



# TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 4.3.18

## Planning Board Meeting Minutes October 17, 2017

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

**Others in attendance:** Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary; Bryan Smith, 117 Indian Meadow Drive; Kerri Martinek, 16 Hemlock Drive; Jason Perreault, 27 Treetop Circle; Bill Pantazis, 10 Mulberry Lane

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

### **Continued Zoning Discussion for 2018 Town Meeting**

Ms. Capobianco noted that the Board of Selectmen had met last evening to address the issue of recreational marijuana. Ms. Joubert explained that she had sent out an email earlier today and has also provided hard copy tonight of the letter provided by Jason Perreault indicating that the Board of Selectmen voted unanimously to move forward with a general bylaw to opt out of recreational marijuana, medical marijuana, and associated merchandise. Ms. Harrison voiced her understanding that there is no distinction between recreational and medical marijuana. Ms. Joubert explained that there is currently a separate statute for each, but there is language in the recreational marijuana law about the inclusion of medical marijuana. She noted that the Cannabis Control Commission (CCC) will be required to come up with regulations for recreational marijuana as well as determining how medical marijuana will be included in the statute.

Ms. Joubert commented that Town Counsel is still in the process of gathering information, and was directed last night to contact the office of the Attorney General about the April 1, 2018 date when the CCC can begin accepting license applications for recreational marijuana retail establishments. She also noted that there is some confusion and question about whether the moratorium currently in place protects the town. She explained that some people believe that the April 1 date could open the town up to applications for siting a facility in Northborough since it occurs prior to our Town Meeting. Ms. Joubert indicated that Town Counsel is emphatic that our moratorium is in effect until June 30, 2018 or the adoption of a bylaw, whichever comes first. She stated that the Board of Selectmen has asked Town Counsel to work with the Planning Board to draft bylaws, and Counsel has provided sample language for the town to opt out for both our general bylaw and our zoning bylaw. She noted that Town Counsel has

suggested that the town do both because there are still so many unanswered questions and so much ambiguity. She also indicated that she had attended a listening session with the CCC, who will be using information from the public to develop regulations.

Ms. Joubert commented that the draft language provided by Town Counsel will be expanded to add in other components. She stated that, in the event a zoning bylaw to opt out is defeated at Town Meeting, we need to be ready with an article that will regulate marijuana. She noted that she had provided Town Counsel with our medical marijuana bylaw for reference and suggested further discussions about where to allow recreational marijuana should the opt out article fail. Ms. Joubert also mentioned that the marijuana statute states that the absence of regulating a marijuana use in the bylaw means that it is allowed, so the town must either prohibit it or regulate it.

In response to a question from Mr. Pember about the required vote at Town Meeting, Ms. Joubert indicated that a majority vote is required for the general bylaw and the zoning bylaw requires a 2/3 majority.

Ms. Gillespie asked Ms. Joubert to explain the use variance process as it applies to recreational marijuana, and asked if it is possible to address it in our zoning bylaw. Ms. Joubert noted that she had discussed this matter with Town Counsel who indicated that we would have to add language to stipulate that no use variances are allowed for recreational and medical marijuana.

Ms. Poretzky recalled that there was discussion at last night's Board of Selectman's meeting about the 90-day period for the AG's office to review a bylaw, and asked for clarification. Ms. Joubert explained that, by statute, the Attorney General's office has 90 days to review a bylaw and respond to the community. She also noted that, regardless of whether it is a Special Town Meeting or an Annual Town Meeting, the night that the town votes is the night that the bylaw becomes effective. She stated that, should the bylaw be found to be invalid or have an egregious error, it would revert back to the way it was immediately upon receipt of the letter from the Attorney General.

Ms. Capobianco expressed appreciation to the Planning Department and Town Counsel for compiling a great deal of information in a very short time. She also recognized the Board of Selectmen for taking up the issue so quickly.

Ms. Capobianco noted that the board had taken an informal poll on the matter, and voiced her opinion that she is now in a better position to render a decision.

Ms. Joubert stated that Town Counsel has opined there is no need to hold a Special Town Meeting, but the Board of Selectmen has committed to doing so if they receive any information that causes them to feel differently. Ms. Gillespie commented that this issue is of great concern to town residents. Ms. Joubert stated that, based on questions that were asked at the Board of Selectman's meeting, she believes people in attendance came away with a better comfort level, especially given that the Board agreed to call a Special Town Meeting if warranted.

Ms. Capobianco conducted an informal poll of the members regarding their position on opting out, with 4 in favor and one opposed (Leslie Harrison opposed).

Mr. Pember indicated that he has no opposition to medical marijuana since it is so tightly controlled and highly regulated. Ms. Poretsky explained that, if we allow medical marijuana then we are also allowing recreational marijuana. She also suggested that most medical marijuana facilities will likely choose to do recreational marijuana as it is easier and less expensive. Ms. Joubert reiterated that there is quite a bit that is still unknown, which is why the town will include medical marijuana in the proposed bylaw.

Ms. Capobianco indicated that the Planning Board is in a holding pattern in terms of working on this particular bylaw, pending draft language from Town Counsel. She requested that the draft be provided to board members for review prior to the November 15, 2017 meeting. Ms. Joubert suggested that the board discuss which districts they would like to allow the use, in the event the opt out is defeated. Ms. Capobianco indicated a preference that the use be restricted to the Highway Business District (Route 9 and a portion of Lawrence Street). Ms. Joubert commented that this is the area where medical marijuana was proposed to go, and noted that there were also buffers included in the bylaw language. Ms. Poretsky cautioned the board about not being too restrictive. Ms. Capobianco asked if we can tie a “no use” variance to both an opt in and opt out. Ms. Joubert agreed to ask Town Counsel.

Ms. Joubert recalled that the buffer zone for medical marijuana was a minimum of 300 feet from schools, day care facilities, and churches. Ms. Capobianco suggested that recreational facilities also be included. Ms. Gillespie voiced her understanding that Westborough has a 500 foot buffer. Ms. Poretsky noted that the town can also limit the number of establishments allowed. Ms. Gillespie asked if it is possible to get copies of the bylaws for those towns that voted to opt out for the next meeting. Ms. Joubert agreed to provide, but expressed her expectation that the board would give consideration to Town Counsel’s recommendations. She also noted that the recreational marijuana bylaws for both Westborough and Southborough simply state “prohibited use”. She stated that both towns allow medical marijuana but voted not to allow recreational marijuana. Ms. Harrison suggested that opting out of recreational marijuana with no medical marijuana facilities in existence is effectively a prohibition. Ms. Poretsky voiced her opinion that Westborough’s bylaw likely covered all bases. Ms. Capobianco suggested that we start with what we proposed for the medical marijuana bylaw and go from there. She also voiced concern that a 300-foot buffer from recreational facilities and baseball fields would result in no place for it to go. In response to a request from Amy Poretsky, Ms. Capobianco suggested asking Town Counsel about imposing a limit of 1 or 2 facilities.

Ms. Capobianco expressed appreciation to Ms. Joubert, the Board of Selectmen, and all of the citizens who have spoken on this issue. She indicated that the board’s next meeting will be on November 15, 2017, at which time the board will review the draft bylaw in a public meeting. Ms. Harrison mentioned that there appears to be a feeling of intimidation by residents who are not in favor of opting out.

**Duplexes** - Ms. Joubert noted that she had provided the board with the following documents for reference, in preparation for the discussion with the consultant at the meeting on November 15, 2017:

- Meeting minutes from all meetings where the matter of duplexes was discussed
- Staff memo from 2017 town meeting season regarding potential setback and lot size changes
- Two charts showing approved duplexes and the number of building permits issues

Ms. Joubert also indicated that Ms. Poretsky had put together a summary of comments. Ms. Gillespie suggested that board members email Ms. Joubert if there is any information they would like to see about how other towns are addressing duplexes. She emphasized the need to have as much data as possible before meeting with the consultant, given the timeline to be ready for Town Meeting.

### **Consideration of Meeting Minutes**

**Minutes of the Meeting of August 24, 2017** – George Pember made a motion to accept the Minutes of the Meeting of August 24, 2017 as submitted. Amy Poretsky seconded; motion carries by unanimous vote.

**Minutes of the Meeting of October 4, 2017** – Ms. Joubert noted that the version provided includes changes that Ms. Poretsky made to the last page. Mr. Pember also asked that the results of the informal poll be modified to read more clearly.

George Pember made a motion to accept the Minutes of the Meeting of October 4, 2017 as amended. Amy Poretsky seconded; motion carries by unanimous vote.

**Changes to the Open Meeting Law regarding Meeting Minutes** – Ms. Joubert agreed to provide clarification of the 30-day time limit to the board at the next meeting. Ms. Capobianco also noted that the board members are required to do an online training and provide a certificate of completion. Ms. Joubert noted that the Town Clerk typically sends out an annual notice, and agreed to check with him about when that was done.

In response to a question from Ms. Gillespie about remote participation in meetings, Ms. Joubert indicated that she has not yet reviewed that portion of the document and agreed to do so and advise.

Ms. Gillespie asked about zoning with regards to special permits. Ms. Joubert agreed to discuss it with the ZBA at their next meeting and draft a warrant article.

**Adjourned at 7:57PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary