

**Town of Leicester Planning Board**  
Meeting Minutes

MEMBERS PRESENT: Jason Grimshaw, Chair; Debra Friedman, Sharon Nist; Alaa AbuSalah, Andrew Kularski

ASSOCIATE MEMBER: Robyn Zwicker

MEMBERS ABSENT:

IN ATTENDANCE: Michelle Buck, Town Planner; Barbara Knox, Board Secretary

MEETING DATE: **February 20, 2018**

MEETING TIME: 7:00PM

AGENDA:

- 7:00PM      Public Application:  
                 ANR, Baldwin Street (Applicant: Central Land Development Corp)
- 7:15PM      Public Hearing, Zoning Bylaw Amendments:  
                 A. Marijuana Establishments  
                 B. Open Space Residential Development (correction of errors)  
                 C. Special Permit Granting Authority Allowed Uses (clarification of  
                 confusing language)
- 8:15PM      Approval of Minutes  
                 • 1/23/2018
- 8:30PM      Town Planner Report/General Discussion:  
                 A. LaFlash Boutilier Solar  
                 B. Budget  
                 C. Miscellaneous Project Updates  
                 D. Board Member Committee Updates

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Mr. Grimshaw called the meeting to order at 7:00PM

**Public Application:**

ANR Plan, Baldwin Street (Applicant: Central Land Development Corp)

The plan shows 4 parcels and remaining land parcel. All parcels have frontage on Baldwin Street and one parcel was split between Leicester and Spencer.

Hearing no further discussion, Mr. Grimshaw asked for a motion.

MOTION: Ms. Friedman moved to approve the ANR for Baldwin Street, Leicester, MA

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

**Approval of Minutes**

1/23/2018

MOTION: Ms. Friedman moved to approve the minutes of January 23, 2018

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

**Town Planner Report/General Discussion:**

LaFlash/Boutilier Solar

A letter was received from the applicant late today regarding the gate requirement. Ms. Buck recommended action be postponed to next meeting.

MOTION: Ms. Friedman moved to extend action on the LaFlash/Boutilier Solar gate issue to March 6, 2018.

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

#### Miscellaneous Project Updates

- *Parker Street:* Ms. Buck met with representatives for a possible Parker Street project. The plan reviewed showed no pavement or stormwater. She recommended that the applicant submit a preliminary subdivision plan for review.
- *Curtis self-storage:* The applicant will be submitting an amendment to their Special Permit.
- *AA Transportation (Inland Divers):* landscaping reviewed. Ms. Buck noted the only work on the site was for the small areas of asphalt to be removed and there were no specific plantings required.
- *Oak Bluff Lane:* A preliminary subdivision application was submitted.
- *Zoning Bylaw Amendments:* Approval received from the Attorney General's Office for amendments related to parking [11/14/2017 Town Meeting, Article 11].
- *Backyard Poultry Subcommittee:* Three applications have been received so far
- *Oakridge Estates:* The applicant was considering an easement vs. modifying the right-of-way to correct an error in the location of pavement. Ms. Buck reviewed this with the Town Administrator and both felt an easement would be more complicated. The applicant was advised to modify the right-of-way, which will require a minor modification to the subdivision plan.

#### Budget

Town wide Budget Meeting at Senior Center held Saturday, February 10, 2018. All budgets level-funded.

#### Board Member Committee Updates

Ms. AbuSalah said next Economic Development Committee meeting will be February 22<sup>nd</sup>.

Ms. Nist said the Capital Planning Committee Meeting had changed to next Tuesday and will update at March meeting.

Ms. Friedman said the next CMRPC Meeting is scheduled for March 8<sup>th</sup>, which she will not be able to attend and suggested that Select Board representative attend.

#### **Public hearing, zoning bylaw amendments**

A. Marijuana Establishments

B. Open Space Residential Development (correction of errors)

C. Special Permit Granting Authority, allowed uses (clarification of confusing language)

Mr. Grimshaw read the notice into the record, gave instructions on hearing procedures and opened the hearing to Ms. Buck to begin a PowerPoint presentation.

### A. Marijuana Establishments

**Current Medical Marijuana Zoning.** In November 2012, a ballot question legalized marijuana. In May 2013, the Town approved Medical Marijuana in several zoning districts by-right with 1,000ft buffers/setbacks from schools, religious facilities, childcare/family daycare facilities, parks & playgrounds, drug & alcohol treatment facilities, other medical marijuana facilities and residential zoning districts (R2, R1, & SA).

A zoning map was reviewed. It showed the 1,000ft buffer areas where medical marijuana facilities are currently allowed.

**Recreational Marijuana Timeline.** In November 2016, a Massachusetts ballot question approved recreational marijuana. July 2017, the State created a Cannabis Control Commission (CCC) to set regulations for the new law. December 2017, the CCC posted a draft set of regulations and in March 2018, a final set of regulations were expected. In April 2018, the State will start accepting applications for recreational establishments and issuing licenses in June 2018.

**General issues related to recreational marijuana.** A majority of Leicester residents voted in favor of recreational marijuana in November 2016. To prohibit recreational establishments would require a bylaw amendment and a ballot vote at a general election. However, existing licensed medical marijuana facilities will be allowed to convert to recreational marijuana facilities.

**Zoning issues and what can be regulated.** Municipalities may regulate the time, place and manner of marijuana establishments operations and may adopt bylaws that impose reasonable safeguards on the operations of these establishments, provided they were not unreasonably impractical.

The proposed Bylaw amendment will be proposed in 5 categories;

1) definitions, 2) districts & permitting required, 3) setbacks & buffers, 4) special permit & standard requirements, and 5) limit on number of retail facilities.

1) Definitions. There are a large number of Definitions, for clarity, in terms of the range of marijuana related uses and additional definitions were included that matched State Regulations.

2) Districts & Permitting required. The next category, which uses should be allowed in which zoning district and how should each use be regulated, by special permit or by-right.

**Proposed Use Table reviewed.** The Board agreed, at the last meeting, to divide the use table into 3 categories, Retail, Non-retail & Social Consumption Facilities. Social Consumption Facilities will be prohibited in all zoning districts. The remaining two categories will be regulated in the exact same way, prohibited in all residential districts and require a special permit most the commercial districts (prohibited in

3) Setbacks & Buffers. Regardless on the type of Use, two different buffers are proposed. 200ft buffer from residential *zoning district boundary line*, (R1, R2, SA), 500ft buffer from *all other uses* listed in current Bylaw, (schools, childcare, parks, etc.).

Proposed Zoning Map reviewed showing proposed 200ft from Residential Zoning Districts and 500ft from schools, churches, etc. In addition, a zoning map showing 500ft from K-12 schools only.

4) Special Permit & Standard Requirements. The Planning Board will be the Special Permit Granting Authority. Applicants will be required to meet all State Requirements to do with signage, security, etc. In addition, a section for parking will be included.

5) Limit on number of retail facilities. This was discussed at the last Planning Board Meeting, but not included in current draft. The Town may limit the number of facilities opening and that number limit was determined by 20% of the number of existing package store licenses. Therefore, Leicester may limit to 1 or more with a Bylaw Amendment.

Proposed Zoning Maps reviewed showing proposed 200ft & 500ft buffers for Marijuana Establishments.

Next Steps: The Hearing will be continued to incorporate changes recommended by Town Counsel, any changes recommended at tonight's hearing and any changes that might be needed after final regulations are revealed by the Cannabis Control Commission (CCC).

The Select Board Town Meeting Article submittal deadline is March 19, 2018; the Town Meeting will take place on May 1, 2018 (2/3 majority vote to pass). The PowerPoint presentation will be made available on the Town website.

Discussion opened to the public.

Mr. Sam Barber of Cultivate, 1754 Main Street, was concerned being required to go through the special permitting process when they include recreational sales within their existing medical facility. He felt the special permit process would hold them back from opening and being able to create revenue in this market, as well as holding the Town back from collecting tax revenue. Their goal was keeping the existing business open and having the ability to jump-start into the very competitive market of recreational sales.

He noted looking at other Towns larger than Leicester on the number of marijuana retailers permitted and most were maxing out at 1, 2 or 3 dispensaries. The market in Massachusetts did not justify having more than 3 facilities. He felt there would be a detriment to an existing retailer if there were more than 1 in any community. When talking sales, it would be as easy as ordering a pizza, with a lot of the tax revenue going back to the Town.

Ms. Mary Gabriela, Advisory Board, asked to explain the comment "as easy as ordering a pizza". Mr. Barber explained the customer would have to call an establishment for delivery service and was stated as a requirement in the proposed State Regulations, but could change when the new proposed regulations were out.

Ms. Gabriela was concerned there would still be customers coming to the establishment, who are over 18 with an approved medical ID, buying products, as well as receiving deliveries. Mr. Barber said deliveries would be done by companies who just do deliveries.

Ms. Gabriela was concerned there would not be any control on where the marijuana was going after purchase. Mr. Barber said medical IDs were required before any sale or delivery. Ms. Gabriela said she did tour the Cultivate facility and was very impressed with the security, but was concerned recreational would not be at the same security level as medical.

Mr. Doug Belanger, Select Board, explained all licensing, sales and deliveries would be controlled through the State Regulations and was not under the Town's control. What the Town can control was limiting the number of facilities. He asked whether the Board was considering limiting the grow facilities or the retail facilities. Ms. Buck said limiting the retail facilities.

Mr. Belanger asked in the proposed bylaws, whether growing facilities were now included under the special permit process, as opposed to by-right. Ms. Buck said in the current draft it would be included under the special permit process. Mr. Belanger's concern was a growing facility business owner having another hoop to go through, as opposed to being allowed by-right. He felt that would be a detriment to that business.

Mr. Harry Brooks, Select Board, asked in terms of limiting the number of recreational facilities, could the Town limit to just one, because they did not want to see Leicester become a recreational marijuana community. Ms. Friedman asked if it would require a ballot vote if the Town limited to just one facility. Ms. Buck said no, because 20% of liquor licenses in Leicester equal 1 facility.

Ms. Sandy Wilson, Select Board, questioned the number limit being a Select Board decision for General Bylaws and not a Planning Board decision for Zoning Bylaw. Ms. Buck said it has to be in a Bylaw somewhere and the Planning Board controls zoning and it was too late to consider a General Bylaw, though, some Towns have put it in their General Bylaws.

Ms. Wilson said when the medical marijuana first came up and passed, the Town Administrator at that time said, it was a Select Board's decision. Ms. Buck explained the amendment was putting a limit in place and wouldn't be by just a vote taken from the Select Board. Mr. David Genereux, Town Administrator agreed it needed to be stated in the Zoning Bylaws. Ms. Buck further explained some disagreement among different attorneys whether it should be a Zoning Bylaw or a General Bylaw and some have put it in both.

Mr. Belanger questioned if a limit was not stated in the Bylaw, would that be creating the control through zoning on how it was approved, as opposed to, being through a vote of the Board of Selectmen, who are the license granting authority. He said the number allowed by State Law was 20% of liquor licenses, which equaled one in Leicester and 1 will be the allowed number under the bylaws the Planning Board creates. The number allowed under the State Regulations, right now was also one. He questioned whether that number should be up to the State. Ms. Buck said no, it can be limited as long as there is something in the local Bylaw. If nothing is in the Bylaw, there is no limit.

Ms. Wilson asked if there could be language added for existing facilities converting to recreational, so they wouldn't be required to get another special permit at the same location. She felt that would not set precedent, because it was an existing business, already approved and just

wanted to convert. Mr. Grimshaw explained by requiring a special permit, it gives public notice to what additionally could be approved. Mr. Kularski felt not requiring a special permit could be problematic, because it was a change in retail use that could change the parking conditions.

Ms. Wilson asked whether a special permit would be required for converting.

Ms. Friedman said it would be for the change of use. Ms. Buck noted it could be problematic to create an exception for one business owner.

Ms. Gabriela asked would someone have to apply for a medical facility first before a recreational facility and be required to apply for a special permit. Mr. Grimshaw said a recreational facility would have to apply for a special permit and did not have to start with medical first.

Mr. Barber's concern was they had already gone through the approval process and on April 1, 2018 will have the right to apply for adult use. That license process includes having public meetings to inform people what this meant for their Town, and conforming to the Town Zoning requirements. A letter would be sent to the Town within 15 to 30 days of that license, asking to confirm Cultivate met their licensing requirements. He asked whether the business would be grandfathered under the Town's new regulations in the Bylaw. They currently conform to the current parking requirements for a retail business and would like to try to avoid further delay opening and operating their business.

Mr. Grimshaw asked why he felt going through the special permit process was the primary concern. Mr. Barber said his experience was that it did not end quickly. They were so close to the finish line, any delay would result in additional loss in revenue. Mr. Grimshaw asked if that was their experience in other communities. Mr. Barber explained his partner's experience in the real estate market had them concerned going through another permit process would delay opening. Mr. Grimshaw understood the concern, but didn't foresee a lot of problems resulting from their application. Mr. Barber's concern was with the process resulting in longer reviews and delaying the opening of their business.

Ms. Friedman felt the special permit for retail would not be that much more onerous and the special permit protected the Town. Given this was new territory for everyone; it would be nice to be able to have that protection for the Town. She understood recreational facilities could not begin to sell publicly until July 1, therefore on May 1 if the amendment passes at Town Meeting, would give 8-weeks to go through the special permit process.

Mr. Belanger questioned review by the Attorney General's Office. Ms. Friedman explained that when approved by the Attorney General's Office, it's approved retroactively to the date of Town Meeting approval. The Board could go forward on an application after May 1, 2018.

Ms. Diana Provencher, Select Board asked by only allowing one facility, where the competition was. Mr. Brooks noted there could be more than one medical marijuana facility; it was recreational facilities being limited to one. Ms. Buck said the Board lumped multiple categories together, however, the Bylaw can be written in such a way that a limitation only applied to recreational.

Mr. Barber asked what the Board's intentions were behind requiring a special permit and the guidelines for that special permit.

Ms. Buck said the requirements in the draft bylaw asks applicants to demonstrate consistency with state requirements and conformance with the Town requirements, the same as any other special permit applicant for a commercial use. It also provides opportunity for a public process, for a use where some people may have a concern. With this use in particular, one of the issues that would be looked at through the special permit process is the parking.

Mr. Barber said their biggest concern with the special permit process was, it being left up to the unknown, as well as people who have many concerns going into this. He felt it very unlikely getting through the special permit process within that time frame.

Mr. Grimshaw said the Board's concern was the change in use could be considered significant and the special permit process would allow the Board and public, opportunity to be a part of the open meeting process.

Mr. Belanger asked if recreational was limited to one and as time goes on, the one current business was the quality business the Town wanted, could the Town, at a later date, decided to require the special permit to increase the number of facilities. He understood the Board trying to limit the unknown, but questioned whether parking would be a problem. His other concern was limiting a facility on the growing side, due to the interest of companies wanting to locate within existing factory warehouse buildings. He asked the Board to look at the Town's Industrial area as the growth area and not limit by special permit.

Mr. Kularski asked whether there was another way to review other than through a special permit process, if the Board agreed to allow cultivating facilities in specific zones. Ms. Buck said that would depend whether it was new construction or moving into an existing building. New construction would trigger Site Plan Review.

Mr. Kularski noted one problem was all the business districts about residential districts. Ms. Friedman felt the cultivation establishments would be in existing buildings and not trigger a site plan review. Ms. Buck said the Bylaw states Site Plan Review applies only if new construction. However, it could be rewritten for this use in particular and require a Site Plan Review.

Mr. Brooks asked whether the Cultivate facility already met State Requirements on filtration. Mr. Barber said they have met those requirements. However, recreational had less stringent requirements and a less vigorous process.

Mr. Grimshaw felt maintaining the special permit process was a good idea, and to allow conversions by-right. Mr. Barber noted their intention was wanting to be a good business neighbor to everyone. He suggested within their Host Agreement, the Town can review parking if it ever became an issue.

Mr. Genereux noted Cultivate could not move forward until the Host Agreement was in place and a letter of Non-opposition was in place. He suggested Cultivate submit their application now

so it would all be done by that point, because part of the application requirements before conversion was to have the Host Agreement in place. Mr. Barber said part of the Host Agreement was to protect the Town on negative impact and they could include a parking review in that Host Agreement. Mr. Genereux disagreed; all the Host Agreement allowed was facilities to apply for the retail license.

Ms. AbuSalah asked if Cultivate would no longer do the medical once they were approved for a recreational establishment. Mr. Barber said the medical side was the larger portion of the market and it would not make sense to drop the medical.

Ms. Wilson said social consumption was not going to be allowed anywhere in Town, and the way the definition was written, facilities that actually sell it, such as restaurants or bars could have smoking rooms. There was a smoke shop in the Center of Town people go and smoke cigars, was there a way to prevent social consumption smoke shops from opening. Ms. Friedman referred to a facility in Worcester where a social smoke establishment opened and operated as a private club where people paid a fee to join and not open to public. Ms. Buck said that was a question given to Town Counsel, whether there was something the Town can add to the Bylaw to close that loophole.

Ms. Kristen Forsberg, T.A. Assistant noted the Select Board being the local licensing authority for liquor and according to the ADCC, the Select Board could be the BYOM licensing authority for the Town. She questioned who would have the authority for BYOM licensing. Ms. Buck said that will be another question for Town Counsel.

Ms. Buck asked about consensus on limiting facilities. All agreed limiting to one retail, because it served the purpose. It could always be increased later; and it allowed for conversion.

Ms. Buck asked about consensus on buffers; 200ft from residential district boundary and 500ft from school buildings, childcare, etc.

Mr. Belanger asked if Cultivate converted to recreational, would that be considered another marijuana establishment within themselves. Ms. Buck said no, it was the same facility and they won't need to have a buffer from themselves. Mr. Belanger said if Cultivate creates another corporation within themselves, retail versus medical, they would have two businesses. Ms. Buck will recheck the way the definition was written, but it was not intended for someone to have a buffer from themselves.

Mr. Genereux asked whether the Board intended to keep the limit at one retail production facility when it came to converting facilities, because if they no longer are permitted under what was originally setup, would it still need the 500ft buffer. Ms. Friedman said medical production facilities were different from other marijuana retail or medical facilities. She felt production facilities did not need the 500ft buffer because it was all self-contained. She suggested a 200ft buffer for grow facilities and 500ft for retail [rather than 200 from residential zoning districts/500 feet from the other uses.].



Mr. Kularski said State regulations now require 500ft buffer [if there's nothing in the local bylaw] and even though the Town previously had 1,000ft, the State was now lowering that requirement. Ms. Buck agreed and understood the Town could not go higher than State regulations.

The consensus was to have 200ft buffers from everything (including residential district boundaries) from non-retail, and 500 ft buffers from everything for retail.

Mr. Genereux suggested to make the Bylaw in accordance with State Regulations because State law already had specific buffer requirements. Ms. Friedman agreed and during the presentation at Town Meeting, say the Town was following State Requirements of 500 ft buffer and whether it passes at Town Meeting or defaults to State Regulations, it will be 500ft.

Ms. Buck said State Law is clear that the Town can't have more than 500ft for K-12. However, not directly answered by Town Counsel is whether or not the Town could have greater than 500ft for the other uses.

Ms. Buck asked consensus of the Board on conversions by-right or by special permit. She said it was brought up to consider adding a footnote in the section to allow existing facilities by right. Mr. Genereux understood the concern Cultivate had. Their process involved was applying to the State by April 1; theoretically, they can get a Host Community Agreement, shortly thereafter. On top of that, they need be a special permit before starting up and there was no way they could do that before enacting the Bylaw. He suggested getting an opinion of Town Counsel before answering the question on existing facilities converting; special permit versus by-right.

Ms. Nist felt the special permit requirement should remain on conversions, due to the change in use. Mr. Kularski felt existing facilities should be allowed to convert by-right, because they had already gone through the approval process and had proven to be a good neighbor. Ms. Friedman was concerned with parking, as well as, hours of operation changing. She questioned how that could be regulated if allowed by-right. Another concern was favoring one business and having the Attorney General's office look at this as spot zoning.

Mr. Genereux suggested asking Counsel to contact the AG's office in advance of moving forward to help provide language for the amendment. Ms. AbuSalah questioned whether that language could be provided before the Board's next meeting. Ms. Buck said yes, and that Counsel intended to be at the Board's next meeting. A revised draft will be completed prior to the March 6<sup>th</sup> meeting.

#### B. Open Space Residential Development (correction of errors)

There are three mistakes in this Bylaw. 1) It incorrectly refers to RA & RB, which were previous names for R1 & R2. 2) In the Use table, R1 & R2 were accidentally not listed anywhere. 3) An entire sentence was removed because it didn't belong.

#### C. Special Permit Granting Authority / Allowed Uses (clarification of confusing language)

Historically, the Zoning Board of Appeals was the Special Permit Granting Authority (SPGA) for everything. Over the years, it changed to the Planning Board in some districts. This

amendment will make it easier to understand which Board is the SPGA for each special permit. The amendment also makes the Planning Board the SPGA for all special permits in BR-1 and RIB (right now those districts are split depending on the use).

Hearing no further comments or questions, Mr. Grimshaw asked for a motion to continue.

MOTION: Ms. Friedman moved to continue the public hearing on the Zoning Bylaw

Amendments to March 6, 2018 at 7PM

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

### **Next Meeting:**

The second March meeting will be re-scheduled from Tuesday, March 20, 2018 to Tuesday, March 27, 2018.

### Miscellaneous Project Update Cont:

#### *Solar Moratorium*

Ms. Buck met with the Town Administrator and even though there were projects going on land that wasn't necessarily the best use for that property, it's one of the few commercial businesses the Town is currently getting and bringing needed revenue to the Town. Ms. Friedman noted concern on the amount of solar projects the Town was getting, but if the Selectmen's interest was continuing having solar projects that's up to them. Ms. Wilson understood where the Town Administrator was coming from because it was consistent revenue to the Town for 20 years and was better than an empty lot. However, some of those lots could be better used for a business that didn't disrupt the neighborhood and would bring consistent revenue to the Town. The Board may consider amendments for a future Town Meeting.

#### *Eastern Pearl Restaurant*

Building Permit was applied for, not sure of progress.

#### *Barber's Crossing new addition*

The new addition was smaller than the previous building, therefore didn't trigger the requirement on more parking. Ms. Nist asked about the outdoor seating locate on the deck off the back of the addition, as well as the additional seating within the addition. Ms. Buck will further review with the Building Inspector.

### Updates:

- Ms. AbuSalah will be attending a workshop on Downtown Business in Springfield on March 7<sup>th</sup>
- Send a reminder to the Select Board Office regarding CMRPC meeting on March 8<sup>th</sup>

Hearing no further discussion, Mr. Grimshaw asked for a motion to adjourn.

MOTION: Ms. Nist moved to adjourn meeting

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

Meeting adjourned at 9:15PM

Respectfully submitted:

*Barbara Knox*

Barbara Knox

**Documents included in meeting packet:**

- Agenda
- Copy of Memo to the Planning Board from Michelle Buck regarding February 20, 2018 Planning Board meeting
- Copy of Public Hearing Notice on the proposed Zoning Bylaw Amendment
- Copy of Draft Zoning Bylaw Amendment for Marijuana Establishments
- Copy of email memo from Rob Lally to Michelle Buck regarding Bylaw Amendments for Marijuana Establishments
- Copy of proposed Zoning Bylaw Amendment for Open Space Residential Development
- Copy of proposed Zoning Bylaw Amendment on Clarification of Special Permit Granting Authority and Improved Cross-References
- Planning Board minutes of January 23, 2018

**Documents submitted at meeting:**

- Privileged Attorney Client Communication