

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, January 20, 2015
TOWN HALL CHAMBERS
Following the Town Council Meeting**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Tuesday, January 20, 2015 following the Town Council Meeting. Chair O'Neill opened the meeting at 8:10 p.m.

The following were in attendance:

**Vice Chair Joseph Thornton
Councilor Jay Kelley
Councilor Kenneth Blow
Councilor Michael Tousignant
Town Manager Larry Mead
Assistant Town Manager V. Louise Reid
Attorney Mary Costigan – Bernstein & Shur
Planner Jeffrey Hinderliter**

Absent: Chair Shawn O'Neill

The purpose of the Workshop this evening was to give an opportunity for the Town Council to ask questions on unresolved issues related to the proposed Medical Marijuana Ordinance including the ordinance language, the creation of the ordinance, Planning Board Review, and other issues relative to the agenda item to be brought before the Council for a decision. The major question before the Council is whether such a facility can be located in the GB2 zone and/or the PMUD zone, in addition to the GB1 zone. Attorney Mary Costigan from Bernstein Shur will lead off the presentation and explain what the Town is able to regulate under state statute. Jeffrey Hinderliter will then go through the proposed ordinance. His memo is part of the Council meeting packet. The Town Manager explained that he has heard from several people who would like the Town to prohibit medical marijuana facilities and he has explained to them that under state law the Town is obliged to allow them, but can develop an ordinance to place conditions under which they may operate, so long as the conditions do not contradict state law.

There were many in the audience and several who spoke and shared their opinion including John Bird, Jerome Begart, Richard Bayles, Sheila Flathers, Michael Coleman, Pierre Bouthiller, Jenna Payag, Robin Dube.

Planner Jeffrey Hinderliter reviewed the process of developing an ordinance. He reviewed the approval process including State authorizations, exemptions and performance standards. He talked about proximity limits, outside appearances, odors, and explained the process that went through the Planning Board. He informed how the location went from one recommended place – GB1 to three, GB1, GB2 and PMUD.

It was noted that last summer Pierre Bouthiller proposed a medical marijuana research and growing facility at a Saco Avenue site, the site of the former Post Office. Since then

the Town established three times a moratorium for medical marijuana growing facilities to allow time to create an ordinance to regulate them. The moratorium will be up on March 15, 2015. Town officials contacted legal counsel and Marietta D'Agostino, the program manager of the Maine Medical Use of Marijuana Program, in creating the ordinance. In order for this to go to the Town Council it was necessary for the Planning Board to review and make a recommendation to the Town Council. The three to one vote by the Planning Board and the recommendation to the Council would allow medical marijuana growing and research facility in the General Business 1, General Business 2 and the Planned Mixed Use Development districts. Before it had been considered not to allow in the GB2 district which was the proposal of Bouthiller. One member of the Planning Board felt that it should not be allowed in the GB2 district because of how densely populated the neighborhood is and potential odor issues. If the Council approves this change, any proposed medical marijuana production facility would have to go back to the Planning Board and meet specific requirements for approval including regulations concerning its distance from schools and other medical marijuana production facilities as well as regulations for the outside appearance of the facility.

The Maine Medical Use of Marijuana Act allows caregivers to serve up to five patients at a time. Each caregiver may maintain up to six flowering plants and twelve not yet mature plants per patient. Each patient can buy up to 2.5 ounces of medical marijuana every 15 days. The plants must be kept in an enclosed, locked facility, except while the caretaker is moving the plants to his or her own property in order to cultivate them. Access to the growing area is limited to the caregiver, although invited elected officials may enter for educational purposes, emergency services personnel and those who need to enter to make repairs or do construction. The law requires that caregivers be at least 21 years old and free of disqualifying drug crime convictions. The Town Manager reminded the Council is that all we can require is that the Town can regulate the setback, as long as it's reasonable, and the height of the fence. It should be noted that we are forbidden by State statute and rule to release the names of caregivers to anyone except law enforcement officers and that information has to be relevant to current investigations (DHHS).

There was concern expressed about the need to create "safe zones" around schools, child care facilities and recreation programs and it was noted that in Raymond Maine a 1,000 foot radius has been required and a 100 foot set back from property lines. The extent to which municipalities may further regulate patients' and caregivers' medical marijuana cultivation pursuant to their home rule authority has not yet been tested in the Maine courts and remains unclear."

Pierre Bouthiller on several visits to the Planning Board and Town Council presented his opinion that this is about making medical marijuana available to persons who are suffering from debilitating diseases that simply do not respond to more traditional forms of medicine and that continue research is vital. Other arguments he presented were that this ordinance should go forward which would include the need to educate the public with facts regarding the proposed therapeutic cannabis research, development, and caregiver facility under consideration. The proposed facility is not an open-to-the-public operation. It will house a secure, state-of-the-art research lab whose focus is the establishment of peer reviewable data through clinical trials and scientific analysis performed by professional researchers and scholars from area institutions with the commitment to develop dosage protocols, product consistency, potency guidelines, safety standards, as well as quality assurance controls. Caregivers will have access to the high security, independently operation production spaces and be assisted in developing policies and procedures in all areas related to therapeutic cannabis by the research staff. A primary goal of the research facility is to develop medical products that can be prescribed by

physicians with confidence in their efficacy and safety. The intent is to create a line of topical and ingestible mediations, moving away from high-heat inhalation methods of delivery most widely utilized presently. A 30% of all current therapeutic drugs are plant-derived. The overwhelming evidence of the wide changing positive outcomes achieved by patients using therapeutic cannabis supports an urgent demand to increase the scientific basis that physicians and caregivers of all disciplines require to appropriately consider this important alternative. The proposed location is the best possible location for the facility. Not only will it provide several good-paying, full-time, year-round jobs, it is a Class A steel and concrete structure that has been vacant for years. It features high visibility and accessibility for easy monitoring and response from local public safety personnel giving the staff an even greater sense of security. This aspect, coupled with a state-of-the-art security system will ensure that all activities underway in the facility are safe from unauthorized access at all times. The facility will not be open to the public; only state-licensed personnel may have access; caregivers will be required to deliver medications to their state authorized patients; no signs will be visible indicating facility activity; and the parking area will be fenced and have an access-only gate. It was also noted that there will be a highly qualified diverse team involved in this project including doctors, administrators who have documented success in management experience, and zoning and financial experience as well.

Other issues raised related to the real estate property itself. What are the physical features of the real estate; zoning issues; legal and financial considerations; and owning versus leasing? It is imperative that compliance with state and local zoning rules will be required with the proposal. Medical marijuana laws are really vague and that is why this conversation this evening is so important. On the other hand it was also noted that it is to live in fantasy land to not recognize both the good and bad side of the dispensary. People need to get educated so that these decisions

The Town Manager has presented clearly that first and foremost the Town needs to enact an ordinance regulating medical marijuana facilities. Without an ordinance there is nothing to prevent such a facility from being located in any street or location in Old Orchard Beach that allows non-residential uses, which is most of the Town and this is the reason that the Council enacted the moratorium. Secondly, the Town Council cannot prohibit this type of medical marijuana cultivation facility from existing in Old Orchard Beach. State law is very clear that this is a use that can be located in a municipality and it is not within the municipality's authority to prohibit or effectively prohibit them. Third, state law does allow municipalities to regulate these types of facilities under the Town's land use authority. That is the Town may create regulations that address where in Town it can be located (what zone) and establish reasonable standards for operation (parking, signage, safety, odors, noise, and so forth.) Fourth, the proposed ordinance would allow these facilities as a conditional use, which means that they would have to go before the Planning Board for review to ensure that they meet standards related to noise, safety, odors and traffic. Fifth, the ordinance would require the owner to obtain a business license and require that the facilities be inspected by the code officer upon license renewal.

Discussion during this evening's workshop included the subject of the need for ventilation and getting good air flow in the building was a specific concern. Plants absorb carbon dioxide and release oxygen. Roots need oxygen so both must be present in the room for plant survival. Therefore it is vital that there is an air exchange passing through the building. The more plants per cubic meter of space, the more need for good ventilation. It should be noted that oscillating fans do not create enough air movement although they would serve some need in the room. It is

important, it was indicated, and that marijuana ventilation will reduce the smell and odor of the weed.

There were those who felt the location of the facility should be restricted so that residents and children are not affected but care needed to be taken, according to Attorney Costigan that stipulations are not confining to the rights of those opening the facility. There were those who wanted to limit the facility to an industrial site and others felt the regulations were not strict enough in the ordinance. There were those who felt it was a “greater-good issue,” permitting those who need the service to have it. Others felt that allowing the production facility to be constructed sends a wrong message to the wider community beyond the medical marijuana users. Youth in the town will not get the medical message from any such production facility. There were those who felt it was giving credence to drugs. Others indicated that the marijuana facility would be legally permitted by federal and state law to produce a medical product that offers relief to patients. The Town Council again reiterated that the Town of Old Orchard Beach has no authority to prohibit a legal center in the Town as was substantiated by Attorney Costigan. She made it clear that the Town only has the authority to control where the facility will be built. Others were irritated and concerned that it would be a consideration to allow it in school and residential zones. Michael Coleman reminded the audience that there are several proposed bills on the State level dealing with the marijuana issue and there were those who felt that this was ‘opening a can of worms.’ He indicated that he believes there will be many legal battles ahead. There were those in the audience who felt that this is a people’s right. It is their human right.

The Town Council explained that the workshop this evening was held so the Council would be able to get some of the information shared with them regarding the entire issue and project and Vice Chair Thornton encouraged the audience to attend a Workshop in the coming weeks in which they would have ample opportunity to share their expressed opinion, pro and con, on this issue but that tonight it was an informational workshop.

Councilors Blow and Kelley both were not in support of having the facility in the residential area of Dunegrass based on the immensity of the land area and also were appalled to consider putting it near a school even with the boundary limitations that were mentioned. Vice Chair Thornton said he was against the project but that legally the Council could not stop the facility from coming into the community but were limited to where it could be located. He reiterated that the Council’s hands are essentially forced under the regulations. Since we cannot legally prohibit the facility, he said, it is necessary that we be sure of the regulations that are put in place.

Chief Kelley, in addressing the question of seeing that regulations are followed, he indicated this is a new area of regulations and we will do what we always do – our best to see that regulations and procedures are followed.

The Workshop adjourned at 9:30 p.m. The Vice Chair thanked all those who attended and participated in the discussion

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

**I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of five (5) pages is a copy of the original Minutes of the Town Council Workshop of January 20, 2015.
Louise Reid**