



## Town of Wilton Planning Board Minutes March 5, 2020

Members Present: Mike LeClair (Chair), Lisa Small (Secretary), Norman Hurlburt, Bill McCrillis, Everett O'Neill, Gwen Doak, Charlie Lavin (CEO)

Meeting called to order by Mike LeClair at 7:05 PM.

1. Pledge of Allegiance.
2. Review and consider adopting the minutes from the previous meeting, 2-20-2020  
Members Lisa Small/Norm Hurlburt minutes from 2-20-2020 were approved 5-0-1.
3. **Public Hearing to take comments on the Following**
  - (a) Elective Electrical Transmission Corridor Moratorium & Ordinance. The name was changed to Energy/Transmission Conduit ordinance.  

The draft was sent to Bernstein Shur for legal review. Philip Saucier wrote 3 paragraphs of comments. The initial comment was that this creates a new use and should appear in the usage tables that are article 9. He also stated that state and/or federal law could have a preemptive effect on the Town's ability to locally regulate ETCs.

" 35-A M.R.S. § 2305(1) allows transmission and distribution utilities to construct and maintain lines over and under roads and streets in municipalities in which it is authorized to operate, although that law does not appear to address other locations (such as an energy transmission corridor not along a road). A municipality cannot enact an ordinance disallowing utilities to do so. Likewise, the zoning enabling statute, 30-A M.R.S. § 4352(4), specifically exempts real estate to be used by a public utility from zoning ordinances altogether if the PUC determines that the exemption is reasonably necessary for public welfare and convenience. There may be provisions at the federal level through FERC as well that have preemptive effect although we have not researched federal law as part of this review. These statutory provisions show that there are certain utility regulations at the state level that could override any contrary measure at a local level.

Second, an ETC owner could potentially raise a dormant commerce clause issue with the amendment. Under the commerce clause of the U.S. Constitution, Congress has authority to regulate commerce, and courts have interpreted this to also mean that states (and municipalities) cannot discriminate against out-of-state commerce or unduly burden interstate commerce. This is known as the dormant or negative commerce clause. An ETC owner could raise a dormant commerce clause argument if it perceives that the amendment unduly burdens interstate commerce by including requirements that differ from industry standards, or in effect would make it impossible for an ETC to be located anywhere within the Town. This argument may not be raised given the circumstances of the ETC, but we wanted to point out this potential challenge to this type of regulation.

Finally, to the extent the proposed ordinance language would affect a state highway (since it applies to transportation corridors), any such effort may also be pre-empted by the state. Notably, another provision of

the zoning enabling statute provides that any zoning ordinance that is not consistent with a comprehensive plan is only advisory with respect to the state, and if it is consistent with a comprehensive plan the State is required to comply with a zoning ordinance when developing any building, parking facility, or other publicly owned structure – and is silent as to roads. Even if it does apply to a state project, the Governor can choose to waive any such restrictions in a local zoning ordinance if it meets certain conditions.”

CMP sent a letter from Pierce Atwood signed by Matthew Manahan dated March 4, 2020. The initial section I stated that the ordinance is unnecessary as the existing ordinance has Article 5 Performance Standards and Article 6 Site Plan Review Standards which requires Planning Board review. The letter goes on in section II to assert that the ETC Ordinance is duplicative of and conflicts with existing provisions governing essential services. The section III states that the ETC Ordinance is discriminatory against non-local interests in violation of the Equal Protection Clause of the US Constitution, as well as the Commerce Clause to the extent it would impact interstate commerce and could be challenged. The section IV states that the ETC Ordinance is subject to override by the Maine Public Utilities Commission. Then in section V they offer changes to the ETC. Lisa Gilbreath, Pierce Atwood attorney was available and commented that the ordinance as drafted had serious legal problems and could be subject to legal challenge.

Del Reed a resident of Strong was allowed to speak and spoke in favor of the NECEC.

Members Gwen Doak/Bill McCrillis move to table until Planning Board can review the Pierce Atwood comments and discuss at future meeting, approved 6-0-0.

- (b) Exploding Target Ordinance. The original draft ordinance was reviewed Bernstein Shur and the comment was that it is similar to ordinances passed by other communities. At the last meeting it was recommended to simply the wording in actions prohibited to just state that it shall be unlawful for any person within the limits of the Town of Wilton to detonate an exploding target and to change the penalty section so that upon a first violation, only a warning would be issued. Public comment was that there are differences between mixtures where as 1 lb of one type can be as powerful as 5 lb of another type. Also noted was that there are two typographical errors: there is an open parenthesis in definition 1 and close parenthesis in Enforcement. These need to be corrected and clarification of in the wording of enforcement. This will be completed for next meeting.
- (c) Marijuana Moratorium & Adult Use and Medical Marijuana Business Ordinance. Members reviewed the draft presented by Charlie Lavin which was based on Farmington’s Ordinance.

Public comment: Brian Patterson of The Honecomb Farms inquired if another site plan review would be required? Charlie Lavin stated that if Brian stayed as a Caregiver Retail Store that would not be the case. That the intention of the ordinance is to give responsibility to Select Board for in the annual renewal of licenses. If Brian changed from Caregiver Retail to Adult Use then a state conditional license would be required and another Planning Board approval process following the Site Plan Review process.

The other question had to do with definitions and fees. Is baking considered manufacturing and requiring an additional license and fee. Brian concentrates the oils derived from the marijuana plant in another town and then brings to Wilton where he has established a kitchen to make edible products. The state definitions need to be reviewed and it would be useful if these could be placed back in the ordinance.

John Black questioned how odor would be dealt with an outdoor cultivation. Charlie noted that Article 10.A.10 stated that “All Adult Use and Medical Marijuana businesses are required to mitigate odor emanating from the premises. If multiple citizen complaints are received by the Code Enforcement Officer, a panel comprised of 3 persons from the Select Board or the Planning Board will make a site evaluation to determine if the complaint is valid. Excessive odor noticeable during the

evaluation shall be deemed to be a violation of 30-A M.R.S. §4452 and grounds to terminate the permit/license.” John stated that the nature of the plant even low THC concentration gives off odor when flowering. John understood that the fee schedule was intended to keep only committed people in the process but would like to single fee to allow sales and processing if at the same location.

The other question Brian had to do with the Article 9.D.2.f where “the applicant or a potential employee has been convicted of criminal activity under State and/or federal law, they must list the specified criminal activity involved, and the date, place and jurisdiction of each conviction” and how far back in time? Same as the state which is 10 years?

Then in Article 9.D.2.m the applicant’s driver’s license and Social Security numbers both Brian and John would prefer that requirement be replaced with federal business EIN number instead.

Brian and John both had concern over Article 10.A.3 which states that one or more marijuana businesses may not be located within 500 ft of another property housing another marijuana businesses as John Black’s location at 833 US 2 E and Brian Patterson’s at 844 US 2 E are closer than 500 ft.

CEO to collate the comments and rewrite the ordinance for the next meeting.

(d) Other Ordinance changes.

- 1) Add line in section 4.9 Downtown/Village Zone: Retail & office store fronts on the ground level-street side shall be maintained as store fronts or offices and shall not be converted to residential or other uses.

Members Norm Hurlburt/Gwen Doak move to have CEO send downtown property owners notice of this proposed change and table further action until feedback from property owners is received, approved 6-0-0.

- 2) Add Watershed Overlay Zone in Zoning Maps and list Watershed Overlay (WO) in tables along with Resource Protection (RP) as the Varnum Pond Watershed Protection Ordinance was passed in a special town meeting.

Members Bill McCrillis/Lisa Small move to approve, approved 6-0-0.

5. **Adjourn 9:20PM**

Norm Hurlburt/Lisa Small approved 6-0-0

Submitted by Lisa Small, transcribed by Charlie Lavin