

## **Licensing Review Committee Meeting – January 18, 2018**

A meeting of the Licensing Review Committee was held on Thursday, January 18, 2018 at 8:30 a.m. The meeting followed all the guidelines of the Open Meeting Law.

In attendance: Ben Franco (Co-Chair); Bernard Greene (Co-Chair); Lea Cohen; Anne Meyers; Tom Gallitano

Absent: Peg Senturia

Also present: Tracey Michienzi (Paralegal); Patty Correa (First Assistant Town Counsel); Zack Carlton (Town Counsel Intern); Pat Maloney (Health); Francisco Torres (Planning); Ashley Clark (Planning); Paul Cullinane (Police), Austin Faison (Assistant Town Administrator); Jennifer Gilbert (Attorney for NETA), Robert Allen (Attorney for NETA), Amanda Rossitano (NETA); Kevin Fisher (NETA), Garrett Havck (Resident); Donelle O'Neil, Sr. (Resident), Will Seaguard (Resident)

Ms. Michienzi announced that the meeting would be audiotaped to assist with preparation of minutes. The Committee agreed.

### **I. Approval of Minutes from the December 14, 2017 Meeting**

The minutes from the December 14, 2017 meeting were discussed and approved unanimously with changes.

### **II. Discussion of Possible Local Regulation of Recreational Marijuana**

The discussion began with First Assistant Town Counsel Patty Correa giving the Committee an update on what is going on at the State level. She has provided the drafted Cannabis Control Commission (CNB) regulations (Item 7 on the Materials List) and the CNB's guidance for municipalities (Item 6 on the Materials List). They state that local licensing schemes are permitted. She believes it likely that the AG's Office's interpretation will not be at odds with the Cannabis Commission. She said that it is likely that the AG's Office will be approving local licensing schemes.

First Assistant Correa suggested the Committee start by reviewing the current draft Zoning By-Law Article. Francisco Torres, Economic Development and Long Term Planner, told the Committee that after community outreach and discussions, the Planning Department is recommending that the maximum square footage be made smaller than what it initially suggested. Mr. Torres and Ashley Clark, also from the Planning Department, thought 3,500 square feet was sufficient, however, the Planning Board thought that this number is arbitrary. The Planning Board believes that the number should be larger and encompass the gross area. The Planning Department is now suggesting that the square footage of an establishment be capped at 4,000 square feet and encompass the entire area. Co-Chair Bernard Greene questioned what was wrong with 5,000 square feet. Mr. Torres explained that the Planning Department is suggesting avoiding larger scale

operations that do not blend well with existing businesses in commercial districts. Tom Gallitano asked if there is a sense of what is needed as far as “back of the house” is concerned. Mr. Torres told him that the square footage needed for the back of the house would depend on the layout of the business. He said that NETA exceeds the 5,000 square foot limit, but it is laid out in such a way that it feels smaller than it is. Kevin Fisher, a representative of NETA, explained that the licensee’s needs would depend on its commercial interests. Lea Cohen asked whether counting the gross area is a change from the proposal made at the last meeting. She recalled that, at the last meeting, Dan Bennett told the Committee that the square footage would be determined by the retail space and not the storage space.

Jennifer Dopazo Gilbert, attorney for NETA, asked if NETA would be grandfathered in, as it is currently larger than the proposed square footage. First Assistant Correa told Attorney Gilbert that there is grandfathering language in the current draft.

Will Seaguard told the Committee that the amount of square footage needed depends on what the space will be used for. If the business is cultivating, packaging and selling, they will require more room than if a business is only going to be a retail business. First Assistant Correa informed him that the regulations that are being discussed at the moment are for retail use only. Mr. Torres said that it really is going to depend on the business plan and the model.

Co- Chair Ben Franco told the Committee that he believes that they should go with the 4,000 square feet for now and see what happens at next week’s public hearing. After speaking with the public, the group will reconvene and discuss what is appropriate. Anne Meyers asked if 5,000 square feet is the current maximum square footage for retail space. Mr. Torres confirmed that for general retail space, 5,000 square feet is the maximum. She questioned if there would be pushback because the square footage is different than for other retail uses. The Committee decided to keep the square footage at 4,000 square feet and revisit at the meeting after the public hearing.

First Assistant Correa told the Committee that there is language in the CNB’s draft regulations that contemplates social consumption licenses. The Town regulations have a section dedicated to social consumption licenses that allow them subject to a town- wide vote pursuant to the statute. The draft regulations provide that the CNB will afford municipalities 60 days to identify by-law restrictions that would prohibit or limit an applicant’s siting. Because the Town is planning on having these draft by-laws ready for a spring Town Meeting vote, it is anticipated that they will be in place when the State starts issuing licenses. The Town zoning by-law will go into effect immediately following the vote. Lea Cohen asked if common victuallers who want to include a menu item containing marijuana must obtain a license to do that. First Assistant Correa said yes, the restaurant would need a social consumption license.

First Assistant Correa told the Committee that she may remove the reference to the community host agreement on page 8 because the guidance document from the State says that community host agreements only last 5 years, although she said that this may be

an error on the State's part. She says that her recollection is that the statute's language on fees refers to a 5-year duration but the law does not state a specific time limit for other measures in a host community agreement.

First Assistant Correa said that she has been communicating with Sandy Gadsby, Town Meeting Moderator, to understand what he would allow at Town Meeting with respect to motions to increase or decrease the cap. His position is that he would approve motions to increase or eliminate the cap. He would not approve motions to decrease the cap. Based on this, she proposed how to handle the warrant articles to permit Town Meeting options without running into scope issues. She suggests that the zoning by-law warrant article state that the cap "shall not exceed 20%". The licensing warrant article will have similar language and then there will be a third warrant article with a motion to amend the cap in the licensing warrant article. She handed out a copy of a draft version of the third warrant article with the motion, stating that it is a work in progress. She reminded everyone that there would still need to be a town-wide vote after any approval of the motion by Town Meeting. This approach would permit the zoning by-law article to take effect without the delay that would be caused by the need for a town-wide vote in November.

Lea Cohen questioned whether or not the cap would apply to social consumption operators. First Assistant Correa said that it would and added that in the event the town accepts social consumption operators in a town-wide vote pursuant to the law, the determination of the cap and whether to increase it can be revisited.

There was then a discussion about proper identification and making sure that only people of legal age would be able to purchase recreational marijuana. Amanda Rossitano from NETA told the Committee that identification is checked to gain access to the dispensary and again at the time of purchase. Dr. Jett noted that the amount of recreational marijuana that can be purchased is lower than the amount of medical marijuana that can be purchased.

The discussion then turned to the topic of the buffer zone. First Assistant Correa told the Committee the history behind the medical marijuana buffer zone and why it was narrowed to 500 feet from K-12 schools and not in a building with a daycare. The CNB draft regulation's default buffer zone language is the same as in DPH's medical marijuana regulations.

The Committee then turned to discussion of the warrant article proposing a general by-law on marijuana establishments. This warrant article would establish the local licensing of marijuana establishments in the Town. First Assistant Correa explained to the Committee that the regulatory language in this warrant article basically mirrors the regulatory language in the zoning by-law and in the Town's medical marijuana license conditions. The Committee did not have any changes to suggest other than correction of a few typos and changing Selectmen to Select Board.

The Committee then turned to discussion of the warrant article regarding marijuana and hemp products. Ms. Cohen asked about the definition of an open container when it comes to marijuana. First Assistant Correa told her that the definition of open container and the language in the warrant article comes from the state statute. It will be open to interpretation by law enforcement. They will become more knowledgeable as they are trained and prepared to understand recreational marijuana. Their interpretation will be guided by guidelines from the State as well as from the Chief's Association. Lt. Paul Cullinane told the Committee that the police will be learning as they go and that the courts will be interpreting the statute and dictating what an open container is in this context. He believes that an open container is a container that has a broken seal. Also, someone who is actually consuming marijuana in a car has an open container. Individual officers will be interpreting the law, and each officer reports to a supervisor. Lt. Cullinane doesn't foresee any overzealous enforcement and expects that it will be applied when officers actually see the consumption.

The Committee then turned to discussion of the warrant article's language regarding residential cultivation. First Assistant Correa told the Committee that she researched concerns that arose in Colorado and steps taken there. A major neighbor complaint seems to concern odor and home explosions from solvent-based extraction. The language in the draft is primarily language from Boulder and Breckenridge, Colorado. It addresses nuisance issues. The use of supplemental carbon dioxide and ozone prohibition was taken from Boulder's regulation. First Assistant Correa said that the Fire Department recommends retaining that language. Dr. Jett said that the Health Department agrees.

### **III. Next Steps**

The public hearing is taking place on January 24, 2018 at 7:00 PM in the Select Board's Hearing Room. The Committee discussed Peg Senturia's overview and agreed that she did an excellent job and that the document should be included in the packet for the public hearing that will also include a table of contents and the drafts. The Committee discussed using sign-up sheets for speakers and attendees. There was discussion about a three minute limit for speakers. Prior to opening the floor for public comment, First Assistant Correa and Ms. Clark and Mr. Torres will explain the legal background and the drafts.

### **IV. New Business**

At this point, with time left before the close of the meeting, NETA offered to discuss the processing of marijuana and answer any questions to assist the Town with thinking through possible regulation needs. First Assistant Correa asked NETA to address the issue of water waste issues that could arise from both commercial and residential processing. Kevin Fisher from NETA told the Committee that the State regulations and most local regulations state how concentrated nutrients can be. Some localities in Colorado choose to more locally address those types of environmental impacts. That would be a local issue that would need to be discussed.

Co-Chair Greene asked if anyone using combustible material should be required to register with the Fire Department. Jennifer Dopazo Gilbert, attorney for NETA, said that they would be required to get a permit for flammable storage. First Assistant Correa said that she believes this point is covered by section 5 in the draft. Residents must conform to all state and local law regarding combustible materials.

Mr. Fisher told the Committee that he was glad to see the supplemental carbon dioxide and ozone language in the by-law because ozone can be easily generated by plug in machine and if done incorrectly can poison and kill a whole building. He said the rest would be up to the Fire Department. Pat Maloney told the Committee that he envisions that the Health Department will educate landlords and property owners. He said that it is concerned about taxing electrical systems. He also said that mold, water and flooding are issues as well. Mr. Maloney explained to the Committee that there have been issues in Massachusetts already. He said that the Inspectors Association invited the Colorado Inspectors Association to visit and discuss what has been going on in Colorado. He informed the Committee that it was very useful and enlightening to hear about the issues there and how they are being resolved. He continued that they are trying to learn from Colorado's challenges and making sure that those challenges are considered when drafting regulations. He told the Committee that educating property owners is going to be very important so that this can be done safely.

Mr. Maloney then asked the NETA representatives to explain what they are envisioning as far as the separation of medical and recreational sales. Mr. Fisher told the Committee that there are two concerns. The first concern is underage purchasing without a medical card. The second concern is revenue and how the state and local governments are going to collect their taxes. He said that the business is allowed to be virtually separated. He explained that virtually separated means that the product is the same, but tracking how it is sold and how much can be sold is different. When a visitor comes to NETA, the visitor will be required to show identification. The visitor will be admitted if s/he is 21 years old or older. Visitors will be required to show a medical card if they are under 21. The visitor would be able to approach any of the counters to purchase recreational or medicinal marijuana. Then a staff member will ask for an id. If the person is over 21, the staff member will access the database for recreational marijuana and that would track taxes. If they see a medical card, the staff member will access the medical marijuana database. NETA explained that the product is the same for both medical and recreational and there will be a huge demand for recreational marijuana. Mr. Fisher said that NETA's priority is to continue to service the patient population. It will limit sales to recreational users before it limits patients. Mr. Fisher said that if it were forced to separate the product at the facility, there could be a shortage for both types of uses. He told the Committee that he is waiting for the State interpretation to make the decision on how to separate product but that is how NETA is envisioning it.

Attorney Gilbert offered tours of the Brookline dispensary to members of the Committee. She informed the Committee that she has made a similar offer to the Planning Board and will follow up with times that work for NETA.

**V. Schedule Next Meeting**

In addition to the meeting on January 24, 2018 at 7:00 PM (the public hearing), the Committee will also meet on February 8, 2018 and March 1, 2018 at 8:30 AM.

Adjourned at 9:55 A.M.

## **Materials List**

**(Items distributed at the 1/18/18 meeting of the Licensing Review Committee)**

- Item 1: Agenda for January 18, 2018 Meeting (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 2: Minutes from the December 14, 2017 Meeting (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 3: Draft Warrant Article regarding the Zoning of Marijuana Establishments (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 4: Draft Warrant Article regarding Marijuana Establishments (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 5: Draft Warrant Article regarding Marijuana and Hemp Products (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 6: The Cannabis Control Commission Guidance Document for Municipalities Regarding Marijuana for Adult Use. (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 7: State Regulations Regarding the Adult Use of Marijuana (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 8: Marijuana Regulation in Colorado Presentation from the IMLA Conference (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 9: Brookline Measurement Maps from Planning (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 10: Proposed Overview of Marijuana-Related Warrant Articles (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)
  
- Item 11: Proposed Warrant Article on Cap on Marijuana Retailers (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)