

ITEM 1 - ROLL CALL

Present: Dennis Lentz - Chairman, Ed Cieleuszko, Melissa Horner, Carmela Braun, Bill Olsen – Alternate.

Also Present: Abbie Sherwin, Planner; Kristina Goodwin, Land Use Administrative Assistant

Absent: Christine Bennett, (excused).

Voting members: Dennis Lentz, Ed Cieleuszko, Melissa Horner, Carmela Braun, and Bill Olsen.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

There was no public input.

ITEM 5 – REVIEW AND APPROVE MINUTES

Ms. Horner moved, second by Ms. Braun, to approve the minutes of June 18, 2019, as written.

VOTE

4-1 (Mr. Cieleuszko abstained)

Motion approved

ITEM 6 – OLD BUSINESS

A. 291 Harold L. Dow Highway (Map 37, Lot 2-1) PB19-6: Site Plan Review – An application to request a Change of Use from Cold Storage to Non-profit Medical Marijuana Dispensary. The applicant is proposing to convert the rear Storage Building to a Medical Marijuana Cultivation and Processing Facility. Applicant is Attar Engineering (Mailing address: 1284 State Road, Eliot, ME 03903). Owner is Paolucci Realty Trust (mailing address: 291 Harold L. Dow Highway, Eliot, Maine 03903). Property is located in the Commercial/Industrial District and Limited Commercial District.

Received: April 10, 2019

1st Heard: April 16, 2019

2nd Hearing: May 21, 2019

3rd Hearing: June 18, 2019

Public Hearing: June 18, 2019

Site Walk: June 4, 2019

Approval: July 2, 2019

Mr. (Ken) Wood, Attar Engineering, the applicants, Mr. (Dana) Brearley and Mr. (James) Folan, and Mr. (Peter) Paul, property owner, were present for this application.

Mr. Wood said that some of the comments that Ms. Sherwin had taken away from the last meeting was the function of the commercial kitchen, and we've addressed that in a note; that it's a relatively small commercial kitchen and has full fire suppression, it has a range and oven where the products will be made – gummies and brownies; that the PB was concerned that we'd be sharing a dumpster with Northern Pool & Spa so, on this plan, we have a dedicated dumpster that will be locked at all times except when anyone is dumping into it. He added that you also wanted a lighting plan, so we've shown the existing lights (150-watt LED cut-off fixtures) and we have new lights on every side of the building, so the building is illuminated and monitored with security cameras 24/7. He said that we've incorporated some of the Fire Chief's comments in the general notes. He added that, other than that, we would certainly like the PB to consider approval tonight.

Ms. Braun asked if items produced in the commercial kitchen and packaged are for patient's prescriptions or are they extras.

Mr. Folan said that, typically with edibles and edible-dosing, some states have put a cap on the amount you can dose but specifically, yes, we want to serve our patients' needs and it would be most likely to a specific patient; that we would formulate specifically what they would want and need. He added that, realistically, it's kind of a range of products, anywhere from 5 to 10 to 20 milligrams of dosing so that it's up to the patient, with guidelines, to administer the product.

Mr. Lentz asked if his permit was updated.

Mr. Folan said yes; that he brought a copy of it in yesterday.

Ms. Braun asked about the new proposed septic tank and pump chamber, wondering if the PB will receive any information on this so that we have an idea of what it will look like.

Mr. Wood said that he has specified it on the plan; that the existing system (H-20) is on the plan and has more than enough capacity and it's just a 1,000-gallon tank with an integral pump chamber. He added that, if the PB would really like to see the cut sheet from Genest, we can do that but he doesn't feel that is really necessary for an approval.

Mr. Cieleuszko asked if the cameras are only on the outside or do you have inside surveillance.

Mr. Brearley said yes, cameras are in all the rooms with full surveillance externally and internally on the property.

Mr. Cieleuszko asked about odors from the baking of products in the commercial kitchen.

Mr. Brealey said that the concentrates that go into edibles have already been stripped of odors; that the only thing you might smell is the baked good, itself. He described a countertop machine used to extract concentrates that is sealed so that no odors escape into the air and you get the proper extraction for use in baking.

Mr. Lentz said that, in review, they are looking for our decision this evening and walked through all the steps taken to this point. He asked if the PB was ready to make a decision.

Ms. Horner asked if Ms. Sherwin had anything to add.

Ms. Sherwin said that she thinks they have addressed everything that was in her memo. She added that the only thing they haven't submitted that the PB might want to consider requesting, and this would not require any sort of prolonging action of the application, is a copy of the Food Establishment License from the Department of Agriculture, Conservation, and Forestry (DACF) for that kitchen.

Ms. Horner asked if the applicants needed a health inspection.

Mr. Folan said that we did forward the documents to the DACF, which is basically a checklist from the State where we set it up, they come in to make sure we meet the standards and we cannot operate until we get that license.

Ms. Braun asked how often they come in to check, do they do it yearly or is it a one-time shot.

Mr. Folan that we submit an application, then set a date; that it's just like the walk-through we did with the PB.

Ms. Braun moved that the Planning Board accept the application for PB19-6 as complete and approved.

Ms. Horner asked if we could add the condition regarding the kitchen license.

Mr. Lentz said yes.

Ms. Horner moved, second by Mr. Olsen, that the Planning Board accept PB19-6 as complete and accepted, with the following conditions of approval:

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved**

- permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
 3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
 4. A copy of the Food Establishment License from the Department of Agriculture, Conservation, and Forestry will be submitted to the Planner.

VOTE

5-0

Motion approved

Mr. Lentz said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

B. Agritourism Ordinance Discussion

1. Review potential non-binding question for November ballot.

Mr. Lentz said that Mr. Widi was here; that we have talked about an agritourism ordinance through several discussions and we wanted to review a potential non-binding question for the November ballot.

Mr. Cieleuszko said that this question covers several things, asking if we would be bound by this if a majority were in favor.

Mr. Lentz confirmed that this is non-binding, suggesting that the PB might start working on this ordinance if the public shows an interest.

Mr. Cieleuszko said that he liked the language of the question.

Mr. Lentz agreed that he did, as well.

Mr. Widi said that he was hoping we could get started on actually getting the ball rolling and this just kind of puts it off. He added that, if he wants to do anything by best-case scenario, it wouldn't even be voted on until June 2020, in the middle of the season. He

explained that he has other avenues to get it on; that he could do a Citizen's Initiative and get the signatures, and he thinks that should show that there is interest in this. He said that he was hoping that we could work together and he could get PB input; that he came here and talked for like 40 minutes about it and we really don't have anything. He thanked the PB for working on it but said he is just going to go with a different avenue.

Mr. Lentz said that we have worked on it and he thinks this is the third meeting.

Mr. Widi said that he wasn't told that it would be talked about at the second meeting; that he met with Ms. Sherwin two days after, he gave her information that he had, she sent him a review of what we had, and he heard from Ms. Goodwin asking him to come tonight; that he hasn't heard anything other than that and that he literally got a copy of the question here tonight.

Mr. Lentz said that our process is exactly what is in Mr. Widi's hand; that that's the process we legally have to follow.

Mr. Widi asked about the Local Food Ordinance, saying that it wasn't proposed until July and then it was on that November. He added that he wanted to be held to the same standard as everyone else.

Mr. Lentz said that Mr. Widi came and asked for our help and we've taken the time to try to give you the help but this is the process; that Mr. Widi can do a Citizen's Petition.

Mr. Widi said that he does appreciate the PB listening to him, asking the PB to not take it as disrespect; that it's just, as the timeframe goes, it's the fastest way to get it done; that we are very busy at the farm stand, now, and it shouldn't be hard to get the signatures. He added that he really views that as the most viable way to do this; that he may ask your opinion on a few things and maybe worked together a little bit. He thanked the PB for their time and said that that is the way he is going to go.

Ms. Horner asked Ms. Sherwin if there was time to get a Citizen's Petition for a full ordinance on the November ballot.

Ms. Sherwin said that that does not follow the same process as a regular ordinance that is going through the PB process.

Ms. Horner asked if an entire ordinance could be put on in November.

Ms. Sherwin said that, through a Citizen's Petition, yes.

Mr. Lentz said that there would have to be public hearings.

Mr. Widi said that that would be 60 days before so that would put him at early September; that if he does his petitions now, he'll have them within a week and a half; that he has the support of all the farmers so it shouldn't be an issue.

Mr. Lentz said that Mr. Widi has PB support, too, but we have to follow the rules.

Ms. Sherwin asked if the PB wanted to put this non-binding referendum question on the November ballot regardless of what happens with the Citizen's Petition.

The PB said yes, as it is written.

Ms. Sherwin said that getting it on the November ballot would give the PB time to work on the ordinance language should something fail with the Citizen's Petition and allow for the timelines to be met to get it on the following November ballot.

Mr. Lentz said that we will continue our efforts.

Ms. Sherwin will make sure it goes through the proper channels to get on the November ballot.

C. Adult Use Marijuana Ordinance Revisions

Mr. Lentz said that he would start with Ms. Sherwin's memo dated June 19; that she was conveying which part of the ordinance we were responsible for and which part other folks were responsible for. He asked Ms. Sherwin if she had a response back on that document.

Ms. Sherwin said that she did not; that she believed the Cannabis Committee had to reschedule their meeting that was planned for the 19th. She added that she spoke briefly with the Town Manager about it and he said that he would convey the points of the memo. She clarified that it was conveyed by the Town Manager that the process that we discussed, moving forward, to clearly delineate between the licensing process and the land use process that would be associated with any type of proposed business would be sort of as we've discussed in previous meetings, and that we could proceed with that.

Mr. Lentz said that he thought, in reading the notes and minutes and looking at the video from the last meeting, it appears that the PB would like to have separated those – the PB deals with the land use issues and the licensing piece would be something that the front office would come up with.

The PB agreed.

Mr. Lentz said that we would put Ms. Sherwin's memo on hold until we get an answer but we will move forward with continuing with the land use portion.

Ms. Horner said that we would continue with licensing, as well; that we will continue to write the ordinance but they will process it.

Mr. Lentz addressed the letter from Attorney Saucier; that we should go through that, saying that that has the ability to change what Ms. Horner has written. He asked about a draft document regarding licensing and fees included in our packets.

Ms. Sherwin said that that is the draft Town application for a license that accompanies the memo she wrote on the 19th; that she believes it was drafted by the Town Manager based on input he received from the Cannabis Committee. She added that she marked this draft document up on page 5 to specify that the licensing process, and the responsibility for that process, lies solely with the Town Manager and the Town Clerk and not with the Planning Office or the PB.

Ms. Horner said that we can't really chime in on this because it's an internal process that happens amongst the staff, here.

Ms. Sherwin said that it is but it does follow the draft ordinance language for Chapter 11 Marijuana Establishments; that that's why it's included in the packet.

Ms. Horner reviewed the updated draft Chapter 11 ordinance language, with one copy being a clean draft and the other that includes bolds, strike-outs, etc. She worked from the clean copy.

Ms. Horner said that she had talked about updating the definitions at the last meeting to use the State definitions (86 words defined); that she did that and, in reviewing them, she came to the word 'opaque' and decided we didn't need the State definitions anymore; that she ended up keeping what we had and have remained the same, with the exception of **'Local Licensing Authority' that is updated to say Select Board.**

The PB agreed with that change.

Ms. Horner said that the next edit was 'Marijuana', that she didn't include the entire definition even though she meant to and the other thing is that 'marijuana' is defined twice; that she wanted to talk with the PB and Planner about that because she feels that we need to include that that terms is defined in the Maine statutes but she doesn't know if we should go with the end of the sentence for the first 'marijuana' definition; that it's a minor grammatical thing.

Ms. Braun said that, at the end of the first paragraph, she thought it should say, "As defined by the State."

Ms. Sherwin said that Attorney Saucier said, in 2) f. of his memo, "Any term defined in state law should simply include reference to that law and not include specific language since the Legislature continues to amend the statutes."

Ms. Horner asked, then, if the first definition of 'marijuana' should be struck.

Ms. Sherwin said yes, from his input.

Mr. Cieleuszko asked if Attorney Saucier was talking about just the 'marijuana' definition or all the definitions.

Ms. Sherwin said all the definitions, any term defined in State law.

Ms. Horner used 'marijuana establishment' as an example, asking if that meant only the first sentence in that definition and not the rest of it.

Ms. Sherwin said yes, based on his input.

Ms. Braun read 2) d. from Attorney Saucier's memo, "Marijuana Establishment should also include reference to the medical marijuana establishments if that is the intent (there is no definition of that term in Title 22 but you should list out the allowed establishments.)".

Ms. Sherwin said that that speaks to a previous comment he made that he was unclear if this ordinance spoke specifically to adult use only or adult use and medical use.

Ms. Horner asked if we could go through the ordinance and then go back to Attorney Saucier's letter.

The PB agreed.

Ms. Horner said that the other thing she added was a definition for 'plant canopy'; that she pulled that from the State. She added that, throughout the ordinance document, there is 'local license', 'tier 1 license', and a whole bunch of licensing words, and her proposal is that we just call it a 'marijuana license' or a 'local marijuana license'; that that would be what it is called throughout the entire document. She said that, for example, in §11.7, it says it is a Class I license but we don't call it a Class I license on licenses that are required, so there needs to be some consistency and her proposal is 'local marijuana license'.

Mr. Cieleuszko said that he thought we were going to cap the amount at Class I or Tier I; that he's using them interchangeably but he wasn't sure, as it's been awhile.

Mr. Lentz said that he thought we agreed to that, too, but in this particular case, he doesn't think you need Class I – it's a license, in general, no matter what license, unless you want to get specific and, then, we should list them all.

Mr. Cieleuszko said that he thought the original conversation was to not let anything more than a Class I licensed establishment in.

Ms. Horner said right, so now we can call that whatever we want.

Mr. Olsen asked if we could put that in §5, under "Prohibited Activities" and just say that we will not issue licenses for Class II and III.

Mr. Lentz said that we need to flag it somewhere else, he thinks; that we can make this a license, period, and then we can stick the constraints in that area.

Mr. Cieleuszko asked if we could take a hint from the audience.

Mr. Lentz said yes.

Attorney Rynes asked if the PB was talking about limiting cultivation in Eliot to only a Tier I license under State law.

The PB said yes; that this was the original position of the PB.

Mr. Hughes said that he believes that the Cannabis Committee voted to support all Tiers about licensing structure; that there was some debate on whether to call it one thing, or not.

Mr. Lentz said that he saw that and that's why we're trying to straighten out regarding what we look at – do we look at this or what the PB has come up with, or the State.

Attorney Rynes said that the State allows for four.

Ms. Horner said, going back to the original draft, that originally §11-7 License Classes was broken out by South Portland to Class I and Class II; that “a Class I license shall be required for marijuana product manufacturing facilities. A Class I license shall be required for medical marijuana product manufacturing facilities”. She added that the Class II license in South Portland was required cultivation, stores, and then medical marijuana cultivation and stores but we were allowing all of those things so we didn't need two classes of licenses because we were incorporating everything under one umbrella. She said that, because we're getting to the end of this, she would like some continuity throughout the licensing, so, we need to call our license something, just like South Portland was calling it a Class I and Class II and her proposal is to call it a “local marijuana license” throughout the licensing chapter.

After further discussion, the PB agreed that they didn't need §11-7 because it was covered in §11-6 and stuck it from the draft.

Mr. Hughes asked if the PB was still recommending that there only be 500 square feet of recreational cultivation.

Ms. Horner said that that would be in the code and we are only talking about licensing.

Ms. Horner discussed §11-8, saying that, at the last meeting, she thinks the whole confusion sprung from the way we had proposed how the licensing should happen, which was basically the same as the way Eliot is running it now but in different language; that she felt, because our staff is comfortable with a certain language, that she should try to incorporate the language that they are used to in the ordinance. She explained that she took the Special Amusement License Ordinance, put it in here, and married our procedure from South Portland and what Eliot currently has because we're trying to tell

people that this is a lot like getting an alcohol liquor license and she wanted to clear up any confusion as to who was supposed to be issuing this license.

After a brief discussion, the PB agreed to strike the current language in §11-8(9) and replace with the title name of the application form – ‘Town of Eliot Adult Use and Medical Marijuana Stores, Cultivation Facilities, Manufacturing Facilities, and Testing Facilities Application’.

Ms. Horner said that (10) through (18) are all things that we had in our licensing document. She added that she has a question about (14), which says: “If not included in the Applicant’s State License Application, a release authorized by 16 M.R.S.A. §620(b), as may be amended, with the application for each Applicant and for each officer, owner, member, manager, or partner of the Applicant seeking a local license.”, asking what that means.

Attorney Rynes said that that was part of the State license and you wouldn’t see it in the Conditional License; that you have to vet out every director, officer, manager, owner; establish percentage Maine ownership, majority director, officer, Maine residence, etc.

Ms. Horner asked Attorney Rynes if (11) covered what he was just speaking to.

Attorney Rynes said yes.

§§ (14) and (15) will add Eliot before the words ‘Code of Ordinances’.

The PB agreed that (15) covered/clarified that applicants would have land use approval before getting approval of the licensing application.

Mr. Cieleuszko asked, regarding (11) and (14), if those were to be deleted.

Mr. Lentz said no.

Mr. Cieleuszko said that it was his understanding that we wouldn’t see that because it would already have been done by the State as part of the Conditional License.

Mr. Olsen said that those cover us just in case the State changes their statute language; that those would be a fallback for us.

Mr. Cieleuszko said that we would not get that because the State won’t release that private information.

The PB agreed to get clarification from Attorney Saucier on this issue.

Ms. Horner said that she thinks we need (11); that she is hearing that he wants to streamline this.

Mr. Cieleuszko said only just to make it not impossible to meet.

Ms. Horner agreed, saying that in order for applicants to get that State licensing they have to give that information, anyway, so they would already have it.

Mr. Cieleuszko agreed, adding that that's all public information, anyhow, so he will withdraw (11) but (14) is very troublesome.

Attorney Rynes agreed that a lot of that information does get redacted.

Ms. Horner said that whoever comes in here for a land use approval we will get to know.

The PB agreed but still wanted clarification from Attorney Saucier.

Ms. Horner discussed §11-9 Issuance of marijuana license. 'Local' will be added to the title. She said that some of this is from the Special Amusement section; that it used to be a subsection of the South Portland chapter (issuing procedures); that she broke it out into its own section because she felt that the application, itself, and then the issuance of it are separate. She also said that she added (b), (c), and (d) from the Special Amusement. She explained that it used to be the application, getting the application, and how to get the license was in one giant section and she broke it out to be more in keeping with our ordinances, which separates out each piece of the application process.

§11-9 (a) (1) revised to 'Local marijuana license'. §11-9 (a) (2) revised to 'No local marijuana license shall be granted by the Local Licensing Authority until the Police Chief, the Fire Chief, the Code Enforcement Officer and, if applicable, the Health Inspector...'. §11-9 (b) revised from Board of Selectmen to Select Board. This change will be reflected throughout the document.

The PB was in agreement to the revisions.

In §11-9 (b) (2), it was revised from "The Select Board may grant a marijuana license..." to 'The Select Board shall grant...'.

Attorney Rynes said that, in §11-9 (b) (3) and §11-9 (b) (7), they seem to virtually say the same thing; that you could have someone come in who is not previously licensed as a medical provider and may be applying cold for adult use; that if they don't have the State license for an establishment operation, already, this could be interpreted to say that that would be a condition for their appeal. He added that, if you changed (7) to say 'State approvals and licenses...', you'd capture everything without sort of cutting off somebody who wasn't previously licensed in the State. He clarified that the State law contemplates a conditional license; that you go to the State, you get your seal of approval; whether or not you talk to a town beforehand, it's probably in the best interests of the town to wait until that happens because there's a certain set of criteria in there that gives you a little more comfort that you know who you are dealing with; that he thinks that was the contemplation of the law coupled with the local control in giving towns that reassurance

that these entities have already gone through these steps and the conditional license demonstrates that.

The PB agreed to Attorney Rynes's wording suggestion for (7) – 'State approvals, licenses, and other approvals...' and to strike out (3).

Ms. Horner asked if there was anything missing from these criteria.

The PB agreed nothing else was missing.

There was discussion around the Town's ability to legally shut down an entity if they hear of a violation before State notification.

§11-9 (c), (d), and (e) were accepted, as written, as this is only talking about the license and a Public Hearing with the Select Board; that the PB decision still stands and that they are only re-applying for their license.

Ms. Horner said that §11-10 is the same; that we have still not talked about the civil penalty amounts; that there was a comment about whether that was enough but it was said that that is not a rate that we set.

Mr. Cieleuszko said that that might need some help by the Select Board.

Ms. Horner said that those amounts are from the Special Amusement Ordinance; that we're still looking for feedback.

Mr. Cieleuszko said that we have the comments from the Cannabis Committee but they didn't specify amounts; that they just said to be weary of over-billing.

Mr. Pope said that he has seen much higher amounts charged than what is there; that as a member of the Town and the Cannabis Committee, he wants them to be much higher than \$2,500 but he's not sure what the limit would be.

Ms. Horner asked Ms. Sherwin if she knew who sets those rates.

Ms. Sherwin said that she did not; that she thinks it would be the Select Board.

Ms. Horner suggested that we ask the Select Board to review this at their next meeting.

The PB agreed. Ms. Sherwin and Ms. Goodwin will work with the Town Manager on that.

The PB agreed to have the updated draft sent to the Cannabis Committee for their review and input, as well.

Mr. Olsen discussed sending a recommendation to the SB that they could review. He added that he agreed that \$100 was not the right number; that he thinks it should be a minimum of \$500 and \$5,000, or something like that; make it hurt.

Ms. Horner suggested \$1,000 and \$10,000 per violation.

Mr. Olsen said that he thought that sounded good.

Attorney Rynes said that barring any specific limitation per civil penalty, you will have more flexibility in the violations than you will in the licensing piece.

§11-11. License Expiration and Renewal – The PB agreed to revise this to include that renewals “must be submitted at least 30 days prior...”

§11-12. Operating Requirements (b) Location – The PB agreed to revise this to say “...shall be in fixed, permanent locations.”

§11-14. Transfer of Ownership and Change of Location

Mr. Olsen discussed his concern for this requirement that any change in ownership will require a new license, using an owner who passes away as an example around his concern.

Attorney Rynes said that, at the State level, they are transferrable, particularly in a merger or a sale of substantially all of a company's assets.

Mr. Olsen said that he would agree that they would have to come back for a license for that but, if they are operating and one of the owners passes away, it's not really changing the operation; whereas, if they were adding an owner, that would be different. He added that that seems unnecessarily burdensome.

Mr. Lentz said that, if you look at the title, it's really talking about transfer of ownership and change of location; that if you start the second sentence, you could say any transfer instead of any change; that that is really what the whole thing is talking about.

Attorney Rynes suggested any change in the majority of the officers of the company.

Mr. Cieleuszko said that the owner is still carrying the liability so if we kept it as an ownership change and then let the license renewal take care of any officer change when they apply for a fresh license.

After further discussion regarding edits, the PB agreed to have attorney review.

§11-15. Appeals – Revision made to be in alignment with our current ordinance accepted.

§11-17, §11-18, and §11-19 were accepted as written.

Mr. Lentz said that we put the Memo from Ms. Sherwin to Mr. Lee and the Cannabis Committee on hold tonight.

Ms. Sherwin explained that she drafted a memo based on a prior meeting of the PB and their discussions of the Cannabis Committee's recommendations for the local licensing process for adult use establishments and sent that to Mr. Lee to be shared at the June 19th meeting of the Cannabis Committee, which was cancelled and rescheduled.

Attorney Saucier's memo back to the PB, dated June 26, 2019:

§11-1 Purpose – Attorney Saucier's comment was to clarify the intent of this ordinance as to what it covers regarding adult use and medical marijuana.

Ms. Horner asked if the chapter should be called 'Adult Use Marijuana'.

Ms. Sherwin said that it could or possibly include a subsection somewhere within the first three that says 'applicability' and, then, just define that this ordinance applies specifically to adult use establishments.

Ms. Horner suggested it could be in §11-3, ahead of definitions, and she would then just update all the numbers. She asked if it could go in the Purpose.

Ms. Sherwin said that it could.

After some discussion, the PB agreed to edit §11-1 Purpose to say '...issuance of Local Licenses for Adult Use Marijuana Establishments...'.

§11-3 Definitions - Attorney Saucier had several comments that the PB addressed.

a. Questioned where the definitions were placed.

Ms. Horner said that Attorney Saucier's caveat was "unless they are ordinance-specific terms" and she would argue that they are.

Mr. Cieleuszko said that the attorney is saying that we should reference in §33-190, that definitions are going to be found in Chapter 11, clarifying that, from §33-190, there should be a reference referring to Chapter 11 definitions.

The PB agreed.

b. Not applicable.

c. Agreed that the two marijuana definitions would be combined.

d. Not needed – no reference to medical marijuana is in this ordinance.

e. Regarding deleting 'marijuana social club.

Mr. Cieleszko said that he would not delete this as we don't know what the State will do in the future.

Mr. Lentz said that then we can put it back in; that right now it's not allowed in the State and it's not allowed in the Town, so why carry it.

Ms. Horner said that she disagrees; that we've had this discussion with other applications... "there's no definition for this thing I want".

Ms. Lemire said that the Town was very specific that they didn't want social clubs in the Town.

Mr. Olsen said that it's pretty clear that we don't want it even if the State doesn't recognize it, and that's fine; that it doesn't hurt us.

Mr. Cieleszko said that he doesn't see a problem keeping it, just in case they (State) decide to change their mind.

The PB agreed that they would leave it in.

f. Regarding any term defined in State law should simply include reference to that law and not include specific language.

Ms. Horner asked if that was a must.

Mr. Cieleszko and Mr. Lentz said that they didn't see it as a must.

Ms. Sherwin asked Attorney Rynes if he knew the date the State approved the rules.

Attorney Rynes said June 6th.

Mr. Cieleszko said that he would disregard that.

Ms. Horner disagreed, saying that she thought we should and then only because we won't have to continually update our definitions; that a lot of our definitions reference State statutes and they always say "as may be amended"; that, then, the language that follows is that definition.

Mr. Cieleszko asked for an example.

Ms. Horner read – "*Marijuana Cultivation Facility* shall mean a "cultivation facility" as that term is defined in 28-B M.R.S.A. §102(13), as may be amended. A Marijuana Cultivation Facility is an entity licensed to cultivate, prepare and package adult use marijuana and to sell adult use marijuana to Marijuana Establishments." She said that the

first sentence would be kept and the second sentence struck, clarifying that the second sentence of that definition is that definition that has been defined in that statute; that the attorney is saying to remove that specific language because that language could get updated and we would always be referencing the most updated definition.

Mr. Cieleuszko read – “*Marijuana Establishment* shall mean a “marijuana establishment” as that term is defined in 28-B M.R.S.A. §102(29), as may be amended. A Marijuana Establishment is a Marijuana Store, a Marijuana Cultivation Facility, a Marijuana Products Manufacturing Facility, or a Marijuana Testing Facility or a Marijuana Social Club.” He said that, next year, the State could say that this also includes Medical Marijuana and now our whole ordinance has just been tossed if we automatically go with the State. He added that we don’t have to go with what the State says; that we’re using their definitions as written now and it doesn’t ruin our definitions, even if they amend it. He said that he would not drop those definitions because they are in here for all of our local work; that he likes it the way it is written now and would not recommend using Attorney Saucier’s recommendation.

The PB had no objection to Mr. Cieleuszko’s recommendation.

3) § 11-5(c), § (4) 11-6, and (5) § 11-8(a)(3) have been addressed.

(6) § 11-9 License Financials – the PB agreed to go back to the term ‘License Fees’.

(7) § 11-10(5) Application regarding the requirement of a criminal history background check.

The PB agreed that this was now outdated and that they needed more clarity from the attorney regarding this whole concept.

(8) § 11-15 Appeals – Rewritten to say “Any appeals of decision under the provisions of this Article shall be made to Superior Court.”

Mr. Lentz said that the next attorney comments were for §33-190 Performance Standards.

Ms. Horner said that she is not of the mind to go to the ordinance right now and asked if we could have a special meeting next week to talk about this and these recommendations.

Mr. Cieleuszko said that he was concerned that we would pull an extra meeting just to rush this.

Ms. Horner clarified that we are trying to work on this, and it’s 9:30PM, and we seem to be running into this every week; that while we’re getting a lot done, we aren’t finishing everything and she likes to have things completed; that for her, personally, she wouldn’t mind coming to an extra meeting just to hammer it out because we’re still working on applications and other stuff.

The PB agreed to have a Special Meeting next week, July 9th at 7PM.

Ms. Sherwin wanted to clarify that, if this is to go on the November ballot, there needs to be a public hearing on it at the next regularly scheduled meeting of the PB on July 16th, which we would need to notice tomorrow.

The PB agreed to schedule a public hearing on this for the July 16th meeting.

Ms. Horner asked if there was a way we could structure the public hearing so that we could focus on the licensing, as the last one focused on the ordinance.

Mr. Lentz agreed that we could go through that section more thoroughly than we do §33-190.

ITEM 7 – NEW BUSINESS

A. Open Space Development Discussion

Mr. Wood said that he had been reviewing the Open Space Development requirements, as we may have an Open Space development in the Critical Overlay Zone; that Ms. Lemire remembered a subdivision the PB did called Frost Hill Estates back in 2014. He added that the one thing the ordinance doesn't seem to address is a frontage requirement; that they are in the 3-acre zone and it talks about reduced lot size (20,000 sq. ft.); that shore frontage can't be reduced because it's in the Shoreland Overlay District and one of the goals of Open Space, under Purpose, is "In an open space development streets and utility lines are usually shorter, thus allowing development at a lower construction cost initially and lower maintenance costs in the future." He clarified that, with most towns, when they develop an open space ordinance, they reduce the lot size, as Eliot does, but they also reduce the frontage requirements and he just can't find anything that discusses frontage requirements along the road. He added that he and Ms. Sherwin have been corresponding and she (and the Planning Office staff) has been very helpful but he thinks that's why she put it on for discussion tonight so we can, hopefully, come to some type of decision on what the frontage requirements are. He reiterated that it is a 20,000 square-foot lot size, we're encouraging smaller lots to reduce total road length, setbacks remain the same, shore frontage remains the same; that his question lies with what is the street frontage in an Open Space Development. He said that in the subdivision the PB reviewed there was a back lot (#3), which we really couldn't figure out how it was approved if the frontage remained the same as what the ordinance requires in that district.

Mr. Lentz said that one of the lots, and he doesn't remember which one, the owner of the property was going to keep one of them for himself, if he recalls correctly. He added that that was our first time with that and it really didn't turn out that well.

Mr. Wood said that he doesn't know if it's up to the applicant to come in with an open space plan, and he knows there are two different avenues of developing the number of lots with the two different formulas, and present a sketch plan to the PB with 20,000

square-foot lots and what we feel is adequate for frontage, and go from there, or is frontage defined in the ordinance and we just can't find it.

Ms. Horner asked if it would be safe to assume that most open space developments would be on a cul-de-sac.

Mr. Wood said that he didn't know if that was a safe assumption because we have cul-de-sac limits and we have upper limits that require two street connections; that there are a lot of open space developments in Kittery and Wells and they are not all on cul-de-sacs. He added that both Kittery and Wells allows a reduction in frontage; that Wells also allows a reduction in setbacks and our ordinance doesn't; that he thinks we did one in Scarborough that also had a reduction in frontage as, in open space development, you are encouraging smaller lots with smaller frontage, reduce your street lengths, and York also allows a reduction in frontage. He explained that the offset from what your lots are reduced with in acreage is held in open space.

Ms. Horner asked if the Planning Department in those towns provide for the allowance in reduction.

Mr. Wood said that that is in their ordinance under Planning; that they usually call them 'cluster developments'.

Mr. Lentz asked how serious are we in moving forward with this.

Mr. Wood said that his client is fairly serious; that he has a P&S on a piece of property; that Mr. Wood thinks it would be a great property for an open space development on it and his client's due diligence is running out.

Mr. Cieleuszko asked if there isn't a reference that it has to meet the subdivision requirements.

Mr. Wood said that that is what it says but, of course, it doesn't give you frontage.; that open space is allowed in the Rural Zone, which is a 200-foot frontage; so, we have a 20,000 square-foot lot minimum but it doesn't seem to be in agreement with the ordinance that's encouraging shorter road lengths and utility lengths that all the lots would be, say, 200 feet of frontage and only 100 feet deep to get to 20,000 square feet; that that's his quandary.

Ms. Sherwin said that she prepared a memo that cites specific ordinance language and it addresses just what Mr. Wood has been talking about; that the ordinance states what the purpose of open space development is, which cites reduced street length and utility lines and reduces the allowable minimum lot size, and is somewhat silent on all other dimensional standards except to say that all other requirements, including applicable performance standards of related chapters, must be met; that that includes any road frontage. She said that, essentially, the way the ordinance currently reads is saying that open space development is required to meet all other dimensional standards apart from

the reduced minimum lot size; that there is that provision for reduced frontage on steep curves and cul-de-sacs but it's only by 20% for sharp curves, and what you reduce the road frontage by on one side of the curve you have to make up for on the opposite side of the curve; that cul-de-sacs is by 50% but, again, Mr. Wood is saying that not all open space developments are on cul-de-sacs. She said that the last paragraph of her memo gets to the point that it is her opinion that ordinance revisions would be required to specifically address flexibility in reducing the frontage requirements and other dimensional standards, as well.

Mr. Lentz said that the PB is not privy to changing any other dimensional specifications, other than the frontage, in this case.

Ms. Sherwin agreed, on a sharp curve of a road or a cul-de-sac; that she reviewed the Frost Hill Subdivision and there was little information in that PB file regarding the decision-making process and it got very confusing as to where the frontage was actually coming from.

Mr. Cieleuszko said that, if we took the conservative approach and said that you need 200 feet, turned it down for that, and went to the Board of Appeals (BOA) and asked for a special exemption in meeting the open space requirements in a unique situation...there are going to be open space projects that can do 200 feet without a problem; that you've got to have a bit of a unique situation.

Mr. Wood said that he doesn't know what the advantage would be with having 200 feet of frontage.

Mr. Cieleuszko said that all he is saying is that we don't have the authority and, more than likely, he would be prone to go with the 200 feet, whether it be right or wrong, and wait for an ordinance change; that if Mr. Wood wanted to hit the ground running, he would think that's the way to go. He added that maybe he would be overruled and you could have it; that he doesn't think we could make that decision tonight with just a verbal representation.

Mr. Lentz said that he thinks it is certainly to the Town's benefit to give this strong consideration.

Ms. Horner suggested that the 200-foot frontage minimum might have been a restriction created on purpose to keep the number of houses down.

Mr. Wood agreed that was possible.

Mr. Cieleuszko said that it was probably a mistake but we can't address it, reiterating his suggestion to submit a plan to the PB and, if turned down, immediately go to the BOA or Select Board for some kind of administrative remedy.

Mr. Lentz said that he wasn't sure he liked that as it seems like going in the back door. He asked Ms. Sherwin if there was anything else we should be looking at.

Ms. Sherwin said that, apart from ordinance revision, there was nothing she could think of. She added that a lot of towns avoid open space developers getting additional density by reducing all of the lot dimensions by stating that you cannot increase the density that would otherwise be allowed but just allowing for flexibility in the configuration in the dimensions.

Mr. Wood said that, in Wells, they actually have density bonuses that if you have the open space that are dedicated to the public, you can get more lots than the conventional lot design; that he doesn't know if he agrees with that; that he thinks our ordinance is fine that you can't exceed the number of lots than with a conventional lot design but he thinks that, at some point, we need to look at reduction in frontage, especially when you are in the Open Space Critical Overlay District and that's the plan you are supposed to come in with first; that that's kind of a big swath of property and, if you're going to really make open space developments work, with smaller lots, less roads, more open space, then we need to look at more reduction in frontage.

Mr. Lentz said that we talked about that 10 years ago when we did the Comprehensive Plan.

Ms. (Jessica) O'Donoghue said that open space development would do very, very badly with ½-acre lots when everything else is 3-acre lots; that the road is very dangerous as it is; there are accidents every week. She added that the water from that kind of development would run into all of our wells in that area. She said that she just doesn't understand why this Town allows all these developments and only allows so many permits for private people; that she happens to live in a development in that neighborhood; that she has no frontage when everybody else in the development has all kinds of frontage, except her next-door neighbor, and that has caused both of us a huge problem; that she is looking at a \$20,000 bill right now to fix it. She explained that she has 33 acres she wants to forest and there is no access; that her next-door neighbor wants to do the same on his 9 acres and he doesn't have the access because he has 170 feet of frontage; that when you don't have frontage, it's a problem, never mind this development; that where it's going is an awful plan.

Mr. Wood said that we don't even have a plan, yet, to look at. He said that, maybe, the Town shouldn't have come up with a Critical Overlay District for Open Space developments; that it may not be a good plan but that's what the Town encourages. He added that it's encouraging open space developments in the Overlay District where that parcel is; that it's saying that you have to look at an open space development before you look at a conventional subdivision.

Mr. Lentz suggested that the PB put this on for discussion to make a conscious effort to decide where we're going with this.

Mr. Cieleuszko said that he would like to not address this, at all, until we see a sketch plan; that you have to look at every project uniquely, not make a decision from discussion.

Mr. Lentz clarified that we could consider all the options and if we have any, and what the consequences would be.

Mr. Cieleuszko said that it's up to the applicant to try to show us where it would be less than 200 feet and, whether we agree with that, or not, we would have to look at a sketch plan.

Mr. Lentz asked for any other comment. There were none. He said that we would discuss this again next time just to see if we can come up with any options.

Ms. Sherwin clarified that any ordinance revisions would be addressing some shortcomings in the existing ordinance and not specifically tailored to any individual proposal.

The PB and Mr. Wood agreed.

ITEM 8 – CORRESPONDENCE

A. Stonecrop Farm Development

Mr. Lentz said that we have some information that Ms. Sherwin put together done by Ms. Prescott back on August 9, 2018.

Ms. Sherwin said that this is on the agenda because a concerned citizen raised a potential issue, stating that the Stonecrop Farm Development was possibly an illegal subdivision. She added that she looked through the Town files and followed up with the CEO to try and assess what was going on; that we've reached out to the Town attorney for his comment and have not yet heard back from him. She explained that, essentially, it looks like there are two parcels that are each being divided into two new parcels, so two coming forward, and the original two are owned by separate people and they've been owned by separate people for over 5 years; so, as she interprets the ordinance and State statute, it would not be considered a subdivision because it's been in the same ownership for over 5 years and there are only two lots being created, not three; that the Town attorney has been asked to weigh in on this.

Mr. Cieleuszko said yes because that's not his understanding of how it works. He asked if it was originally one lot that one person bought half of it and another person bought the other half and now, five years later, they are splitting it again.

Ms. Sherwin said no.

Mr. Cieleuszko asked who owned it before the 5 years; if it was two individual lots, still, even 5 years before that.

Ms. Sherwin said yes.

Mr. Cieleuszko asked when was the original split.

Ms. Sherwin said that we are trying to find that out because, again, the Town records are somewhat limited with regard to that; that based on what she could find in the Town records, Ms. Prescott did seek input from the Town attorney last year, when this issue came up. She added that, based on the email chain that was in the file, it seems as though the attorney also felt that this was not a subdivision.

Mr. Lentz asked if we had an active application.

Ms. Sherwin said no, nothing has come in to the Planning Office while she has been here or prior to her arrival that she is aware of.

Mr. Cieleuszko asked if this Stonecrop Farm development exists.

Ms. Sherwin said yes; that they have a website and they are selling some of the parcels.

Mr. Cieleuszko said that it exists, asking if there are houses on all these lots.

Ms. Sherwin said that there are not houses, yet; that there is a house on one of the lots.

Mr. Olsen said that it is raw land; that the husband and wife, who are the two owners of the lots, split their residence into two and, then, want to split two more lots into two, so they will have five house lots.

Mr. Cieleuszko said that, if it's referenced as backlots, then they are in trouble; if it references a family division, which is the exception that the State allows, and they can prove that, then it's legal.

Mr. Olsen asked if family division isn't for the purpose of family members, not just to sell to anyone.

Ms. Sherwin said that it is but because of that 5-year threshold that has been passed, and passed over again, they can sell.


ITEM 9 – SET AGENDA AND DATE FOR NEXT MEETING

A Special Planning Board Meeting is scheduled for July 9, 2019 at 7PM.

The next regular Planning Board Meeting is scheduled for July 16, 2019 at 7PM.
Public Hearing for the draft Marijuana Ordinance.
Annual Growth Permit cap item.

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 9:39 PM.



Dennis Lentz, Chair
Date approved: 07/16/2019

Respectfully submitted,

Ellen Lemire, Recording Secretary