

## TEWKSBURY ZONING BYLAW SUBCOMMITTEE

February 4, 2014

### **Call The Meeting to Order**

Vincent Spada called the meeting to order at 8:00 P.M. at the new Town Hall Auditorium. Present at the meeting were Nancy Reed, David Plunkett, Community Development Director Steven Sadwick and Recording Secretary Dawn Cathcart. Also in attendance were Building Commissioner Edward Johnson and Attorney Richard O'Neill.

### **Approval of Minutes – January 27, 2014**

**MOTION** - Mrs. Reed made a motion to approve the Zoning Bylaw Subcommittee minutes of January 27, 2014 as presented. The motion was seconded by Mr. Plunkett and unanimously voted 3-0.

#### **(1) Medical Marijuana**

Mr. Sadwick distributed copies of the draft bylaw with the redline strikeouts from the last meeting. The changes include:

- Section 6541 (c) – Deleted the 1,000' setback from Rt. 495
- Section 6541 – added the map reference and added the effective date for protected facilities coming in after the bylaw has been accepted
- Section 6541(d) – Changed 1,500' to 1,200' for protected uses – Note: Need to fix the text “one thousand five hundred” to “one thousand two hundred”. “(d)” should now be changed to “(c)” with the deletion of the current “(c)”.
- Section 6541(d) – added language from the State regulations, “or other locations that children generally congregate”.
- Section 6552 – Change to read the dispensary shall not exceed “5,000” square feet of gross floor area.

Commissioner Johnson asked what happens if a protected use comes in after the bylaw is approved. Mr. Sadwick stated that is why the effective date was added to “(d)”. Mr. Sadwick stated that would be their risk.

Mr. Plunkett asked where the language about children congregating. Mr. Sadwick stated that comes from the State regulations. Mr. Plunkett stated that the language should have meaning. This Board looked at the areas along Rt. 38 and determined based on the 1,200' setback from protected uses at the time of this submission this location was the best option. This Board determined that this area is sufficient from the protected uses and determined that children do not congregate as set forth in the State regulations.

Stephen Johnson joined the meeting.

Mr. Sadwick provided a blank zoning map with the 1,200' setbacks drawn in and asked the Board for confirmation of the parcels to include in the overlay. Mr. Sadwick stated that if the changes and the map are acceptable, he will prepare the article for the Planning Board meeting, so the Board may accept the article and submit it for the warrant.

TEWKSBURY ZONING BYLAW SUBCOMMITTEE

February 4, 2014

Mrs. Reed stated that they are predicting a possible snow storm Monday so we should vote to preliminary accept these changes.

Mrs. Reed asked if we should put in an article to extend the moratorium in case this article fails. Mr. Spada stated that he would not agree to that. Mr. Sadwick added that he is not sure that the Attorney General would accept another extension.

**MOTION** - Mr. Plunkett made a motion that the Zoning Bylaw Subcommittee endorse the proposed bylaw with the changes presented tonight including the zoning map and give authority to Mr. Sadwick to submit the article for the warrant in the event that the entire Planning Board cannot meet prior to the submission deadline. It is noted that Mr. Johnson is in attendance and agreed and Mr. Sadwick will contact Mr. Fowler. The motion was seconded by Mrs. Reed and unanimously voted 3-0.

**(2) Automotive Use – Attorney Mike Newhouse**

Attorney Mike Newhouse joined the meeting. Attorney Newhouse stated that his client owns a car rental business in Lowell that has between 80-100 cars licensed. His client is currently under agreement for the old Wally's World site for a pre-existing use of car sales. His client would like to operate the car sale as well as a car rental facility.

Attorney Newhouse stated that with the car leasing/rental operation, they normally only have between 5 to 10 vehicles on site at a time. This will generate excise taxes because the cars will be registered in Tewksbury. Attorney Newhouse added this will not open up the flood gates for Class II licenses. These vehicles will be limited to Gross Vehicle Weight (GVW) under 10,000 lbs. Attorney Newhouse stated that the Board members can go and look at his facility in Lowell at any time to view how many vehicles are on site.

Mr. Plunkett stated that he would not want this to be open to the entire Commercial zone. He would be more agreeable if this were an accessory use to a licensed car sales operation. If this was accessory to that particular use, there would not be a change in appearance. Commissioner Johnson agreed, if this was opened up to all commercial sites, the gas stations would all want to rent cars. Mr. Spada asked if these rentals will be on the same parcel. Attorney Newhouse replied yes.

Commissioner Johnson stated that he did research on this lot and there was a special permit issued in 1975 for repair and sales on this property. Commissioner Johnson stated that he was also worried about the 10,000 lbs GVW because this may include U-Haul type trucks and this should be investigated. Attorney Newhouse stated that he has a ¾ ton Dodge and the GVW is 8,800 lbs. He understands that it should be specified as vehicles not rental trucks. Mr. Plunkett asked if we can indicate passenger vehicles.

Mr. Spada asked why "trailer" is mentioned in the bylaw. Attorney Newhouse stated that is currently in the existing bylaw and it is prohibited. Mr. Johnson stated that a trailer has no motor. Commissioner Johnson stated that it does need to be registered and can be rented.

## TEWKSBURY ZONING BYLAW SUBCOMMITTEE

February 4, 2014

Attorney Newhouse stated that #4 in the definition guarantees that all excise tax will go to Tewksbury.

Mrs. Reed stated that this would have to come before us for a Site Plan Special Permit. Attorney Newhouse replied that he advised his client that a special permit process would be required. Mr. Sadwick stated that this is more of a Use Special Permit than a Site Plan Special Permit. The Board can still ask for conditions such as landscaping.

Mr. Plunkett stated that his opinion is that before he would consider agreeing upon this, it would have to be an accessory use to a principal use of a licensed car sales operation, the word "passenger" is added before motor vehicle, and the description of types of vehicles in #2 be expanded to include moving vans, box trucks, etc.

Mr. Spada stated that this article should be submitted by the applicant, not the Board. Mrs. Reed agreed and if the changes that Mr. Plunkett suggested were incorporated she would also support.

### **(3) Solar Farms**

Mr. Sadwick presented the draft solar bylaw. This now has the Tewksbury numbering system. Mr. Sadwick also presented the State regulations. The State regulations talk about as of right uses, but since Tewksbury is a Green Community, we have other by right uses already established.

Mrs. Reed stated that this bylaw talks about a Site Plan Review when it should be a Site Plan Special Permit. Mr. Sadwick stated that is what Dunstable had but he will change it.

Mr. Sadwick stated that he will add the description from the State regulations on page 3. He is going to pull in some information from the State regulations. Mr. Sadwick asked how the Board feels about having these in a residential area with over 20 acres, such as Rocco's and the Simon property. Mrs. Reed stated that this should be open to all zoning areas. Mr. Sadwick stated that he is just concerned with the setbacks from residential homes.

Mr. Spada stated that we should be looking at esthetics and buffering. Mr. Sadwick stated that he is also looking at the Chapter 40A, Section 3 exemptions. These are typically small installations on homes.

Mr. Johnson asked how this will be a value to the Town. Mr. Sadwick stated that he will speak with Andover.

Attorney O'Neill stated that in 5 years these could be obsolete when the Federal and State government stop providing incentives so make sure there is a removal clause in the regulations.

Mr. Plunkett asked if there is a hazardous potential. Mr. Sadwick replied he doesn't believe so, but will check.

TEWKSBURY ZONING BYLAW SUBCOMMITTEE

February 4, 2014

(4) **Floodplain Overlay District**

Mr. Sadwick provided emails from the State Floodplain coordinator. Mrs. Reed stated that there are two effective dates July 7, 2014 and July 16, 2014 this should be verified. Mr. Sadwick stated that he would verify the date and also look into if these maps are going to be delayed.

(5) **Electronic Message Board**

Mr. Sadwick stated that there is no information for this agenda item. Mrs. Reed asked why the bylaw needs to be reviewed. Mr. Sadwick stated that Mr. Plunkett asked that this be reviewed to set criteria for the TCOD. Mr. Plunkett stated that there should be special limitations in the TCOD. Mr. Johnson stated that if we add criteria for the TCOD then people may think we want them in the TCOD. It is prohibited now, so if someone wants it then they would have to come in with a specific proposal. Mrs. Reed stated that when we approved the one at Bernard's Jewelers it was because there was already a reader board sign there; it was smaller than what is allowed and cannot be seen from the center. Mr. Johnson stated that we should leave this as is.

(6) **MFD Revisions**

**MOTION** - Mr. Plunkett made a motion to accept the strike-out version of the MFD Bylaw and give authority to Mr. Sadwick to submit the article for the warrant in the event that the entire Planning Board cannot meet prior to the submission deadline. It is noted that Mr. Johnson is in attendance and agreed and Mr. Sadwick will contact Mr. Fowler.

**New Business**

**Family Suite**

Attorney O'Neill stated that currently there is a by-right 800 SF family suite and a 1,000 SF family suite with Planning Board Special Permit. This has been working except there have been problems with getting the subordination agreements from banks. He is proposing that all family suites get a Special Permit from the Planning Board and the restriction can be deleted. Currently, the restriction and subordination agreements are recorded by Town Counsel; he is proposing that a person designated by the Building Commissioner will record the documents.

Mr. Plunkett stated that we need to look at what happens if the property is foreclosed on. If the bank has title before the Special Permit is recorded and the property is foreclosed on, then the Special Permit would be wiped out to the successor/owner any obligation to conform to the permit. There should be a provision in the Special Permit that states that in the vent of a transfer of tile which legally negates the recorded Special Permit and the Family Suite is null and void and the property is returned to the original use of a single family. Attorney O'Neill stated that this would apply only to a foreclosed property. Attorney O'Neill stated that there is also annual certification required. Mrs. Reed stated that the article needs to be in the proper format.

## TEWKSBURY ZONING BYLAW SUBCOMMITTEE

February 4, 2014

Mr. Johnson stated that if there is a foreclosure, then the Special Permit is voided on a transfer of title.

Commissioner Johnson stated that he would agree to a Special Permit for all family suites. Commissioner Johnson stated that a lot of people are trying to get the family suites because the unit already exists and they cannot sell it without making it legal. This is becoming a fight and the staff is getting blamed because we make them conform. Commission Johnson added that we are making them remove the kitchens for homes that are being foreclosed on that have illegal units.

### **Automotive Use in HI Districts**

Attorney O'Neill stated that he would like to present an article to allow for Light Motor Vehicle Service in the HI district along Washington Street. This will go with the thought of breaking out the HI districts. Mr. Plunkett stated that one note on this HI district is there is a one parcel with frontage on Main Street that should not be included for this use. There should be an exception added that no parcel with frontage on Main Street can have this use.

Mr. Sadwick stated that each HI district is different and we should start looking at breaking each HI district out, such as HI-1, HI-2, etc. He will update the maps to call out each HI district separately.

Commissioner Johnson stated that the Groundwater Protection District should also be looked at to make sure this use is allowed.

Mr. Johnson stated that the uses should be updated to match the article submitted by Attorney Newhouse.

**MOTION** - Mr. Plunkett made a motion to instruct Mr. Sadwick break out each HI district by number so in the future different uses may be applied. The motion was seconded by Mrs. Reed and unanimously voted 3-0.

### **Master Plan**

Mr. Sadwick stated that we need to start discussions on the direction of the Master Plan.

Mrs. Reed stated that we received two documents today. She reviewed the Land Use quickly and there needs to be some updating to match our current zoning such as the removal of the Cluster Subdivision. Mr. Sadwick agreed and added that there is no driving force at NMCOG for the Master Plan.

Mr. Plunkett stated that 10 years ago we did not use NMCOG; we used Cecil Group because they had more innovative ideas.

Mr. Sadwick stated that we have other relationships with NMCOG but this did not get out of the box and they played it safe. Mrs. Reed stated that what was given to us was boiler plate. When the Master Plan was done originally, it took four years. Mr. Sadwick stated that this is a different situation; the original Master Plan was a citizen community with a consultant. Mrs. Reed added that there is no inspiration in what they have supplied.

TEWKSBURY ZONING BYLAW SUBCOMMITTEE

February 4, 2014

Mr. Plunkett stated that Chelmsford is involved with NMCOG for their Master Plan but they went out to the Cecil Group for the Town Center to get an outside view.

Mr. Spada agreed to look at someone new. Mr. Sadwick stated that we can pay NMCOG for work done up to date and get out of their contract but we need to make sure there is money for an outside consultant.

Mr. Plunkett stated that we need to look at the funding first. Mrs. Reed stated that when they met with the Town Manager he gave the indication that money would not be an issue. We can get funding from our some of our funds, the CPC and some Town money. Mrs. Reed added that it would be a waste of resources to go any further with NMCOG.

Mr. Plunkett stated that he would like to come up with property standards along Rt. 38 especially along the power lines. There is a large amount of frontage under the power lines and they should talk with National Grid about adding landscaping and cleaning up the area.

**MOTION** - Mr. Plunkett made a motion that the consensus of the Zoning Bylaw Committee is to recommend to the entire Planning Board that the NMCOG contract for the Master Plan should be terminated and pay NMCOG for work up to day, as long as there is sufficient funding to go out for additional consultant for an outside view of the Town. The motion was seconded by Mrs. Reed and unanimously voted 3-0.

**Adjournment**

**MOTION** - Mrs. Reed made a motion to adjourn at 9:30 PM. The motion was seconded by Mr. Plunkett and unanimously voted 3-0.

*Approved: 2/24/14*

TEWKSBURY ZONING BYLAW SUBCOMMITTEE  
February 4, 2014

**List of documents for 2/4/14 Agenda**

**Documents can be located at the Community Development Office**

Approval of Minutes

January 27, 2014

1. Medical Marijuana
  - *Copy of MJ Draft 01.27.14 – Section 6500, Article*
2. Automotive Use—Mike Newhouse
3. Solar Farms
  - *Section 6600 - Article*
  - *Copy of Model As-of-Right Zoning Bylaw prepared by Dept of Energy Resources, March 2012*
  - *Email dated 1/31/14 from Joanne Bissetta re: Solar Panel Production*
4. Floodplain Overlay District
5. Electronic Message Boards
  - *Copy of Section 5230*
6. MFD Revisions
  - *Draft revisions of Section 7100*
7. Master Plan Discussion