



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 10.17.17

Planning Board Meeting Minutes October 4, 2017

Members in attendance: Theresa Capobianco, Chair; Amy Poretsky; George Pember; Leslie Harrison; Michelle Gillespie

Others in attendance: Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary; Jason Perreault, Chairman, Board of Selectmen; Keith Martinek; Carolyn Harrington; Craig Cox; Jennifer Costa; Tom Racca; Janice Fournier; Tim Kaelin

Chair Theresa Capobianco called the meeting to order at 7:02PM.

Continued Zoning Discussion for 2018 Town Meeting – Ms. Capobianco explained that Ms. Joubert and Ms. Poretsky had recently attended a meeting of the Massachusetts Municipal Lawyers Association and she asked them to share what they learned.

Ms. Joubert noted that the workshop addressed the issue of recreational marijuana regulations following passage of Question #4 last November. She discussed the state-imposed timeline as follows:

August 1, 2017 – Cannabis Advisory Board appointed (25 member board)

September 1, 2017 – 5 member Cannabis Control Commission (CCC) appointed. Ms. Joubert noted that one of the members of the CCC is a former member of the Town's legal advisory team.

March 15, 2018 – CCC is required to have regulations adopted stipulating how the state and towns should proceed with regulating recreational marijuana. She noted that there was a question raised at the last meeting about display, labeling, and marketing of products that, as yet, has not been answered but will be addressed by the CCC.

April 1, 2018 – CCC can begin accepting license applications. Ms. Joubert noted that this date is most concerning and garnered much discussion at yesterday's workshop.

June 1, 2018 – State can begin issuing licenses.

June 30, 2018 – Northborough moratorium expires. Ms. Joubert explained that the town can regulate to either prohibit or allow recreational marijuana. She suggested that, if the town opts to allow, then a decision is needed about where it is to be allowed.

Ms. Joubert commented that, typically, if a town wishes to prohibit a use they simply do not address it in their bylaw; hence an omission of a use in the bylaw means that it is a prohibited use. However, it is the opposite with this new legislation requiring the town to specifically opt out. She noted that, since Northborough voted against Question 4, the town can proceed to go to Town Meeting to ban or approve it. She explained that Town Counsel has advised that the town should have the following three specific votes at Town Meeting:

1. A vote by the Board of Selectmen, if they so choose, recommending a general article at Town Meeting prohibiting recreational marijuana businesses in town. Ms. Joubert reiterated that, should the town choose to opt out, it does have the ability to opt in at a later date;
2. A zoning article, similar to the general bylaw from the Board of Selectmen, prohibiting recreational marijuana; and
3. Ms. Joubert discussed the need to have a backup article, to give the town the ability to regulate and control such use should the articles to prohibit fail at Town Meeting.

Ms. Joubert stated that there is some concern about whether the CCC will be able to meet the March 15, 2018 deadline.

Ms. Joubert commented that, if the Planning Board and Board of Selectmen choose not to opt out and to regulate recreational marijuana, then there would only be the one zoning bylaw needed at Town Meeting with regards to recreational marijuana. Ms. Joubert emphasized that the resounding opinions voiced during yesterday's workshop is that there remains too much unknown at this time and it might be worth considering to opt out instead of being one of the first communities to allow it with so many unanswered questions.

Ms. Joubert discussed "listening sessions" to be held by the CCC, at which the Massachusetts Association of Planning Directors intend to present a series of questions. She commented that this is not a statement of support or opposition, but is simply a desire to better understand how to regulate. She voiced her understanding that the CCC will listen to attendees but not respond.

Ms. Joubert explained that there is a great deal of concern about the pending expirations of moratoriums in several communities, and the question of whether towns are protected given the April 1, 2018 timeline when the CCC can begin accepting license applications for recreational marijuana facilities. She noted that the Assistant Attorney General erred on the side of caution by suggesting that communities consider holding Special Town Meetings prior to the April 1 deadline. Ms. Joubert stated that she had spoken with the Town Administrator, who indicated that he has a series of questions for Town Counsel about whether our moratorium protects the town against the April 1 license application date. She noted concerns about whether someone applying for a license between April 1 and the date of our Town Meeting, with the lack of a bylaw during that period, would have a window through which they could potentially get into a community with a moratorium in place. Ms. Joubert commented that one of the attorney's on the panel at yesterday's workshop believes that having a moratorium in place means that nothing can happen while it is in place. She referred to a memo from Town Counsel in which they specifically state that "The CCC will be governed by the zoning bylaws or ordinances **in effect at the time of application**. Municipalities must inform the CCC of any bylaw or ordinance that would make the applicant noncompliant if the license is issued." She stated that town staff believes that this is in reference to moratoriums currently in place, and this is one of several questions being sent to Town

Counsel for clarification. She stated that she hopes to get answers before the next Board of Selectmen's meeting on October 16. She also noted that the Board of Selectmen typically hears presentations at one meeting and takes a vote at their following, so it is possible that the Planning Board may not receive feedback from the Selectmen until after their November 13th meeting.

Ms. Harrison asked if the state has considered delaying their timeline, and if there is any concern about the timing or liabilities.

Mr. Pember asked if the bylaw can differentiate between the sale and cultivation of product or if they come as a package. Ms. Joubert agreed to get clarification on that issue, but voiced her understanding that medical marijuana is now a part of the recreational marijuana law. She stated that there is some concern about whether existing medical marijuana cultivation or dispensary facilities (Northborough has neither) can be automatically converted into recreational marijuana facilities. She also indicated that the laws regarding personal use remain in place whether the town opts in or out.

In response to a question from Ms. Gillespie about the frequency of Board of Selectmen meetings, Ms. Joubert indicated that they meet on the 2nd and 4th Monday of the month, but holidays in the fall have altered that schedule. Ms. Joubert also indicated that, although the Planning Board is a stand-alone board, she has reached out to get information about where the Board of Selectmen stands before the Planning Board proposes a bylaw. Ms. Gillespie expressed concerns about not having an opinion until mid-November, especially given that the Planning Board is also trying to address a bylaw on duplexes. She emphasized the need to have sufficient time to write an adequate bylaw, which might be challenging under this timeline. Ms. Joubert stated that, since we do not have a model bylaw available, she will request help from Town Counsel in drafting a bylaw. Ms. Capobianco explained that the town will need to have a bylaw ready for an opt in option in the event an article to opt out does not pass.

Ms. Harrison suggested that having the two boards involved could cause some confusion, and questioned whether this will result in opposing articles at Town Meeting. Ms. Joubert expressed her desire for the two boards to work together so that this will not be the scenario.

Ms. Poretsky commented that the fact that Northborough did vote no on the ballot question is key. She emphasized the importance of opting out at this point, especially since the statute was written so poorly and it will be hard to regulate.

Ms. Poretsky reiterated her suggestion for the town to opt out, and reiterated that there is the opportunity to opt in at a later date. She noted that the cost of a license is only \$5,000 and a high demand is expected when the state opens the application process.

Ms. Joubert noted that the Attorney General's office has commented that this is very unclear legislation. She explained that current tobacco and alcohol regulations in Massachusetts allow towns to impose local regulations and licensing, but it is unclear in the statute if it is possible to do so for recreational marijuana use. She noted that it is not possible to get guidance yet as the CCC was just formed and there isn't any case law yet as the statute is new and hasn't been tested in court.

Ms. Gillespie noted that the representative from the Attorney General's office has recommended that towns get something in place by April 1, 2018. Ms. Joubert voiced her opinion that her comments mean that she cannot make the assumption that a temporary moratorium is going to hold up as other zoning moratoriums have, so suggested that we opt out before April 1 if we want to guarantee protection.

Ms. Joubert reiterated that attorneys on the workshop panel had differing opinions, so she is asking Town Counsel for clarification.

Ms. Poretsky referenced a letter from School Superintendent, Christine Johnston, in which she weighed in heavily in favor of opting out (copy of letter attached).

Ms. Capobianco asked if there is anything else that the Board of Selectmen needs from the Planning Board. Ms. Joubert indicated that the Town Administrator has requested input as to where the Planning Board stands on the issue. In response to a question previously raised by Ms. Poretsky, Ms. Joubert confirmed that the majority of the board must agree with whatever it is that they are sending to Town Meeting. Ms. Capobianco emphasized that the town cannot do nothing, and would do so at our own peril. Ms. Joubert agreed, and noted that if nothing is presented at Town Meeting, the moratorium will expire and the absence of a regulation would mean that recreational marijuana can go anywhere in town and we would have no way to control it.

Ms. Capobianco asked for a poll of the Board regarding opting out or not:

Ms. Poretsky voiced her opinion that the town should opt out.

Michelle Gillespie spoke in favor of opting out.

Leslie Harrison indicated that she would not opt out.

George Pember and Theresa Capobianco both indicated that they are undecided.

Ms. Joubert agreed to report back to the Board of Selectmen.

Ms. Capobianco explained that, as this is not a public hearing and was not advertised as such, the board cannot open up to public comments.

In response to a question from an audience member and suggestion by Ms. Gillespie, Ms. Capobianco explained that Planning Board meetings are public meetings, which allow for the public to attend and listen, but a public hearing is different. She noted that this meeting was not intended to be a public hearing and was not advertised as such, and thus does not allow for public comment. She explained that the public will have the opportunity to speak when the agenda shows a public hearing to discuss the issue. She commented that, at this point, there is still more information to be gathered before public comment can be considered. She emphasized that there will be a public hearing scheduled, at which time comments will be allowed.

An audience member voiced concern about recreational marijuana distribution, and whether accessories and paraphernalia will fall under this umbrella and result in droves of people coming in to town to purchase. Ms. Joubert explained that the Building Department and Board of Health will be involved in that, when the time comes.

Ms. Joubert discussed rumors about Spero's Snack Shack, and voiced her understanding that a gentlemen from that business had submitted a zoning determination form within the last six months to determine whether he can change the Snack Shack to a retail store, which is allowed in that zoning district. She noted that no one from that business has called or come to town hall to request a permit for a retail store. In response to the question about sales of paraphernalia, Ms. Joubert indicated that Town Counsel has said that this would not be allowed under the moratorium but, once the moratorium is lifted, it could be possible depending on the vote at Town Meeting. She voiced her understanding

that there are currently two gas stations in town that sell glass pipes, and explained that they are grandfathered from the moratorium. Ms. Poretsky suggested that, if we do write a bylaw to opt out, we can also write a bylaw to prohibit accessories as well.

An audience member asked if the board can provide assurance that the public will have an opportunity to comment. Ms. Capobianco indicated that it is required, and suggested that the best assurance is the fact that the Town Planner has already put Town Counsel on notice that we need their help. She stated that, once we have draft documents, we will know what we need to do to be ready for the February 1 warrant article deadline. Ms. Gillespie suggested that it will be critical to know whether there is a need for a Special Town Meeting before April 1, 2018. Ms. Capobianco commented that everything that this board does has to be put out for public comment. She also noted that residents have the opportunity to speak at Town Meeting.

In response to a question from an audience member, Ms. Capobianco explained that citizens can vote to either approve or deny whatever the Planning Board brings to Town Meeting. She also noted that a Citizen's Petition can be brought forward at Town Meeting. Ms. Joubert stated that a Citizen's Petition must go before the Board of Selectmen.

Master Plan – Ms. Joubert noted that the deadline for responding to the RFP has passed, and two firms have submitted proposals. She indicated that she will now work with town staff to schedule interviews.

Citizen Planner Training Collaborative (CPTC) Ms. Joubert invited anyone interested in attending these sessions to contact her.

Zoning Board of Appeals meeting, October 24th – Ms. Joubert noted that there is one application for the next ZBA meeting, and the applicant is scheduled to go before the Design Review Committee (DRC) tomorrow. She explained that the proposal for the property at 89 West Main Street seeks approval for a commercial use (hair salon) on the first floor with 3 residential apartments upstairs. She mentioned that the DRC has held one meeting on the application and found the design to be favorable, though there are some issues with the site plan that need to be addressed before the ZBA meeting. In response to a question from Ms. Capobianco, Ms. Joubert indicated that the applicant is not seeking to build more apartments than what is allowed. Ms. Gillespie recalled that there are some ADA issues that also need to be addressed.

Duplexes – Ms. Capobianco asked about work being done by Judi Barrett. Ms. Joubert indicated that Ms. Barrett will be here for a meeting at 7:00PM on November 15th. Ms. Capobianco asked if the board is going to get information about what surrounding towns are doing about duplex developments. Ms. Joubert confirmed that this information will be provided. She reiterated that the bylaws to be addressed at the next Town Meeting are for duplexes and recreational marijuana. Ms. Gillespie asked about the bylaw pertaining to curb cuts for driveways. Ms. Joubert responded she will connect with DPW to see if this needs to be a zoning bylaw or something the department can regulate through their own regulations.

Ms. Joubert voiced her understanding that Ms. Barrett will speak with each board member individually to get their input and concerns, which will be consolidated for discussion at the board's November meeting. Ms. Joubert agreed to provide board members with copies of Meeting Minutes to allow them to review previous discussions.

In response to a question from Ms. Gillespie, Ms. Poretsky noted that other towns differentiate between two-families and duplexes, with conversions going from one family to two but requiring the walls and footprint to stay the same and duplexes being classified as multifamily. She voiced her understanding that Westborough allows conversions vs. teardowns in their downtown.

Howard Street – Mr. Pember asked if it is appropriate to discuss what is happening with land at the end of Howard Street. Ms. Joubert noted that the matter will go before the Conservation Commission. Mr. Pember explained that there is a large parcel (75 acres) that the owner intends to sell to the Town of Berlin but there appears to be ½ to 1 acre within Northborough that Berlin Town Counsel has indicated that they cannot accept. Ms. Joubert stated Sudbury Valley Trustees (SVT) will be speaking at the next Conservation Commission meeting, since the majority of the land abuts Mt. Pisgah, and they will discuss accepting the parcels as conservation land. She also voiced her understanding that there will be no money required from the Town of Northborough for this transaction.

Zoning bylaw - Ms. Poretsky recalled that the board had also discussed addressing special permits at Town Meeting, and modifying the bylaw so that they will remain with the owner and not with the land. Ms. Joubert indicated that she was not at the last ZBA meeting, but will be sure that the issue is discussed at their next meeting if they have not already done so.

Ms. Capobianco expressed her appreciation to the audience. She recognized that it is a frustrating process and promised that there will be an opportunity to speak. She advised the audience members to look for a posting of a public hearing on an agenda for an upcoming meeting, which will be an indication that they will be afforded the ability to comment.

In response to a question from an audience member, Ms. Capobianco indicated that the results of the straw poll taken earlier this evening will be provided to the Board of Selectmen tomorrow. She also reiterated that the board is awaiting guidance from Town Counsel.

Ms. Poretsky presented a petition from 37 residents who wish the Town to opt out.

Meeting adjourned at 8:22PM.

Respectfully submitted,

Elaine Rowe
Board Secretary