

SPECIAL OPEN PLANNING COMMISSION MEETING

MAY 13, 2020

MEETING HELD ELECTRONICALLY DUE TO COVID-19 RECOMMENDATIONS

Commissioners present: Derek Babcock (Chair), Donna Romanak, Mike Kosher, Joe Wooding, Georgette Peterson, Annie Davidson-Funke (Alternate)

Other Attendees: Brian Knotek (Attorney), John O'Connell, Ken Detloff, Jacque Phillippe, Phil Sanborn, Ted Swanson, Christopher Passmore, Cheri Duncan, Jude Samson, Kyle Holland, Clayton Robison, Troy McLaughlin, Carmine Pistolesi, Dan Higgs, Steve Denenberg, Kevin King, Judith Daniel

Meeting was called to order by Derek at 6:10 PM. Roll call was taken by Georgette; all Commissioners present.

Derek made an Agenda change under #4 B which read Proposed Draft Zoning Ordinance (1st reading). The correction was made to say Proposed Draft Zoning Ordinance (2nd reading).

Derek opened the meeting with the following comments: Everyone has an opinion, and everyone is entitled to their opinion. We all hear a lot of different opinions. We have to figure what's best for the Township.

Annie commented that there is an issue with what is posted on the website that says "draft". This was adopted in 2013 and is not a draft. There are things that have not been updated. She said the first part of Ken's revision is a recap and Item 10, which was done in 2014, regarding the entertainment venue text amendment should have been relayed to the county and posted on our website showing special use to AG property. She added that those items through item 17 had Public Hearings, and she suggested that she and Ken can get those amendments on the website as written and adopted since 2014. She said Article 18 is the one regarding the SUP for MM. Derek asked Ken if he was ok with working with Annie on this and his reply was that he will submit what he has.

Christopher Passmore made a comment about the Zoom meetings as we go forward. He noted that it is working for the Supreme Court and he wanted to encourage us to continue using it. He said it is a useful tool and valid. He noted there were about 25 people on the last meeting.

Ted Swanson asked about the Complaint Form stating that it is apparently supposed to be mailed and asked that, with the technological age, could it be made so it can fill it out and e-mail in. He also commented on Section 309 E16 stating that Air B&B is a brand and he feels the Township is opening itself for litigation. John said we do not have the option to fill out forms online and he is happy to accept complaints and will get them to the proper channels. Derek said this is a work in progress.

Cheri Duncan said pertaining to the new Ordinance, if the existing MM turns into Rec, is the new Ordinance going to pertain to them; for example: would a grower have to move their fence to the new setback? Derek responded that discussion will be brought up under Old Business.

Mike stated that he goes the opposite way of Chris Passmore stating he cannot get a clear connection no matter what he uses under the current situation. Mike added that he thinks it is wrong to pass an Ordinance under a Zoom Meeting. Georgette said the Supreme Court has better internet connections than we do. Derek added that 23 people are on the meeting right now: 7 on cell phones and the rest on

video. Mike said obviously attendance is good and we might want to look into that for the future. Derek said we need to look into the Open Meetings Act. Mike said a dedicated land line at the Hall would be good. Chris said regarding the Zoom platform, the software, in its settings, can change format and if there's confidential issues, there are things that can be done to protect your interests. Dan asked about Cider Mills in the new Ordinance wanting to know if you had to produce 25, 000 gallons or more or does it mean you do not need a SUP for 25,000 and under. Ken responded that if you make more than 25,000 Gallons, you need a permit; you don't need one if less than 25,000 gallons.

OLD BUSINESS

Re: Proposed Ordinance Provision to Township Board re: Adult Use Marijuana

Derek said all revisions are in yellow and his comments on page 20, Sect. 7.8C which says all facilities must have an approved Certificate of Occupancy at the time of application needs to be reworded to say renewal. Brian concurred. Brian said if they get a license and it needs to be reviewed in a year, they should have a Certificate of Occupancy. The other was Sect 8.2, where it talks about air filtration systems, he asked where every 3 minutes came in. Brian said it was in his notes. Brian suggested saying as regulated by State law. Derek said we should take out the 3 minutes and put in per regulated State law. Mike asked Derek if he had a chance to look at Phil Sanborn's notes. Derek replied in the affirmative. Mike said he sent them out multiple times for corrections. Derek asked Mike if he saw those corrections and asked if he wanted to make those corrections. Derek added it is up to us to make those recommendations; a lot of corrections were grammatical. Brian said any typos or grammatical changes as suggested by anyone, if he agrees, he will change. Brian said Phil is pointing out things that are not represented in the Zoning Ord to be consistent, it does not need to be added. The second question gets to Cheryl Duncan's question and it is important; it regards who does this new Ordinance pertain to? Regarding her question in moving a fence, the short answer is "No", however there is a trigger that if their new plan expands by more than 1500 plants they would require a new Site Plan and they may be required to move the fence. One grower last week recognized this. But if they are not expanding beyond 1500 plants they do not need to. They are grandfathered in. Ken said these become legal, non-conforming uses because they were approved at the time of the rules and regs of the Township at that time.

Joe made a motion, supported by Donna:

To Recommend Approval to the Township Board the Police Power Ordinance as Revised.

There was no discussion.

Vote: Joe, Donna and Derek "Yes" Mike and Georgette "No"

Motion carried

Re: Proposed Draft Zoning Ordinance 2nd Reading

Derek said we are only looking at 18 and 19 and we did change the setbacks from 100 to 200; 150 side. Mike said under 18B we need to add the word "feet" and he said his question is are we talking property line to property line because it says nearest occupied house. Ken said when it comes to the house, it would be the measurement to the house, but all the other setbacks would be property line to property line. Georgette asked Ken where at the house is it measured. Ken said at the foundation. Georgette

asked if it would be the farthest point or the closest point and Ken's response was from the closest point. Mike asked Ken if that should be included. Ken said he can add that. Mike asked if you could say which property line because on page 20 it says closest property line so should we have that added. Ken responded no and 19 says what it says because you are not measuring structure to structure; the retail facility as a building to the school or playground or whatever it is; so the setbacks are far greater than from facility to facility. Derek said he likes how we added H I J K which is the hours of operation, the odor, the generators and the gravel drive so we do not have to keep adding on every special use. Mike said on 18B he thought it was supposed to be 200 feet from the occupied house. Joe said that's what it says, and Mike and Derek disagreed stating in the new one it says 150. Mike said everything was supposed to be 100 and 200. Derek said side and rear are the same and should be 200 feet. Derek said it was probably just a typo. Mike said regarding 18D, regarding wetland, asking should we add minimal land clearing as it says in the old Ordinance. Georgette asked minimal by whose standards and Brian replied by the PC standards. Georgette asked if we had to have facts here and Brian said we could do that but the case by case basis does work and Brian said the term minimal is helpful from his perspective. Mike said on the Site Plan it shows trees and we can tell how much they plan on clearing out. Ken said the 2 initials eg mean *for example* so woodland and wetland are examples of natural features so it does not limit it to the two. Ken asked what about blueberries saying many of these farms used to grow berries. Mike said we talked about that when we made the old ordinance saying blueberries were a crop. Ken said that is helpful so he can put "not including crop land". Derek said correct and we can deal with this on a case by case basis. Mike said he would like to add minimal lot clearing. Donna asked if it should say minimal lot clearing is acceptable; Mike said he did not think so and Derek said just leave it at minimal lot clearing; we will see what clearing they plan to do by their Site Plan. Derek asked Brian to add that verbiage. Mike said the other thing is that it does not address outside lighting and Derek said that would be under generators because technically they would be generators. Mike said he thinks we need to add that, and Brian agreed. Derek said add that as "L" Mike suggested no outdoor lighting except for State requirement. Mike said the topic under #20 and asked if Derek had a chance to look at it and Derek said we should leave that alone and it is tight. Mike said he wondered because he was going to try to get a map to see if any close residences. Derek said Annie looked at a Commercial map and if you looked at Commercial facilities only, it is property line to property line and that is severe. If you read the regulations in the Commercial District it says facility to an occupied unit which is about 25 feet which is close. She said that is why it should be spelled out for the Processing Centers. She suggested it be left as written by Ken. Mike said he was talking about a house across the street with people lined up outside and he brought this up last week. Annie said you would have to put that in here and Mike said that's why he brought that up and Annie said that the previous said "residentially zoned property" and we do have R1, 2 and 3 in our Township; but it doesn't say anything when you get out to the rural district. Derek said he thought we could deal with the Provisioning Center under their SUP. Mike said it is easier to have it in there now and not have to deal with it later. Annie suggested having them do what you are doing for the grow operations; the overhead of where the houses and so on are and look at it case by case. Mike said he wanted to make a motion to make the setback to the nearest occupied house the same as what we would do for a grow operation so it would be 200 feet from the occupied house. Derek asked if he was going to take out property line to property line. Mike said no and this would be Item C. Ken said the requirements cannot be so stringent that there would be no place in the Township where this could be. Derek said if there were places that met the requirements, both the licenses would be taken, and we should deal with it on a case by case

basis. Mike said the language isn't in the Ordinance, so we don't have a back bone and asked Brian who said yes and added that if you put specifics like 200 feet, it does not leave any leeway. He cited a possible case of someone wanting one at 197 feet. Mike said if worded any occupied residences within 200 feet of the Provisioning Center is up to the PC. Brian said it could say unless otherwise recommend. Brian said a use variance should never be given and it should be something about the land and reminded that this would go to the ZBA. Mike said he would not like people waiting in line across the street from him. Derek said we are seeing the lines because of the Covid thing and we could add something about loitering, Ken said the line is related to off street parking requirements and the Township has no off street parking requirements for marijuana retail sales and that would be a tool in terms of how many customers could be at the Center at any one time. Derek said he understands Mike's point and added that Commercial property is few and far between. Georgette asked what if we increased the number in the future and Derek said then you readdress the Ordinance in the future. Mike said the whole point is trying to get this right in the first place. Derek said we can't do everything, but we also want a Provisioning Center to come into the Township without making it so tight that there would be no place for them to go. Mike said he would like to put a line item C that if it is within 200 feet that it is up to the PC.

Mike made a motion, supported by Georgette:

To Add Line Item C that If There Is a Residence or Occupied House Within 200 Feet of the Proposed Provisioning Center that it is Up to the Planning Commission to Allow or not Allow.

Discussion: Ken said he does not think this is a good idea. He said you are giving yourself powers that you do not have in terms of allowing or not allowing and he thinks it is kind of a slippery slope and he doesn't see a retail facility as being any different than a restaurant. He added that he would have a hard time defending that when there could be other commercial uses that could create more problems and we may be able to fix the hours of operation for a retail facility but, for a restaurant we couldn't. Brian said back when this started the first was the Police Power Ordinance and the Zoning Ordinance Amendments adopted back in 2018; there is a Provision in the Zoning Ordinance as amended that says as follows A Provision Center may not be located within the distance specified from the uses below as determined by the Township Board. The distance is measured as the shortest straight-line distance between the property line at the location of the following uses to the property line of the following uses, whichever is less. The first provision says a Provisioning Center may not be located within 500 feet of schools or licensed childcare centers, public park etc. The second one says a Provisioning Center may not be located within 500 feet of a religious institution or residentially zoned property. He said you may be trying to reinvent the wheel. You only have the power to recommend. The Board has the power to enact. You can define how the measurement can be taken. He said he wanted to let us know that it was defined in the old Ordinance. Mike commented that it was in the old Ordinance but not in the new one. Brian said that is correct. Mike asked why he is getting push back over the 200 feet and Derek said you are talking about a residential neighborhood. Derek said it says from a neighborhood and Brian said it says residential. Derek said it does not mean a house in the country. Brian said he heard the PC talk about these being close to someone's house even though it is zoned Ag and he agrees with Derek and added that it came up one time with the old doctor's office that is too close to property zoned residential so they couldn't get a permit for a Provisioning Center. Brian asked if we wanted that language in the new Ordinance. Georgette suggested to Mike that he use the wording in the old Ordinance and leave it at 500 feet. Mike said his understanding is that the old Ordinance was dealing

with places like subdivisions. Georgette said it should be 500 feet anyway. Derek talked about some businesses in the Township that are close to residential. Mike said they can't be within 500 feet of a school or church which comes from a higher place than us.

Roll call vote on Mike's motion:

Donna, Joe, Derek "No" Georgette and Mike "Yes"

Motion failed

Discussion on the proposed Zoning Ordinance Mike asked if there is anything where we should add what we require for a Site Plan. Ken said they are in the Zoning Ordinance under Article 5. Three changes are suggested: the 200 feet distance, the security license and the minimal site clearance.

Motion by Joe, supported by Donna:

To Send this Ordinance to the Township Board with the Changes

Roll call vote:

Donna, Joe and Derek "Yes" Mike and Georgette "Yes" "No"

Motion carried

Ken said he would provide a revised copy by tomorrow.

NEW BUSINESS: There is none

PUBLIC COMMENTS:

Brian said he has suggested to the Supervisor that the Board hold a Work Session prior to their next Board Meeting. They will have all the Drafts in front of them and he said he would like the PC members to attend. He said it is strictly a business meeting of the Township Board and is open to the Public and at the end Public Comment would be open. They will not be taking any action at this meeting. He said he doesn't know about time of day given present circumstances and that is up to the Board to decide. He said he hopes the latest would be on Monday.

Cheryl said she has a follow up question on her previous question; if somebody has their Provisional licenses but their Site Plan has not been approved yet, would they then have to comply with the new setbacks? Derek said he did not have an answer now, but he would look into that and told her to send him an e-mail. Mike said we told her we would answer that question and we never did. Derek said we did, and this is a second question. Mike withdrew his comment. Cheryl said she thought so since this would require a new Site Plan and since you said everybody that must come back with a new Site Plan would have to follow that new Ordinance. She said she would send Derek the e-mail. She said the other thing in the last meeting Annie brought up how there are growers sitting on licenses and asked if we had put anything in the new Ordinance regarding a timeline and the response was yes. She asked what that is. Derek said Annie can answer that. Annie said as she recalled in the new Ordinances from the time they get their Provisional licenses, but don't quote her, they are on the clock and they have a year to apply for a SUP and she thinks that once it says that once they get their SUP, they have a year to get their State licenses. In other words, she said, you cannot just get a SUP and wait 2 years. She said in the old Ordinance, it said they had to duly proceed but what does that mean. Brian said he thinks that

Cheryl's question is a good question because we all have an understanding of what we believe is in the Draft Ordinance and added that he made a note about her two questions and he is going to make sure they get answered at the Workshop. He added that if anyone has any comments or questions, they want to make that these can always be received by any Board member in advance of the meeting. He said if people have specific questions, the workshop would be a great opportunity to have those answered. Derek said to send their questions to him, and he will get those to Brian. Cheryl said on the timeline, I have a feeling you are going to tell me that everybody sitting on licenses now is grandfathered in, so she is wondering if there is anything that can be done about the people that have been sitting on licenses for over a year. She added that Danny had brought up a good point on the grower side of this; those are licenses that other growers could be using. Brian said he is going to answer that question to the Board and said the answer is in the Ordinance; there is language in there that action can be taken against people who are sitting on licenses. The other thing, Cheryl said, last week we talked so much about density and that was not brought up tonight. She asked if 100 was approved rather than unlimited and Derek responded in the affirmative for grow licenses. Christopher made a comment on the Provisioning Center and said he understands that there are 2 properties in the Township that qualify for this and if they are functioning, then the Township is able to claim the taxes and could benefit from the whole reason you got involved in this in the first place. He said in his opinion, they should be supported and encouraged because it is the only avenue the Township has to get the 25% tax from. He said getting behind them and supporting them would benefit the Township; it is in the best interest. He said he appreciated the fact that we have come to the Board with these Ordinances and he is not part of the party that has changed and soured the spirit but he thinks it has inspired you to write a better Ordinance. He said he would like to see a rebuilding of trust between the Township and the growers. Ted asked if the Police Power Ordinance replace 2018-01? Brian said yes it does. Ted said he would like to see the PC put the meetings on the Township calendar. Derek said our next meeting will be on June 10. 2020. Annie commented on Mike and the Provisioning Centers and she said she thinks that Ken may have a point and we should address how many parking spaces they may have and she asked Mike what if you live across from a McDonalds or a bank and as far as the Commercial, the corner of M43 and 50th Street is zoned Commercial. She added that Christopher is right and we should talk to Bangor about the money they get from the Provisioning Center. Another thing brought up by the growers is that we do not have a lot of Processing Centers and they are storing their product and the more competition we have in processing, the better for the growers. Dan Higgs said he wanted to clarify that in order for the Township to get any money from Adult Use, first the regulatory agency has to pay the State back for start up costs, between 5 and 10 million and then the first 20 million for 2020 and 2021 is dedicated to medical studies, then after that the Township can get their 15%, so if you look at this year, you might end up with 27 million and you pay those back; in the end you would have about 2 million to split between all municipalities. It is not a gold rush yet, but it will come. Mike said he wanted to clarify that he is not against the Provisioning Center but he was trying to prevent issues for the taxpayer with all these people lingering around their house and he is not for or against marijuana and he said he felt he was taking the heat for what he was trying to accomplish. Brian said there was a discussion about parking, and we have a parking ordinance that deals with numbers and so on in Article 11. He said he asks what the Ordinance says. If someone has 1500 sq. ft, they need 10 off street parking spaces per the Ordinance. Phil Sanborn said very few of his comments were considered during the closed session and those that were, were misunderstood. He said in 3.3, he mentioned the new paragraph gave Ken a lot of authority to decide whether or not a change was administrative in nature; last week Ken said he could

see himself in the witness chair and he said he supported Ken last week to write something more specific. He said he was not implying the Zoning Ordinance should Duplicate the Police Power Ordinance. He said he was just saying that last week Ken discussed being uncomfortable with the non-specificity with his authority that Derek had asked him to write something more specific. He said he learned tonight that Appendix 13 was going to be thrown in the trash which is the first time he knew that and probably the first time that anybody on the PC knew that. If they knew, he would think it would be reviewed by the PC and the Board to see if there was anything in there that you wanted to retain. Brian commented that is wrong. Phil added in one instance tonight, talking about a Provisioning Center, Brian extracted something from Appendix 13 and offered that as a possible addition to the new Ordinance. He added that he asked somewhat the same question that Cheri has been asking about who the new rules apply to and he was expecting the PC members to ask themselves and whatever the answer would be to add that rather than leaving to the PC whether or not to require a new Site Plan to comply with the new setback requirements. Neither the PC or the Board should have that authority and it should be in writing, in the Zoning Ordinance. He said he asked that his e-mails with the recommendations be presented to the Board at their meeting. Brian said he is going to clarify because Phil is wrong; if he is referring to Article 13 in the Zoning Ordinance, that is wrong; nothing is happening with Article 13 which addresses a SUP. However, the new Ordinance is designed to take the place of the MM Facilities Ordinance which will go by the wayside because its Provisions will be superseded. Also, the Zoning Ordinance Amendments do not go away unless the new Zoning Ordinances change them so he said he will ask Ken to look at 2018-01. He said this is important because the PC is sending this to the Board; he said he agrees with some criticism and the Board will ask him. Brian also said to suggest that the Township can put something into Ordinance that goes against State Law will not be done and this is one of his obligations. He said these are all great questions and he is going to address every one of Mr. Sanborn's comments with the Board at the work session. He said he obviously misunderstood one of Phil's comments and Phil misunderstood one of his. Derek said the only comment he was going to make was that we have a lot of opinions from a lot of different people and we have to look at those and take them into consideration and that's also why the Township Attorney sits in on every one of these meetings. Cheryl Duncan commented that she takes a big offense to Brian saying that her Dad was wrong. At another meeting, Brian said her Dad was wrong and he had to then say he was wrong. She said if you want questions and conversation, you should not treat people like that.

Meeting adjourned at 8:11PM

Respectfully Submitted by

Georgette Peterson

