

**Board of Appeals Meeting
May 4, 2015 – 7:00 PM
Town Office Conference Room**

MINUTES

CALL TO ORDER

Chairman Richard Carlson called the meeting to order at 7:00 pm with members Mark Hyland, Erland Torrey, and Gerard Bowes present. Vice Chairman Joseph Radziszewski is absent with notification.

- Member Mark Hyland motions to make Alternate Gerard Bowes a voting member for this meeting, seconded by Member Erland Torrey. No discussion.

Vote: YES – 4 NO – 0

Public Attendance: Code Enforcement Officer Nick Adams, Recording Secretary Alex Sirois, Larry Hancock, Stephen Fraser, Sheilalee Fraser, Corey Burns, Elaine Therriault, Mark Motley, Winslow Durgin, Arleen Brennan, Jane Pentheny, Pamela Blake, John Conway, and Derick Erickson.

MINUTES

February 4, 2015

- Member Mark Hyland makes a motion to approve the minutes for February 4, 2015 as presented, seconded by Member Gerald Bowes. No discussion.

Vote: YES – 3 NO – 0 ABSTAINED – 1 (E. Torrey)

COMMUNICATIONS

Copy of Decision Letter for Tina S. Agren

OLD BUSINESS

None

NEW BUSINESS

Poland Country Estates, Administrative Appeal – Map 49, Lot 26

- **Appellants Philip and Susan Brienza, Stephen Frazier, Andrew Robbins, Matthew Brettler, property owner Derick Erickson, and Code Enforcement Officer Nick Adams are all present.**
- **Standing: Member Mark Hyland makes a motion that the appellants have standing, seconded by Member Gerald Bowes. No discussion.**
Vote: YES – 4 NO – 0
- **Jurisdiction: Member Mark Hyland makes a motion that the Zoning Board of Appeals has jurisdiction to hear the appeal due to section 304.2 of the Comprehensive Land Use Code (CLUC), seconded by Member Erland Torrey. No discussion.**
Vote: YES – 4 NO – 0
- **Appellant: Attorney Nicholas Worden is representing the Appellants. He references a letter submitted to the Board by Attorney Anthony Ferguson. Mr. Worden reminds the Board that care givers are a newly defined state statue. He questions whether or not Mr. Erickson is a licensed care giver. By the description of the number of plants being grown on Mr. Erickson's property, and his LinkedIn web page, the assumption can be made that he is a legal medical marijuana care giver.**
 - Member Mark Hyland asks how many plants a medical marijuana care giver is allowed to have.

- Mr. Worden informs him that a care giver is allowed to have six (6) mature plants per patient. He is unsure if there is a maximum number of allowed patients.
 - According to Elaine Therriault of 24 Timber Lane, a care giver can have no more than five (5) patients.
- The homeowners of the association understand that their deed restrictions are not being discussed this evening. It is understood that the Board cannot enforce these restrictions.
 - John Conway, 11 Bluebird Lane, reminds that board that while they cannot make a decision based on a deed restriction, they can make a decision based on whether or not something fits the general characteristics of the neighborhood. In this situation a medical marijuana growing operation does not fit the general characteristic of the neighborhood.
 - Member Erland Torrey asks Mr. Conway if green houses are specifically restricted.
 - According to Mr. Conway they are not, however commercial operations in general are not allowed.
 - Stephen Frasier, 11 Bluebird Drive, informs the board that assessory structures are limited to boat houses and garages only.
- The permit application completed by Mr. Erickson was for a residential use green house for vegetables only. Mr. Worden and the association believe that it is very clear Mr. Erickson is not using the green house for vegetables, but is instead using it for medical marijuana, a commercial use.
 - John Conway, 11 Bluebird Lane, feels as though the Board should revoke the permit issued on the fact that the applicant clearly lied on the application. Secondly he believes according to the zoning, that the applicant would have needed to go before the planning board since it is a commercial use.
- **Owner:** Derick Erickson addresses the board and the members of the public in the audience. He informs everyone that he is a licensed care giver and closely follows all care giver laws. He can currently grow for himself and four (4) card holders. This allows him to grow up to thirty (30) mature plants.
 - The application was for a green house for growing vegetables because vegetables are grown in the green house. He did not want to put that he intended to also use the green house for marijuana on the application, for his own safety. The Code Enforcement Officer however, was aware.
 - Member Gerard Bowes asks why Mr. Erickson did not want to put marijuana on the permit application, but he chose to create a LinkedIn page publicizing what he is growing.
 - Mr. Erickson informs him that he created a LinkedIn profile much like any other professional. The page does not actually promote the business, nor does he do any public advertising.
 - The green house is locked, and has fans going through carbon filters to reduce the odor.
 - Member Mark Hyland asks if he obtained all necessary electrical permits for the green house.
 - The fan is not hard wired, and is simply plugged in with an extension cord.
 - His operation is all organic, so there is no risk of contamination from chemicals.
 - Mr. Erickson feels as though this could have all been settled by a knock on his door, and this is the first time he is hearing any of his neighbors concerns.
 - Member Mark Hyland asks how many plants Mr. Erickson currently has, and he has thirty (30) mature plants.
 - Member Mark Hyland asks how long the growing season lasts.
 - Mr. Erickson informs him that the greenhouse is in use from June until the beginning of October, with the odor being the strongest in September.
 - Member Mark Hyland is curious where the thirty (30) mature plants are currently growing.
 - The basement is used during the winter months.

- Member Erland Torrey asks if anyone from the State has inspected the facility.
 - They have not. The sheriff has inspected the growing operation.
- Mr. Erickson reminds everyone that if he cannot keep the greenhouse he is still allowed to grow outside, in a fenced in area. This will cause the odor to be even stronger.
- **Code Enforcement Officer:**
 - Chairman Richard Carlson asks Mr. Adams if the business is allowed in this particular zone.
 - Mr. Adams informs the Board that this particular use is not currently defined in the ordinance. The Planning Board has concluded that it should be considered agricultural and there should be no additional regulation. Agriculture is allowed everywhere in town, and does not require site plan application, or a permit.
 - John Conway, 6 Bluebird Drive, believes that in this case the growing and the selling of marijuana, like any agricultural product, should be viewed differently. Yes the growing operation could be considered agricultural, but as soon as something is sold it then becomes commercial.
 - Mr. Adams reads the definition of agriculture from the Comprehensive Land Use Code (CLUC): the production, keeping, or maintenance, for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management, timber harvesting activities or confined feeding operations.
 - The definition does include the words for sale and lease.
 - Member Gerald Bowes asks Mr. Adams if he would have acted differently had he known it was a commercial operation before issuing the permit.
 - Mr. Adams had a feeling that it was being operated as a medical marijuana care giver facility; however there was no proof of that until this evening.
 - Member Mark Hyland asks the Code Enforcement Officer if a permit is usually required for a residential green house.
 - Mr. Adams informs him that a “zoning permit” is usually issued outlining compliance with setback requirements for structures less than two hundred square feet (200).
 - Member Mark Hyland requests the impervious surface ratio for Mr. Erickson’s lot as it exists.
 - According to CEO Nick Adams the lot is approximately thirteen percent (13%) impervious surfaces.
- **Public Statement:**
 - Elaine Therriault, 24 Timber Lane, has concerns about the green house not being secured. She believes the medical marijuana care giver laws require a secured green house with a six (6) foot privacy fence surrounding it. She worries that this will increase theft in her neighborhood.
 - Sheilalee Fraser, 11 Bluebird Drive, has concerns about possible use of pesticides or other chemicals on the property, and its close proximity to homes and the lake. She also notes the amount of sound and odor coming from the operation.
 - Mark Motley, 23 Timber Lane, also mentions a strong displeasing odor. He also mentions a large German Sheppard has on multiple occasions tried to attack his dogs.
 - Stephen Fraser, 11 Bluebird Drive, explains the history of the situation, and how it went from small and unnoticed, to a commercial operation.

- John Conway, 6 Bluebird Drive, questions whether or not electrical permits have been issued for the greenhouse. Also, he does not see how the structure locks. It is made with plastic and could easily be broken into.
- Pamela Blake, 32 Mountain View Drive, is concerned for the neighborhoods safety, especially during the day when everyone is at work.
- **Member Mark Hyland makes a motion to close the public hearing portion of the meeting at 8:40 pm, seconded by Member Erland Torrey. No discussion.**
Vote: YES – 4 NO – 0
- **Board Deliberation:** Members Richard Carlson and Gerard Bowes believe that Mr. Erickson should need to complete a site plan application with the Planning Board, and that his operation should be considered commercial. Member Mark Hyland reminds the Board of a similar case a number of years ago, when the Board determined a confined feeding operation was considered commercial.
 - Member Gerard Bowes asks the members of the public if there are any signs, or increase in traffic related to the marijuana growing operation.
 - There is neither.
 - Mr. Erickson informs him that all products is delivered and sold off site.
 - Member Mark Hyland, while conflicted, believes that this should be considered agricultural because he has nothing telling him otherwise. However he does have concerns for the neighbors as this is being operated in an area of town that it should not be.
 - Chairman Richard Carlson believes personal growth a vegetables is one thing, but growing medical marijuana for personal profit is another, and the permit application should have included it.
- **Member Mark Hyland makes a motion to approve the administrative appeal of Philip and Susan Brienza, Stephen Frazier, Andrew Robbins, Matthew Brettler based on the fact that an error was made in the issuance of a building permit to Derick Erickson for the construction of a green house, seconded by Member Gerard Bowes. No discussion.**
Vote: YES – 3 NO – 1 (M. Hyland) **APPEAL IS APPROVED**
- **Findings of Fact:**
 - The owner of the property is Derick Erickson.
 - The appellants are Philip and Susan Brienza, Stephen Frazier, Andrew Robbins, and Matthew Brettler.
 - The property is located at 166 Deerfield Road Poland, Maine, in the Rural Residential two District (RR2). It is identified as Assessor's Map #49, Lot #26, and contains 1.23 acres.
 - An application for an administrative appeal was received on April 20, 2015, and public hearing was held on May 5, 2015.
 - Relevant sections of the ordinance are: 508.11B, 508.23, Chapter 14 Definitions.
 - The property owner was issued a permit for a twenty foot (20') by sixty foot (60') green house for the use of growing vegetables as noted on the building permit application dated February 9, 2015.
 - The appellants believe that this permit was issued in error by Code Enforcement Officer Nick Adams because the structure is being used as a commercial building.
 - The owner is using the green house for his medical marijuana business.
 - Testimony was heard from multiple abutters to the property stating that there is a very strong unpleasant odor coming from the greenhouse, and while there has been no increase in traffic they do not believe it fits the residential character of the neighborhood. The owner often runs loud fans in the greenhouse. Neighbors are concerned for the safety of the community.
 - The board found that this green house should be considered a commercial structure per the definition of Home Occupation and Business/Commercial in chapter fourteen (14) of the Comprehensive Land Use

Code for the Town of Poland, Maine. Business/Commercial is not allowed in the Rural Residential Two (RR2) zone.

- **Conclusion:** In conclusion, the Board of Appeals has decided that the green house is a Home Occupation and business/commercial structure. A Business/Commercial structure is not allowed in the Rural Residential Two (RR2) zone; therefore the Board believes that the building permit was in fact issued in error by the Code Enforcement Officer.
- **Decision:** Based on the above findings of fact and conclusions, the Town of Poland Board of Appeals voted to approve the application for an administrative appeal. This decision can be appealed in the Superior Court within 45 days.
- **Member Erland Torrey makes a motion to accept the written finding of facts for an administrative appeal by Philip and Susan Brienza, Stephen Frazier, Andrew Robbins, Matthew Brettler, seconded by Member Gerard Bowes.** No discussion.

Vote: YES – 3 NO – 1 (M. Hyland)

OTHER BUSINESS

None

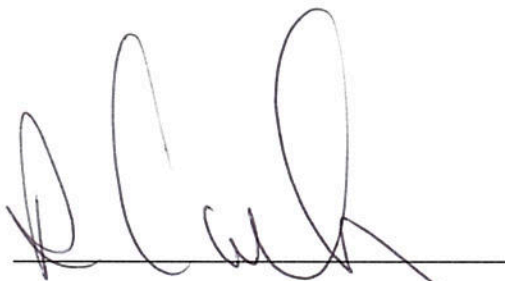
ADJOURNMENT

Member Erland Torrey makes a motion to adjourn at 9:22 pm, seconded by Gerard Bowes. No discussion.

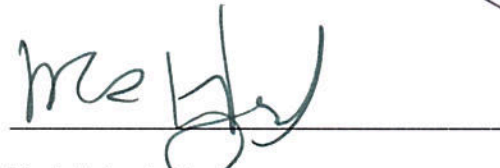
Vote: YES – 4 NO – 0

Recorded by Alex Sirois

Approved on:



Richard Carlson, Chairman



Mark Hyland, Member

ABSENT

Joseph Radziszewski Jr., Vice Chairman



Gerard Bowes, Alternate

Erland Torrey, Member