

SCITUATE PLANNING BOARD MINUTES February 10, 2022

Members Present: Ann Burbine, Chair; Patricia Lambert, Vice Chair; Rebecca Lewis, Clerk; Stephen Pritchard, Benjamin Bornstein and Bob MacLean, Alternate.

Others Present: Karen Joseph, Town Planner; Shari Young, Planning Administrative Assistant.

Members absent:

See Sign-in List for names of others present at this meeting.

Location of meeting: Select Board Hearing Room, Town Hall, 600 C J Cushing Highway, Scituate.

Chair Burbine called the meeting to order at 6:30 P.M. The meeting was being recorded for airing on local cable television and streamed live on Facebook.

Documents

- 2/10/22 Planning Board Agenda

ACCEPTANCE OF AGENDA: Chair Burbine indicated there was a posted agenda. Ms. Lewis seconded the motion for the posted agenda and the vote was unanimously in favor.

Continued - Public Hearing - Stormwater & Site Plan Review Common Driveway – 533 Country Way

Assessor's Map/Block/Lot 26-2-5

Applicant/Owner: Marvell Homes, LLC

Documents

- Doc REV 3
- Doc 4169 PB Sub Ltr SWP 12-11-21
- PDF 4169 SW Report 1-10-22 Part 2 of 12
- PDF 4169 SW report 1-10-22 Part 1 of 12
- PDF 4169 SW report 1-10-22 Part 3 of 12
- PDF 4169 SW report 1-10-22 Part 4 of 12
- PDF 4169 SW report 1-10-22 Part 5 of 12
- PDF 4169 SW report 1-10-22 Part 6 of 12
- PDF 4169 SW report 1-10-22 Part 7 of 12
- PDF 4169 SW report 1-10-22 Part 8 of 12
- PDF 4169 SW report 1-10-22 Part 9 of 12
- PDF 4169 SW report 1-10-22 Part 10 of 12
- PDF 4169 SW report 1-10-22 Part 11 of 12
- PDF 4169 SW report 1-10-22 Part 12 of 12
- PDF 4169 CD SWP BOH 1-8-22 SWP DET II-SHT 5
- PDF 4169 CD SWP BOH 1-8-22 SWP DET I – SHT 4
- PDF 4169 CD SWP BOH 1-8-22 SWP DET I – SHT 6
- PDF 4169 CD SWP BOH 1-8-22 SWP EROS DET – SHT 7
- PDF 4169 CD SWP BOH 1-8-22 SWP EX COND – SHT 1
- PDF 4169 CD SWP BOH 1-8-22 SWP LAYOUT PLAN – SHT 2
- PDF 4169 CD SWP BOH 1-8-22 SWP SITE PLAN – SHT 3
- PDF 4169 CD-01-10-22-SHT 1

- PDF CD-01-10-22-SHT2
- Doc Summary of Issues
- Letter from abutter Tina Davin

Attendees: Steve Bjorklund, Representative; Greg Tansey, Ross Engineering; John Chessia, Town's Consulting Engineer

Ms. Burbine read a letter from abutter Ms. Tina Davin into the record. (See attached)

Mr. Bjorklund responded to several comments in the letter from Ms. Davin;

- No pipes are connected directly to the basin
- If there is water coming off the site across the street it will not be increased; it will be decreased.
- There is no additional water leaving the property
- Plowing will occur going into the property towards the back
 - Stipulated in the Homeowner's Association
- Street drain is directly in front of the of the property
- Abutter's property does have water on it now, it is referred to as a "vegetated wetland" and water goes to the wetland
 - There will be no increase in that water, with systems in place they will be decreasing water

Ms. Joseph indicated she spoke with DPW and plowing is done within the Towns' right of way. The email from today was shared with DPW.

There was discussion about the project going to Conservation. The project has to go to Conservation because some of the work being done at the front of the property is within the buffer zone; it has insignificant impacts because the project is across the street, but it does require filing. Mr. Bjorklund does not foresee any issues with Conservation because of the improvements that are being made.

Ms. Joseph indicated Conservation is waiting for the Planning Board to get further along in the hearing so the design does not change before another public session for Conservation.

Mr. Tansey walked the Board through comments from Mr. Chessia's last review. He said he has made some plan changes based on the last comment letter received and most were very minor.

- Cross section for common driveway inconsistent with the plan
 - 6" berm has been added to the cross section
- Intercepting trench drain at retaining wall
 - Now lined with an impermeable barrier
 - Any runoff coming off lawn area will enter into the stone trench, get into the perforated pipe at the bottom of the retaining wall and then go into the stormwater management system
 - Grading as been revised, 1% slope
 - Trench is now more hydraulically efficient
- Setbacks from stormwater management structures
 - Requirement to be 100' away from a foundation
 - Regulations are meant for a five-lot subdivision and above

- Proposed infiltration basin is very shallow and flat only getting clean water and has an overflow device.
 - Very little water will be infiltrated in that area, most of the water will be drained off through the overflow structure and get recharged in the subsurface recharge chambers
 - This design element has been used in the past and successfully
- Sand Filter
 - Filter has been lined
- Calculations have been tweaked to use the constant flow component
 - There was no material impact
- Added a remove and replace note to the subsurface recharge system to the detail
- Water quality volume using the entire sub catchment area
 - Used an iterator process – allowed under BMP stormwater management handbook
- Proprietary unit specified
 - Under Mass Step program has a 60.5% TSS removal
 - Under Jersey Step program has a 50% TSS removal
 - Overall 90% TSS or better removal rate and meets code
- Adjusted erosion control plan
 - Noted Marvel Homes will be the entity responsible for maintaining the erosion control systems
- Calculation on sediment traps completed
 - Will use existing retaining wall to prevent sediment from getting into the street – temporary during construction
 - When wall is removed will provide other temporary traps
- Construction flow
 - Start in the back and move forward
 - When moving forward a lot the back will be stabilized either permanently or temporarily by wood chipping, etc.
- Provided sizing on sedimentation traps
- Notes on erosion control
 - Comments seem to be geared towards a SWPPP
 - SWPPP not prepared
 - Prepared erosion and sedimentation control plan will be implemented
 - Practices used are more than adequate
- Snow removal will be at the end of the cul-de-sac
 - Safe and practical, plows can get up the grade

Mr. Tansey opined the project will not have any short-term or long-term impacts on Country Way. He spoke about the improvement to the sidewalk on Country Way; there will be a shoulder, grass between the new retaining wall and the outside of the right of way and there will be a grass strip between the sidewalk and pavement layout of Country Way. The sidewalk and shoulder will have a 1.5% super elevated pitch so there will not be icing. He said it will be a major improvement for the Town and will enhance the value of the neighborhood. He said next door is a common driveway with two house lots that is much longer than what is being proposed here. He opined that project will be good for the Town, there are no adverse impacts from any type of runoff from that project. He said there is plenty of sight distance. He said the common driveway for this project will be perpendicular to Country Way which is ideal, it is an improvement to what is there now, it is safer.

He said the amenities and improvements of this project meet the performance standards and if there are any other issues they can probably be conditioned.

Mr. Chessia provided a summary to the Board of some outstanding items the Board needs to make determinations on, Mr. Tansey did address some items in his presentation.

- Common Driveway
 - Does the Board want cross-sections at different sections of the road, because there are variable sections? Under Section 720.3 of Common Drive
 - Section 720.7.a, minimize site disturbance, proposed drive is relatively steep through the middle and will require a bit of cut, the Board needs to make that determination
 - Section 720.7.i discusses screening, this driveway is up the middle it is not abutting an existing property, but the Board needs to decide if it applies and screening is appropriate
 - Section 750.7.k, Country Way considered a major road, Board should make determination if a speed study is necessary. Proposal is based on the posted speed not the 85th percentile speed which is typically required.
- Site Plan Review
 - Section 770.5 several items the Board should provide direction on for the applicant if they want the following information:
 - Floor areas, foot print
 - Zoning Table with required setbacks
 - Zoning table does have existing and proposed, but is missing required
 - Topography of abutting properties
 - Some provided, does not extend to the distance required
 - Houses and buildings have been identified, but does not show all the contours
 - Does the Board want more specificity regarding trees to remain or a landscape plan?
 - Plan shows existing trees, but not necessarily designated to remain or to be removed
 - Street trees planted in the front
 - Does the Board want information on entrances/exits for the houses?
 - Does the Board want to see walkways?
 - Does the Board want to see lighting
 - Property is in the Water Resource Protection Zone
 - Requirement for maximum impervious area
 - Recharge being provided so there can be higher impervious area
 - Board needs to make a determination
- Recommended Conditions
 - 720.3, there should be condition that the DPW approves the work done in the public way
 - 720.5, operation & maintenance agreement
- Stormwater
 - Board needs to determine which if any DEP requirements would not need to be met

- Examples, set backs from foundations, abutting septic systems
- Shallow grass depression not a BMP modeled as an infiltration basin
 - Board has allowed in the past
- Interceptor trench comment has been addresses by adding the lining
- Sand filter basin, Board needs to determine if acceptable
 - Mr. Chessia opines it is difficult for a house, if it is not working correctly it needs to be dug up to be fixed
 - Design issues are being corrected
 - In areas where water protection is required sand filters have been lined, Board should make a preference
- Tree box filter, typically small concrete casket with a tree in it
 - Proposal is for bigger structure than a typical filter
 - Lined with impermeable liner
 - Modeled like a sand filter
 - Board should make a determination
- One test pit showed poor soils – relative to discharge rates
 - Area showed redox features which would not show up unless there has been fill
 - Applicant says there is no fill
 - Mr. Chessia was not present for test pits
 - If test show slower soils need to use the slower rate
 - SRS2 area needs to be addressed
 - Condition that when systems dug there should be inspections to make sure soils are as the applicant says they are
- Recharge
 - Providing a ton of recharge, small perimeter area flowing off the site
 - Rates are definitely going to be reduced provided everything is working
 - Board needs to opine on DEP requirements from list provided in review letter
- TSS removal
 - Pretty close
 - Need to provide sizing data
- Erosion and Sediment Control
 - Used DEP checklist for basis of comments
 - Site flows downhill to Country Way, building all infiltration system in the front
 - Don't want them ruined by sediment during construction
 - Temporary basin cannot be built where putting the permanent structure
 - Needs to be carefully thought out on how do it; it can be done just needs to be carefully controlled
- Operations & Maintenance Plan
 - Mr. Chessia referred the Board to his original comment letter for any comments they may have

Mr. Pritchard opined it is hard to make decisions here, with so many options laid out and asked Mr. Chessia his recommendations on how to approach these decisions.

Mr. Chessia pointed out an area on the plan, the yard basin area and said it seems like it is commonly used in the town; it looks like grass but it is loam, water will puddle there and if it gets too high it will overflow through a pipe. He said it sounds like it is something that has been used on a single-family home before and if the Board is okay with it it is fine. He said there is a sand filter, he does not know how many of those have been used on single-family homes, there is a tree box filter, but it is not really a tree box filter the way it is drawn and his understanding is those have not been so successful in Town that is something the Board needs to consider. He said a sand filter is a DEP BMP and the one on the northern part of the lot is pretty consistent with what is in the DEP handbook. He said the tree box filter is a little different and they are an expense for a homeowner to have to fix if it clogs. He said as far as the other subsurface systems in the front, chamber type systems the soils are better for the most part except of the one test pit, there is either roof runoff or pretreated runoff so it should be pretty good before it gets there. He said the catch basin does not bang right into the infiltration system, there is a swirl chamber on one side and water goes through multiple systems before it even gets to the system, he opines those will probably last a long time provided that people clean up the stuff upgradient. He said conceptually the Board needs to think about the tree box filter, which could be changed if the Board preferred. He said the other part of the system is probably very similar to what the Board has reviewed before; 90% of the lots reviewed probably have underground systems.

Mr. Pritchard said he understands Mr. Chessia's concern to be the tree box filter and whether the sand filter is appropriate or not. Mr. Chessia said no the sand filter is more a maintenance thing, it has a high cost if something gets clogged up, he said they work and they provide great treatment if they are working. He said it works engineering wise, but it is more of political decision. If the filter did get clogged up it would fill up and more water would go to the north. He said with the tree box filter there is an inlet that is higher similar to the lawn basin, there is a grate at the surface or just below and it would go into that and pipe all the way to the other system. The sand filter has to go down through and out the pipe.

Mr. Tansey asked if he removed the tree filter and loamed and seeded so there is a concave structure to capture runoff and perks through the sand filter media and is lined as an under drain to the subsurface recharge system is that something that is preferred. He said he could change it, but he thought the tree box would be something that is more aesthetically pleasing.

Ms. Burbine said no tree boxes, they do not work, they don't last; there needs to be something that is more permanent.

Mr. Bornstein opined since the first iteration it seems like the proprietary system is really something different; it is a self-designed system and is not the same thing as the Board was concerned about before. The applicant could use a different name to represent more of what the proposed system is.

Mr. Chessia said if there is any issue it should be the homeowner's issues not the abutters issue. He said a potential option for the sand filter should maybe have another riser so that it does not overflow into the neighbor's yard. Mr. Chessia did not want to design the system. The Board needs to let the applicant know how they should proceed relative to some of the suggestions presented.

Mr. Bjorklund said they can work on something visual that the homeowners are going to see and know something is not working.

Mr. Bjorklund said the decisions that need to be made by the Board for the Common Drive under section 770 are very simple things that could be knocked off. He suggested suspending the meeting until after the other public hearing to go over those issues so they would not have to be discussed at the next meeting.

The Board did not want to suspend the hearing until later in the evening.

The Board did answer some of the questions requiring decisions;

- The Board does want building floor plans,
- The Board does want required setbacks,
- The Board does want additional topography on abutting properties,
- The Board wants a landscape plan
 - Mr. Bornstein said he thought this was asked for at the last meeting,
- The Board does want data on the entrances/exits
 - Mr. Bjorklund said there are doorways and walkways shown on the plans,
- The Board wants to make sure lighting is down lighting
 - Mr. Bjorklund said that can be conditioned
 - Mr. Bjorklund indicated that lighting was added at the end of the driveway as requested.

Mr. Bjorklund said as far as the berm it can be seen looking at the plan view. He disagrees that a cross section is needed everywhere where the berm might change. He said it is easily depicted on the plan.

Ms. Joseph suggested continuing the meeting to two weeks from now to get some of these answers so the applicant can finish the plans. Mr. Bjorklund said that is what he is trying to do, but wants to have a conversation about why the Board is asking for more topography for a non-commercial site, this is just a single-family home site.

Ms. Joseph reviewed the schedule for the next upcoming meeting it was decided to continue to the next meeting before the applicant continues with the drawings.

Motion:

Ms. Burbine moved to accept the applicant's request to continue the public hearing for the Stormwater Permit and the public meeting for the Site Plan Administrative Review for a Common Driveway at 533 Country Way until February 24, 2022 at 7:30 pm and to continue the time for action for filing with the Town Clerk until May 6, 2022.

Mr. Bornstein seconded the motion; a vote was taken and was unanimously in favor.

Public Hearing – Proposed Zoning Amendment for Annual Town Meeting April 2022

Ms. Burbine read the public notice into the record. (See attached)

Ms. Burbine opened the meeting explaining this is a public hearing required by State Law to change and/or add Zoning Bylaw changes. The Board is seeking input for the proposed Zoning Bylaw changes; no votes will be taken tonight. She said that at a separate posted meeting the Board will

discuss and vote its recommendations to Town Meeting for each of the Zoning Warrant Articles which by law are required to be read at Town Meeting.

Public Hearing - Proposed Zoning Amendment – Section 440.5 – Business District

Documents

- Doc Proposed Amendment 440.5

Ms. Burbine indicated this is a housekeeping issue to add the language to the “Business District” by adding the VCN, Village Center & Neighborhood.

No public comment.

Public Hearing – Proposed Zoning Amendment – Section 620.3 - Setback and Yard Requirements

Documents

- Doc Section 620 Redline Version

Ms. Burbine explained the proposal to amend the Zoning Setbacks in an R3 district from 8’ to 15’ is being put on hold, based on previous comments from the Zoning Workshop that further study is needed.

There was not further discussion.

Public Hearing - Proposed Zoning Amendment – Section 610.1 – Lot Area and Width Requirements

Documents

- Doc Section 600-proposed- sp 1
- Doc Section 600 – proposed (3)
- Email dated 2.2.22 from Chair of ZBA

Ms. Burbine indicated the proposal is to have a dimensional requirement which was proposed as a 50’ circle at the workshop; there was some opposition and suggestions were made to lower the requirement to 30’ with an additional caveat.

Ms. Joseph indicated it was proposed at the workshop to consider language, that any portion of a lot that doesn’t meet the criteria above should not be counted towards the buildable lot area. She also said she heard from the ZBA Chair that he cannot support the 50’ circle and recommends something lower 30’-25’.

Ms. Joseph suggested adding the language “any portion of any lot created after 4.11.2022 that does not meet the above criteria shall not be counted toward buildable lot area, all buildable lot area must be contiguous.” She opined this would address the comment from the Zoning workshop.

The Board agreed to the 30'.

Public Comment:

Mr. Greg Morse, Morse Engineering, said that 30' is still a very wide width. He said there are several locations in town where strips have been done to accommodate installation of utilities. He provided an example where a lot is one removed from the primary street which has sewer, but the lot would require a septic system. He said there are several occasions where a strip has been used to get to the street for a connection; a sewer pipe is only 4" in diameter and there are mini-excavators that can work in much smaller areas than widths of 30'. He said there have been strips done at 8' or 10', i.e. 33 Beaver Dam and Jericho, corner of Hatherly and Stone, Mann Lot.

Mr. Pritchard opined there maybe a way to word this to allow for some exceptions. The Board's goal is to eliminate all the crazy lot lines created that are 2' or 4' wide just to get buildable area.

Mr. Morse said the way the language is presented tonight and presented on the website would prevent the example he provided from being doable.

Ms. Joseph disagreed, because the language says "any lot portion of any lot created after 4.11.22 that does not meet the above criteria shall not be counted towards the buildable lot area". Ms. Joseph said this portion was not reposted, but comments were taken from the workshop and the language was added to address the comments.

Mr. Morse said it appears it may resolve the issues, but he needs time to interpret and analyze it and it would be nice if it was provided prior to this evening.

Mr. Pritchard said this is the time for public comment; if you have comments please provide them.

Mr. Bjorklund commented the new language allows for a 2' strip, but does not allow it to be counted towards the buildable lot area. He said a septic pipe would be able to be put in to get to a leaching area; it could be 10' to provide access for a machine to get to another area of the lot.

There was discussion on why 30' was chosen. Ms. Joseph opined 30' is more appropriate it allows for access with a machine and does not interfere with the 50' frontage lot.

There was no further comment.

Public Hearing – Proposed Zoning Amendment – Section 800 Nonconforming Structures – Bob Vogel

Documents

- Doc Redline Section 800 – posted 1.24.22

Attendees: Bob Vogel, Building Commissioner

Mr. Vogel explained the proposed Zoning Bylaw change is aimed to solve a problem of derelict houses and other buildings that under the existing Bylaw after a certain amount of time cannot be rehabilitated. He said if they are on a non-conforming lot there is a barrier against further repair or

replacement of those structures. He discussed the features of the existing Bylaw that are pertinent to the proposed changes:

- Section 810
 - Structures and uses that are non-conforming
 - Lot doesn't meet size of dimensional requirements, i.e. too small
 - Structure on the lot doesn't meet setback requirements, i.e. too close to the property line
 - Use not allowed in the zoning district, i.e. a general store in a residential district
 - Currently those uses maybe continued unless or until abandoned or not used for a period of 2 years or more.
- Section 830
 - A non-conforming use or structure, other than a residence, may be repaired, reconstructed or restored provided such a repair, reconstruction and restoration is completed within 4 years.

Mr. Vogel said there are two different time periods, but both are finite and after the time periods have lapsed the properties become orphaned. Most typically a lot is non-conforming and cannot be built on and what might remain of the original structure cannot be repaired, i.e. 81 Surfside Road which has been there for 25 years. The properties only value is to be combined with an adjacent parcel or to sell it to a neighbor, the lot does not have a use. He explained the unintended consequences of the existing Bylaw, there are situations, financial, extended legal action, illness and the owner of the property may not be able to respond within the time frames that prevail. No redevelopment options exist after the time period has elapsed and the property becomes a blight on the neighborhood.

Mr. Vogel said what exists now could be called an "uncompensated taking", which has been discussed with Town Counsel and the ZBA. A property that had value now has no value because it cannot be re-built or redeveloped. This could be a problem for the Town, there is case law that does not allow that to happen; that takes away the value of a property.

Mr. Vogel said the proposed change increases the by-right window of redevelopment from 2 years to 4 years. If it goes beyond the time limit the change would allow the ZBA to grant a Special Permit or Finding. The ZBA would be the gatekeeper and provide a path forward for these properties to be brought back to good standing within their neighborhoods. He said you do not want to create any unintended consequences and read the language of the proposed Bylaw; "any lawful structure or lawful use of land or structure existing in whole or in substantial part as of the effective date of this Bylaw", date after passage at Town Meeting. It would be up to the ZBA to make a determination whether a particular property met those criteria or not and would be part of the Special Permit public hearing process. The ZBA would only be allowed to grant the relief only if it finds the repair, alteration, etc. will not be substantially more detrimental to the neighborhood, which is already present in the Bylaw.

Mr. Vogel said another goal would be to weed out non-conforming uses in a residential neighborhood, i.e. a commercial use. He said there is wording in the proposed change "once abandon or not used for a period of 4 years or more shall be allowed to be restores as a non-conforming use and no non-conforming use of change to a conforming use shall revert to a non-conforming use", over time that would weed out things like the Egypt Garage.

He said a couple of the Bylaws are being combined together and it is more or less housekeeping. He opined this is a decent way to solve the problem and go forward.

Public Comment:

Mr. Steve Bjorklund, resident at 861 Main Street, Norwell, said he is not against what is being proposed, but the entire time limit makes no sense. He believes anyone should be able to go the ZBA and ask for relief. This Bylaw takes care of 99.99% of the people in town. He said at the workshop it was discussed if people could come out of the "ocean" and rebuild their homes. He said he did some research regarding the properties on Peggotty Beach to make sure someone could not go and build a house in the ocean; he said every cottage that was destroyed on Peggotty Beach has been bought out by the Federal Government and sold back to the town with the stipulation that there can be no structure on it. He said none of those people are coming back. He opined this proposal prevents the reconstruction of the sole house that he knows of after the Storm of '78 that the owner cleaned up so the neighbors would not have a problem and that is the one person that cannot come forward and try to ask to rebuild the house; but everyone that has left homes like trash will now have the ability to come in and ask for permission whether it is today or in 50 years. He asked that the time frame be done away with. He said that is what would get rid of blight by allowing a structure to be removed and then come back to ask permission to put up a structure later on.

Town Counsel had no comment at this time; it is a public hearing and people are entitled to voice their opinions if there should be any time frame. She said a lot of time and effort was spent trying to address the problem in the most responsive and fairest way to the most people around. Is it perfect, no, no Bylaw is, but is it substantially better and fairer than what is on the books, she opined yes. The Town could change things down the road, but she opined there was a lot of effort to get everyone's input to get this place.

Mr. Bjorklund said this is not the first change, it used to be 2 years it was changed to 4 years to appease the people and they have still left their houses there and now it is being changed again because those people left blight in town; if they had cleaned it up they wouldn't have the right to come back. He said that is not right.

Mr. Vogel responded saying the intent is not to shut the door on any particular property or situation; the ZBA would become the gatekeeper of this Bylaw and the applicant or the proponent would be able to present their case to the ZBA for the ZBA to determine if the particular property fell under the umbrella of what is talked about here. He said it is not as though language in the Bylaw absolutely precludes the property Mr. Bjorklund is talking about; it simply makes the ZBA the judge of what is appropriate.

Mr. Bjorklund asked does this allow the property at 141 Turner Road to file with ZBA for a permit because the structure is no longer there, he heard it will open the avenue for that property. If it is true great if not it should be changed to include it.

Mr. Vogel opined the wording of the Bylaw is clear, the ZBA would have to agree the structure existed in whole or in substantial part as of the effective date of this Bylaw. That is a judgement that would need to be made.

Mr. Joe Fiorentino resident of 183 Lawson Road commented on the 2 years to 4 years; he said what is being talked about is managing a transition of an abandoned or not used parcel and the State

default is 2 years and questioned why the Town would go to 4 years. He said the problems he has seen in town is if they can't be solved in 2 years they are not going to be solved in 10 years. He suggests keeping the time frame to 2 years.

Ms. Lewis indicated this was discussed the last time and there are certain things, i.e. divorces, estates that go past 2 years, opening it up to 4 years takes care of some of those kinds of situations. She said it is a different issue with a storm, but a lot of times the State holds things up, i.e. divorces and that is why it is being proposed to switch to 4 years.

Mr. Fiorentino said those things would not make the property abandoned or unused.

Ms. Lewis said that is not true; someone could die and no one has the right to sell or do anything with a property because they are looking for heirs, etc. and it can take longer than 2 years.

Mr. Pritchard said at this point it is really just a handful of properties.

There was discussion about rare exceptions being dealt with by a variance; Mr. Vogel said he would have to refer to Town Counsel, there are very specific requirements for a variance and each situation would have to be looked at.

Public Hearing – Proposed Zoning - Marijuana

Documents

- Email dated 2.2.22 from Annmarie Galvin – Charlton Decision
- Email dated 1.31.22 forwarded from Lorraine Devin from Elizabeth Blanchard
- Email dated 1.31.22 from Barbara Quinlan
- Email dated 2.3.22 from Margaret Donovan
- Email dated 2.3.22 from Martin Henry
- Doc Marijuana Redline 1-20-22 Version 4-sp doc, email dated 1.26.22
- Email dated 2.3.22 from Jeff Nicolo
- Letter from Val Baker dated 1.28.22
- Power Point Marijuana Public Hearing 2.10.22 – DRAFT
- Doc Marijuana Redline 1-20-22 Version 4-sp.VGR Responses to SP's Comments doc
- Doc Marijuana Redline Version for Posting 1.24.22
- PDF Marijuana Redline REVISIONS post Public Workshop Posting 2.7.22
- Email dated 2.7.22 from Nancy Kimmett
- Email dated 2.7.22 from Judy and Jeff Kalla
- Email dated 2.8.22 from Stephanie McGirr
- Marijuana Public Hearing 2.10.22
- Email dated 2.10.22 from Dana Gillis
- Power Point Marijuana Public Hearing 2.10.22 (3)
- Email dated 2.10.22 from Graham McGirr
- Letter dated 2.10.22 The "Our Fair Share" Group

Ms. Burbine turned the meeting over to Ms. Lambert for the discussion and presentation of the proposed Marijuana (Adult Use) Bylaw portion of the meeting.

Ms. Lambert opened the discussion stating the hearing is a direct result of the Planning Board receiving instruction from the 2021 Special Town Meeting to further research and develop a citizen's petition presented at that Town Meeting. The petition was referred to the Planning Board to fine-tune and present a Bylaw that would pass the scrutiny of the Planning Board, Town Meeting and the Attorney General. The Board is acutely aware there are real concerns about placing an Adult Use Establishment in the Town and those concerns have been addressed in the language of the Bylaw. The Planning Board is not lifting the "ban" on marijuana only the voters can do that; inquiries are being conducted as to what kind of business can be located in Town should the voters lift the ban. She asked that questions and comments be kept to matters that are relevant; this is not a referendum of Marijuana in Massachusetts or Scituate. Marijuana is a legal use in the Commonwealth and the purpose here is to craft a responsible Zoning Bylaw for the Town that needs to be ready should the voters at Town Meeting decide to lift the ban on Marijuana which is what the citizen's petition last fall proposed to do. Ms. Lambert acknowledged that Town Counsel, Ms. Amara, and Mr. Romano, the Town's pro bono Attorney are present for the meeting this evening. She said Mr. Romano offered the Board his help to write the Bylaw. She said as a result of the workshop a new redline version of the Bylaw has been posted on the Planning Board home page of the Town website; she directed people how to find it. She said the Board took a lot of notes and suggestions from the workshop and all the communication received since then has been incorporated into the power point presentation of the Bylaws. She read a list of those how sent in comments to the Board; Val Baker, Barbara Quinlan, Jeff Nicolo, Martin Henry, Margaret Donovan, John Kimmett, Jeffery Kalla, Nancy Kimmett, Stephanie McGirr, Mary Henry, Dana Gillis, Graham McGirr, The "Our Fair Share" Group – Richard Bowen, April O'Connor, Keith Saunders, Freya Schlegel, and Margaret Loughlin.

Ms. Lambert explained how the meeting would be run and reminded everyone that the decision to lift the ban is for the voters.

Ms. Lambert presented the power point presentation (See Attached).

Ms. Lambert explained there has to be somewhere if someone choses to establish a business; the Board has to provide a land opportunity. She said the Board does not lift bans on anything, that is not their job and it is up the Town voters. It is the job of the Board to provide the opportunity to start a business, to have economic development: this is tax dollars.

Public Comment:

Ms. Margaret Donovan resident of 9 Trysting Place asked about the process that will take place at Town meeting. She said in 2016 Scituate voted "no" on Recreational Marijuana 52.4%, at 2018 Town Meeting the vote was 86% to prohibit and this could be a totally different vote; she suggests that an up or down vote whether or not to remove the "ban" be done before going through all the different Zoning Bylaws. She appreciates the amount of work done, but opines it will be very confusing and the vote to remove the "ban" should be totally separate from all the different Bylaws; it will be time consuming to go through them.

Ms. Lambert referred the question to Town Counsel.

Town Counsel explained the reason for having the Zoning put in first; Zoning will be in place so there are limits on how Marijuana facilities can be permitted in the Town if the "ban" is lifted. She explained that if the "ban" goes first and the "ban" is lifted, Zoning could fail and then

establishments could go anywhere without any regulation. Town Counsel said if the Zoning is passed it will go to the State and be approved at the same Town Meeting, the Marijuana ban will not be lifted until after the Zoning Bylaw is in place. This is how Towns have consistently done it, so there are not potentially conflicting results or a gap in ability to regulate.

Mr. Pritchard added the Bylaw gives the opportunity for voters to understand that if the vote for the ban is lifted, this Bylaw is what is going to be in place. He said if the vote to lift the ban was taken without knowing anything else then it is going to be open ended and the State will make decisions until the Town can get a new Bylaw in place and that would not be until another Town Meeting took place.

Mr. MacLean said hearing the arguments he would be in favor of having the vote, whether or not to lift the ban before doing the Zoning Bylaw. He said in the past in Massachusetts precedent has been set if there is a Zoning Bylaw put in place; a General Bylaw cannot effectively rescind a Zoning Bylaw that is put in place, i.e. Charlton and Brewster. He said if people choose to vote for the Zoning Bylaw and then keep the ban in the General Bylaw, the Town is opening itself up to a challenge; the Town cannot have a General Bylaw that countermands the Zoning Bylaw.

Ms. Joseph said that she has been working with Town Counsel and there is a series of articles that have to go before Town Meeting. She explained the DRAFT articles;

- Article to remove the Medical Marijuana Dispensary and replace with new Medical Marijuana Treatment Centers
- Article to add Recreational Marijuana
- Article to delete the temporary ban; it is no longer in effect
- Article to delete the ban in the Zoning Bylaw; all Zoning Bylaws have to come before a General Bylaw
- Article to have local option excise tax at 3%
- Final Article to eliminate the General Bylaw

She said if the General Bylaw and Zoning Bylaw “bans” are not over turned by vote, the new zoning even if approved is not usable because the “ban” would still be in effect in the Bylaw. Both the Zoning “ban” and the General Bylaw “ban” have to be removed.

Town Counsel said most importantly is the order of the Zoning Bylaw and the Zoning “ban”; having the Zoning Bylaw first allows for regulations to be in place. The ban will not be removed until the Town votes to remove the ban. The Zoning Bylaw does not have any impact if the Zoning “ban” remains; the prohibition will overcome it. She said there is nothing illegal about flipping them, but the Town is at risk of inconsistent results or not getting a well-thought-out well-crafted Zoning Bylaw, inclusive of residents, town officials, emergency management personnel and safety officers feedback, the Town risks removing the “ban” and not having adequate protections in place. She said while it may seem more cumbersome or problematic, particularly if the feeling is the Zoning is going to get shot down, why bother, “you “just don’t know. The Town wants to protect itself as best it can in the event the Town decides it wants to allow the use.

Ms. Lambert said the Board is proposing the Bylaw and the Town could say it does not want to lift the ban. She said that is okay, somewhere down the road there is a Zoning Bylaw in place for protection. She said they don’t go away and one is not dependent on other; she gave the example of Sewer, if a moratorium was allowed the Sewer Bylaws would not go away, once the moratorium is

lifted the Bylaws would go back into place. She said this protects the Town to have dedicated space to where these businesses could go.

Ms. Donovan said the confusion is that if you vote yes for the Bylaws you are saying yes to Marijuana. She said this could be confusing and could be hours before it goes to a vote. Ms. Lambert said that is why they depend on the Town Moderator, he really has the control of keeping the meeting orderly.

Ms. Linda Ferguson, resident of 57 King's Way and member of the Advisory Board, said at the Advisory Meeting a guest said if the Zoning Bylaw is voted "no" and then "yes" on the General Bylaw that is inconsistent results proving the Town wants Marijuana establishments. She provided an example of the Town of Kingston where that happened and how the Town is having to deal with the Attorney General because someone is trying to open a business. She said her concern is not the order, but that they are on the same Town Meeting because if the Zoning Bylaw does not pass and then there is a yes vote on the General Bylaw, the Town is in the same place it was last year. She said the General Bylaw vote should not be at this Town Meeting, the Zoning Bylaw should be there first and the other one later because we run a huge risk of having no control if it goes to the State Attorney General. She also asked about the 500', what metrics were used to include not allowing for an establishment near kindergartens, schools, daycares, preschools, religious education places.

Ms. Lambert said the 500' away from K-12 comes from the Cannabis Control Commission regulations, daycare is from the Chief of Police, the religious education facilities come from the Catholic church in the Harbor; the Board listened to it all.

Ms. Ferguson said obviously those things came up because there is a high population of young children; she questioned why playgrounds, ballfields, art schools, dance schools, karate schools were not included all of those things are clearly geared towards young children.

Ms. Lambert said it is an onerous proposition and the Town does not want to set its self-up where so much is banned that the Town is then subject to lawsuits. She said one of the default positions is that someone must be given the opportunity; the proposal is to put Marijuana in commercial/industrial areas where they would be best suited. The Board has tried to keep it away from where most people live and all comments are taken under consideration.

Ms. Ferguson said the 500' away from the playground in North Scituate leaves plenty of room for an establishment and 500' away from Dance Carousel still leaves plenty of places and the athletic fields. She would like the Board to consider that. Ms. Lambert said a Special Permit is still required and all that is taken into consideration. Ms. Ferguson argued then it comes down to five people's opinions and those people change all the time so it would be better if it were in the Bylaw at this time. Ms. Lambert reiterated that Marijuana Establishments cannot be in a residential district; there are business districts that are adjacent to a residential area, but the majority of the town is in a residential district.

Ms. Margaret Loughlin, resident of 91 Front Street, said the village, the Harbor is a mixed-use property there are both residential and businesses there and that has been included as a full Business District. Ms. Lambert said there is a 500' buffer around the peer recovery center. Ms. Loughlin asked about the other end near Lucky Finn. She said people live there and the Board is saying there could be a recreational use in the Harbor. She said she is confused.

Ms. Joseph said it is zoned as a Business District. Ms. Loughlin commented should she be paying business taxes because she lives there. Ms. Joseph, responded it is a Business District and there can be residential in a Business District, that creates a vibrant area - people live there, shop there and work there. Ms. Loughlin said it is considered by the State as a mixed-use property, she is in a mixed-use environment so you run the risk of both residential and businesses.

Town Counsel tried to clarify what is being discussed are Zoning districts in the Town not individual residences that are not in a residential district; the discussion is about Zoning districts in the Town where particular districts can have a wide assortment of business, some residential, some industrial, all different types of uses. This Zoning Bylaws is identifying where those uses could belong. It does prohibit any establishment in those residential districts in town, those purely residential districts. If it is a district that otherwise allows commercial, industrial, or however the districts are defined and subject to a special permit these types of activities may be allowed in those districts. When speaking about Marijuana not being allowed in residential areas that is Residential Districts, but a mixed-use district meets the Zoning requirements chosen; it is one of the allowed districts.

Ms. Loughlin said it is an area where there is residential, there are condos and there are already hazards, i.e. traffic, parking and those elements aren't considered.

Town Counsel said in a mixed-use district the global reality is different than a completely residential district that is why this particular use will only be allowed subject to a special permit; if a particular project comes before the Board those concerns issues can be the basis for serious conditions or denial of a project. She said traffic has killed many projects, Marijuana or otherwise. She said there is no reason to assume that if there is a traffic concern about a particular project in a particular location that it would not receive the same scrutiny as any other business with the same types of traffic concerns; the Planning Board would seriously consider the traffic impact, police, fire, everyone weighs in on traffic concerns no matter what the proposal is. She said those things are addressed and that is why it is under a Special Permit.

Ms. Loughlin said she has lived in the village for 12 years and respectfully debates that.

Mr. Gregg Davey resident of 50 First Parish Road asked if it is legal to require that any owner of these establishments be a resident of Scituate; he can see down the road where there will be large commercial interests buying these things up and they will get very sophisticated and targeted with advertising. He said if "we" do end up having a facility in town and it becomes part of a larger organization down the road, there will be marketing for the product. He said if there was a restriction that they have to be locally owned, locally operated and not part of a franchise some of those more direct advertisements may be avoided in the future.

Ms. Lambert said thank, but that is not required for any other business in Town. The Board will take it under advisement and consideration.

Mr. Stephen Conway resident of 12 Wade Street asked for clarification on what "geometric center" means. Ms. Lambert explained it means the center of the doorway.

Ms. Tracy Cutting resident of 389 Country Way asked for clarification on the types of businesses that would be allowed, 7 proposed, but she understands that only 2 would be allowed. Ms. Lambert explained the proposal limits retail establishments to 2. There is no limit on the other types, but there must be a Host Agreement with the Select Board and the business has to fit within the

parameters of the Zoning Bylaws. Ms. Cutting argued that when it is said there is a limit to 2 that is confusing for the average person, it is not really being limited, it is just 2 retailers. She said in reality there could be 12 places, she doesn't even know how many there could be. She said the Board is trying to pitch that there are only 2 retailers allowed, but that is deceiving to the average citizen especially in a town where 86% of the people voted a ban in place. She asked Ms. Lambert to tell her how many could there be, she is asking the Planning Board to give her a number on how many they would allow and why are the others not being limited.

Town Counsel said the law allows there to be limits on retail space and that is what is of most concern in most communities because that has the most impact on a community; what many communities have done and more importantly the individual that wants to put in a business that is not retail looks at the zoning to see what parcels there are or potential parcels could become available and be reasonable for a particular type of business to come in. She said the Planning Board has looked at all the Zoning Districts in Town and has limited the universe where any of these businesses can go, based on a lot of homework, i.e. knowing which areas have which parcels that are available, that could be used and those that would not work. She said a number of how many allowed can't be known.

Ms. Cutting asked the Board what is the likelihood of how many of any of these businesses could come based on the maps.

Mr. Bornstein opined the Bylaw is clear, there can only be 2 retail establishments and anything else would be up to the free market to decide. Mr. Pritchard it will be bounded by what is physically and economically there for any business.

Mr. Valerio Romano introduced himself as the Attorney working with the Planning Board on the Bylaw. He said the Planning Board is doing responsible planning, there are people in Scituate who were going to bring this forth without the Planning Board; they would not be looking for input, they would be able to just do it at Town Meeting without any other input. The Planning Board stepped up and took it on to work together in a manner that would protect Scituate. He said the people on this Board have no other interest for doing this other than putting in a responsible Bylaw. He said that is why it is being done in a certain order; get the Zoning Bylaw first before removing the ban, if it doesn't go through there is a Bylaw and it only protects Scituate. Mr. Romano said he does not have any client, nor can he conceive of a client that wants to come into Scituate. He said the Planning Board is not pitching anything to anyone, the Planning Board is trying to put in a responsible Bylaw to protect the people sitting in the audience. There needs to be a 2/3 vote at Town Meeting to get rid of the ban and the Board is doing their job to draft a responsible Bylaw. He opined that with regards to how many other different establishments there would be in Scituate, none, and said he would be surprised if there would be even one retailer. He spoke about a cultivation facility and asked people to realistically think where it would go, he said it doesn't make sense in Scituate. He continued to say that the Board is just doing their job of putting in a responsible Bylaw.

Mr. Bornstein made a point of order that when public comment is solicited it does not have to be a question, people are allowed to make comments they do not have to ask questions.

Ms. Christine Gillis resident of 10 Aberdeen Drive asked for explanation about the clause that says the permit granting authority can lessen or reduce the buffer zone to less than 500. She wants to know why and when can be done and when wouldn't it be done.

Ms. Lambert said it can be reduced, but it has to be a hardship case; a proposed business would need demonstrate the hardship to be allowed to be at 425' instead of 500' showing the proposed location is the only viable location. Ms. Lambert said what happens in each district is very confined with what can be done with the facilities, transporters, couriers, cultivators all fits in an overlay where there is very little space in Scituate. Ms. Lambert read from the proposed Bylaw what needs to happen for the Board to allow for a reduced buffer," show to the special permit granting authority that it is unreasonably impractical to gain site control". She said the magic words are "unreasonable and impractical". She provided an example of someone coming to the Board saying they have tried every site in town and they are at 452' instead of 500' and the Board denies the application, it is likely the Town would be sued and would probably loose. She said the Board is looking for the very best interests of the Town, the Board is elected officials, if you don't like what we are doing don't vote for us and hopefully someone else steps up, the Board volunteers their time to make sure the Town is well protected and there is not legal liability. Ms. Gillis asked why the clause has to be included. Ms. Lambert said because it protects the Town; it protects the Town from being sued. Ms. Lambert said that if someone comes before the Board they have to prove "reasonably impractical", every application is based on its merits. She said a citizen petition can come before Town Meeting any time. She said the Board is not here to propose things that people don't want. Ms. Gillis said it is not really a 500' buffer then because it can be reduced by the Board. Ms. Lambert opined an establishment would hard pressed to not be at 500'.

Town Counsel added that in a non-marijuana context the special permit process allows for people to come in and request waivers from all sorts of requirements and that is one of the reason's there are special permits so the individual situation is looked at; she said it is more often than not that Boards get challenged for turning down these requests and they fight to say "we" did the right thing and they often get upheld. Boards put out the requirements, not everyone can meet every requirement, aside from marijuana, with any special permit it is legitimate to make a request for certain relief and it is also legitimate for the Board to say "no". Ms. Gillis said that if the clause is not in then someone can sue, but if there is the clause someone can still sue. Town Counsel clarified that the clause does not prevent someone from suing; she said you cannot prevent someone from suing, but you can put in a Bylaw that justifies the actions taken based on the Bylaw. If someone is disgruntled anyone can sue, whether they win or not and whether the Town fights it or not for a host of reasons, even with the best protection and best decision you cannot stop them from suing. She said there has to be some faith in that people elected are going to do their utmost to uphold the law that is on the books. If a situation arises where a particular Bylaw no longer makes sense then there can be zoning amendments down the road, but the job of the Board is to uphold the Bylaws to the best of their ability, they are elected to do that. Ms. Gillis continued to press on why the clause is included. Town Counsel said the Board made a decision, which is not uncommon that in circumstances of extreme hardship which in a zoning context that there is potential to have some derogation from the black and white hard numbers, she gave the example of setbacks that happens all the time. Everything in a special permit is reviewed on a case by case basis.

Ms. Burbine said anything can be appealed. She said the Boards position is to do what is in the best interest of the Town of Scituate.

Ms. Gillis suggested that the clause be omitted from the Bylaw. Ms. Lambert said the Board will take the recommendation under advisement.

Mr. Tony Vegnani resident of 98 Chief Justice Cushing Highway and member of the Select Board, thanked the Board for the work they are doing; he opined it is important that Zoning Bylaws are in

place in case one of these establishments comes to town. He said it could have happened at the last Town Meeting and the Select Board and Planning Board decided these were the right steps. He said he has been listening to the last few meetings where suggestions have been made regarding limiting other locations and limiting the number of cultivation places and wonders why those comments are not being incorporated. He said we don't know what is going to happen in the future and that is why we need a strong bylaw. He thought Ms. Ferguson raised a good point that both things don't have to be at the same meeting and questions why the Planning Board is asking for the moratorium to be lifted instead of just doing the Bylaws. Ms. Joseph indicated it is a complete thought as the citizens petition was to remove the Zoning Bylaw Ban and the General Bylaw Ban. The Board will be sponsoring the Medical Marijuana Treatment facility, the Registered Marijuana Dispensary, the deletion of the temporary ban, and the Zoning ban removal; it is a complete thought.

Mr. Vegnani said he didn't understand that until recently and said the request was to put zoning in place not to come in and ask to lift the moratorium. He knows the citizen could have come on his own to this time, but he didn't. Ms. Lambert corrected him and explained that the citizens petition asked to lift the ban.

Mr. Keith Saunders, original petitioner, said he did petition to lift the ban and asked for some zoning that was put together by a different Attorney. He said he asked to defer the vote from October until April and it was approved. He said his petition might still be in effect if he chooses to reinvigorate it. He said he is letting the Planning Board handle everything.

There was discussion about the Planning Board "supporting" the lift of the ban; the Board is not "supporting" the lift of the ban, they are just putting it forward. Mr. Vegnani said it is perceived that the Board is supporting the lifting of the ban. Ms. Joseph said this is the public hearing, the Board has to vote to make a recommendation to the Town Meeting, just like the Select Board and Advisory Committee on all the articles.

Mr. Vegnani also commented on the pro-cannabis, pro-bono Attorney helping to craft the Bylaw. He said many people have asked him how that has occurred. He said the idea was to craft the Bylaw if this issue were to come down the pike again; he said what "we" are doing is bringing it down the pike again. He said he does think the zoning part is excellent and hopes the feedback is being listened to.

Ms. Annmarie Galvin resident of 80 First Parish Road said she wanted to clarify a comment from Town Counsel, that municipalities are able to limit and restrict the number and types of businesses and referred to that as "local control" and said it is part of the State Statue so the Town can do whatever it wants within the zoning. She thanked Ms. Joseph and Ms. Lambert for meeting with her after the last workshop to hear some of her concerns and said she was surprised about the list of business types in the zoning. She said she was told the zoning was using Rockland and Marshfield as templates for the zoning, but those communities are bigger communities and allow for 3 business types. She finds it strange that a smaller oceanside community would have 7 business types versus 3. She asked about what the vision is for siting these establishments for the town; she is surprised about the other business types, i.e. shipping, delivery, manufacturing.

Ms. Lambert said it is recommended by the Building Commissioner to list every type of establishment. She said it was decided to put all of them in the table of uses because we don't know what will happen in the future. The table shows where and what can be sited.

Ms. Galvin said through the CCC there are 10 business types available and the Planning Board is proposing 7 out of 10; she questions where those 7 came from and opined they don't really fit in with Scituate. Ms. Lambert said the Board chose the types of businesses in the areas they are proposed believing those are the best options and locations.

Mr. MacLean said what he is hearing is that people want limits on not just the retail businesses, but all the other types of businesses and that it should not just be up to the Board of 5 people to decide. The Town should be able to set the limits. Ms. Joseph said it is not just the Planning Board, a community host agreement is needed from the Select Board before anything even comes before the Planning Board; that is a means of control as well.

Ms. Galvin said she still does not understand why "we" would want manufacturing in Greenbush and shipping and receiving in North Scituate to be unlimited. She understands retail stores or if there was a zoning overlay on 3A. She said we already have the most protection, so it can't be to protect us. She thinks the zoning could be better or better explained.

Ms. Barbara Quinlan resident of 78 Brook Street, commented there needs to be clarification on the order of the Zoning Bylaw and the General Bylaw. She referenced Mr. MacLean's comment about Charlton and Brewster and the order in which things went resulting in lawsuits against the Towns. She said it is important for people to know that if they don't want it they need to say "no" to both things or if they say "yes" to one and "no" to the other the Town is still open to legal issues. Once there is one "yes" that is "yes" for everything.

Ms. Joseph said there will be multiple articles and that will be published for Town Meeting; it is not yet available. The order of articles and the implications will be explained by the Town Moderator at Town Meeting; the Town Moderator will be in charge of the discussion at the meeting and the warrant is published 3 weeks prior to the meeting for review.

Ms. Freya Schlegel resident of 9 Westgate Lane and part of the group that did the original petition said they were told the ban could not be lifted without zoning and more time was needed for the zoning and that is why it is being proposed for this Town Meeting. She is confused why people are proposing it should be pushed even further. Ms. Lambert said she thinks it is a public perception issue. This was referred to the Board in 2018, the Board thought about it, but when the citizen's petition came before the Town in 2021 the Board was remanded to work on it now.

Ms. Ferguson questioned the number of articles. Ms. Lambert explained there are multiple articles; some to do with the zoning and some with the bans. Ms. Ferguson said this is the same situation as last time, the petition was deferred because there was no zoning; if the Town does not vote to approve these Zoning Bylaws and the General Bylaw gets lifted the Town is in the same place as a year ago with no zoning or the Town runs the risk of being sued. She said the Town is being forced to vote "yes" on the Zoning Bylaw in case the General Bylaw passes. She does not think it is fair to the Town or the people who **don't** want Marijuana dispensaries. She said it will all be for not if the Zoning Bylaw doesn't get voted in and the General Bylaw does. She said having the General Bylaw on the same Town Meeting where there is huge risk that the Zoning Bylaw does not get passed, the Town could end up in the situation where it is voted to approve Marijuana dispensaries, but then the argument "you" won't let me have one comes into play. Ms. Lambert deferred to Town Counsel.

Town Counsel said she does not see it as a legal issue; there was a citizen's petition that could not be touched that was to lift the ban and had some minimalist zoning attached to it; it was agreed to have

the Planning Board work with the citizen group to have the best Zoning Bylaw crafted. It was always coming back with the Zoning Article and the request to lift the ban; if people read and are told there is zoning that will be in place should the ban get lifted and that goes first, it is unlikely the zoning will not pass and the ban is lifted. The question on whether to lift the ban or not needs to come after.

Ms. Ferguson said the Town essentially has to vote “yes” on these Zoning Bylaws because right after that vote there will be vote on the General Bylaw and the Town cannot run the risk of having the General Bylaw lifted without the Zoning Bylaw in place. She said the Planning Board by having both of these at the same meeting has put the Town in the position of having to approve Zoning Bylaws to cover the Town in case the General Bylaw is lifted. She opined it is not fair and the Zoning Bylaw should be as strict as possible at this point because it should not be left up to the whim of 5 people that changes every year. She said they shouldn’t be at the same meeting, because it is forcing a “yes” vote.

Mr. Romano commented he is not sure how separating one proposition from the other changes anything, it just delays it. He said there is both a ban in the Zoning Bylaw and the General Bylaw. There is a 2/3rds vote needed for the Zoning Bylaw and a 50% vote required on the ban for the General Bylaw, the Board has done a good job in figuring out the order of these things. He said putting one off for 12 months does not make the order any different. The goal is to craft a Zoning Bylaw that everyone can get along with; comments have been considered from people in the room, i.e. Ms. Galvin, the Police Chief added preschools and daycares, the Priest added religious educational facilities, folks in the community added 500’ versus 300’, everyone’s thoughts have been brought into this. He said the order does not change anything and he is doing this for no other reason other than he likes doing this.

Ms. Liz Charlton resident of 4 Jawl Ave. said something that has not been addressed is delivery and distribution; they were touched on briefly but they are huge businesses. She referenced the Town of Milton and opined those businesses seem to be the future. She said that is what Keith Saunders hopes and this is what he said when he brought the citizen’s petition in September. She said he said he is not interested in retail shops, that that was not his focus. She said he had a meeting with the Advisory Committee and Mike Westort who owns a dispensary in Marshfield and Rockland agreed that Scituate is not ideal for a retail establishment. She said it is unlikely that any large retailer will look at Scituate. She said from a realistic point of view if it is delivery and distribution that going to come, i.e. the building at the rotary, which require a traffic study, a warehouse in North Scituate, the tennis club, could be bought and turned into manufacturing, Tree Berry Farms and R&C Farms, the Montessori School, could those properties be developed and suddenly there are grow houses, warehouse, delivery trucks. She said rules do need to be put in place and we need to look at what the overall picture is. She agreed with Ms. Ferguson that there are two articles being put together when they should be separate. She said Mr. Vegnani is correct when he said we need to look at this more broadly and to look at all businesses being considered. She said we don’t know what we are voting on; the work done has been excellent and is a great start but if the question needs to be moved from April to October to get it right so be it.

Ms. April O’Connor resident of 21 Gilson and citizen from the original petition said she appreciates the work that has been done by the Board and addressed some of the concerns raised tonight; advertising for cannabis is not legal, there are caps on the sizes of facilities, the cost of these business is a lot so only certain businesses will come here, it can only be grown inside so R&C Farms is going to remain a farm, trucks can be housed outside of the town, a fulfillment center could be here and that could be small space.

Mr. Randy Arsenault resident of 3 Otis Place said he is trying to think of these things mathematically, there are 4 outcomes, they both pass, they both fail or one does and the other doesn't what is the exposure to the Town for each of those possible outcomes, what is the risk in terms of legal exposure, etc. If the Zoning does pass, but the ban is not lifted does that expose the Town to someone saying Zoning Bylaws are on the books and there could be a legal attempt to trying to open a business. Mr. MacLean opined probably yes, even though the precedent has not been established yet. His opinion was if the Bylaw is passed and the General Bylaw stays in place the Town is open to the State Attorney General. Mr. Arsenault asked how is that any different than the waiting system.

Town Counsel said if the zoning is passed and ban is not lifted, they are both zoning and the ban will be the controlling factor. Mr. MacLean said that is not the way the litigation has been trending.

Mr. Arsenault said it is perceived that the Town is forcing the vote to protect it from all the possible negative outcomes; if the Zoning Bylaw is voted in and the ban is not lifted then what is the harm. There is no harm. Mr. MacLean opined the Town will end up getting sued and will give up on the law suit because it does not want to spend the money and will end up going against the General Bylaw ban and what the citizens stated when not voting the ban to be lifted. He opined "we" need to keep it open to having the General Bylaw lifted and the Zoning Bylaw failing and then it will restrict it until the next Town Meeting. There was discussion that scenario is the worst risk.

Ms. Galvin said there are more than 4 possible outcomes, because there is a permanent Zoning ban in place. The General Bylaw ban needs to be lifted, the Zoning Bylaw ban needs to be lifted and the Zoning Bylaw needs to be voted in.

Ms. Burbine said a Zoning Bylaw has been proposed and if it passes and the other Zoning Bylaw and General Bylaw bans fail, a Zoning Bylaw will be in place. She said sometime someone else will come back to lift the bans, but the Zoning will not have to be done again. Ms. Galvin said that is why people are saying not to do the General Bylaw ban and only address the Zoning.

Ms. Lambert said the Board was told to this by Town Meeting and Zoning can be changed all the time.

Ms. Gillis said since there is so much concern about the timing and what comes first should there be more work done. The Board deferred to Town Counsel.

Town Counsel said this is getting ahead of ourselves in the process. This is a public hearing on the different articles, after all the input the Planning Board will decide what if there are any changes they want to propose on any article then the Board needs to make a decision on what to recommend to the Town as does the Advisory Committee, Select Board and the people at Town Meeting. This is just about information and articles that could potentially be before Town Meeting. The Board has the job of tweaking the language based on all the input received and putting the best articles before the Town. The Board can recommend passage, recommend passing it over, not recommending it as do other Boards, then the people will have all the information and the voters will decide. This is just an information session that is required. Ms. Lambert said this a not a done deal.

Ms. O'Connor recommended that the square footage be brought down to 5,000 sq. ft. for a cultivation facility.

Ms. Schlegel said her understanding was if the articles were pulled from the last Town Meeting then it would come to vote again; there was six months to plan and then there would be another vote, not that there would be six months to plan and not take another vote.

Ms. Cutting agreed with Ms. Ferguson's comments and said that she does not feel that some of the concerns are being received. There is consensus that "we" want really tight Bylaws and that negotiation is not happening. Ms. Lambert respectfully disagreed and said that everything discussed is being reviewed and considered.

Ms. Caroline Hine resident of 69 Hollett Street thanked everyone for today's meeting asked that beaches, playgrounds, public transit centers and public parks be included the 500' area. She would be interested in increasing the 500' area and asked for a map showing where the establishments could go; 500' is less than 2 football fields and is not a great distance. She also said more needs to be talked about and said a continuance would be helpful. She again wants to include playgrounds, beaches, public transit centers, libraries. Ms. Lambert said all those comments have been received and the Board is taking them under consideration.

The presentation will be available on the Planning Board page on the Town website.

Ms. Hine asked where the Commercial Districts are. Ms. Lambert said the Commercial Districts are the Business Districts, Humarock, Harbor and North Scituate.

Ms. Hine asked if there are question about the 3% tax and how it works who should questions be directed to. Ms. Lambert said the questions can be directed to the Board, but that is not their prevue the Select Board and Finance Direct will be in charge of the funds and they will go into the General Fund.

Mr. Martin Henry resident of 3 Mill Wharf Plaza, disagreed with the comment that no one will want to bring Marijuana to Scituate because it is out of the way and disagreed that there will be no advertisements. He said there are other areas around the country that advertise Marijuana. Ms. Lambert said in the State of Massachusetts in the CCC regulations advertising is not allowed and it is within the Boards prevue to make sure that does not happen.

Mr. Kevin Krawiec resident of 38 Hollett Street asked if the Planning Board has a legal obligation to consider these articles at this next Town Meeting, would it be permissible for the Board to defer it until the next Town Meeting. Town Counsel said the articles will go forward on the warrant, but at Town Meeting there will be recommendations for or against by all the different committees/boards of the Town. She indicated the Planning Board could recommend to pass over the articles, but when it is on a warrant some action needs to be taken. The Board makes the decision of what zoning articles to propose, but it does not mean the Board will recommend that the Town pass the proposed changes. Mr. MacLean opined the Board is under no obligation to propose these articles at this Town Meeting.

Ms. O'Connor said if it was brought up as a citizen's petition it would have to be put on the warrant, instead the Board is working to find something that would pass and be acceptable, the Town would be obligated to put forth a citizen's petition.

Mr. MacLean said there was a gentlemen's agreement to work with the who proposed the citizen's petition.

Motion:

Ms. Burbine moved to continue the public hearing for the zoning articles until 8:00 pm on February 24, 2022.

Mr. Pritchard seconded the motion; the vote was unanimously in favor.

Minutes
Documents

No meeting minutes.

Accounting
Documents

PO #2206875 (\$124.32)

Ms. Lewis moved to approve the requisition of \$124.32 to Gatehouse Media for legal ad for 81 Norwell Ave.

Mr. Pritchard seconded the motion; a vote was taken and was unanimously in favor.

Liaison Reports:

Charter Review Committee - reported by Ms. Lewis:

- Very close to being complete

CPC - reported by Ms. Burbine:

- Sunset land acquisition
 - One owner wanted more money
 - Town will be buying all land surrounding that parcel
- Scituate Small Dog Park
 - Appropriated monies to, but still have some homework to do
 - Will be located behind the other dog park on the Driftway
- Mordecai Lincoln
 - Will getting signed P&S before Town Meeting
 - Sellers wanted more money
- Hollett Land Acquisition
 - Land behind the Purple Dinosaur on Country Way
 - 2 plus acres, can become another playing field
 - \$37,500 purchase price
 - Land locked
- Cole Parkway Bandstand
 - Postponed till Special Town Meeting
- 90' Baseball Field indefinitely postponed
- Scituate Light House restoration
 - Originally asked for \$800K
 - Nothing has been done to the building since the 70's.

- Appropriated \$2M to restore the iconic, nationally registered lighthouse
- CPC has already funded money for the revetment to save it
- Condition is so poor it is ready to implode
- Lighthouse is operational
- Grants will be applied for
- Cushing Trail Restoration
 - Put on hold
 - Trail from Utility to Cushing School
- Historical Survey
 - Previously appropriated \$10K
 - Grant received for \$15K
 - CPC augmenting original appropriation of \$10K with an additional \$5K
 - List will be compiled of the historical properties in Town

Traffic Rules and Regulations Committee - reported by Ms. Burbine:

- House numbers in North Scituate do not make sense
 - Not good for public safety and needs to be addressed
- Speed limit signs have been put up on Clapp Road
- Need to address truck traffic on Mann Lot

Discussion and Follow up - Public Zoning Hearings:

- Board to provide comments to Ms. Joseph by Monday

Planning and Development – reported by Ms. Joseph:

- Next meeting – Site Plan Waiver, Common Driveway, 533 Country Way and Continued Public Hearing
- March 10th meeting - 81 Norwell Ave., 7 New Driftway will present a change in concept, MBTA Communities Discussion and Recommendations for Town Meeting
- Anticipate closing the public hearing for Zoning next time.
- Ms. Joseph will provide another DRAFT of the articles

There was discussion about the Planning Board proposing to lift the bans with their articles. Mr. Pritchard does not want it written that the Board is proposing to lift the bans. He opined the Board is doing it because of the previous vote and it should be stated that way. He said that is the only way he would support it. Ms. Joseph said perhaps the language on the bottom could be changed to say “Planning Board based on previous citizens petition”. The Board did not start out seeking to lift the ban.

Documents

- Email to the Board from Shari Young dated 2.4.22 with meeting agenda 2.10.22
- Email to the Board from Karen Joseph dated 2.4.22 with meeting materials for 533 Country Way, Section 440.5, Section 620, Section 600, Section 800 and Marijuana
- Email to the Board from Shari Young dated 2.7.22 with materials for Marijuana
- Email to the Board from Karen Joseph dated 2.7.22 with materials for Marijuana
- Email to the Board from Karen Joseph dated 2.8.22 with materials for 533 Country Way
- Email to the Board from Karen Joseph dated 2.8.22 with materials for Marijuana
- Email to the Board from Shari Young dated 2.9.22 with materials for Marijuana
- Email(s) to the Board from Karen Joseph dated 2.10.22 with materials for Marijuana

These items were distributed to the Board electronically.

Mr. Pritchard moved to adjourn the meeting at 9:40 p.m. Mr. Bornstein seconded the motion; the vote was unanimously in favor.

Respectfully submitted,

Shari Young
Planning Board Administrative Assistant

Ann Burbine, Chair

Date Approved: March 10, 2022