

**PLANNING AND ZONING COMMISSION
SPECIAL MEETING – MINUTES
DECEMBER 18, 2013 – 7:00 PM
NEW HARTFORD TOWN HALL- 530 MAIN STREET**

PRESENT: Chairman James Steadman, Gil Pratt, Ted Stoutenberg; Alternates Robert Moore, Martin Post, and Peter Ventre; Martin Connor, AICP, Town Planning Consultant; Mark Branse, Esq., and Caleb Hamel, Esq., Commission's Legal Counsel; Land Use Staff Certified Zoning Enforcement Officer Rista Malanca and Recording Secretary Stacey Sefcik.

ABSENT: David Krimmel and Daniel LaPlante.

Chairman Jim Steadman called the meeting to order at 7:00PM. All regular members present were seated for the evening. The proceedings were recorded digitally and copies are available in the Land Use Office.

1. DISCUSSION WITH TOWN PLANNING CONSULTANT AND COMMISSION'S ATTORNEY REGARDING HOW TO REGULATE MEDICAL MARIJUANA DISPENSARIES:

Commission members discussed with Ms. Malanca, their legal counsel, and the Town's Planning Consultant recent medical marijuana regulations developed by the State Department of Consumer Protection (DCP). Mr. Hamel reviewed with the Commission a memorandum dated December 18, 2013 that he developed for the Commission and for several other client towns that were now deciding how to address this issue. Mr. Hamel explained that while State law now allows marijuana to be sold or grown for medical purposes under certain specific conditions, the possession, sale, and production of marijuana still remain illegal under federal law; however, the federal government had indicated that it would not prosecute anyone who was acting in compliance with State law. The DCP regulations addressed production facilities separately from dispensary facilities. Dispensary facilities must be managed by a licensed pharmacist (the dispensary) and may only dispense marijuana to registered patients or their registered primary caregivers.

Mr. Pratt and Mr. Post questioned who would meet the definition of a licensed caregiver. Mr. Hamel explained that the caregiver would also have to be registered with the State; a patient could not have just anyone pick up their prescribed marijuana. Ms. Malanca asked whether a patient was only permitted to have one registered caregiver, and Mr. Hamel responded affirmatively. Mr. Branse noted that no delivery was permitted; the patient or their caregiver was required to pick up the marijuana themselves. Mr. Pratt questioned why marijuana was not dispensed by existing pharmacies, since they had many of these requirements already in place. Mr. Connor stated that the larger pharmacy chains were not interested in participating, likely because marijuana was still illegal at the federal level. Mr. Branse and Mr. Hamel concurred, noting that they risked prosecution at the federal level under the RICO Act, given that they operated across state lines. Ms. Malanca explained that the current zoning regulations did not specifically list a pharmacy use; she stated that a CVS or Walgreens would be considered a retail use. She then asked whether the Commission wanted to consider medical marijuana dispensary facilities to be retail uses or create a new and separate use listing in the zoning regulations.

Mr. Connor, noting that he was also the Planner for the City of Torrington, explained how this issue was addressed in Torrington. Mr. Connor explained that the City had wanted maximum control over where these facilities were located, given bad experiences that had occurred in California and other states when similar medical marijuana laws were first enacted there. He stated that they had not wanted these facilities in either the downtown area or in any residential zones. Mr. Connor stated that they had selected a few zones where such a facility could potentially be suitably located, and then they created an overlay zone that could then land on a property within one of these zones. If a company wished to open such a facility, they would first need to apply for a zone change to the overlay zone, which would require a public hearing and the submission of a site plan.

Mr. Branse explained that a Planning and Zoning Commission had its highest level of discretion in a zone change application; a special exception application would be the second highest level of discretion available to the Commission. Ms. Malanca questioned whether the Commission would approve the site plan application as a part of the zone change application; Mr. Connor stated that the Commission could do so if that was made part of their new regulation. Mr. Pratt asked whether the Commission should also be considering ways to regulate marijuana production facilities. Mr. Hamel explained that a company applying to the State for a dispensary license was required to show the State that it could meet the Town's zoning regulations; for production, a company would only have to show that manufacturing is allowed in the zone where they would be located. He stated that State law required marijuana production to be indoors, which made old manufacturing and warehousing facilities appealing to businesses considering obtaining these licenses.

Mr. Pratt questioned whether the marijuana could be distributed in forms other than its pure form, for instance in brownies. Mr. Hamel stated it could be sold in whatever way the production facility chose; however, all packaging must be done at the production facility and the product had to be sold at the dispensary facility in whatever the original packaging was when they received it from the production facility. Mr. Hamel also explained that, if the establishment sold other items besides marijuana, then marijuana and all related paraphernalia had to be sold only within the dispensary department, which must be kept separate and apart from any other areas of the business. Only patients and their caregivers as licensed by the State would have access to the dispensary department. Mr. Ventre questioned how licensed patients or their caregivers would be granted access to this controlled area of the facility; Mr. Hamel stated that the regulations did not specify how this was to be achieved; only that the dispensary facility was required to ensure that no unauthorized persons were allowed access to this area. He explained that the facility would determine what safeguards to use; some have suggested the use of fingerprint scanning. Mr. Post questioned whether the Commission would be able to spell out what safeguards were used. Mr. Branse stated that he did not believe this was really a zoning-related matter. Mr. Connor concurred, noting that the Commission would likely be more concerned with things such as hours of operation.

Ms. Malanca questioned whether the State regulated what other uses could be present in such a facility, such as doctor's offices. Mr. Hamel said there were no specific guidelines addressing uses specifically permitted to be present, only counseling on drug use. She questioned whether a doctor could therefore set up an office in the same facility. Mr. Connor noted that very few people had registered thus far in the State, perhaps because doctors were hesitant to issue prescriptions for marijuana given its use was still illegal according to federal law. Given this scenario, it was a concern that doctors could open offices in or adjacent to such a facility for the express purpose of writing marijuana prescriptions. He noted that this had happened in Colorado when similar regulations had been adopted there. Mr. Post expressed concern that no other uses should be permitted onsite with a dispensary facility as there was potential for this to be abused by unethical medical practitioners. Mr. Hamel explained that the State regulations contained a list of the medical conditions for which marijuana was permitted to be prescribed. He also read from the regulations which stated that the patient could not be examined and diagnosed at a dispensary facility.

The Commission then discussed with Mr. Hamel the approval process with the State, which requires that the facility be able to prove that they can meet the requirements of the zoning regulations for the Town in which they propose to establish their facility. Mr. Hamel explained that the floating zone Mr. Connor implemented in Torrington provides safeguards for the Town to ensure where such facilities were located. Mr. Connor explained that a Town should probably not state that there was absolutely no place in Town where such a facility could be located. However, with the floating zone, the applicant had the ability to apply for a location where the Commission has said such a use might be allowable. The public would have the opportunity to comment, and the Commission had the ability to require certain conditions be met. Mr. Branse stated that, in his opinion, it did not appear that the State was superseding the authority of local Planning and Zoning Commissions. Mr. Ventre noted that in some ways it did, such as the regulations which stated the size permitted for dispensary facility signage. Mr. Branse and Mr. Hamel noted that the maximum permitted signage in the State regulations was smaller than the smallest permitted signage in all of their client towns.

The Commission briefly discussed the possibility of larger chain pharmacies participating in this program. Several present noted that very few patients were currently registered in this program, perhaps leading larger pharmacies to conclude this would not be a lucrative endeavor. Mr. Pratt questioned how many licenses were being issued by the State. Mr. Hamel said that the State was currently only offering 3-5 dispensary licenses and 5-7 production licenses. Mr. Ventre questioned whether out-of-state patients could access these dispensaries. Ms. Malanca questioned whether the State looked at the entire facility as a part of its review, or only at the dispensary department. Mr. Hamel said that the patients had to be a Connecticut resident and the prescription has to come from a doctor registered in Connecticut. Mr. Hamel said that the State reviewed the entire facility; for example, it required the perimeter of the entire facility to be well lit. He noted that they were trying to obtain clarification as to whether the perimeter to be well lit was the building or the full property. Mr. Moore questioned whether bonding was necessary. Turning to production facilities, Mr. Hamel noted that the State required a \$2 million bond.

Ms. Malanca then asked Commission members whether, given this information, did they feel this use could be addressed within the existing regulations. Several members responded negatively, noting that the Commission had no way of knowing the State would permit such a usage of a then-illegal substance when they drafted these Zoning Regulations. Mr. Connor then asked what zones the Commission would want this use to potentially be permitted in, and at what level of discretion did the Commission want to regulate it. Mr. Branse stated that he

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would never recommend site plan approval for this use. Mr. Connor noted that a potential dispensary facility might be able to go to the State and say that they could meet the general and specific special exception requirements and thereby receive a license. Mr. Branse noted that the Commission could state that such a use could be required to be a certain distance from schools, churches, other dispensary facilities, etc. Mr. Hamel noted that the applicant had to inform the State what such facilities were within a 1000-foot radius of the facility; however, it appeared that the facility could still potentially be approved. Mr. Connor suggested that the Commission might want to give due consideration as to where these facilities could be located, because, like Colorado, the time may come when marijuana use was simply permitted regardless of medical necessity. Ms. Malanca suggested that a dispensary use not be permitted in residential zones or the New Hartford Center Zone. The Commission discussed whether to simply limit this use to Industrial and Industrial Park Zones. Mr. Connor recommended they consider permitted applications for the B, C, I, and IP Zones. Mr. Stoutenberg noted that the B Zones were very small pockets throughout the Town. Mr. Branse suggested that language could be included requiring a certain distance from residential zones.

Ms. Malanca then asked if the Commission also wanted to include language regarding production facilities. Noting the electrical requirements, security requirements, lighting requirements, the Commission agreed with creating similar regulations for production facilities, but only within the I and IP Zones. Mr. Branse noted that production facilities were required to be indoors. Ms. Malanca questioned what level of traffic was associated with a production facility. Mr. Hamel said that this was an area the Commission would want to regulate as a part of a floating zone regulation. He noted that trucks carrying marijuana product could not stop for any reason until they reached their destination, and it required a special vehicle with certain security requirements as well as randomized routes.

The Commission agreed to have Mr. Connor draft regulations that Mr. Branse and Mr. Hamel would then review. A draft would be available for the Commission's review within the next month or two.

MOTION Mr. Stoutenberg, second Mr. Pratt, to adjourn at 8:10PM; unanimously approved.

Respectfully submitted,

Stacey M. Sefcik
Recording Secretary