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Town of North Reading
Massachusetts

Community Planning

MINUTES

Tuesday, April 29, 2014

Mr. Christopher B. Hayden, Chairperson called the Tuesday, April 29, 2014 meeting of the Community Planning Commission to order at 7:30p.m. in Room 10 of the North Reading Town Hall, 235 North Street, North Reading, MA.

MEMBERS

PRESENT: Christopher B. Hayden, Chairperson
Daniel Mills, Vice Chairperson
Patricia Romeo, Clerk
Warren Pearce
Neal Rooney

STAFF

PRESENT: Danielle McKnight, Planning Administrator

Mr. Hayden informed all present that the meeting was being recorded.

ANR - 0 Swan Pond Road – re-endorsement of mylars

Mr. Hayden stated that the applicant has been unable to locate the mylars that were signed on August 20, 2013, and therefore would like to request that the mylars be resigned.

Mrs. Romeo moved, seconded by Mr. Pearce and voted 3-0: (Mr. Mills abstained & Mr. Rooney absent)

that the Community Planning Commission vote to endorse as “Approval-Not-Required”, the plan entitled “Plan of Land in No. Reading, Mass”; dated 4/18/12, revised 8/20/13, drawn by Hayes Engineering, Inc.

Registered Marijuana Dispensary - workshop

Mr. Hayden stated that Chief Murphy was unable to make the meeting this evening. They did receive new information from Town Counsel that he would like to review.

Mrs. McKnight stated that she did read the opinion and it is straight forward. They are not recommending fingerprinting; it does not meet the State criteria.

Mr. Pearce stated that if they change the classification they could probably do it.

Mrs. McKnight stated that she’s not sure that it would make a difference.

Mr. Mills asked what the “Occupational Licensing Requirement” means. Doesn’t the town already do this? He believes that one was just passed and was specific to ice cream vendors.

Mr. Pearce stated that one would think there would be a crossover. The medical marijuana is a retail trade, which is similar to Walmart and we are not going to fingerprint people going to Walmart. He does believe that there is a loophole when it comes to caretakers. He believes that they could require a caretaker to be fingerprinted.

Mr. Rooney arrived at 7:45pm.

Mr. Pearce stated that there were some interesting points in this opinion. The guidance for law enforcement states that if someone has a medical card and less than 10oz. of medical marijuana on them, the police cannot ask them where they got it.

Mr. Hayden stated that there is loophole in the law. People are selling it out of their houses and they cannot be arrested or charged until the legislature closes the loophole in the law.

Mrs. McKnight stated that she would send Town Counsel's opinion to Chief Murphy and he can bring any questions he might have to the commission at their next workshop.

Mr. Hayden stated that it was not sent to Chief Murphy because she received it today.

There was some language in regard to: under what circumstances they can revoke the Special Permit. They already have similar language but she will adapt it so that it covers all of it.

Mr. Pearce stated that if the State revokes it, it is gone.

Mr. Pearce asked if they were going to make a requirement that they need to renew the license every couple of years.

Mrs. McKnight stated that she recalls that the commission did talk about not making the time period too short.

Mr. Hayden stated that it should be three or five years.

Mr. Pearce stated that it should be at least five years,

Mr. Rooney asked if there were any other towns that put a time limit.

Mrs. McKnight stated that some towns don't have anything and others are across the board.

Mr. Pearce stated that making it every two years would be onerous, but it might also prevent someone from locating it they have to do it every two years.

Mr. Mills stated that if there is an issue, it would be tough to act on if the renewal is every five years.

Mr. Pearce stated that the State would do something.

Mrs. McKnight stated that she agreed that the State would step in.

Mr. Hayden asked Mrs. McKnight if she thought about incorporating what they talked about.

Mrs. McKnight stated that she has not figured out exactly how to word it, but it will be something to the affect that there is to be no sale of medical marijuana can take place on any residential property.

Mr. Pearce stated that this may conflict with the caretaker's law.

Mrs. McKnight stated that it would not because they are talking about selling the product out of their home.

Mr. Pearce stated that as he understands it, this town's Board of Health wants nothing to do with this because the State's Department of Public Health rules are sufficient. He is concerned that the State's Board of Health is supposed to inspect, but from past precedent he does not think that they will be able to inspect these properties properly.

Mr. Hayden stated that they should talk to the Board of Selectmen to see if they would add the clause (Town's Board of Health will inspect) to the bylaw.

Mr. Pearce stated that if they put rules into the town's bylaw that are redundant to the States the Attorney General's office may not approve the bylaw.

Mr. Mills stated that he believes that the Board of Selectmen is more obligated than this commission to oversee the new bylaw.

Mrs. McKnight stated that she has been in direct contact with members of the Board of Health and they are not asking for the Board of Health to be part of the process.

Mrs. McKnight stated that since the Board of Selectmen are the Special Permit Granting Authority, when they issue a decision they can put in a condition "on an annual basis the Board of Health will inspect the premises".

Mr. Hayden stated that this inspection would be for the food, not the drug.

Mrs. McKnight stated that they could leave this for the Board of Selectmen, in their own rules & regulations and conditions for decisions that they issue, to incorporate, or they could do what some towns are doing, which is that the planning board formulates their zoning bylaw and completely separate from that is that the Board of Health may or may not formulate their own bylaw. The Board of Selectmen could encourage the Board of Health to do this if they think it is appropriate.

Mr. Pearce stated that his suggestion is that they should tell the Board of Selectmen that they did approach the Board of Health and their position was that the State is handling the whole thing.

Mrs. McKnight stated that she would add these items to the bylaw and would update Mr. Prisco about the discussion. She has updated the maps and wanted to know if the commission thought they were clear enough to present at town meeting.

The commission's consensus was that they are legible.

Mr. Mills asked if this was all for the Industrial area and if any analysis was done on the other parcel in town.

Mrs. McKnight stated that it was industrial and asked if it would be helpful to have a map illustrating this other parcel.

Mr. Pearce stated that there was too much housing.

Mr. Mills stated that he would just like to have it presented and how it is affected.

Mr. Pearce stated that one of the questions that may be asked is there a possibility that if the daycare closed, could the medical marijuana facility expand, but once the area is expanded, could they then not allow someone to come in and depress the area again.

Mr. Hayden stated that if "Celebration Kingdom" goes away for a year, but something comes back in two years, but there is no dispensary there, it would fluctuate.

Mr. Pearce stated that if the dispensary located on the parcel, then that would mean that a daycare could not go back onto the parcel.

Mrs. McKnight stated that the daycare could choose to go in. The dispensary cannot keep out the sensitive uses, but the sensitive uses could keep out the dispensary.

Mr. Pearce stated that if the dispensary is given a five year renewal, and within four years a daycare center moves in next to the dispensary, at the five year renewal they will be in violation.

Mr. Rooney asked why they would allow a daycare to move in.

Mr. Pearce stated that they do this at their own discretion, but he does not believe that this is true because he has seen it happen.

Mr. Hayden stated that they could put into the bylaw, that if a restrictive use moves within the zone of a legally existing dispensary, the dispensary is grandfathered.

Mr. Pearce stated that this is not a good way to put it. If they are going to cause this particular business to be restricted to this location because of what currently exists, then the reverse is true.

Mrs. McKnight stated that she is unsure if they can do that.

Mr. Hayden stated that they could use the term "pre-existing license" instead of "grandfathering".

Mrs. McKnight stated that she would like to get some clarity from Town Counsel because she does not want to get into territory where they are dis-allowing uses that were allowed by right, before.

Stop & Shop/97 Main Street - discussion

Mr. Hayden stated that Stop & Shop is going to file a Site Plan Review, because they are going to subdivide the building into three separate uses. 1) 40,000 sq. ft. for Ocean State Job Lots, 2) 12,000 sq. ft. gym and 3) 21,000 sq. ft. would possibly be used as a specialty food store or Tractor Supply.

Walmart – 72 Main Street - discussion

Mr. Hayden stated that Walmart is reviewing an option to put in a treatment plant.

Mr. Pearce asked if it was Walmart or Great Island Development.

Mrs. McKnight stated that the way it was explained by the building inspector it is the developer coming in with the application, but Walmart is paying for it.

Mr. Pearce stated that if they are going to become a super Walmart they would need to expand.

Minutes

Mrs. Romeo moved, seconded by Mr. Rooney and voted 5-0:

that the Community Planning Commission vote to approve the April 1, 2014 minutes as amended.

Planning Administrator Update157 Main Street

Mrs. McKnight stated that construction has begun.

Budget

Mrs. McKnight stated that the Board of Selectmen voted to approve an additional \$10,000.00 for GIS and \$6,000.00 to an EDSAT assessment with Northeastern.

GIS Flyover

Mrs. McKnight stated that she followed up with the Finance Director, Liz Pavao to see if there was any way that they could revise their capital request or do anything else, to take advantage of this inexpensive way to capture the photography and was told no.

Senior Housing

The community Planning Commission discussed the previously pursued housing grant for the Carpenter Drive property.

Mr. Pearce asked if they were going to build and sell.

Mr. Hayden stated the town would supply the property, with a 20 year buy-out plan.

Mr. Pearce stated that the inventory is very low right now and does not think that it would be viable at this time.

Mrs. McKnight stated that the Housing Authority was pursuing this particular property for that type of use, there is no funding right now, but that does not mean that they should stop looking.

Mr. Pearce stated that as the economy continues to improve, eventually money and grants will be available for the Housing Authority to pursue.

Cell Towers

Mrs. McKnight stated that two Request for Proposals went out to lease space, to companies, to put new equipment on the existing towers for Tower Road and Swan Pond Road.

Mr. Hayden stated that they would need to come to the commission for approval.

Mrs. McKnight stated that she was unsure if they would need to come to commission for approval because the new FCC regulations.

Mr. Hayden stated that this is new equipment, so they do need to come back to the commission.

Mr. Pearce stated that the planner should check this to be sure. If they stay within the existing footprint they are all set.

Mrs. McKnight stated that there is a new tower that is being contemplated on 117 Marblehead Street. (Pretty property) They have not applied to anyone in Town, but they have advertised in the Transcript. She did call and told them what they would need to do before they begin construction.

Sidewalk Survey

The Director of Public Works, Dick Carnevale has a draft of the plan and BETA is coming into meet with him, she has been invited to attend.

Charles St. Ext.

Mrs. McKnight stated that the project has stalled and she believes that it is the contractor who is working on another project in Town. (Pine Forest Park)

3 Gifford Way

Mrs. McKnight stated that work started a few weeks ago at this site and the developer never called for inspections. David Giangrande was sent out to review the site and found that there were numerous issues. The developer is not using pervious asphalt, as shown on the plan. He was going to use pavers instead and David does not have an issue with pavers, except that the ones they were going to use are not acceptable. The road work was stopped and they need to come back to this commission and conservation for approval of the changes.

Flash Road

Mrs. McKnight stated that construction should be starting soon. The developer has submitted the Letter of Credit in the full amount. DPW is still waiting for them to fulfill other requirements.

Amber Road

Mr. Hayden stated that Amber Road is a mess and the DCR needs to be contacted.

Mrs. McKnight stated that she would send a letter.

Executive Session

Mr. Hayden informed all that they would be entering into Executive Session and would not be returning to the regular meeting.

Mrs. Romeo moved, seconded by Mr. Rooney and voted 5-0:

that the Community Planning Commission enter into Executive Session pursuant to Mass. General Law chapter 39, section 23.B.8.

Mr. Rooney – Aye

Mr. Pearce - Aye

Mr. Mills – Aye

Mrs. Romeo – Aye

Mr. Hayden - Aye

Adjournment at 8:45PM

Respectfully submitted,



Patricia Romeo, Clerk

Danielle McKnight

From: Patricia A. Cantor <PCantor@k-plaw.com>
Sent: Monday, April 28, 2014 4:30 PM
To: Danielle McKnight
Cc: Greg Balukonis; Darren Klein; John J. Goldrosen
Subject: RE: Medical marijuana questions

Dear Danielle,

John asked me to follow up with you because I have been working on reviewing most of the medical marijuana bylaws and related questions for our clients.

First Question

1. North Reading is interested in adding a fingerprinting requirement to our bylaw. Will we also need to amend our town code, Article II, Fingerprinting of Applicants; Criminal History Checks, Section 104-3, in order to allow for this? And, would we need to do that in a separate warrant article, or together with the zoning amendment?

In my opinion, civil fingerprinting of persons associated with registered marijuana dispensaries would not be permitted under the Massachusetts Civil Fingerprinting Law, G.L. c.6, §172B½, because such persons are not “applicants for licenses in specified occupations,” as the statute provides, unless the Town has an occupational licensure requirement for an applicant. See below for the relevant statutory provision. It is therefore my opinion that an amendment to the Town Code, Article II, §104-3, that authorizes the Town to conduct nationwide fingerprint based criminal background checks may be disapproved by the Attorney General’s office and/or the state Department of Criminal Justice Information Systems (DCJIS) or the FBI.

G.L. c.6, §172B½ provides, in relevant part that, municipalities may, by local ordinance or bylaw, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to c.6, §§168 and 172 and 28 U.S.C. § 534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the FBI for a national criminal records check.

G.L. c. 6, s. 172B ½ does not specify the licenses that may be included in a Civil Fingerprinting Bylaw other than to say it is for “applicants for licenses in specified occupations...” Many other communities have only included occupational licenses to the extent that such background checks are, in the Town’s opinion, necessary to preserve the public safety. The licenses that have been designated in the Civil Fingerprinting Bylaws that we have reviewed deal generally with licenses where individuals have direct and unmonitored access to individuals, e.g. taxicab drivers, door-to-door solicitors, hawkers and peddlers and ice cream truck vendors. In response to your inquiry, we have spoken with representatives from DCJIS who confirmed that they have not, to date, seen any Civil Fingerprinting Bylaws include a civil fingerprinting provision for medical marijuana dispensary agents or other persons associated with a registered marijuana dispensary (RMD). The DCJIS representative emphasized that background checks for RMDs are conducted under the state Department of Public Health (DPH) regulation and unless an applicant was specifically obtaining an “occupational license” from the Town (rather than DPH), then civil fingerprinting would not be appropriate.

Accordingly, in my opinion, where the occupational licenses subject to civil fingerprinting are not designated in the statute, the Town may only include such a license in its Civil Fingerprinting Bylaw, if it is going to grant an occupational license to a medical marijuana dispensary agent, separate and apart from any license issued by DPH to operate the dispensary. Please be advised that even if the Town does issue such an occupational license, as this is a new and evolving area of the law, in my opinion, it runs the risk of the Attorney General and/or DCJIS or the FBI determining that the categories of licenses is too broad or inconsistent with state law. I note that state regulations, 105 CMR 725.030(C), require a RMD to submit a CORI report for each individual for whom the RMD seeks a dispensary agent registration, but

do not require fingerprinting. In addition, I note that there would be an increased administrative burden on the police department to implement the program for a significant number of licenses while ensuring that the results of the criminal background checks are maintained in a confidential and secure manner, as required.

Finally, in my opinion, even if the Town were to adopt a bylaw requiring a RMD dispensary agent to obtain a Town occupational license and the Code, Article II, §104-3, was amended to include such an occupation, the Bylaw amendments would be a separate warrant article and would not be part of a zoning bylaw amendment regulating RMDs under zoning.

Second Question

2. Under what circumstances could the SPGA revoke a special permit? Could we put a provision in the bylaw that allows us to revoke it if the state issues a violation of their regulations?

Many zoning bylaws regulating medical marijuana do provide that if the RMD license is revoked or termination by the DPH, the special permit shall lapse. Additionally, the violation of a condition in a permit could give rise to a zoning enforcement action by the Town's Zoning Enforcement Officer. In my opinion, there is no clear authority for a SPGA to revoke a special permit. Enforcement is achieved by the Town's Zoning Enforcement Officer who would issue a cease and desist order and/or bring an enforcement action in court for violation of a permit condition. The result of a successful enforcement could be, in effect, revocation of the permit, but the SPGA does not have the power, in my opinion on its own initiative to enforce a special permit though revocation.

The DPH regulations, 105 CMR 725.450-510, establish a detailed process for addressing any violation of a RMD license. The process includes multiple steps and may result in license revocation. In my opinion, a condition in a bylaw requiring that a special permit for an RMD be conditioned on a continuing valid DPH license would be consistent with state law and I note that the Attorney General has approved many such provisions. However, in my further opinion, a local requirement that would result in revocation of a permit for a violation of state law that did not result in revocation by DPH could be found by the Attorney General to be inconsistent with state law

The following are examples of provisions that you may want to consider:

The special permit shall expire within xx years of its issuance. If the permit holder wishes to renew the special permit, an application to renew the special permit must be submitted at least xxx days prior to the expiration of the special permit.
The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the Medical Marijuana Treatment Center.

- a) Special Permits shall be issued to the RMD Operator for a specific site/parcel and shall be non-transferable to either another RMD Operator or site/parcel.
- b) Special Permits shall have a term limited to the duration of the applicant's ownership/control of the premises as a RMD, and shall lapse:
 - i) if the permit holder ceases operation of the RMD, and/or
 - ii) the permit holder's registration by DPH expires or is terminated
 - iii) The permit holder shall notify the Zoning Enforcement Officer and Special Permit Granting Authority in writing within 48 hours of such lapse, cessation, discontinuance or expiration.

If you have any further questions or would like to discuss this matter, please contact me.

Regards,
Pat

Patricia A. Cantor, Esq.
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From: Danielle McKnight [mailto:dmcknight@northreadingma.gov]
Sent: Thursday, April 24, 2014 1:55 PM
To: John J. Goldrosen
Subject: RE: Medical marijuana questions

Hello John,

I just wanted to check in on my questions below. We are having an (informal) planning discussion/workshop on medical marijuana Tues. 4/29, and if you are able to answer by then, that would be helpful.

Thanks,

Danielle McKnight
Planning Administrator
235 North Street
North Reading, MA 01864
(978) 357-5206
dmcknight@northreadingma.gov

From: Danielle McKnight
Sent: Tuesday, April 15, 2014 11:57 AM
To: 'JGoldrosen@k-plaw.com'
Subject: Medical marijuana questions

Hello John:

I have two additional questions as we continue to work on our medical marijuana bylaw:

1. North Reading is interested in adding a fingerprinting requirement to our bylaw. Will we also need to amend our town code, Article II, Fingerprinting of Applicants; Criminal History Checks, Section 104-3, in order to allow for this? And, would we need to do that in a separate warrant article, or together with the zoning amendment?
2. Under what circumstances could the SPGA revoke a special permit? Could we put a provision in the bylaw that allows us to revoke it if the state issues a violation of their regulations?

Thank you,

Danielle McKnight