



TOWN OF WARE

Planning & Community Development
126 Main Street, Ware, Massachusetts 01082

t. 413.967.9648 ext. 120

Planning Board

Meeting Minutes from

Thursday, December 16th, 2021

Select Board Room, Town Hall

Planning Board Members Present: Rick Starodoj (Vice-Chairman), Ed Murphy (Remote),
Joe Knight (Remote), Elizabeth Hancock (Alternate)

Planning Board Members Absent: Josh Kusnierz (Chairman), Ken Crosby

Staff Present: Rob Watchilla, PCD Director
Alex Ziter. PCD Assistant

Public in Attendance:

PLEDGE OF ALLEGIANCE

Vice-chairman Rick Starodoj called the meeting to order at 7:00 pm and led the Board in the Pledge of Allegiance.

ADMINISTRATIVE

- Approval of meeting minutes from October 21st, 2021.

Motion made by Ed. Murphy to approve minutes, Seconded by Joe Knight.

Rick Starodoj Aye
Ed Murphy Aye
Joe Knight Aye

Approved. All in favor. 3/0/2

- Approval of meeting minutes from December 2nd, 2021.

Motion made by E. Murphy to approve minutes, Seconded by J. Knight.

Rick Starodoj Aye

Ed Murphy Aye
Joe Knight Aye

Approved. All in favor. 3/0/2

- Approval Not Required (ANR): 2021-04 review and approval

Robert Watchilla informed the board that the parcel being reviewed for ANR in the Rural Residential zone meets the required frontage, setbacks, and has adequate area.

Motion made to approve by J. Knight, Seconded by E. Murphy.

Rick Starodoj Aye
Ed Murphy Aye
Joe Knight Aye

Approved. All in favor. 3/0/2

OLD BUSINESS

- Marijuana zoning bylaw update and review

R. Watchilla informed the board of additions to the marijuana bylaw Section C "Definitions" which included language for an anticipated new use of "Marijuana Delivery". The language added within the definition section includes the agreement, endorsement, and licensing parties for delivery.

R. Watchilla noted that all the language has been sourced from the Massachusetts Cannabis Control Commission and nearby municipalities.

R. Watchilla informed the board that the use table has been updated to reflect this new marijuana industry use.

R. Watchilla informed the board of another definition added in Section C, which is "Marijuana Microbusiness".

R. Watchilla informed the board of additions made to Section E "Separations and Setbacks" which state "and other areas where children commonly congregate in an organized, ongoing, formal basis." The reasoning for this inclusion of language was to connect the "Separation and Setbacks" section with the "Intent" section, to strengthen the overall language of the marijuana bylaw.

R. Starodoj suggested that all of these additions and edits be discussed at a later meeting again, when the Zoning Enforcement Officer and Planning Board Chairman are in attendance, before providing a copy for town council to review.

Elizabeth Hancock suggested that the language included in the "Intent" and "Separation and Setbacks" sections should again be repeated within the seconded paragraph of Section E, to close any gaps, a further clarify the meaning of "areas where children commonly congregate".

R. Watchilla informed the board of an inclusion under Section G "Standards", Subsection "b" which includes the Rural Residential zoning district for Marijuana Facilities.

R. Starodoj suggested that there be a limitation for canopy size, to ensure there are no large-scale outdoor cultivation facilities in residential zones.

R. Watchilla informed the board of an addition to the bylaw, Section G "Standards" Subsection "d" which states "Use of property as Marijuana Retailer, Cultivation facility, or Delivery Operator shall be deemed a principal use for purposes of this Zoning Bylaw, and shall be permitted exclusively in accordance with this Article. No Marijuana Establishment may be allowed within Town as an accessory use. Cultivation of marijuana must not take place in residential unit with an established accessory use, unless the marijuana is for personal consumption in accordance with Massachusetts State law."

R. Watchilla informed the board of an addition to the bylaw, Section G "Standards" Subsection "e" which states "Any Marijuana Delivery Operator application for a Special Permit shall include the anticipated number of vehicles operating from the location, number of employees for all operations including fulfillment, administration, and vehicle drivers shall be identified and may be conditioned as such. A copy of the Application of Intent and Management and Operations Profile submitted, to the extent permitted by law, as an integral part of the Special Permit application."

R. Starodoj stated that this language is similar to how a taxi or transit service is organized and operationalized.

R. Watchilla informed the board of an addition to the bylaw, Section G "Standards" Subsection "m" which states "All applicable rules and regulations established under the auspices of the Massachusetts Cannabis Control Commission (CCC) must be adhered to." He stated that is good language which was missing from Ware's bylaw, and was included in neighboring towns.

R Starodoj wanted to clarify this does not deem any new marijuana use or establishment defined by the CCC as being permissible within Ware. Stating they must be presented before a public hearing and or ballot question to be allowed and regulated within town.

R. Watchilla informed the board of an addition to the bylaw Section "G", Subsection "v" which states "Outdoor cultivation may occur in provided that screening, security and other provisions complies with 935 CMR500".

R. Watchilla informed the board of an addition to the bylaw Section "G", Subsection "w" which states "For outdoor cultivation, this bylaw will require that security fencing be screened with natural vegetation or topography. On large properties, it is likely that the cultivator will place the relatively small growing area far from any property boundary so that it is screened from the public by existing vegetation and/or topography. If vegetation is planted to screen the fence, the cultivator will have 3-years for the vegetation to reach maturity and full coverage. We also require that any barbed or razor wire type fencing materials not be used or be entirely hidden from view from public ways or neighboring property. The cultivar must include these security provisions within its special permit application."

R. Watchilla informed the board of an addition to the bylaw Section "G", Subsection "x" which states "Outdoor cultivation must not occur within 1000 yards of a pre-existing hemp farm."

R. Watchilla informed the board of an addition to the bylaw Section "G", Subsection "y" which states "Outdoor cultivation must not store fertilizers, compost, soils, materials, machinery, or equipment within the required front, side, and rear yard setbacks."

R. Watchilla expressed his concern for regulating and enforcing the odor control of outdoor cultivation facilities.

E. Hancock suggested to strike some of the language in subsection w, and to better define the proximity parameters for abutters, and where the cultivation can occur.

R. Watchilla informed the board of an addition to the bylaw, Section G "Standards" Subsection "x" which states "Outdoor cultivation must not occur within 1000 yards of a pre-existing hemp farm."

R. Starodoj stated that this linear measurement should be changed to be calculated in Feet, so that it conforms to the rest of the bylaw measurement standards.

R. Watchilla informed the board of an addition to the bylaw, Section G "Standards" Subsection "y" which states "Outdoor cultivation must not store fertilizers, compost, soils, materials, machinery, or equipment within the required front, side, and rear yard setbacks."

R. Watchilla asked the board if they wanted to include language which prohibits social consumption.

R. Starodoj stated that this should be put to a town meeting vote, or ballot question so that the residents will be the deciding factor of the new marijuana establishment type.

R. Watchilla suggested that his department prepare language for either decision to approve or not allow within town, and provide that to the board for reference once a town meeting question or local ballot is in place.

- Earth Removal bylaw update and review

R. Watchilla informed the board of language which was removed in Section C "Exemptions" of the bylaw which stated "provided that no such moving shall take place across or within a street."

R. Watchilla informed the board of language which was added to Section C "Exemptions" which is under C.2, a. & C.2.b. this language states "Excavation and grading needed for construction of a structure may be completed within 100' of proposed principal structure and for any roadway necessary to access the structure. For the purpose of Earth Removal, the definition of "structure" within §4.8.5 shall not include: pole, sign, fence, wall, any small constructs (less than 100 sq.ft.), or any part of the above."

R. Starodoj suggested that they add language which states that any structure greater than 100 sq. ft. and less than 1000sq. ft. and designed for non-residential use, may waive or modify the requirements.

R. Watchilla informed the board of language added in Section D.2 "Operational Standards" which states " If an abutting property is conducting an earth removal operation, a waiver of the 50 foot buffer on the shared property boundary is granted by written agreement of the involved parties and super-majority vote of the Planning Board."

R. Starodoj suggested that they strike the "is" from the proposed language and state that it should read as "boundary may be granted".

R. Watchilla informed the board of language added in Section D.6 "Operational Standards" which states "No excavation shall be made at less than 10 feet above the annual high water table, as established from test pits, soil borings, and monitoring wells which are installed and gauged quarterly."

R. Watchilla informed the board of included language within Section F.2.c. "Decision" which states "hours of operation within 7am – 7pm Monday through Saturday and 9am – 5pm on Sundays".

E. Hancock recuses herself as a board member alternate to address this language as a member of the public and as a direct abutter to an ongoing earth removal site.

E. Hancock stated that the previously language was written as hours of operations and that this suggested language could provide a long term nuisance for neighbors if they are allowed to be operating during Sundays. She suggested that the board look at each permit and make a decision on a case by case merit as to their daily, and hourly operations.

E. Hancock rejoins the Planning Board as an alternate member.

R. Watchilla suggested that the language be changed to state that "hours of operations are to be determined on a case by case basis by the planning board."

R. Watchilla informed the board of language added to section F.2.h which states "an updated topography map of the project site showing the current grade sent to the planning board every 5 years".

R. Watchilla asked the board about the intended language for "Earth Processing" and stated that a neighboring community had more inclusive vocabulary to include mulch, wood chips, loam and other natural materials which are commonly processed.

R. Watchilla requested insight on which zones to limit this use, and how that would reflect changes of the use table.

R. Starodoj suggested that they include language which states "not mined on site" for this bylaw section.

R. Watchilla requested that this use if over 1000 cubic yards of processing per year warrants a site plan review and special permit process. If less than the designated volume, it does not need to go through the site plan review.

R. Starodoj suggested that the board look into including performance bonds for restoration, specifically with commercial development.

- Definitions Document

R Watchilla informed the board of changes made to the definitions in the general provisions section of the zoning bylaw. Section 1.4 Applicability language was discussed, with R. Starodoj inquiring that they were not overstepping their regulatory powers as a board, and recommended that other boards in town had the authority to regulate aspects of this section.

R. Watchilla informed the board about the addition of Section 1.9 Adoption of Rules and Regulations, which was recommended to him by a land use attorney while attending a webinar. This section states "the Town of Ware shall allow the Planning Board and the Zoning Board of Appeals to adopt rules and regulations for procedural and substance matters

directly, provided they are not inconsistent with the Town's current Bylaws. They shall be made by majority vote and filed with the Town Clerk. Rules and regulations with penalties attached must be filed with the Town Clerk within ten (10) days."

R. Starodoj expressed his concerns that this might be overreaching in regards to the roles and intentions of the planning board, and recommended that this be discussed again with more board members present.

R. Starodoj stated he would like to see a possible exemption for site plan reviews of projects which the Town owns, due to multiple boards and departments having already approved plans.

R. Watchilla informed the board that he added language under the definition of "Farm" he included raising grapes or viticulture, as well as "hemp" under the same umbrella of protection that other farms are provided.

R. Watchilla stated that he was going to do more research on "Winery", "Brewery" and "Distillery" licenses and uses and suggested making a distinction of agricultural production practices and commercial manufacturing practices, to better protect farming operations.

R. Watchilla informed the board of the addition of the definition "Hemp" which states "The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of cannabis or marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinol acid in any part of the plant of the genus Cannabis regardless of moisture content. Production of Hemp is separate from marijuana cultivation, and is considered an acceptable agricultural crop within this bylaw."

R. Starodoj wished to confer with the chairman, who is the town's tree warden and plant expert.

R. Watchilla informed the board of the addition of the definition "Marijuana Delivery Operator" which states "An entity licensed to purchase at Wholesale and Warehouse Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, and Microbusiness, sell and deliver Finished Marijuana Products, Marijuana Accessories and Marijuana Branded Goods directly to Consumers, but is not authorized to Repackage Marijuana or Marijuana Products or operate a storefront under this license."

Alex Ziter informed the board that the most important aspect of this definition is the clear separation from a retail establishment. He stated that "Marijuana Delivery Operator" should be considered a new use in the zoning use table, and is required to go through the same permitting process regulated by the CCC and Town. He recommended that the adopted

language which strictly specifies delivery of finished products, goods and accessories to consumers, but the inclusion of other language describing the establishments included in this process is up to the board's discretion.

R. Watchilla informed the board of the addition of the definition "Marijuana Microbusiness" which states "A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Marijuana Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments."

R. Watchilla informed the board of the addition of the definition "Park" which states "A municipally or privately owned area that is used principally for active or passive recreation, which may include equipment and facilities for active recreation and play such as playfields, play structures, swings, slides, public assembly and accessory uses such as restrooms. A park may also serve as an area for formalized sanctioned events, accommodate related municipal uses such as educational facilities, and facilities for storage and maintenance of equipment used in the park."

R. Starodoj asked if this definition could include pools, and splash pads and or water recreation facilities. Similarly, he inquired if these definition includes the dog park as well. He also questioned the status of the Quabbin Reservoir Park, although it is owned and operated by the state it still falls within the Town's boundaries and is considered an asset for the community.

E. Hancock stated that is it defined in the town's list of parks in the Town's Open Space & Recreation Plan.

R. Watchilla informed the board of additional language in Section 7.5.1 "Zoning Enforcement Officer" which states "For any uses not specifically listed in §4.2 (Use Table), the Zoning Enforcement Officer shall make a determination as to the closest appropriate applicable category, or to determine that the proposed use does fit appropriately in any category and deny with a written explanation."

R. Watchilla asked if this inclusion would be giving too much power to the Zoning Enforcement Officer, and wanted to know the opinions of the board.

R. Starodoj stated that it might be enabling too much power, but it is the best route to ensure any action taken be brought to the Zoning Board of Appeals. Seeing that if it is denied with a written explanation, then denied a second time, it can go to the appeal process, hopefully providing more clarity to the processes and in a more streamlined manor.

The board chose to table the topics of junkyard auto salvage and battery storage until their next meeting.

- Use Table

R. Watchilla informed the board of changes made to the use table item "Adult entertainment establishment" He changed this use to No for all districts except for Rural Residential, where this use requires a special permit.

R. Watchilla informed the board of changes made to the use table item "Outdoor recreation facility". He changed this use to require a special permit in zones Rural Residential; Residential Business; Highway Commercial; and Commercial Industrial.

R. Watchilla informed the board of the additional use table item "Earth Processing" which is not allowed in all residential or mixed use zones, and special permit in Commercial Industrial and Industrial zones.

R. Watchilla informed the board of the additional use table item "Marijuana Delivery" which mirrors the existing marijuana uses with special permit required within the Downtown Commercial; Millyard, and Highway Commercial zones.

R. Watchilla informed the board of the additional footnote number three (3) which includes the definition of "Farm" updated as previously discussed in this meeting.

R. Watchilla informed the board of the additional footnote number thirteen (13) which states the Zoning Enforcement Officer has the authority to deem the most appropriate use classification within the use table for any newly proposed use item.

- Town Planner Update

R. Watchilla informed the board that the subdivision regulations have been completed, and that he had provided the board with physical and digital copies for them to review over the next few months.

R. Watchilla informed the board that the Planning and Community Development Department assistant, Alex Ziter, is leaving the employment of the town to pursue a career with a private engineering firm.

R. Watchilla updated the board on the ongoing status of the Right to Farm surveys which have been sent out. As of this meeting there have been fifteen (15) responses and the data analysis will begin once there have been seventeen (17) - eighteen (18) respondents.

R. Starodoj requested a list of all previously approved and ongoing special permits to be posted for public reference. Stating that some can expire if not utilized, and it is in the best interest of the Town to record these permits and establish a list to reference them.

ADJOURN

Motion made to adjourn at 8:43 p.m. by E. Murphy, Seconded by J. Knight.

Rick Starodoj Aye
Ed Murphy Aye
Joe Knight Aye

Approved. All in favor. 3/0/2

The next meeting is scheduled for Thursday, January 6th, 2022 at 7 pm.

Minutes from December 16th, 2021

Respectfully submitted by,

Alex Ziter,
Planning Assistant,
Planning & Community Development

Minutes Approved on: <u>1/6/2022</u>	
Kusnierz	<u>[Signature]</u>
Starodoj	<u>[Signature]</u>
Knight	_____
Murphy	_____
Crosby	_____