium.

Ray Lang would like a definition of what the Moratorium is? It doesn't stop the application process?

Ruth Weil answers that there is a state process, phase 1 and 2. Applications are received from all over state. Our moratorium allows no use under our current zoning. Town/local zoning is not in place, but the state has to move forward. Many communities have moratoriums.

Ray Lang feels the Planning Board has not really been a part of this. He refers to Staff Report (Exhibit A) makes reference to listing of people/organizations that would be involved. He thinks that the Planning Board should be talking to all of the people on this list. This Board should provide input to staff.

Asks/questions why this is a state of Massachusetts regulation and it is prohibited at the Federal level?

Ruth Weil answers that the voters approved medicinal use marijuana. Massachusetts is the 20th state to do this. Massachusetts has approved the use of it in very limited purposes.

The cases dealing with moratoriums, both the state and U.S. Supreme court cases, require that a study be done, this is a scientific process. This would be impossible to do in the context of a Planning Board hearing. The moratorium could be subject to challenge if the study was not conducted as required.

JoAnne Buntich replies the content of the interviews will be published in the report that they will have ready shortly, it is not complete. The Joint Hearing coming up is about extending the moratorium.

We are here to re engage tonight. The next piece of information will be the results of this study. She wants the Board to think about where they want these uses to be, dispensaries, cultivation etc.

Patrick Princi suggests after review of report, we could invite people to a public hearing, for comment. He doesn't think a mapping would be good to do until we get the study.

David Munsell fully supports the moratorium. Confirms there are to be 5 in the county? Asks why can't we let other towns do this? We have banned second hand smoke, why have this? Does not think proposed/suggested locations are good, hospital, industrial area.

Stephen Helman states that he is in agreement with Mr. Lang, he would like input from people. He is not concerned about people coming here to get the help for this as a medicinal purpose. He would like to be more informed.

Paul Curley states we can't get in the way of progress. Important to follow the process, do not delay it. He looks forward to the report.

Matt Teague states our direction should be to get results of the study and move through the process as quickly as possible. Everybody wants it, just not next to them. We cannot say no. Our duty is to make a best faith effort and craft piece of zoning in the best location and with the input of the state regulations. He's very interested to see the public comment on this.

JoAnne Buntich asks the Board if she can show them some suggested locations they got from the people that they interviewed. There are regulations about land use. There are three components: dispensary, place where patients go to receive treatment, cultivation, has to be closed, locked facility, and co-located, cultivation and dispensary. The main concern from the hospital was that there would be an increase in drug seeking behavior.

Could have dispensary in one location and cultivation in another.

She makes reference to the map(s) (Exhibit C, Overlay Map). Points out different areas that were suggested for dispensaries and/or cultivation use. Cultivation is to be in an enclosed, locked facility and insulated from the outdoor environment.

Ray Lang asks if there would have to be a change made to the agricultural by law to allow or not allow the growing of Marijuana?

JoAnne Buntich answers that this was raised by an attorney that works for the state.

Felicia Penn confirms/asks about facility for growing, is it true that this would have to go for testing to make sure that it is the product that it should be? Dept. of Public Health.

JoAnne Buntich answers yes and points out the industrial area, which is Iyannough Rd., Phinneys Lane, Airport, and south of the Mid Cape highway. This was pointed out to be a good possible location.

Matt Teague asks about the size of a facility, transporting, business perspective and less touch, the more efficient it would be? The industrial concept may be of value.

JoAnne Buntich answers that there's been a broad range, some for several dispensaries, and some for just growing, some are proposing all 3. Sizes varied from 40,000 sq. ft. to a dispensary of maybe 3000 sq. ft.

Ray Lang asks if we can make another kind of district for medical marijuana?

JoAnne Buntich answers/explains that it would be an overlay district. There would still be permissions of use from original zoned area and rules, plus the new overlay district. They are recommending overlay so won't have to change any underlying existing zoning.

Ray Lang states the Yarmouth town line area should be a strong area for consideration.

JoAnne Buntich replies yes, for dispensary sites. We can't predict who will go where yet. The impacts of the study will mainly relate to setback issues, traffic issues, churches.

In conclusion the next steps will be a joint public hearing with the Planning Board and Town Council regarding extending the moratorium

Subdivisions:

7:15 PM Continued

Proposed Definitive Subdivision No. 822 Aberle Way – 2519 Main Street Barnstable - William A. Riley

To all persons deemed interested in the Planning Board acting under the General Laws of the Commonwealth of Massachusetts, Chapter 41, Sections 81A, through 81GG, Subdivision Control and all amendments thereto and the Town of Barnstable Chapter 801, Subdivision Regulations of the Code of the Town of Barnstable you are hereby notified of a Public Hearing to be held to consider Subdivision No. 822. The plan for this subdivision is entitled "Definitive Plan of Land in Barnstable, MA #2519 Main Street - Riley Subdivision" prepared for William A. Riley. The plan proposes the division of a 9.24-acre lot addressed 2519 Main Street, Barnstable, MA into six developable lots and creation of Aberle Way off Main Street (a/k/a Route 6A) to serve the new lots. The subject property is shown on Assessors Map 257 as Parcel 010.

- *Opened July 22, 2013, continued to August 26, 2013 - Follow-up issues:*

1. *Board of Health Review of Subdivision – See July 25, 2013 Letter with 6 Recommendations*
 2. *Applicant to review relocation/elimination of the existing utility pole on Route 6A that sits close to the proposed new roadway*
 3. *Applicant to investigate some low level lighting at the entrance to the subdivision.*
 4. *Easement to Homeowners needed for sloped retaining wall bordering the cul-de-sac (plan and/or text)*
 5. *Final review by Board's Engineer needed.*
- *Continued for review of draft subdivision documents; Decision, Development Agreement Home-owners Association Declaration*
 - *Application submitted June 20, 2013. No Extension of Time. Filing of Decision due September 20, 2013*

Dan Ojala in attendance. William Riley and John Kenney, Esq. also in attendance. Dan Ojala gives a brief history and a background of what was needed at the last hearing. He hands out a plan, "Entrance Revision Sketch" (Exhibit D) and refers to the plan as follows: Slid the roadway about 3.5 ft. to the southwest, which pulls the pole further off the edge of roadway, light will now show on the entrance way, crystal clear site distance past the pole. Full 6 ft. clear off the pole, pole will not need to be moved. The large tree will still be removed.

Matt Teague asks for any public comment. None.

David Munsell comments that he does not like the way this subdivision enters onto Route 6A. So many signs on this roadway. He thinks it's dangerous. Suggests sending letter to State to check the site distances here/curb cut issue. Speed issues here.

Patrick Princi states that the state is involved by our subdivision control laws anyway. This meets all the requirements/standards. They are only looking for a few waivers. He doesn't think there are safety issues. The Planning Board is not law enforcement.

Paul Curley supports it. He thinks that approval should be given for this subdivision.

Ray Lang objects to the waiver for the roadway to be reduced to 18 ft. from 22 ft. If there were a sidewalk in the area, kids wouldn't have to stand in the road. He's against the waiver for no sidewalks or reducing the size of the road.

Art Traczyk states that there is no final memorandum from Steve Seymour as of yet. Refers to Condition No. 18 of the Draft Notification of Approval (Exhibit E).

Dan Ojala replies that Steve Seymour asked for a reinforced concrete pipe in the road, he will make the change and note this revision.

Matt Teague asks for a unified set of plans to go to staff.

Attorney Kenney replies that he will have a homeowner agreement to give to staff shortly, he is making some edits. The actual property owner is Billken LLC. This is an entity change. William A. Riley, manager. This is more of a conveyance issue.

Felicia Penn makes a motion to continue this hearing for September 9, 2013, at 7:00 p.m., moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

Subdivision No. 405

**Goldman High Noon & Judith Eve
Request for Release of Security**

A letter dated August 5, 2013, from Attorney Jeffrey W. Oppenheim, in representation for the Estate of David Goldman, has requested the release of security. The Board had requested a \$5,000 security on September 10, 2012, to ensure that drainage improvements are properly functioning, grass be established in disturbed areas and overhanging vegetation be cleared. The securities were to be held by the Treasurer's office for a period of one year, at which time, and upon request by the developer, the Planning Board review the subdivision and if it is found to be completed, the Board will authorize the monies be returned to the developer.

Felicia Penn refers to Stephen Seymour's report dated August 26, 2013 (handed out at meeting, Exhibit F).

Felicia Penn makes a motion to release the remaining security, seconded by Paul Curley, so voted unanimously.

Regulatory Agreement:

7:45 PM Continued Hearing

Regulatory Agreement No. 2013- 03

**Hyannis Harbor Suites Hotel, LLC or Nominee & Harborview
Hotel Investors, LLC**

Regulatory Agreement No. 2013-03 is the application of Hyannis Harbor Suites Hotel, LLC or Nominee & Harborview Hotel Investors, LLC, seeking to enter into an agreement with the Town of Barnstable to construct and operate at 213 Ocean Street, Hyannis, MA a new four (4) story year-round hotel with up to sixty-eight (68) rooms, each room containing its own kitchen facility. This proposed hotel building is in addition to the existing 136 room Hyannis Harbor Hotel situated on the 3.4 acre lot. The subject property is located in the HD-Harbor District of the Hyannis Village Zoning Districts and is shown on Assessor's Map 326, Parcel 035.

The Regulatory Agreement seeks waivers from the Barnstable Zoning Ordinances, specifically:

Section 240-24.1.7.A – Harbor District, Permitted uses to allow hotel rooms with kitchens.

Section 240-24.1.7.C – Harbor District, Dimensional, bulk and other requirements, including maximum building height, to allow 4-stories where only a 2.5 story buildings are permitted, waivers of the 10-foot minimum side and rear setbacks, waiver of the 70% maximum lot coverage and waiver of the 10-foot front yard landscape setback.

Section 240-24.1.10 - Site Development Standards and Section 240-53 – Landscape Requirements for Parking Lots, including waivers from the following; the 6-foot minimum setback for parking lots, 10% interior parking lot landscaping, required minimum number of trees, dumpster setback from lot line and any other necessary relief.

Section 240-56 - Schedule of Off-Street Parking Requirements to allow a reduction in the required on-site parking.

In addition, the Regulatory Agreement seeks relief from the general ordinances of the Town, Chapter 112, Article III, Hyannis Main Street Waterfront Historic District seeking the Planning Board to act on behalf of the Hyannis Main Street Waterfront Historic District Commission.

- *Opened April 8, 2013, continued June 10, 2013, July 22, 2013, August 12, 2013, and to August 26, 2013 - continued for further review and finalizing of a Regulatory Agreement*

Matt Teague makes reference to request for continuance dated August 23, 2013, from Attorney Ford (handed out at meeting, Exhibit G).

Matt Teague entertains a motion to continue this hearing to September 23, 2013, at 7:30 p.m., so moved by Ray Lang, seconded by Paul Curley, so voted unanimously.

Discussion:

ZBA Comprehensive Permit Application No. 2013-047 - Habitat for Humanity – By letter dated August 16, 2013, the Zoning Board of Appeals has requested the Planning Board's review of an application for a Comprehensive Permit submitted by Habitat for Humanity to build 2 affordable housing units at 28 and 29 Sesame Street, Marstons Mills, MA, Assessor's Map 173 parcels 007-001 and 007-002.

Art Traczyk explains that this is a processing request from the ZBA for a comprehensive permit. It includes a road that they want to complete. Outstanding covenant for the two lots here as well as the right of way, which can be worked out within the grant of the comprehensive permit to be removed. The issue was some missing information and standards for this subdivision. He, Growth Management Staff and Stephen Seymour have discussed. Recommendation is for Stephen Seymour to ensure that the road is correctly done for the proper standards, 200 ft. road, and for recommendation for Stephen Seymour to assist the ZBA in this.

Felicia Penn remarks that it seems strange to formalize this, since Mr. Seymour is under the umbrella of Growth Management and do we really have to do this?

Art Traczyk replies that it is just to acknowledge to ZBA that the Planning Board is looking over this.

Matt Teague asks are they are looking for a letter? Some kind of maintenance program for? Probably a smart drainage design for utility of the road. He would recommend and he states that maintenance will be a problem.

Ray Lang states that the original subdivision approval showed a turnaround now shows half a T (see Exhibit H). Is this turnaround part of a street or a driveway? Looks like road goes into two houses. 100 ft. buffer zone, silt fence. He thinks maybe looking more carefully at this.

Matt Teague confirms that this is a Chapter 40B Comprehensive Permit and the Planning Board has no jurisdiction over this, only input.

Art Traczyk states that Habitat for Humanity has a purchase and sale for this property now.

Felicia Penn confirms to formalize the arrangement between Mr. Seymour and the ZBA. The Planning Board strongly recommends that they work with him and follow his guidance.

Follow-up to Election of Board Officers – Execution of Signature Documents for the Registrar, Registry of Deeds Barnstable County and Recorder, Boston Land Court

These have been signed by all members tonight.

Correspondence: Cape Cod Commission Hearing Notice for Proposed Amendment to Chapter H, Municipal Application for Revisions to DRI Thresholds, August 29, 2013

Felicia Penn asks/confirms that it's her understanding that the purpose of Chapter H is to increase the minimal thresholds for development so that the town would have more say without the projects having to go to the Commission. Does Chapter H allow the town, through appropriate processes to establish their minimum? Wondering if the Planning Board would like to be the first to have a discussion to be available for this?

Matt Teague comments that this may be a good idea, to examine these thresholds. Anything Planning Board should do?

Felicia Penn suggests possibly inviting the Commission to come and address us?

Art Traczyk states that JoAnne Buntich may be able to explain it, he does not know much about it. He will let her know.

Future Meetings: Regularly Scheduled Meetings: September 9, 2013 and September 23, 2013 @ 7:00 p.m.

Matt Teague entertains a motion to adjourn, moved by Paul Curley, seconded by Felicia Penn, so voted unanimously.

The meeting adjourned at 8:36 p.m.

Respectfully Submitted 
by Karen A. Herrand, Principal Assistant, Planning Board

Approved by vote of the Board on October 28, 2013
Further detail may be obtained by viewing the video via Channel 18 on demand at
<http://www.town.barnstable.ma.us>

List of Exhibit Documents

Exhibit A – Staff Report dated August 26, 2013 – File Zoning Ordinance Chptr. 240, Permitting of Medical Marijuana Treatment Centers Town Council Item No. 2013-055

Exhibit B – Town Council draft Amend Chapter 240 §129 of the Zoning Ordinance to Extend the Moratorium on the Establishment and Permitting of Medical Marijuana Treatment Centers and Associated Activities Through May 19, 2014 – File Zoning Ordinance Chptr. 240 Medical Marijuana Treatment Centers

Exhibit C – Map dated November 30, 2012 – Proposed Amendment to the Hyannis Zoning Map creating the Medical Marijuana Treatment Center Overlay District (MMTCOD) – File Zoning Ordinance Chptr. 240 Medical Marijuana Treatment Centers

Exhibit D – Plan dated August 27, 2013 – Entrance Revision Sketch to Accompany Definitive Subdivision Plan of Land – File Definitive Sub. No. 822, Aberle Way, 2519 Main St., Barnstable William A. Riley

Exhibit E – Draft Notification of Approval – File Definitive Sub. No. 822, Aberle Way, 2519 Main St., Barnstable William A. Riley

Exhibit F – Memorandum/Report from Stephen Seymour, dated August 26, 2013 – File Sub. No. 405, High Noon, Final Security Release

Exhibit G – Letter from Michael D. Ford, Esq., dated August 23, 2013 – File Regulatory Agreement No. 2013-03

Exhibit H – Zoning Board Plan Permit Set dated August 2, 2013 – File ZBA Comprehensive Permit Appln. No. 2013-047