

HAMILTON PLANNING BOARD
MINUTES OF MEETING
November 20, 2018

Members Present: Richard Boroff, Peter Clark, Janel Curry, Ed Howard, Rick Mitchell, and Brian Stein (Chair).

Associate Members:

Planning Director: Patrick Reffett

This meeting was called to order in the Memorial Room at Town Hall at 7:03 with a quorum established.

Public Hearing for Scenic Road Tree Removal

Tim Olson was present to discuss maintenance on scenic road trees. Mr. Olson said marked trees were dead, diseased, and dangerous according to the opinion of professional arborist, Mark Cicorea. Mr. Olson hoped to obtain permission to do annual maintenance before the DPW hearing on November 27, 2018. Richard Boroff and Brian Stein had seen the dead tree on Union St.

Rick Mitchell made motion to approve the request of the DPW Director to remove the trees. Ed Howard seconded.

Vote: Unanimous in favor.

Public Hearing. 601, 605, 609, and 613 Bay Road.

Tom Ford recalled the discussion of the previous week regarding the Gesmundo lot across the street from the proposed development. Mr. Ford presented photos of the driveway access. Richard Boroff said he went to the site and saw the reflection of his headlights on the fence, which were the same as was indicated in the photos. Rick Salvo distributed the revised plan, which reflected the circular turnaround as requested by the Fire Chief. The orientation of the driveway with respect to the Gesmundo lot was also indicated on the revised plan. On sheet 4 of the revised plan was a note to the effect that the driveway would not be used for any further subdivision or access to any other property.

Ed Howard said as the Chairman of the Historic District Commission, he had received the memorandum from Donna Brewer in relation to the Historic District Commission holding hearings for the widening of the ways, which Mr. Howard agreed needed some level of review. Mr. Howard's first inclination if no one stepped forward to hold a hearing, would be to let it lie but with Ms. Brewer's opinion having been received, a public hearing should be held regarding the appropriateness of the roadway. Mr. Howard would schedule the public hearing. Mr. Howard noted that no street lighting was being proposed and no architecture would be reviewed. The only topic of the public hearing would be the effect the roadway would have on the Historic District. The Board discussed options as to approval pending the Historic District's review.

Paula Gesmundo (610 Bay Road) requested seeing the distributed information and wanted to ensure the notation on the revised plan was appropriate to deny access or further subdivision. Ms. Gesmundo said living in the Historic District was costly and noted the extra costs associated with the renovations of her home. Ms. Gesmundo wanted the District to be appreciated by the public who voted for the District's establishment. Those who moved to the District took on burdens as well as privileges, according to Ms. Gesmundo. Ms. Gesmundo recalled that when Tom Ford originally developed the parcel, the Historic District Commission cared very much about the appearance of the roadway. Mr. Ford responded that the three houses built or renovated on Bay Road went through the Historic District Commission's process. Mr. Ford did not agree with Donna Brewer's interpretation but agreed to have the Historic District Commission weigh in on the road. Mr. Ford said he respected and improved the view of the Historic District.

Holly Shepherd (613 Bay Road) supported the proposal because it was better than possible alternatives. Ms. Shepherd said she was assured by Tom Ford that there would be no further subdivision or access to adjacent land. Ms. Shepherd said the effects of turning car lights were more on her home than on the home across the street. Ms. Shepherd said her family loved where they lived but she was afraid of possible alternatives. Ms. Shepherd also wanted to see similar homes to hers with people of similar values to keep the Historic District special. Ms. Shepherd's friends were interested in the lots and she hoped the children could ride their bikes on the cul-de-sac as she lived on busy Bay Road. Ms. Shepherd thought the plan was the best possible outcome for the property.

Motion made by Janel Curry to approve the subdivision plan, for 601, 605, 609, and 613 Bay Road subject to the review by the Historic District Commission.

Richard Boroff seconded.

Vote: Unanimous in favor.

Motion made by Janel Curry to accept this plan dated November 13, 2018, which included the 17 waivers as the official plan.

Rick Mitchell seconded.

Vote: Unanimous in favor.

Motion made by Brian Stein to close the public hearing.

Rick Mitchell seconded.

Vote: Unanimous in favor.

Board Discussion – Special Permit to Regulate Medical Marijuana Facilities

Patrick Reffett recalled that Green Meadows farm had discontinued their operations the previous spring and made the decision to pursue a medical marijuana operation. As an article previously accepted by Town Meeting recreational marijuana had been banned in town. Mr. Reffett noted however, that the Town of Hamilton did not have a specific By-law for medical marijuana

facilities even though there were other protections that covered the town and abutters. According to Mr. Reffett, the State had rigorous standards for overseeing operations and gave host communities protections. One of the laws required a Host Community Agreement (HCA). The Green Meadows Farm Host Community Agreement, dated August 20, 2018 was sent to each Board member. Bob Patton and the Selectmen worked with abutters to try to address their concerns. The Agreement would allow the proponent and town to work out concerns before and after permitting. The Agreement addressed noise, smells, use of consultants, and gave the Planning Board Site Plan Review responsibility. Mr. Reffett said the Town had a level of control even if unanticipated things arose and required the proponent to address the issues. The Host Community Agreement contained a termination clause that would end the HCA if the company failed to comply with the Agreement and the conditions therein.

Attorney Ben Tymann, a land use litigator was present to represent two abutters, Paul Grand Pre of Patton Ridge in Hamilton and Chris and Deborah Abbot of Topsfield. The abutters had concerns about the facility and were hoping the Planning Board would get behind a By-law. While Mr. Grand Pre had spoken about the concerns at a public meeting previously, the Abbots had not been involved in the Host Community Agreement discussions as they were Topsfield residents. The Abbots had filed an appeal to the Topsfield By-law in land court as they believed it was spot zoning. According to Mr. Tymann, Topsfield created an overlay district, which was part of the Route 1 area as well as one single lot at Green Meadows Farm. The Patton's attorney, Gavin Cockfield reportedly indicated that the Patton's would not pursue the Topsfield location at this time. The appeal was withdrawn without prejudice by the Abbots. Mr. Tymann asked the Planning Board to create a By-law that existed in every other North Shore community.

Attorney Tymann explained that since cannabis was legal in MA, towns could no longer ban medical marijuana establishments and municipalities had the responsibility to manage the use like any other use relative to zoning. According to Mr. Tymann, all North Shore communities regulated medical marijuana. As Hamilton had no specific overlay district or regulations regarding medical facilities, he claims there was a right to operate one anywhere in Hamilton. The State Cannabis Control Commission had produced a "Guidance for Municipalities Regarding Marijuana" in December 2016, which allowed for facility placement under local control. The State certificate required municipal zoning approval, according to Mr. Tymann.

In 2017 Hamilton Special Town Meeting approved a ban on recreational marijuana establishments but created a loophole regarding medical marijuana dispensaries Tymann stated. By definition a medical marijuana dispensary shall not be deemed to be a marijuana establishment. According to Attorney Tymann, Green Meadows Farm sought to use this loophole. The Patton's were not seeking a dispensary but under the Regulations, a dispensary encompasses cultivation as well. Mr. Tymann believed that the exemption or loophole allows the Patton's to move forward on their plans. Mr. Tymann warned that others could follow because no Special Permit or overlay district would allow for placement of facilities anywhere in town

even though there would be a Host Community Agreement process. It was stated that Agreement negotiations could deny the facility, but Mr. Tymann had never experienced it.

Richard Boroff asked why the Town would care how many facilities there were when they would increase the value of the land and potentially the amount of revenue for the Town and that there was a chance to set up a monopoly of one business versus another. Mr. Boroff suggested doing this with all types of businesses and horse farms. Ben Tymann explained that the legislature had determined that this use was not agriculture as per state law with the customary exemptions in regard to zoning constraints. Tymann stated that the exemption in the Hamilton By-law allowed for medical marijuana, which allows both dispensaries and cultivation. Mr. Tymann added that while the Town may not be concerned with the impact of cultivation facilities it might be concerned about the dispensaries. Mr. Boroff compared the facilities to pharmacies, which were not limited in the town. Tymann responded that they were only allowed in the Business District under a Special Permit, which did not exist for medical marijuana facilities. It was noted that pharmacies were allowed under Site Plan Review in the Business District. Rick Mitchell stated that the voters had spoken with a two-thirds approval of the article. Attorney Tymann responded that they might not have been aware of the full implications of its passage.

Tymann indicated that within a 10 mile radius of Hamilton there were 20 towns of which Hamilton was the only one with no regulation of medical marijuana dispensaries or had a loop hole with a moratorium. Rick Mitchell said he had reviewed the list and spoke with Planning Directors in a number of communities. Wenham had the same By-law as Hamilton. Boxford and several other communities were on the list that did not have cultivation By-laws. According to Mr. Mitchell, Ipswich had a Special Permit process in the Industrial District. Danvers had a by-right provision in their Industrial Overlay District. Mr. Tymann responded that Boxford and Wenham had only done a moratorium but did not take the extra step that was put in place for the Patton's.

The attorney mentioned that a marijuana zoning by-law would require the Board weigh the impacts of facilities. Impacts would include noise, odor, visual impact, light pollution, water usage, wastewater generation, environmental risk to rivers and streams, safety risk and the diminution of neighboring property values, according to Tymann. An Overlay District would control placement, promote municipal planning, avoid incongruous uses, give public notice, and create transparency. Site Plan Review for an as-of-right use did not require notification under 40A, while a public hearing for a Special Permit would require notification. Mr. Tymann believed a Special Permit was more appropriate as the Host Community Agreement was not the best way to regulate the use in his opinion.

Tymann recalled that marijuana was still unlawful under Federal law and that the use was considered industrial rather than agricultural under State law, which required stringent zoning such as for asphalt or recycling facilities. Facilities in Georgetown, Amesbury, Fitchburg,

Franklin, and Milford were all in industrial zones. As Hamilton had no industrial zone, Mr. Tymann thought it was even more critical to regulate the use.

Attorney Tymann described the impacts such as noise from exhaust fans, truck traffic, and security alarms. Mr. Tymann said there was no filtration system that eliminated the pungent skunk-like odor and that the proposed Patton Homestead operation was an incongruous use due to the impacts. He noted the visual impact of an industrial site near homes and condos. The outdoor lights would need to be on 24/7 for security reasons and would trespass onto other properties. Tymann noted that water usage would increase due to thirsty crops and that wastewater generation would allow for chemicals to seep into the Ipswich River Watershed. Tymann added that the safety risk would increase causing a burden on the police department. The neighboring properties would experience a property devaluation. Mr. Tymann reiterated his request to create an overlay district, which would put in place a conventional Special Permit process allowing for the impacts to the community to be analyzed and mitigated.

Bob Patton, Chris Walker, and Shawn Costello were present. Mr. Patton assured the Board that no loophole had been granted to the Patton family but that they had a farm and applied for the use to the State. Mr. Patton said the Host Community Agreement had a great deal of power. Mr. Patton said the Hamilton facility would be producing an oil that was extracted by pressing. The oils, which were provided for under the Host Community Agreement would be used in edibles or creams and not smoked. The oils would be extracted by a hydraulic press. The odors would be removed through a double filtration system, according to Mr. Costello. Exhaust air and incoming air would both be filtered. The facility would be a greenhouse not an industrial complex with chemical uses. The Patton Family Mission Statement was that the farm would be organic with no chemicals used, which was different than the industry standard. The facility would be a greenhouse and it was noted that a greenhouse growing organic vegetables had been on the property for five years. He also stated that the Host Community Agreement contains a nuisance abatement clauses within it so such problems as Attorney Tymann mentioned wouldn't be a problem.

Rick Mitchell asked when the applicant would be coming to the Planning Board for Site Plan Review. Bob Patton responded "within 60 days". It was noted that a potential Zoning By-law would need to be passed at Annual Town Meeting and the applicant would be grandfathered if he filed before the Town Meeting was held. Reffett also mentioned that the Attorney Generals review of zoning bylaws usually took 90 days in addition.

Ed Howard asked how the applicant would fertilize the organic crop. Shawn Costello responded that the grower would determine what to use, which would be purchased from a local provider. Fertilization would occur within the building. Irrigation would be conducted through a drip system which would be captured by a floor drain/retention area to recycle the water. The watering system would be through a roof cistern. System designs would be shown in Site Plan Review.

Paul Grand Pre (12 Patton Ridge) emphasized his neighbors' concerns regarding odor, lighting, security, and noise. Mr. Grand Pre asked the Planning Board to adopt Rules and Regulations to control and manage the marijuana growing business in the town. Bill Olson (499 Highland St./Selectman) noted the rigorous process between all departments would be required to do such a use in the town and that the Town didn't want to do spot zoning. Mr. Olson said Chief Stevens proposed the By-law and he did not believe there were loopholes in it. Mr. Olson recalled that the posted meetings included input from abutters before the 16 page Host Community Agreement was created. There were 15 items regarding impacts in the document with nothing missing or forgotten, according to Mr. Olson.

Craig Walker (7 Patton Ridge) spoke about the State Regulations applicability to the town. Ben Tymann said the State Regulations governed distances from schools and that towns could decrease that distance. Mr. Tymann said only zoning would deal with the granular issues. In response to Mr. Walker's question as to why the facility was moved out of Topsfield, Shawn Costello said the rationale was to distance the facility from conservation issues, which also moved it further away from Patton Ridge. Brian Stein said nothing was in front of the Board to date.

Craig Walker asked the Board if they were aware of the loophole. Rick Mitchell responded that a dispensary cannot be in the same town as a cultivation site. Southbridge was the site for the dispensary. Mr. Mitchell said a dispensary would have to go through the review process. Mr. Mitchell cautioned against an overlay district, which named a small group of people who would be subject to the use. Janel Curry noted that the towns that had Zoning By-laws for the use had industrial districts. Attorney Tymann responded that currently the entire town was in the overlay district and that zoning was all about creating districts.

Peter Clark said he had thought it was agricultural growing but the processing and other side effects were worthy of consideration. Rick Mitchell responded that the Host Community Agreement had stipulated what must be reviewed and allowed for the compensation of an independent consultant to verify and validate what the applicants were presenting. Brian Stein said the provisions such as an outside consultant were not typical of Site Plan Review and the only difference between that and a Special Permit would be the ability to deny the project.

Master Plan (Residential) Update.

Patrick Reffett said the consultants were working on the town's demographic profile, reporting on housing characteristics, development constraints and analyzing the community. The consultants would provide a draft report to the Board mid-December. The Selectmen were assisting in focus group selection.

Meeting Minutes – November 13, 2018.

Motion to approve the minutes of November 13, 2018 made by Brian Stein.

Seconded by Rick Mitchell.

Vote: Unanimous in favor of voting members. Peter Clark and Janel Curry abstained as they were absent from the meeting.

Updates from the Chair/Members/Staff

Adjournment

Motion made by Rick Mitchell to adjourn.

Seconded by Richard Boroff.

Vote: Unanimous to adjourn at 9:51 pm.

Prepared by:

Marcie Ricker

Attest

Date