

## TOWN OF GROTON PLANNING BOARD

February 8, 2018

### Meeting Minutes

A meeting of the Planning Board was held on Thursday, February 8, 2018, at 7:00 p.m. in the second floor meeting room at Town Hall, 173 Main Street, Groton, MA, 01450

#### Members Present:

Mr. Scott Wilson, Chair  
Mr. Timothy M. Svarczkopf, Vice Chair  
Mr. George Barringer, Clerk  
Mr. Russell Burke, Member  
Mr. John Giger, Member  
Ms. Carolyn Perkins

#### Not Present:

Mr. Michael Vega, Member

#### Also Present:

Mr. Takashi Tada, Land Use Director/Town Planner

#### **Public Hearing - Proposed Zoning Amendments:**

- ***Extension of Moratorium on Recreational Marijuana***
- ***Zoning for Marijuana Establishments***

Mr. Barringer opened the public hearing and read aloud from the Public Hearing Notice as summarized below:

In accordance with the provisions of M.G.L. Chapter 40A, §§ 5 and 11, the Groton Planning Board will hold a public hearing on **Thursday, February 8, 2018, at 7:00 p.m.** in the Town Hall (second floor meeting room) 173 Main Street, to consider the following proposed zoning amendments:

- **ARTICLE: Extend Temporary Moratorium on Recreational Marijuana Establishments**

To see if the Town will vote to amend the Code of the Town of Groton, Chapter 218, Zoning, as follows:

**Amend §218-16.2 Temporary Moratorium on Recreational Marijuana Establishments**, by deleting the words “June 30, 2018” in §218-16.2.C. (1) **and replacing it** with the words “December 31, 2018 or until the date of approval by the Attorney General of zoning provisions adopted by the Town of Groton, whichever occurs sooner” **and adding the words** “and the Attorney General approves” after the word “adopts” or take any other action relative thereto.

- **ARTICLE: Proposed Zoning for Marijuana Establishments**

To see if the Town will vote to amend the Code of the Town of Groton, Chapter 218, Zoning, as follows:

1. **Amend §218-14 Definitions**, to include definitions for Marijuana Cultivator; Marijuana Establishment, Marijuana Product Manufacturer, Marijuana Products, Marijuana Testing Facility, Marijuana Retailer and Marijuana Transportation or Distribution Facility.
2. **Amend §218-13 Schedule of Use Regulations**, to specify that Marijuana Establishments and any other type of licensed marijuana-related businesses are allowed by Special Permit from the Planning Board in the Industrial Districts; to further specify that Marijuana Retailer and Marijuana Testing Facility are allowed by Special Permit from the Planning Board in the General Business Districts; and to specify that on-site consumption of marijuana at licensed marijuana establishments is not allowed.
3. **Delete §218-16.1 Registered Medical Marijuana Dispensaries** in its entirety **and replace it with new §218-16.1 Marijuana Establishments** to set forth zoning provisions regarding: a) purpose, b) applicability, c) general requirements and conditions for all marijuana establishments, d) special permit requirements and e) abandonment or discontinuance of use.

Copies of the application proposed zoning amendments are on file in the Town Clerk's office in the Town Hall. The Town of Groton does not discriminate on the basis of disability. Further, a signed translation of this public hearing will be provided for the hearing impaired upon request by contacting the ADA Coordinator at (978) 448-1105 at least one week prior to the hearing.

Chairman Wilson stated that they would begin with the first item, which was to **Extend the Temporary Moratorium on Recreational Marijuana Establishments**.

Mr. Tada said he noticed that the way he wrote the public hearing notice for the first Article should have just ended with a period after the end of the first phrase in quotations that began "December 31, 2018," and ended with "whichever occurs sooner." He said the rest of it should be deleted because it was redundant and not entirely accurate as to the way it was written and what we proposed.

Mr. Burke said he put together a brief slide presentation to give an overview of what was happening with recreational marijuana.

Mr. Burke said that the M.G.L. Chapter 94G was the referendum that the town voted on in 2016. He said it was slightly revised by the legislature before taking effect. The state law says marijuana is legal without restrictions for adult use (must be over 21 years old) on private property; public consumption of marijuana is not allowed; and transportation of marijuana could not be unreasonably prohibited or restricted by any community. He said that communities such as Groton who voted in the affirmative in the 2016 statewide referendum were deemed to have opted in and unless specific zoning was adopted, marijuana establishments were subject to the zoning on the books. Mr. Burke said that there was an opportunity for communities to opt out which required both a majority referendum vote and 2/3 vote at the Town Meeting for a zoning article.

Mr. Burke stated that the Cannabis Control Commission (CCC) had jurisdiction over recreational marijuana and the state had proposed a 'seed-to-sale' sole control of the following marijuana products:

- Product contents and strengths
- Product packaging and labeling
- Establishment security and licensing
- Transportation and Delivery of products and materials

Mr. Burke said that two years ago when medical marijuana was adopted by the state, Groton put zoning provisions in place that regulated medical marijuana dispensaries. He said no such facilities had been licensed in Groton. He further said that in 2017, at the Fall Town Meeting, a temporary moratorium to prohibit recreational marijuana was adopted and is set to expire on June 30, 2018.

Mr. Burke stated that the State CCC would start accepting applications for marijuana establishments on April 1, 2018, and would start issuing licenses on June 1, 2018.

Mr. Burke said that 218-16.1 Registered Medical Marijuana Dispensaries, which was the current zoning in the Town of Groton. (Below)

- A. No registered medical marijuana dispensary (RMMD) or off-site registered medical marijuana dispensary (ORMMD) shall be located within 500 feet of the property boundary line of any lot in use as a public or private pre-school, primary or secondary school, junior college, college, licensed day-care center, church, library, park, playground, or other RMMD or ORMMD. Distance shall be measured in a straight line from property boundary line to property boundary line.
- B. A RMMD or ORMMD shall be located within a permanent building and may not be located in a trailer, cargo container, motor vehicle or other similar nonpermanent enclosure. A RMMD or ORMMD shall not have drive-through service.
- C. Marijuana, marijuana-infused products or associated products shall not be displayed or clearly visible to a person from the exterior of the RMMD or ORMMD.
- D. No outside storage of marijuana, related supplies or educational materials is permitted.
- E. A RMMD or ORMMD shall not display on the exterior of the facility advertisements for marijuana or any brand name. A RMMD or ORMMD shall not utilize graphics related to marijuana or paraphernalia on the exterior of the RMMD, ORMMD or the building in which the RMMD or ORMMD is located.

Mr. Burke stated that the M.G.L. said that municipalities may adopt five general types of regulatory authority and they use the words “unreasonably impracticable” or not in conflict with the state law. He said by their definition, unreasonably impracticable meant that a prudent businessperson would view the regulations to be a risk such that it would discourage a prudent businessperson from investing. He said the number of retail marijuana establishments could not be limited to less than 20% of the number of retail alcohol facilities where alcohol was not consumed on the premises.

Mr. Burke said the first Article they would be talking about was the extension of the current zoning moratorium which was set to expire on June 30, 2018. He said, as a safety measure, they were proposing to extend the moratorium until December 31, 2018.

He also said that they could enact local controls which were “reasonable” and “not unreasonably impractical” and also “not in conflict with” M.G.L. Chapter 94G or CCC regulations such as:

- Governing time and place of establishments
- Limiting the number of establishments
- Zoning regulations
  - Buffers from schools, daycares and places children congregate (500’ default per state regulations)
  - Noise controls
  - Air quality/odor controls
- Local Building, Fire and Health Codes
- On Site Consumption is not allowed
  - Requires local referendum to opt in

Mr. Burke stated that some of the issues of concern associated with marijuana involve the following:

- Signage – Local Sign Bylaw/No more restrictive than Alcohol Sales
- Display/Packaging of Product – CCC Regulations
- Buffers – Local Zoning
- Noise – Local Zoning/State Noise Regulations
- Odor/Air Quality – Local Zoning
- Security – CCC Regulations
- Parking – Local Zoning
- Traffic - Local Zoning

Mr. Burke said that M.G.L. Chapter 94G, Section 5, specified that no license for a marijuana establishment may be granted for a location within 500’ of an education use and other buffers could be established from sensitive uses.

Mr. Burke commented that communities (including communities that had opted out) could not prohibit the home delivery of marijuana products by licensed marijuana establishments.

Mr. Burke said that there were two Articles being proposed for the Spring Town Meeting

1. Extend current temporary moratorium on recreational marijuana from June 30, 2018, to December 31, 2018, or the date the Town adopts zoning (and approval by the Attorney General) whichever occurs sooner.
2. Proposed zoning to regulate marijuana establishments.

Mr. Burke stated that they would be proposing to repeal and replace the current medical marijuana zoning, retaining much of the regulatory provisions that the current medical marijuana zoning has and adding additional performance standards to address some of the issues that were identified in the

earlier slide, such as traffic noise, odors, etc. He also said that any marijuana establishment would require a special permit and site plan approval from Planning Board.

Mr. Burke said that they would also be including a definition for marijuana itself as well as other terms.

Mr. Burke stated the next area where they would be doing an amendment was to the Schedule of Use Regulations. He said the following section should be deleted and replaced as follows:

**Delete Section 218-16.1 Registered Medical Marijuana Dispensaries** and replace with a **new Section 218-16.1 Marijuana Establishments**

Mr. Burke said that both majority ballot approval and Town Meeting 2/3 vote were needed to opt out.

Specific language of the proposed by-law was required to be placed on the ballot and Town Meeting warrant to:

- Limit the number of establishments to less than State established minimums
- Restrict the types of establishments
- Ban all recreational marijuana establishments
- If an opt out were to be pursued the outcome is unknown and uncertain.

Chairman Wilson asked if there were any members of the public who had questions or comments.

Ms. Judy Anderson, resident, addressed the Board and said that the state's regulations indicated that there was a 500' buffer from educational facilities from K-12. She asked if it was just K-12 in Groton or if there was something else in the regulations that included all other childcare facilities. Mr. Burke replied there was, noting that they had borrowed the proposed buffer language from the existing medical marijuana zoning.

Chairman Wilson said that regarding the K-12 part, they were also covering middle school, high school and colleges. Mr. Burke replied that it said, "no medical marijuana establishment shall be located within 500' of the property boundary line of any lot in use as a pre-existing public or private pre-school, school providing education; kindergarten or any grades 1-12, junior college, college, licensed daycare center, church, library, park, playground or other marijuana establishments. The distance shall be measured in a straight line from property boundary line to property boundary line.

Mr. Giger pointed out that there were still a lot of loose ends because all of the state regulations had not been finalized and the Planning Board had done the very best they could with the information available to look out for the town.

Mr. Burke stated that he was not aware of any red flags and Town Counsel would be providing the Board with comments before they did a final tweaking, but tonight's purpose was to garner comments from the public.

Mr. Barringer stated that Section B2 read, "nothing in this section shall be construed to supersede federal and state laws governing the sound distribution of narcotic drugs." Mr. Burke replied that he thought they had decided to delete that because they could not figure out what it really meant.

Chairman Wilson said that classification of narcotics was done at the federal level by the Drug Enforcement Administration.

Mr. Barringer said that the current definition of narcotic drugs was basically opioids. He said there were class one drugs that were neither opioids, nor marijuana, such as testosterone, which was in the same category as heroin.

Mr. Svarczkopf stated that he felt it should be deleted. Mr. Barringer said that he agreed.

Mr. Burke suggested that they should make that change at the same time that they heard back from Town Counsel.

Mr. Giger made a motion to close the public hearing. Mr. Burke seconded the motion.

### **VOTE: 6 – 0 - MOTION CARRIED**

Mr. Giger said that he had sent out a few items that he wished to discuss with the Board. He said he looked at three documents, the Guidance for Municipalities Regarding Marijuana for Adult Use from the Cannabis Control Commission and a document from KP Law, both dated in January, titled a Guide to Law Legalizing Medical Marijuana and our current draft regulations. The first one was signage and our draft did not say anything about signage so by default he thought it fell under their sign by-law.

Mr. Svarczkopf said that it could not be any more restrictive than the alcohol beverage signage.

Mr. Burke said that the sign by-law was currently a general by-law and they needed to make it content neutral as a result of a Supreme Court decision.

Mr. Giger said the next item he had was 94G, section 3, sub-section Marijuana Growing and Cultivation. He noted that it specifically pointed out that the growing, cultivation, distribution and dispensing of marijuana did not qualify for agricultural exemptions under general law, Chapter 40A. He said that municipalities were not precluded from establishing zoning by-laws or ordinances, which allowed commercial marijuana growing and cultivation on land used for commercial agriculture, aquaculture, flora culture and horticulture. He further said that unless the farmer's land was in the General Business or Industrial Districts, they were saying that they could not use their fields to grow that. He asked if they were doing that deliberately.

Mr. Burke replied that he believed so. He also said that the regulations needed to be very restrictive.

Mr. Giger said the next item was a reference that identified if a municipality wished to adopt a local sales tax, it must accept general law, Chapter 64N, sub-section 3, by a vote of its legislative body and in compliance with its Charter. He asked if this was something that the Town of Groton needed to make sure they had a separate Article on the Warrant for the Spring Town Meeting that would adopt this.

Mr. Burke replied that was not their business.

Chairman Wilson replied that he felt it was the Selectmen's purview.

Mr. Giger stated that he provided a copy of the list of items to Alison Manugian only, not the entire Board of Selectmen.



Mr. Giger said that the next item was with regard to the Host Community Agreement and one of the first things they would see if someone were serious about having any kind of marijuana facility in Groton was this agreement. He said it was a document that was required to be signed and be attached to their application before it went to the state. He asked who was working on drafting one those agreements.

Mr. Burke replied that the Selectmen and Town Counsel had to work that out.

Mr. Svarczkopf commented that he felt Mr. Giger was making some important points but asked if it had been pointed out to the Selectmen that it involved them directly. He said he felt it would be appropriate for the Planning Board to share that insight with the Board of Selectmen.

Mr. Burke replied that the Board of Selectmen were big girls and boys.

Mr. Svarczkopf said if they dropped the ball then we would just say well, you people should have known better.

Mr. Giger said it might be good to communicate that to them.

Chairman Wilson said he saw no problem with sending that "heads-up" to the Board of Selectmen.

Ms. Perkins suggested that they send a copy of Mr. Giger's list to Mark Haddad, Town Manager.

Mr. Burke said that he was pretty sure that the Town Manager was on top of things.

Mr. Svarczkopf asked Mr. Tada could forward a copy of Mr. Giger's list to the Town Manager and let him know that the Board thought it was important that he know they might be potential issues.

Mr. Giger said that the next item addressed the number of marijuana establishments in a municipality and in the reference it said "a municipality may pass a by-law ordinance limiting the number of marijuana retailers to 20% of the number of liquor licenses issued pursuant to...." He said until he saw that he assumed that the state law said 20% minimum but no fewer than, but if they wanted to limit it to that it suggested we have to state that somewhere.

Mr. Burke said that he thought it was stated in the zoning. Mr. Giger replied that there was a section in the by-law that reads like it was written as instructions to us as opposed to specifically providing instructions. He said it read "it shall not prohibit one or more." Mr. Burke replied that was exactly what it said because the state regulations...Mr. Giger asked why it said "it shall not" and not "it will not" in our town. Mr. Burke replied that the word "will" did not have the same legal force that the word "shall" had. Mr. Giger asked why they just did not cite it and incorporate it by reference. Mr. Burke replied it was because it would be confusing.

Mr. Giger said that his question was in order for them not to have more than 20% of the relationship to the liquor licenses, did they need to explicitly state that they had decided that they would not have more than 20% of retail outlets relative to their liquor licenses. Mr. Burke replied he understood what Mr. Giger was saying and it did not put the limit there, it left it open-ended.

Mr. Giger said the next item was with regard to local tax. He said the amount of the tax had to be in the Community Host Agreement and it could be as much as 3% of the retail sales but the town had to justify it in a written document how those costs were determined and that document had to be a public document. He said his question for the town was who was working on that impact fee.

Chairman Wilson replied it was probably in the Selectmen's purview.

Mr. Giger said the last item was with regard to types of marijuana establishments. He said that was a list that had grown considerably since they had done the draft. He asked if they should be using the same definitions in their matrix.

Mr. Burke replied that he felt they hit the entire major "food groups" and then there was a catch all that said "any other licensed marijuana establishment."

Chairman Wilson said the next step would be to forward the material from Mr. Giger to Mr. Haddad.

Mr. Burke said that he would contact David Doneski (Town Counsel) and see what was happening with his review.

### **Discussion - Master Plan Implementation Committee**

Mr. Tada stated that the next meeting would be held on February 12, 2018, at 5:00 p.m. He said the meeting that was scheduled for January 31<sup>st</sup> was cancelled because there was not a quorum, and a previous meeting was cancelled due to the weather. He said they had made pretty good progress even though they had only met twice. Mr. Tada said there were nine members that the Planning Board appointed to the committee. He said it was suggested that if getting a quorum continued to be a challenge that perhaps the Planning Board should consider reducing the number of members to seven or five members.

Ms. Perkins stated that they might want to change the time as well as the day of the week for the meetings.

### **Discussion - Town Meeting Warrant Articles**

Mr. Tada said that he had not done this for the Planning Board yet and he wanted to get a sense of if they had a protocol of how they handled putting an initial placeholder Warrant Article on the Town Meeting Warrant and how you then go about finalizing it. Mr. Tada commented that he would be meeting with the Town Manager and it was one of the things that will be discussed.

Mr. Giger said that they needed to know what the final date was for the Planning Board to turn in the final version of the zoning. Mr. Tada replied he would ask Mr. Haddad about that and let the Planning Board know.

### **Approval of Meeting Minutes – 1/25/2018**

Mr. Barringer made a motion to approve the minutes from the January 25, 2018, meeting. Mr. Svarczkopf seconded the motion.

**VOTE: 5 – 0 – 1 - (Abstained – Perkins)**

**MOTION CARRIED**

### **Planning Board Meeting Schedule**

2<sup>nd</sup> & 4<sup>th</sup> Thursday of the Month:



- February 8
- February 22
- March 8
- March 22
- April 12
- April 26
- April 30 – Spring Town Meeting

### **Adjournment**

Mr. Burke made a motion to adjourn. Mr. Barringer seconded the motion. The meeting was declared adjourned at 8:35 p.m.

**VOTE: 6 – 0 - MOTION CARRIED**

Respectfully submitted,

Trish Gedziun  
Recording Secretary