

**TOWN OF HAMPDEN  
PLANNING BOARD  
MINUTES**

The meeting of the Hampden Planning Board was called to order at 7:00 p.m. on Thursday, January 13, 2011, at the Hampden Municipal Building by Chairman Peter Weatherbee.

Attendance: Planning Board Chairman Peter Weatherbee, Members Andrew Nelson, Peter Frazier, Thomas Blais, Mort Syversen.

Also in attendance: Town Planner Robert Osborne and applicants for tonight's meeting.

**1. ELECTION OF OFFICERS**

Member Frazier nominated **Peter Weatherbee** for Chairman. This was seconded by Member Syversen. The vote was unanimous. Chairman Weatherbee accepted the role of Chairman.

Member Frazier nominated **Michael Avery** for Secretary. This was seconded by Member Syversen. The vote was unanimous.

**2. APPROVAL OF MINUTES (November 10, 2010)**

Member Nelson made a motion to approve the minutes as written. This motion was seconded by Member Frazier. The vote was unanimous.

**3. NEW BUSINESS**

**A. Minor Subdivision – Alan Peters requests approval to modify Lot 1 of the previously approved Andrade Subdivision located at the northeast corner of Kennebec Road and Libby Lane in a Rural District. (Tax Map 5, Lot 73-B1)- Public Hearing**

Chairman Weatherbee opened the public hearing, asking to hear from the applicant.

Alan Peters asked the Board to amend lot 1 of the Andrade Subdivision. He stated that lot one is currently a three acre lot and the revision reduces the area to 2.0 acres, He stated that they are creating road frontage on Kennebec Road for his existing house lot to the rear and a potential second lot to the rear by modifying the subdivision. He indicated that the plan meets the town standards and asked the Board to approve the plan.

As no one else wished to speak Chairman Weatherbee closed the public hearing and asked for staff comments.

Town Planner Bob Osborne stated that the Andrade Subdivision was created and approved in 1985. Libby Lane is a town road (associated with the subdivision) about 400 feet in length. It came to our attention that tax map 5, lot 91 to the rear of the subject subdivision lot did not meet the frontage requirement of the Rural District on Libby Lane (because the constructed length of Libby Lane is longer than the accepted length of the street). Mr. Peters who owns both parcels seeks to amend the subject subdivision lot to provide frontage to the land to the rear. Frontage is provided as proposed for two lots to

the rear (Tax map 5, Lot 91). The subject lot (map 5 lot 73-B1), would be reduced in size and road frontage but is fully conforming as proposed. Staff recommends subdivision approval.

Member Syversen asked about access and a deeded easement.

Member Syversen made a motion that the application meets the standards governing subdivision, this motion was seconded by Member Nelson. The vote was five in favor and none against. Chairman Weatherbee asked that the Town Planner's Memo be entered into the record.

**B. Zoning Ordinance Text Amendments – Town of Hampden requests amendments to regulate medical marijuana registered dispensaries and cultivation facilities including amendments to Definitions 7.2, district regulations Article 3.1 - Industrial Park, 3.2 – Industrial and 3.3 – Commercial Service Districts, Performance Standards are proposed in Article 4.24 and parking standards are proposed in Article 4.7 – Public Hearing**

Chairman Weatherbee opened the public hearing. He asked for anyone speaking in favor then anyone opposed, then anyone with questions or general comments.

Shelley Blosser of Hampden asked is it a necessity that Hampden allow medical marijuana dispensary and cultivation facilities?

Bob Osborne asked Chairman Weatherbee if he could address the question. He indicated that the voters approved the referendum to allow medical marijuana and the legislature approved a statute to allow for the creation of regional facilities. The question is what happens when a company comes and says it wants to put a facility in town? Failing having medical marijuana regulations in place the code enforcement officer would have to determine if the zoning ordinance addresses the use either specifically or inclusively in the form of some category of use such as service business or medical facility. Then given that this use was not contemplated when the zoning ordinance was written in 1979 and forward no appropriate performance standards or district considerations were crafted for this use. The purpose for the town to look at this is if a request comes to the town and the legislature said it is a legal operation that we have the appropriate land use controls in place so that the people of the town can live with. Looking at downtown Hampden there are service businesses contemplated in the Village Commercial Districts and Business B District. If it were to be determined that this is a service business would Hampden citizens be comfortable with that use in close proximity to homes and schools?

Shelley Blosser asked: So you are saying outer town areas?

Bob Osborne indicated that the goal is to find some standards that aren't totally unreasonable but thoroughly consider the juxtaposition of homes and schools and churches.

Bob Osborne said that as we went through the Council Planning and Development Committee process that is what was discussed. We looked at two ordinances: South Portland and Brewer. We utilized Brewer's primarily with some elements of South Portland's as well.

Shelley Blosser asked: Are we bound by law to have one, a plan in place, if other towns already have a plan in place?

Bob Osborne said that if we do not have appropriate regulations then the existing regulations apply.

Shelley Blosser said next to Edwards (Supermarket).

Member Syversen said (when the application comes to the town) you would just wing it with the current rules. We can set up a black box now that applications must pass through but only if it is in place before they apply (for the use).

Shelley Blosser asked: Is there any way to zone it out of town?

Bob Osborne said that I put that question to Town Attorney Tom Russell and he indicated that he did not think so.

Shelley Blosser asked: Why?

Bob Osborne said that is because the legislature has passed a law that says the use is legal to do in the state of Maine. In zoning law ordinances are supposed to be crafted with a place in town for every use. Not a lot of places but some place.

Shelley Blosser asked if we can have the pertinent laws at the public hearing.

Bob Osborne indicated that this was a subject that would require time and attention and is not a five minute discussion for this hearing.

Shelley Blosser said we agreed in what we voted on the referendum as a state to have medical marijuana facilities. In what we voted does it require that each town have one?

Bob Osborne said that each region will have one initially. If South Portland gets one Westbrook will not have to worry about one initially. However, eventually a single facility will not be adequate and the legislature may come to the conclusion that more are necessary.

Shelly Blosser said that has not happened yet.

Bob Osborne said no, not yet but we are currently in a moratorium on medical marijuana pending adoption of local regulations.

Member Frazier said the legislature did not leave it up to the local communities to decide if they want methadone clinics or medical marijuana clinics. The voters for whatever reason said it is fine to have one. I think what Bob is saying is that we are developing an ordinance that may make it contained because we can't prohibit it completely. I hope we do a good job of creating an ordinance that makes it less attractive to establish the use in Hampden than some other place.

Shelley Blosser asked when does the moratorium run out?

Bob Osborne said he believed it ran out in six months. (The actual extension was for 120 days).

Shelley Blosser asked if we are having other hearings.

Bob Osborne indicated that the Planning Board will likely take this back up next month.

Sally Leete, of Hampden cited a MSNBC report that looked at San Francisco, California and the connections between medical marijuana and crime. It quoted a public official that indicated where there are drugs and money there will always be crime. Sally Leete noted that although marijuana is illegal under federal law the voters approved medical marijuana and Maine is going to have this. It brings in a whole new set of laws and guidelines. It is not something I would like to see in Hampden. She questioned that not all people in town have internet and computers and she favored an open forum for exchange of information.

Kristen Hornbrook, Hampden Town Councilor, spoke about concerns of the crime rate going up and the growing drug problem and cited data from San Francisco, California.

Councilor Hornbrook discussed that these were good issues that were raised and an emotionally charged topic and the statute could have been done differently with control by medical providers. With drug problems everywhere it boggles the mind that this got approved. Perhaps this is something that could be brought to referendum. The question: are you for or against medical marijuana in Hampden? What about Home Rule? Where does it say we must have a medical marijuana facility in Hampden? What about home rule option? What the State says and what the Town says- legally what or where does the town stand on this? It is illegal to possess marijuana under federal law. Can the Town extend the moratorium on medical marijuana? She wants to see that statute, law or case that says towns must provide a place for each use in a zoning ordinance. Perhaps through regulation the town can define a regulation that would make it extremely difficult for the use to be established here. I spoke to the town attorney and he said that the use cannot be excluded but I want to see where it says that. I want to talk more about home rule and the state and local differences and who has the final say. Perhaps there is a link between a referendum and what authority the town could have to exclude the use. My feeling is that if it is medical marijuana that it should be near a medical facility such as Brewer's treatment center. It is illegal to possess marijuana under federal law. Do we have to end the moratorium or can we extend it?

Chairman Weatherbee stated that it strikes him that some of the issues raised tonight are

better suited to the Town Council.

Bob Osborne stated that the moratorium must clearly state a reason for it and the time frame to do what was stated for a reason in the moratorium. Moratoriums are temporary.

Mr. Osborne suggested this item be referred to the Planning Board Ordinance Committee, and he will make the arrangements for the committee to meet, time and place.

A motion was made by Member Syversen to table. This was seconded by Member Frazier. The vote was five in favor and none against.

**C. Zoning Ordinance Text Amendments – Town of Hampden requests amendments to reduce the required setbacks of certain small accessory structures in Article 3.3 Commercial Service District. – Public Hearing**

Chairman Weatherbee opened the public hearing.

Bob Osborne stated that reduced setbacks for accessory structures already existed in the Rural District and the Residential A and B Districts. The town is seeking to apply those existing standards to the Commercial Service District as well. Hampden Mobile Home Park is in the Commercial Service District. The park would benefit from allowing accessory structures with reduced setbacks so that some of the stuff in the yards could be stored in sheds. Accessory buildings would be under 150 square feet and under 16 feet in height. The side and rear setback reduced to five feet.

As no one else wished to speak Chairman Weatherbee closed the public hearing and asked that the staff memo become part of the public record.

Member Syversen made a “ought to pass” recommendation to send this to Council. This was seconded by Member Frazier. The vote was five in favor and none against.

**4. STAFF REPORT**

Mr. Osborne distributed copies of the 2010 Town of Hampden Comprehensive Plan to the Board Members.

Next month’s agenda is light with just the text amendment.

**5. BOARD MEMBERS CONCERNS**

None were stated.

**6. ADJOURNMENT**

The Planning Board meeting adjourned at 8:00 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Avery", written over the printed name.

Michael Avery, Secretary