

PLANNING BOARD MEETING of October 22, 2013: Town Hall Banquet Room

## **I. ADMINISTRATIVE BUSINESS**

Chairperson, Wayne Hayward - Opened the meeting at 6:30pm. Mr. Hayward indicated to the Board and Public that the meeting was being videotaped.

### Quorum/Attendance

Members Present – Chairperson, Wayne Hayward, Francis Budryk, Kaisa Cripps, John Farrell Jr., Rene Fleurent Jr., Jeffrey Lucas, and Peter Nopper.

Absent: Vice Chairperson, Gary Staffon

Planning Director William Roth was in attendance.

In regard to the October 8, 2013, minutes, Francis Budryk asked for a correction on the minutes on page 7, a phrase that was quoted as said by Kaisa Cripps, but he says was said by him. Correction noted.

Kaisa Cripps also had a correction on page 5 that will read, Kaisa Cripps stated that Marijuana possession violates Federal law and State law cannot supersede it. She questioned whether Town of Fairhaven by allowing Medical Marijuana violates Federal law.

Kaisa Cripps made a motion to accept the minutes of October 8, 2013, with the two above amended changes and was seconded by Jeffrey Lucas. The motion passed unanimously.

### Planning Board Bills:

1. Fairhaven Neighborhood News – AD – **Medical Marijuana** - \$130.00

Jeffrey Lucas made a motion to pay the \$130.00 to the Fairhaven Neighborhood News for the advertisement for the Medical Marijuana public hearing and was seconded by Frank Budryk. The motion passed unanimously.

## **II. CURRENT PLANNING:**

### Receipt of Plans:

- 1.) Special Permit – **BlueWave Capital, LLC** – 211 Mill Road (PH: 12/10/13)

William Roth explained he received the application from BlueWave Capital, LLC for a 1MW Solar farm at 211 Mill Road, and he was recommending a Public Hearing on December 10, 2013.

Wayne Hayward made a motion to set the Public Hearing for December 10, 2013 and was seconded by Jeffrey Lucas. The motion passed unanimously.

### Approval of Plans:

- 1.) Form A – **Nye Lubricants** – North of Howland Road

William Roth explained there was a Street discontinuance plan that essentially memorializes what Town Meeting approved to discontinue River Avenue.

Kaisa Cripps questioned whether she would be able to sign the plans, as she was not on the Planning Board at that time.

William Roth said she could sign.

William Roth explained the Form A consolidates River Avenue into the adjoining lots. It would combine Lot number 242, 243B and River Avenue into a 10.28 acre lot. Mr. Roth said this was a condition on the approval.

Jeffrey Lucas made a motion to sign the Form A and was seconded by Kaisa Cripps. The motion passed unanimously.

### **III. PUBLIC HEARING:**

1. By-Law Text Amendment – New Chapter 198, Section 15.1 – Temporary Moratorium on Medical Marijuana Treatment Centers

Wayne Hayward brought the Public Hearing to order at 6:45 a.m.

Wayne Hayward read a statement regarding Acts 212-Registered Marijuana Dispensary. (RMD) He said that Massachusetts State Legislature passed the Acts of 2012 Chapter 369, which took effect Jan 1, 2013. And there are 351 Communities in Massachusetts. One third have moratoriums in effect. He referenced 105 CMR 725.000, "RMD" Registered Marijuana Dispensary and 105 CMR 725.600 "nothing shall be construed to prohibit local oversight and regulation."

Mr. Hayward also stated that in late September the Planning Board sent a proposed moratorium to the Board of Selectmen. Town Counsel Matt Schuyler approved the format and the Selectmen sent it back to the Planning Board. Counsel determined the protection or grandfathering is to be the date of the notice of the Public Hearing.

Fairhaven Zoning 198.16 Use Regulation Tables do not presently contain the new RMD use. According to 198-15A No building, structure or use of premises shall be allowed, except as allowed by 198.16 Schedule.

Wayne Hayward stated that he is hearing from the public about the banning of RMD's. He said that the Planning Board does not have the capacity to ban anything. He explained that in the past the Planning Board has approved adult entertainment in all capacities, wind turbines, and solar; which are all new uses. He said tonight's Public Hearing is proposing a Moratorium on an RMD use in the Town of Fairhaven.

William Roth briefly went over his Memorandum to the Board. He said the purpose of a moratorium is to allow the Planning Board time to prepare a Bylaw. In this particular instance, he did not see this as a necessity. Mr. Roth said that a draft Bylaw has already been discussed at the October 8, 2013 meeting, and there were only a few comments and recommended revisions. Therefore, Mr. Roth was of the opinion that having a draft Bylaw would be ready to start the hearing process within a month, which would be in time for a possible January Special Town Meeting or the Annual Town Meeting in May of 2014.

Kaisa Cripps said the information the Board has received that the Town cannot ban marijuana dispensaries is not true. Communities in Massachusetts including Wakefield, Reading and Melrose have all passed bans. Wakefield is appealing Attorney General Martha Coakley's ruling communities cannot ban dispensaries in Supreme Judicial Court or Supreme Court. Communities in Oregon, Arizona and California have also banned marijuana dispensaries despite state law.

Wayne Hayward said there aren't many things the Board can ban.

Rene Fleurent Jr. said the three communities that were referenced by Ms. Cripps share the same border with each other.

Wayne Hayward said that Article 3 passed 2-1 in Fairhaven and it is a 'new use' within the State.

Mr. Hayward opened up conversation to the audience members.

Shelley Stormo, President of Compassionate Care Centers, introduced herself and her Attorney who was present tonight.

Valerio Romano, Attorney for Compassionate Care Centers was present. He said he was happy to be in front of the Board tonight. In regard to California, he said the State has no oversight to Medical Marijuana. He said that Melrose, Wakefield, and Reading tried to get a ban immediately and now Martha Coakley's office is ruling that isn't possible.

Attorney Romano said that RDM's are really meant for patients. He said 1-2% will know about it; and if you drove by the building you wouldn't know it was there. He said that the organization is operated as a non-profit, and will put money back into the community. In regards to the Federal issue, the State is required to follow State Laws. In summary, Attorney Romano said that Medical Marijuana helps people; and it has been scientifically proven that even with MS (multiple sclerosis) it helps treat the symptoms. He said that the Planning Board has an obligation to help their community.

Wayne Hayward asked if other Towns are doing Moratoriums.

Attorney Romano said that many of them are not and the Town of Dennis is the first Town to approve a Bylaw.

Kaisa said individuals without a dispensary in their Town would not necessarily receive a permit as it was a mile radius. Kaisa questioned Attorney Romano whether he knew if the hardship cultivation permits would be negated for anyone living within a 25 mile radius. She heard there was precedence for the 25 mile radius.

Attorney Romano said he was not sure of the mile radius which would prompt a hardship cultivation permit.

John Farrell, Jr. asked if there was a concern of the IRS issuing a non-profit tax status.

Resident, John Roderiques of 9 Hope Avenue asked to speak as a resident. He said that he wholeheartedly supported the Article back in May. One of his concerns is maybe 500' is not far enough. What zone are these going into? He said that we cannot prohibit them. Mr. Roderiques said that he sees no point in the Moratorium, because the regulations are already out. He also said you wouldn't be superseding any Federal law.

Wayne Hayward said his concerns were location, location, location. He said the By-Law is not on the plate this evening, but the language is common to the Town of Dennis, however the missing link is the location. Mr. Hayward said that this is a brand new use in the State of Massachusetts and his concern is location. Mr. Hayward said that a moratorium would give the Board time to enact a By-Law and protect where they are going (location).

Mr. Hayward said that he thought he understood it that licenses would be given out by the State in April of 2014.

Ms. Stormo nodded her head no.

Wayne Hayward said they wanted to be aware of contractual zoning.

Mr. Roderiques said he understood his concerns. He understands he wants something in place. He said that the law was enacted by the State, and the State allows you to regulate. Mr. Roderiques said that if it's not welcomed in that Town, that are not going to issue the licenses. And if spaced sufficiently, they're not going to have four permits awarded. He said it was protectable use under Section 3, Chapter 48.

Wayne Hayward said there were two applicants currently looking in Taunton.

Mr. Roderiques said that you cannot locate a RMD within 500' of a residence. And it shouldn't take a Moratorium.

Wayne Hayward said that they can't legalize By-Law for the May Town Meeting. He said there was nothing they could do about it if there was no help from the zoning enforcement agent.

Mr. Roderiques said but you are also obligated to enforce state law.

There was a brief discussion between Mr. Hayward and Mr. Roderiques.

Wayne Hayward said that it is there every intention to move the By-Law forward.

Mr. Roderiques said you will kill their application if you do a Moratorium. (Referencing CCC, to which CCC members nodded their head).

Mr. Hayward said that as a residence, he believes in working toward a By-Law vs. a Moratorium. He said that in the last 6-8 months there have been very controversial issues that have been a good learning experience for the Board. He said that the Board has started talking about Medical Marijuana in the past eight months and have not waited until the last minute.

Kaisa Cripps said that the Board started talking about Medical Marijuana in late Winter, early Spring about the needs of the Board to move forward on it.

Resident, Ann Richard said that she appreciated all the work the Board has done. She said she was leery that the Board is putting this process in the same category as the Solar and Wind By-laws. She said they need to consider this issue, and if it is controversial where are all the Town residents that are concerned. She does not feel there should be a Moratorium.

Wayne Hayward said that the Board is trying to do their job and they have a mission to complete regarding zoning issues. He referenced the phrase, "once bit, twice shy". Mr. Hayward said the Board likes to do things in an orderly fashion; and that a Special Town Meeting could be scheduled in January and this could come to an end.

Francis Budryk said you say location, location, location. It's industrial zone, what's the problem? Mr. Budryk asked if they needed a Town Meeting to have that approved.

Shelley Stormo asked if they would opt to pay for a Special Town Meeting, would that impact tonight's vote on the Moratorium.

Wayne Hayward said the Board needs to be careful about contractual zoning. "I don't know," he said.

Ms. Stormo said that the application is due November 21, 2013 and if a Moratorium is in place it would be harmful to them. She said they would need approval from all Boards. Ms. Stormo also said that provisional licenses will be issued by the end of January. She said that the State would not issue a license in a Town with a moratorium.

Kaisa Cripps said that Rochester has approved in their industrial zone.

Ms. Stormo said with all due respect, Ms. Cripps we didn't apply to be in Rochester.

John Farrell, Jr. asked Ms. Stormo when they started dialogue with the Town of Fairhaven.

Ms. Stormo said they initially started contact in July. They had a meeting with the Chairperson of the Planning Board, Mr. Roth, Wayne Fostin (Building Inspector), and Pat Fowle (Health Agent) in August. They have sat down with the Selectman on a few occasions and they have sat down with the Chief of Police as well.

Rene Fleurent, Jr. said to the Board “don’t you think that someone else will come back to Fairhaven if we don’t move on this application.”

Resident, Sertac Ozdogru of 45 Grove Street stood up and said that he studied marijuana techniques in College. Referencing to Mr. Fleurent, he said that he sounds like he already has his mind made up and it’s not about location but it is prejudice. He said it is not a scary plant but a helpful plant. And that every single part of the plant can be used. He said he believes the Board needs to decide do they really want it in Fairhaven. He said that he was a medical marijuana patient as well.

Mr. Fleurent interrupted and said that he was here as a Fairhaven Resident and for the residents of Fairhaven. He said that he is not against anything; he just believes the Board needs more time.

Wayne Hayward said his concern is not the hemp plant and they are not involved with what’s inside the building.

Mr. Ozdogru said that his services are always available to answer any questions.

Wayne Hayward said that if the State hadn’t put the restrictions on us, there would be less to worry about. But there are state regulations.

Attorney Romano said there was a misconception on the State Regulations. He said that the State may request a fence around the building, but it is not required. It can be a nice façade, that by driving by you wouldn’t even know it was there. Attorney Romano said that one of the scoring for the applicant’s is municipal involvement; and that 2 Pequod Road (the proposed location of CCC) looks like a good industrial space.

Discussion ensued.

Attorney Romano said that some Towns were not putting in a Moratorium or a By-Law.

More discussion on ‘new use’.

Kaisa Cripps stated she had some concerns that the Board may be looked upon in the future as of favoring one group of people, because all this information is based on this current applicant.

John Roderiques said first the State said you cannot ban adult entertainment and that the State does not create a new use, it assumes .... You don’t have to do anything.

Wayne Hayward said that Martha Coakley’s office said “You have the right to regulate.”

John Roderiques said that Mr. Hayward was misreading what she was saying.

Wayne Hayward said that wind turbine was a “new use”; PVC was a “new use.” He said that the State gives them regulations, but they don’t give us zoning.

Wayne Hayward said we enable it. This is a new use.

John Roderiques said you want to create a zone. It’s a new legal facility. Mr. Roderiques said that he was entitled to his opinion and there’s a reason why people in Town get upset at the Board’s because people get interrupted when stating their opinion.

"In my legal opinion," he said "You want to put it in a specific zone," Mr. Roderiques said.

Sertac Ozdogru said he agrees with Ms. Cripps and they shouldn't be concentrating on just one applicant.

Kaisa Cripps said her concern is regulating this for the next 30-40 years. She is concerned for the long term for the Town of Fairhaven.

David Obry introduced himself as Shelley Stormo's dad. He said he is not a lawyer, and he is from North Falmouth. He said he is trying to establish a business in your Town. Mr. Obry explained there is a deadline coming up for Compassionate Care Clinics of November 21, 2013 and if the Moratorium is enacted in the Town of Fairhaven, it's very black and white. Mr. Obry said he would like to put an idea forward to the Board, that the Board not vote on a Moratorium and gives CCC a no objection letter with an understanding that there will be a Town Meeting with discussions of a Zoning By-Law. This letter will accompany the application due on November 21<sup>st</sup>. He reminded the Board that the state wants to give out provisional permits by the end of January.

Ann Richard asked when the new Cancer Center came in to town, were they required to come in front of the Planning Board?

William Roth said no they weren't, they got their Special Permit with the Zoning Board of Appeals.

Wayne Hayward said that he appreciated the good thoughts that Mr. Obry had made.

Jeffrey Lucas said that he had trouble with a Moratorium because it shuts off Fairhaven from the first round of candidates. He said that any marijuana business would be beneficial to the Town of Fairhaven, and that the Moratorium would shut everyone off in first round of permitting. Mr. Lucas said he didn't know where that would put Fairhaven, but he does understand that sitting in wrong area would be a big deal as well.

"The finality of a Moratorium is an issue for me," Mr. Lucas said.

Wayne Hayward said the moratorium would only be good until June 30, 2014.

Attorney Romano said that the Attorney General has just said they would be good until December 30, 2014.

Francis Budryk said that he believes 2 Pequod Road is a safe area, in his opinion. Mr. Budryk said he had a problem with a moratorium, and that Mr. Hayward has referenced that it's about location, location, location. Mr. Budryk asked Attorney Romano why the applicant's would leave Fairhaven.

Attorney Romano said that his applicants are going to move forward. He said that it is far less appealing without the municipality backing. And that if Pequod Road is favorable, there is no saying that the landlord might give lease it to someone else.

John Farrell, Jr. asked if the applicant's have any plans to expand to a 2<sup>nd</sup> location?

Mr. Obry said that the reason why Pequod Road was a favorable location was because it is large enough to expand and they were very interested in a state of an art LEED facility.

Wayne Hayward said that MGL Chapter 40A is very specific that the Board needs to direct their thinking within the confines of MGL Chapter 40A.

William Roth said that he believes the Moratorium is a mute point. He said he sees no reason to move forward on the moratorium. He said the Board had a very productive meeting on a By-Law, and they are not very far away to schedule and advertise for a By-Law public hearing.

There was a brief discussion on “if” there was a Special Town Meeting.

William Roth said he believed it’s a use they can find in their use table. And if they wanted to continue tonight’s public hearing they could.

Wayne Hayward asked what would that do specifically?

William Roth said it gives you more time to think about it. Mr. Roth said that their attorney said it is in line with other Moratoriums.

Wayne Hayward said maybe they could get an answer from Coakley’s office, is there a new use called RMD’s?

Rene Fleurent, Jr. said it is a new use and if the State didn’t feel as such they wouldn’t go back to the Town to review it.

William Roth said they don’t need a Moratorium or a By-Law. He said that he doesn’t feel the need for a Moratorium and the Police Chief and Board of Health agree.

Rene Fleurent, Jr. said he feels the Board has a lot of questions and needs more time.

Kaisa Cripps asked if Atlas Tack was zoned Industrial?

William Roth stated it was zoned Wetland Resource Protection, and there was nothing industrial over there.

William Roth stated that as the Planning & Economic Development Director in the town he’s constantly getting questioned on what we are doing to support new business in the Town especially in the current economy.

Wayne Hayward said in over 20 years, they’ve never denied a Special Permit.

Francis Budryk said they should not be arguing over this and they need to move forward.

Wayne Hayward explained what the options are tonight. He explained they could close the Public Hearing and then motion to do something; they could take a vote on the Moratorium, or say nothing and make a motion to adjourn. He said all these choices come with ramifications.

Francis Budryk said that he still did not understand if they do one of these things, what would happen.

Wayne Hayward said that he explained to the Board what the options are. “If you want more time, then you can continue the Public Hearing,” he said.

Francis Budryk said he was very confused and asked what bringing the Moratorium to Town Meeting does.

Wayne Hayward said the Moratorium would be offered to Town Meeting, while in sense they are working on the By-Law. Mr. Hayward said they would be giving a series of options for Town Meeting, and Town Meeting needs a two-thirds vote to approve.

Wayne Hayward said to Mr. Budryk that he has a dilemma because he wants to be on both sides.

“By asking questions means I’m on both sides?” Mr. Budryk asked.

Jeffrey Lucas made a motion to not recommend the Moratorium; however he was ruled out of order by Wayne Hayward, as Mr. Hayward said that the motion needs to be in the positive form.

William Roth stated that he has been in a quandary for twelve years as a motion does not need to be always made in the positive. There are time when the Board may want to deny an application because it does not meet our regulations.

There was a brief back and forth discussion between Mr. Roth and Mr. Hayward.

Kaisa Cripps made a motion to close the Public Hearing and was seconded by Jeffrey Lucas. The motion passed with a 6-1 favor, with Wayne Hayward opposing.

The Public Hearing is closed.

Kaisa Cripps made a motion to recommend By-Law Text Amendment, New Chapter 198, Section 15.1, Temporary Moratorium on Medical Marijuana Treatment Centers to Town Meeting and was seconded by Jeffrey Lucas.

On the question, Mr. Budryk asked what does that mean?

Wayne Hayward asked Mr. Roth to explain it to Mr. Budryk.

William Roth said the recommendation is in favor to send the Moratorium By-Law to Town Meeting; if you vote against the motion, then the Moratorium would not be sent to Town Meeting.

Rene Fleurent, Jr. said that this Board has been put through a lot of pressures from outsiders in the last three years, and they really need to take into consideration all they have done.

The motion passed 4-3 in favor of the recommended motion, with Kaisa Cripps, Wayne Hayward, Peter Nopper and Rene Fleurent, Jr. in favor of; and Frank Budryk, Jeffrey Lucas and John Farrell in opposition.

#### **IV. LONG RANGE PLANNING:**

##### 1. Zoning Reform Bill

William Roth stated there was nothing new.

##### 2. Master Plan Discussion

William Roth stated nothing has begun with this discussion, as of yet.

#### **VI. OTHER BUSINESS:**

Francis Budryk made a motion to adjourn and was seconded by Kaisa Cripps. The motion passed unanimously.

The meeting adjourned at 8:57 p.m.

Respectively submitted,

Patricia A. Pacella  
Recording Secretary