

**City of Newburyport  
Planning Board  
February 21, 2018  
Minutes**

The meeting was called to order at 7:00 PM.

**1. Roll Call**

In attendance for the Planning Board: James Brugger, Anne Gardner, Joe Lamb, Leah McGavern, Andrew Shapiro, Bonnie Sontag, and Don Walters

Absent: Mary Jo Verde and Tania Hartford

Andrew Port, Director of Planning and Development was also present

**2. Joint Public Hearing with the Planning & Development Committee and Committee of the Whole**

***a) Changes to the Boundaries of the Medical Marijuana Overlay District (MMOD) & designated Special Permit Granting Authority (SPGA) for Medical Marijuana Treatment Centers (MMTC)***

Director Port said the discussion would not address recreational marijuana. The small, rectangular MMOD overlay in the City's primary industrial sector resulted from passage of the Medical Marijuana Act, which allowed the cultivation and sale of marijuana by a Special Permit from the City. Extending the MMOD boundaries to the other side of the street would create a corridor instead of including only the south side of the street. Councilor Eigerman read emailed testimony from Art Currier (in support), Ralph Castagna (opposed), Robert Lake (opposed), and Gary Swerling (opposed). Councilor Shand represented the district.

Public comment open.

Elizabeth Ware, 84 Federal Street, wanted to understand the emailed opposition and hear solutions.

Paul O'Brien, Chief Administrative Officer, City of Newburyport, read Mayor Holaday's statement of support.

R. J. Wolcik, Director of Health and Safety, Strem Chemicals, 7 Mulliken Way, was opposed due to electrical systems issues. He referenced a letter sent he sent to the City.

Jim Zampell, chairman, Zampell Companies, 3 and 9 Stanley Tucker Drive and 17 Malcolm Hoyt Drive, was opposed because the proposal went against the park's purpose as established by the Newburyport Area Industrial Development (NAID).

Mary Fitzsimmons, 7 Arlington Street, was opposed. A size increase could lead to retail sales.

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Patricia Daniels, 234 Low Street, was opposed, due to concerns with the current drug problem.

Jay Caswell, owner, Caswell Development, 24 Graf Road, was opposed due to concerns about spot zoning and use discrimination. All park businesses should have been consulted first.

Ralph Castagna, Castagna Construction Corporation, 69 Parker Street, was opposed on behalf of the Park Association due to the eventuality of retail sales that were not allowed in the park, the effect on property values, and the effect on federal contracts for park manufacturers. Of 25 businesses invited to attend a PA meeting with Director Port last week, 12 attended.

Pat Reddy, 8 Pheasant Run Drive, manager of 23 Hale Street, wanted his location (800 feet from the boundary) included in the expansion. He had a prospective tenant for cultivation.

Frank Cousins, President of the Newburyport Chamber of Commerce, was opposed. He attended the Park Association meeting. Opposition to the MMOD expansion was unanimous. The Chamber was also opposed. NAID would be opposed. Electrical issues were legitimate concerns.

Ed DeSousa, 4 Jenkins Road, North Reading, was in support. His small marijuana business wanted to relocate to a park address that was 800 feet outside the boundary. In July, all medical marijuana facilities would be allowed to sell recreationally.

Grace Connolly, 47 Green Street, attorney, chair of EDAC, was opposed on behalf of EDAC. EDAC worked with NAID in assembling the economically diverse industrial development. Assurances were made that the park was where business would want to relocate. She urged the board to consider the community contributions by businesses that had been here for decades as well as the manufacturer's concerns about an adverse impact on federal contracts.

Paul Dahn, 43 High Street, owner, 2 Opportunity Way, was in support. His building had been vacant for three years, which had a negative impact on property values. The demand for marijuana cultivation in his building could bring 30-50 new jobs. Cultivation tenants used advanced security technology. He would ask his tenants to sign an agreements not to engage in retail sales and make a donation to infrastructure improvements from prospective revenues of \$1 to \$1.5 million. Surrounding properties values would improve with the expansion.

Laurie Boudreau, 58 Merrimac Street, Amesbury, Graf Road property owner, was in support.

Michael Reardon, 39 Country Way, Ipswich, owner, Happy Valley Ventures, was in support. It was hard to find facilities for large-scale cultivation. Expanding the zone created an opportunity to attract companies who contributed considerably to the economy. The City's main benefit was revenue from three percent of gross wholesale. Recreational sales would be 'by right.'

Peter Fitzsimmons, 7 Arlington Street, was in favor of a thorough understanding the electrical load from the marijuana industry.

Public comment closed.

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Director Port said the Strem Chemicals letter sent to him and Councilor Shand arrived today. Councilor Eigerman said he heard conflicting testimony. The City needed legal advice on some concerns. The medical marijuana ordinance listed findings for mitigating impacts. Spot zoning applied if a use was distinguishably different from the surrounding area. A required 1,000-foot radius surrounded the MMOD and no marijuana business could be near the River Valley Charter School. The Park Association meeting testimony was on record, but many park businesses were not represented by the PA vote. Adverse federal contract implications could not be ignored.

Councilor Shand would research the risk to federal contracts. Councilor Giunta said it was important to examine the retail aspect as it related to the dispensary. Retail was not an allowed use in the business park. Chair Sontag said a medical marijuana dispensary was not considered retail and would be part of the proposed expansion. Councilor Eigerman said recreational marijuana was due sooner or later. Perhaps the ordinance was outdated. The City needed clarification on cultivation without retail. Director Port identified on the displayed MMOD map the general area of two addresses mentioned in testimony as being just outside the boundary.

Member comments: Changing zoning to satisfy individual property owners was difficult to support when opposition from park businesses was overwhelming. Should the board reexamine everything? Businesses with a continuous electrical load were better than businesses with fluctuating loads. Electrical impact and federal contract issues should be examined. Could potential revenue be verified? If the federal contract issue were resolved, an agricultural-manufacturing use may be appropriate anywhere in the park. What was the rationale for limiting the MMOD? Director Port said the City did not want to leave MMOD zoning to chance, knowing it could be a sensitive issue. At that time, cultivation inside a building had to be located somewhere in the City. Offsets from parks, schools, and places where youth congregated were factored in, and residential areas were inappropriate. The use was consistent with other industrial-style uses currently in the park where activities inside any park buildings could not be seen. Members said the entire business park should be treated equally while maintaining the 1,000-foot radius and eliminating the retail aspect. District expansion was better than empty buildings. Would state law allow a city to prohibit the dispensary? Director Port, who spoke to AG office several years ago, said the dispensary had to be located somewhere. Councilor Eigerman said dispensary and cultivation were packaged together. The difference between a dispensary and retail sales should be researched. The board would consider the entire park.

Councilor Giunta made a motion to continue the proposed changes to the Newburyport Zoning Ordinance Section V-D, Use Table to March 21, 2018. Councilor Shand seconded and all members voted in favor.

Don Walters made a motion to continue the proposed changes to the Newburyport Zoning Ordinance Section V-D, Use Table, to March 21, 2018. Leah McGavern seconded the motion and all members voted in favor.

**Motions Approved.**

*During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments*

*and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.*

- b) Changes to the Table of Use Regulations and designated Special Permit Granting Authority (SPGA) for any and all uses, whether Permitted as-of-right, allowed by Special Permit, or Prohibited outright***
- c) Zoning Map Change – Residential R-3 to Business B-2 District (parcels along Green Street, Harris Street, and High Street)***

Councilor Eigerman said the Zoning Advisory Committee would look at the zoning map and Use Tables holistically. EDAC had concerns and wanted to slow down the decision, but had not taken a formal vote yet. Park businesses did not want health and recreation uses permitted near them at all. Two non-conforming uses on upper Green Street, the law firm Connolly & Connolly and the restaurant Mr. India, had to be fixed. He recommended continuing work on the Use Tables through May and putting the Use Variance ban on hold until June or July.

Councilor Giunta asked if the EDAC vote was needed first? Councilor Eigerman said there was minimal testimony on the Use Tables. Councilor Giunta clarified that once the Use Tables were perfected in May, work could proceed on the Use Variance ban.

Member comments: Proceeding with uncontested Use Table changes now while more comprehensive changes were made in the rezoning process was preferred because Use Variances were unrestricted now. Councilor Eigerman agreed. Written testimony on health and recreation uses on Graf Road were misplaced because those uses were a form of retail. That was an easy change to make now. Chair Sontag had looked at the proposed changes to zoning districts at a Zoning Advisory Committee (ZAC) meeting. The ZAC would use their next two meetings to review the Use Table. Members said extending the review until May added time to get testimony from other business owners who were not part of the Park Association vote. Councilor Eigerman said the City Council committee hearings on the matter were closed. They were ready to vote on Use Variances now. Chair Sontag said it was best to proceed without slowing down. Councilor Eigerman said a resident in Councilor Giunta's ward wanted a use variance for an office near CVS. That issue could be addressed with a map change.

Public comment open.

Grace Connolly, 51 Green Street, and EDAC representative, said EDAC wanted more time to study the impact of Use Table changes in order to provide meaningful input to Councilor Eigerman. Past Use Variances were substantive, such as the variance to expand parking at Anna Jaques Hospital. Speaking as a resident of upper Green Street, she was concerned with how rezoning would impact historic High Street.

Ralph Castagna, 69 Parker Street, Park Association (PA) representative, said the PA was aware of boutique businesses in the park, such as personal training, which was not a huge problem so far. The PA's unanimous opposition to health and recreation Use Variances in the park stemmed

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from a proposed large-scale use in the core of the park that would have created problems with traffic and safety for children. He opposed special permits for unpermitted uses.

Public comment closed.

Chair Sontag said the special permit provided necessary flexibility.

Councilor Giunta made a motion to continue the proposed changes to the Newburyport Zoning Ordinance Section V-D, Use Table, to May 2, 2018. Councilor Shand seconded and all members voted in favor.

Councilor Giunta made a motion to continue the proposed changes to the Newburyport Zoning Ordinance Section III, R3 to B2 map changes to May 2, 2018. Councilor Shand seconded the motion and all members voted in favor.

Don Walters made a motion to continue the proposed changes to the Newburyport Zoning Ordinance Section V-D, Use Table, to May 2, 2018. Leah McGavern seconded the motion and all members voted in favor.

Don Walters made a motion to continue the proposed changes to the Newburyport Zoning Ordinance Section III, R3 to B2 map changes, to May 2, 2018. Leah McGavern seconded the motion and all members voted in favor.

**Motions Approved.**

*During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.*

**3. General Business**

- a) The minutes of 1/17/18 were approved as amended. Andrew Shapiro made a motion to approve the minutes. Don Walters seconded the motion and all members voted in favor.

**Motion Approved.**

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- b) ***Hamilton Way Lot 1 – request for lot release (2010-DEF-01)***

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Director Port said the Wine Subdivision road infrastructure was under way for access to the lots. Water and fire departments required the units to be sprinkled, but the applicant forgot to run the service line from the street to service the sprinklers. The board could withhold, or release the lot and because the sprinkler condition does not need to be satisfied until occupancy.

Andrew Shapiro made a motion to grant the partial release of the covenant for the Hamilton Estates subdivision, file number 2010-DEF-01, to allow the construction of a single-family home on Lot 1. Anne Gardner seconded the motion and all members voted in favor.

**Motion Approved.**

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**c) Evergreen Commons Subdivision – approval of Declaration of Restriction**

Chair Sontag said the Declaration was a legal placeholder for the Conservation Restriction (CR). The Conservation Commission approved it, with minor corrections. Director Port said the Planning Office recommended the temporary restriction in place of the CR.

Attorney Adam Costa, Mead, Talerman, & Costa, 30 Green Street, said the purpose of the Declaration was to get something on record. The property would close in a few weeks.

Anne Gardner made a motion to approve the Declaration of Restriction, dated February 7, 2018 and submitted to the Office of Planning & Development on February 8, 2018, and as further revised for the open space/conservation area of the Evergreen Commons Subdivision as required by Special Condition #19 in the Definitive Subdivision Approval, file number 2017-DEF-01. James Brugger seconded the motion and all members voted in favor.

**Motion Approved.**

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**3. Public Hearings**

- a) New England Development  
83 Merrimac Street and 90 Pleasant Street  
Definitive Subdivision (2014-DEF-02)  
Continued from 1/17/18**

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The applicant made a request to withdraw.

Joe Lamb made a motion to grant the applicant's request to withdraw the Definitive Subdivision application for 83 Merrimac Street and 90 Pleasant Street, file number 2014-DEF-02. James Brugger seconded the motion and all members voted in favor.

**Motion Approved.**

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- b) Gorman Homes LLC**  
**32 Union Street**  
**Definitive Subdivision (2017-DEF-03)**  
**Continued from 1/17/18**

The applicant requested a continuance to March 21, 2018 to coincide with the Courts and Lanes Special Permit discussion.

Anne Gardner made a motion to grant a continuance of the definitive subdivision application for 32 Union Street, file number 2017-DEF-03, to March 21, 2018. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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- c) Low Street Redevelopment, LLC c/o Bernie Christopher**  
**255R Low Street**  
**Site Plan Review (2017-SPR-07)**  
**Continued from 1/17/18**

The applicant requested a continuance today.

Don Walter made a motion to continue the Site Plan Review application for 255R Low Street, file number 2017-SPR-07 to March 21, 2018. James Brugger seconded the motion and all members voted in favor.

**Motion Approved.**

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**d) 101-103 State Street Condominium Trust (2017-SP-10)**  
**101-103 State Street**  
**DOD Special Permit (2017-SP-10)**  
**Continued from 1/17/18**

The applicant was not present and had not returned calls from the Planning Office. Members asked if there was a safety issue. Did the applicant have to be present for the board's ruling? Director Port said the porch had been reinforced. The applicant needed to be present.

Anne Gardner made a motion to continue the DOD Special Permit application for 101-1-3 State Street, file number 2017-SP-10, to March 7, 2018. Joe Lamb seconded the motion and all members voted in favor.

**Motion Approved.**

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**e) Hope Community Church**  
**11 Hale Street**  
**Major Site Plan Review (2018-SPR-01)**

Chair Sontag said there would be another round of peer review. Attorney Costa said expanded parking, reduced from 103 new spaces to 99, provided adequate parking for parishioners, primarily on Sundays. New access isles were associated with new spaces, with 670 linear feet of sidewalk. The 10.48-acre site currently had 1.54 acres of impervious surfaces. Additional impervious surfaces were less than an acre. Underground stormwater treatment where none existed today would lower the discharge rate. There were three outstanding CSI comments. He would proceed with the Conservation Commission for an Order of Conditions.

John Paulson, parishioner and president, Atlantic Engineering, 97 Tenney Street, Georgetown, demonstrated on plans the proposed parking area. In addition to inadequate parking, traffic flow at the entry road was a safety problem he solved by creating a one-way only entrance and a separate one-way only exit. Poor soil included a clay-type material bordered by wetlands. Underground stormwater storage addressed the increased flow of runoff. The front swale at Hale Street would be filled. The wetland replication ratio was 2:1. Cars could drive back and forth inside the lot except in one front section where cars would have to exit the lot if a space could not be found, and re-enter the lot to look elsewhere. Reconstructing the current entry road to address drainage issues would redirect water to an inlet receptor. One existing wetland could



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have additional water. Excess water would drain into new underground storage. A revised hydrology report was submitted to CSI on February 15 in response to their comments. He had not heard back. CSI wanted a plot elevation for handicap areas, had questions about the added filter strip, and questioned the amount of space for the catch basins. More poor and fair conditions existed after construction because more wetlands were created. CSI issues were not major and were all addressed. The area at the church front door would be resurfaced. ADA compliant sidewalks exceeded required standards.

Chair Sontag asked about landscaping the new impervious surfaces. Mr. Paulson demonstrated on plans where trees were designated every 20 spaces with additional shrubbery that more than met regulations. Attorney Costa said correspondences in the submittal listed technical requirements that did not apply and three waivers that included the environmental and community impact analysis, a full traffic study because traffic coming to and from the site was not changing, and architectural style criteria. The parking area had one dead end isle. Mr. Paulson said lighting was 20 feet high. He showed fixture details and a photometric plan. A church representative said the lot would be lit from dusk-to-dawn for security reasons.

Members asked how the need for 99 spaces was calculated? A church representative said 99 represented 80% attendance. Members requested a reconsideration of dusk-to-dawn lighting. An expansive lighted area created light pollution. Motion sensitive lighting or alternating lights were suggested. Chair Sontag said two curb cuts could create more pedestrian safety issues. There should be striping, at a minimum. Director Port asked the applicant check with DPS regarding pedestrian safety measures and let the Planning Office know their feedback. Freestanding signage required board review. It should be in the plans or they would need to come back with details.

Joe Lamb made a motion to continue the Major Site Plan Review Application for 11 Hale Street, file number 2018-SPR-01, to March 21, 2018. Andrew Shapiro seconded the motion and all members voted in favor.

**Motion Approved.**

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**f) 102-104 High Street LLC c/o Lisa Mead  
102-104 High Street  
DOD Special Permit (2018-SP-02)**

The applicant requested a continuance to March 7. ~~The board moved the item to March 21.~~

James Brugger made a motion to grant a continuance of the DOD-Special Permit application for 102-104 High Street, file number 2018-SP-02, to March 7, 2018. Anne Gardner seconded the motion and all members voted in favor.

**Motion Approved.**

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**4. Planning Office/Subcommittees/Discussion**

***a) Complete Streets Policy***

Andrew Shapiro moved to adopt the Complete Streets Policy. Leah McGavern seconded the motion and all members voted in favor.

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***b) Annual Election of Officers***

Bonnie Sontag was nominated Chair. Leah McGavern was nominated Vice Chair. Andrew Shapiro was nominated Secretary.

James Brugger made a motion to approve the election of all officers. Joe Lamb seconded the motion and all members voted in favor.

**Motion Approved.**

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***c) Procedural Improvements***

Most improvements discussed were already documented.

***d) Waterfront West Subcommittee Discussion***

Scott Kelly was no longer with NED. The new NED subcommittee included Leah McGavern, chair, Anne Gardner, and Andrew Shapiro.

*e) Other Updates*

Colby Farm land was discussed. Mylar plans for the Evergreen Subdivision were signed.

**5. Adjournment**

Anne Gardner made a motion to adjourn. Joe Lamb seconded the motion and all members voted in favor.

The meeting adjourned at 10:28 PM.

Respectfully submitted -- Linda Guthrie