

**City of Newburyport  
Joint Public Hearing  
Planning Board and City Council Planning & Development Subcommittee  
July 2, 2014**

The meeting was called to order at 7:13 PM.

**1. Roll Call**

In attendance for the Planning Board: Dan Bowie, Paul Dahn, Sue Grolnic, Jim McCarthy, Bonnie Sontag, and Don Walters.

Absent for the Planning Board: Henry Coe and Noah Luskin

In attendance for the Planning & Development Committee of the City Council: Jared Eigerman and Barry Connell.

Absent for the Planning and Development Subcommittee: Ed Cameron

Also present was Andrew Port, Director of Planning and Development.

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

***a) Amend Section XXVII, Downtown Overlay District (DOD)  
Applications for Signage, Durable Sign Foam or Foamboard, and SPGA Consultant  
Requirement***

Director Port said the amendment addressed a couple of housekeeping issues. Removing the seven-day requirement for consultants allowed a determination to be made at a public hearing. The signage material change was an appropriate substitute for non-glossy material whose durability was better. There were a couple of editorial changes for language, as well.

Councilor Eigerman said an additional paragraph to the one referencing the authority specified sign reviews were to be performed by Planning Office staff instead of in a public hearing.

Public comment opened.

Larry Guinta, 121 Crow Lane, asked if anyone wanting to change a sign had a right to come before the board to state their case? Director Port said the issue would go before the ZBA. Councilor Eigerman said it was a policy matter to have one board handle everything; that could be changed. If someone was unhappy with a sign decision, they needed an appeal process. Director Port said the process was as efficient as it could be.

Jerry Mullins, 7 Parsons Street, was concerned about replacing wood signs with synthetic material. Downtown was inundated with plastic signs that affected heritage tourism because of their inauthentic nature. The look and feel of the city could not be sustained with non-wood

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substitutes. Many building façade signs already violated guidelines created to sustain a heritage look. He wanted the sign requirement to remain authentic wood, despite the higher expense.

Public comment closed.

Planning Board member comments. The sign appeal process should remain with the more experienced ZBA. Director Port had seen examples of the substitute signage material and was waiting for one other sample to review. He was concerned for the aesthetics of the downtown. Technology had improved and the samples looked like wood when finished, therefore he saw no conflict with historic preservation when there was no real difference from a public perception. The synthetic material was a benefit for businesses because it lasted longer and was lower in cost. A member said signs faded differently. A faded wood sign looked bad; a synthetic sign aged better.

Subcommittee member comments. Councilor Connell agreed the material tended not to deteriorate. The consistency problem was enforcement. Who enforced and how vigorous were they, given the long-standing issue with A-frames? Director Port said the new Assistant Building Inspector is aware of the A-frames issue and would aid enforcement progress. Councilor Eigerman said waiting for the comprehensive rezoning would fix the chaotic and unpopular way signs were regulated now. Building Inspector Gary Calderwood had taken on the mantle of NRA Standards. Standards had deteriorated since the 70s. The city had work to do which the amendment would not fix. The amendment was an adequate placeholder until comprehensive rezoning provided new standards. Councilor Eigerman was concerned with the look down the street. Director Port agreed.

Jim McCarthy made a motion to recommend the Minor Amendments to the Downtown Overlay District (DOD). Paul Dahn seconded and all members voted in favor.

Councilor Jared Eigerman made a motion to recommend the Minor Amendments to the Downtown Overlay District (DOD). Councilor Barry Connell seconded.

**Motion 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) Amend Section XXVIII, Demolition Control Overlay District (DCOD)  
Roof Modifications and Hiring Consultants***

Director Port said language for the seven-day requirement for hiring consultants was adjusted similarly to the DOD amendment. Another amendment change clarified that changes in a roofline, roof pitch, or dormers was the only time the older Demolition Delay ordinance applied within the DCOD.

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Councilor Eigerman said language on the exemption or non-exemption in the DCOD of the old Demolition Delay had changed to address rooflines and dormers. In trying to regulate a full tear down we left that loophole; dormers were not defined anywhere. The amendment makes clear you did not have to go through a Demolition Delay if your roofline would remain intact.

Planning Board member comments. All demolition is covered in the Downtown Overlay District.

Councilor Eigerman said only buildings listed on the National Register were covered. If a structure was on the list, demolition would be reviewed and an unlisted building was exempt. A whole roof taken out would not be subject to Demolition Delay and some type of review was needed. If there were design guidelines, a Demolition Delay would not be needed. The zoning rewrite would have design guidelines. A member said the dormer loophole should be closed because a shed dormer could be three-quarters of a roof. Was demolition delay under zoning? Councilor Eigerman said no, it was a home rule ordinance that needed only six votes, not eight.

Public comment opened.

Leah McGavern, 21 Marlboro Street, gave examples of bad dormers. This was a no brainer.

Public comment closed.

Bonnie Sontag made a motion to recommend the Minor Amendments to Demolition Control Overlay District (DCOD). Jim McCarthy seconded and all members voted in favor.

Councilor Jared Eigerman made a motion to recommend the Minor Amendments to Demolition Control Overlay District (DCOD). Councilor Barry Connell seconded.

**Motion approved.**

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***c) Amend Section III-B to reference new FIRMs***

Director Port said the city needed to reference new maps taking effect July 16. The amendment, legally required by the federal government, was a housekeeping issue with no notable changes in maps and affected no one. The City Council should vote to adopt the amendment in one reading at the next meeting. Missing the date could affect insurance policies.

Councilor Connell asked how the public notice could be posted in time for the public to be aware. Councilor Eigerman said there were only 12 days. Director Port said a public hearing notice was advertised in the paper for tonight's meeting and that satisfied the public notice requirement according to City Clerk Richard Jones.

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Public comment opened.  
Public comment closed.

Sue Grolnic made a motion to recommend the Amendment to Section III-B to reference new FIRMs. Paul Dahn seconded and all members voted in favor.

Councilor Jared Eigerman made a motion to recommend the Amendment to Section III-B to reference new FIRMs. Councilor Barry Connell seconded.

**Motion approved.**

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***d) Amend Sections V-D, V-E and VI to establish “Municipal Harbormaster Facility” Use***

Director Port said the new Harbor Master facility that included bathrooms and showers deserved its own use listing. The ordinance included dimensional standards because the existing building was deficient in frontage, requiring a variance for the new facility to fit on the site. The relief was appropriate because the project benefitted the entire city and was away from a public street. The board would see a site plan, but set back should not be an issue.

Planning Board and Subcommittee member comments. Was the board setting a precedent that could be adversely referenced to support other projects? Councilor Eigerman said not legally, but in regard to policy, yes. Municipal uses were broadly exempt anyway; this was an exercise in caution that did not cause him concern. Director Port said the scope of the project was limited and not likely to be referenced by other projects. Councilor Eigerman said codes were amended to avoid variances for the municipal garage -- the next big municipal project. Director Port said only one site in the city was appropriate for the Harbormaster facility. The member recalled talk of moving the facility down the boardwalk. Another member mentioned the old brick garage as an existing non-conformity. Director Port said as a surplus property, it could potentially be considered for sale. Councilor Eigerman said its future use on that site would be a new use. Director Port said if sold, the city could better guarantee what it would be used for.

Support for a marine-use facility down by the water was supported and ordinance language recommended to say, “municipal marine-related building,” if the city wanted to undertake additional marine-related building in the future. The parking section should add any parking associated with its use. Director Port had no objection to the changes, suggesting the language, “...or marine-related use.” Another member concurred with the additional language but wanted the parking clarified. A member explained almost every zoning use included a section requiring a number of parking spaces that should be added, e.g. one spot for each full time employee. Councilor Connell said for construction already completed the term “marine-dependent use”

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would be consistent. Councilor Eigerman said specifying required parking would add clarification if parking was challenged. Director Port recommended one space, but there were part time employees. Councilor Eigerman said the non-residential use within 300 feet of a parking lot would cover part time staff. Director Port would add parking language in time for the City Council meeting.

Public comment opened.

Public comment closed.

Jim McCarthy made a motion to recommend the Harbormaster Facility Use & Dimensional Requirements with the added marine use and parking language. Bonnie Sontag seconded and all members voted in favor.

Councilor Barry Connell made a motion to recommend the Harbormaster Facility Use & Dimensional Requirements with the added marine use and parking language. Councilor Jared Eigerman seconded.

**Motion approved.**

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***e) Permitting for Medical Marijuana Treatment Centers***

Director Port referenced a memo he delivered to the subcommittee and board with details for the ordinance. He gave a brief history of the Attorney General office's opinion that a medical marijuana facility was expected to be allowed somewhere in the community. Zoning would specify locating a facility far away from schools, parks, churches, and other places with sensitive uses that were in most all zoning districts. Director Port recommended use by Special Permit only from the Zoning Board of Appeals and two districts, Area A further out Crow Lane and across to north Hale Street that encompassed Cabot Stains and Area B in the back of the industrial park. The ordinance would create an overlay to existing zoning; a map of the overlay district was presented. The zoning would replace the moratorium. An applicant would have to meet many stringent requirements in the regular application process. It might not be noticeable that an industrial style building was a medical marijuana facility.

Chairman Bowie heard there was concern by park businesses; he shared that concern. He was curious about who would speak in opposition. The city was looking at the business park as a source of increased tax revenue. The district north of Hale Street had potential for passive recreation. One location should be sufficient.

Planning Board and Planning and Development Subcommittee members discussed the idea of separating cultivation and processing from dispensing. Was it possible? It was simply another

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industrial use if separated. Would transporting the product create issues? The city would still benefit from tax revenue with cultivation minus the dispensing. As an option, cultivation alone was more palatable.

Director Port explained that without a specific ordinance indicating where to locate a facility, the city in effect allowed it everywhere, creating potentially greater problems. All agreed that an ordinance should be on the books.

Chairman Bowie posed the legal issues of bifurcating the uses. Councilor Eigerman said a dispensary without cultivation was permitted but did not know about cultivation without a dispensary. Director Port did not see language specifically requiring both uses. Chairman Bowie said even if both uses went forward, only one location would suffice. A member asked if there were no language in the ordinance that covered dispensing, would it mean that dispensing could be located anywhere? Director Port said the ordinance would speak to both portions of the use.

Councilor Connell approved of the two districts for cultivation because the land was agricultural. He told Director Port that the subcommittee should talk to people in the park before making their recommendation. He would rather have those conversations before the City Council meeting. Councilor Connell did not necessarily want the park associated with marijuana uses; a similar comment occurred during the Master Planning discussions. With cultivation only, he did not see that concern becoming an issue. Dispensing was different.

Director Port included a traffic review as one safeguard for approval and a water and sewer review for hydroponics as another safeguard. Councilor Connell said Colorado's experience demonstrated pent-up demand. It was difficult to predict how much activity might be associated with dispensing. Demand would be distributed over a wider area if facilities were also located in Amesbury, Salisbury, Salem, and elsewhere on the north shore.

Councilor Eigerman preferred to have the use covered by the ordinance. Another question was location and there were only two choices, the business park area or the Storey Avenue area. Clearly Storey Avenue was not acceptable. He had no problem with cultivation only if it were allowed. The state of Massachusetts was naïve about what they were getting into because it was a cash business that could prompt numerous robberies and it would not be pleasant to be an abutter. The business would not resemble a CVS pharmacy. He favored the business park and asking the Attorney General if the ordinance could limit use to cultivation. Director Port said someone could challenge a cultivation-only ordinance.

Chairman Bowie was willing to take a chance with cultivation-only as a starting point. The use was compatible in the business park and a prudent first step prior to dispensing. Councilor Eigerman said one analogy was the Brewing Company. Brewing was no problem, but the city wanted to control drinking on the premises because that kind of use had never been in the park before. A board member said if the location for a dispensary was remote, would there be a greater concern about robberies? Councilor Eigerman said either an isolated location or high visibility such as on Low Street was preferred. Director Port said cameras were required at facilities, even down hallways. He was not convinced robbery would be an issue. Chairman

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Bowie said robbery was the biggest threat with dispensing because many banks were not willing to be involved, leaving much cash on hand at facilities.

A member said Newburyport should have higher measures than other towns, such as restrictions in square feet and setback. Councilor Eigerman said Director Port had used restrictive language in square feet, setback, and other measures. Director Port answered member's questions: at most, four to six properties in Area B met the requirements; the Cabot Stains building met dimensional requirements; many other parcels were land locked. Chairman Bowie said an extension of Crow Lane was possible. Director Port said a Crow Lane extension would prove difficult and costly but there were two viable parcels on Crow Lane beyond the landfill. A member said costs and access were not so prohibitive that they would not be done. The city would not be taken to court for failing to provide enough parcels that meet criteria. Director Port said the ordinance covered the city's obligations and one district could be removed.

Public comment opened.

Larry Guinta, 139 Crow Lane, Ward 5 City Councilor, said his concerns were addressed. He did not want Cabot Stains to be a dispensary. If the city was unable to legally separate cultivation and dispensing, he asked that the Cabot location be completely eliminated in favor of the back of the industrial park. His constituents in Squires Glen would not want large amounts of cash traveling up and down Hale Street; it would be an issue. The Storey Avenue establishments were constituents who did not want a dispensary anywhere in the city unless required. The industrial park was the only location suitable.

Public comment closed.

Board and Subcommittee comments. Some board members were uncertain; park businesses were not in attendance to weigh in. A facility could benefit the city; moving forward was acceptable. If the city remained silent on dispensing, would that have the same effect as allowing a dispensary anywhere?

Director Port did not recommend leaving the issue unaddressed in the ordinance. Councilor Eigerman would recommend to the full council adoption of an ordinance that allowed cultivation by special permit and specifically disallowed dispensing anywhere, and wait to see what the legal issue was. He would also eliminate Hale Street from the ordinance because of problems with trucks. Part B had seven good sites. Chairman Bowie supported limiting the overlay district to Part B. His concerns about Part A included its location next to conservation land in the Oleo Woods development and the Common Pasture. If Cabot's was the only viable site in Park A, it was better to eliminate it. He supported the suggestion to disallow a dispensary because it would be easy to correct if there were legal problems. Councilor Connell agreed. In constricting requirements and locations a bit, perhaps we will restrict interest. He still felt uneasy about the whole concept and unable to visualize how it might operate. A member asked if there were companies that applied for just cultivating or just dispensing? Councilor Eigerman said the press seemed to cover only dispensary locations, not cultivation locations because that was the focal point for profits. Councilor Connell said the city could procrastinate another year, and then some. Director Port did not recommend postponing and said maybe the courts would accept extending

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the moratorium. That would give us more time and more information. Chairman Bowie thought it unwise to extend the moratorium unless there was widespread community concern at the City Council meeting.

Jim McCarthy made a motion to recommend Permitting for Medical Marijuana with the changes discussed that explicitly disallowed dispensaries and created an overlay district in area B only. Sue Grolnic seconded and all members voted in favor.

Councilor Barry Connell made a motion to recommend Permitting for Medical Marijuana with the changes discussed that explicitly disallowed dispensaries and created an overlay district in area B only. Councilor Jared Eigerman seconded.

Councilor Eigerman said area B is defensible alone in court.

Director Port asked would it be agreeable to put the item on the docket at the next meeting? Councilors Connell and Eigerman agreed to add all of the amendments at the same time.

**Motion approved.**

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Public hearing adjourned.

**2. General Business**

- a) The minutes of 6/18/2014 were approved. Jim McCarthy made a motion to approve the minutes. Bonnie Sontag seconded the motion and four members voted in favor. Paul Dahn abstained.

**5. Adjournment**

The meeting adjourned at 9:43 PM.

Respectfully submitted -- Linda Guthrie, Note Taker