

Conway Planning Board

Thursday, December 2, 2021, 6:30 p.m.

MINUTES

Location: Meeting conducted remotely via Zoom

Present: Beth Girshman (chair), Jenn Mullins (vice-chair), George Forcier, Bill Moebius, Joe Strzegowski (associate member); Lara De Lucca (administrative assistant)

Other Attendees:

Bob Armstrong, 25 Thompson Rd

Alex Chinn 1743 Juliet Ave Saint Paul, MN (Owns abutting property on Roaring Brook Rd)

David De Lucca, 682 Roaring Brook Rd

Lisa Gustavsen, 40 Whately Glen Rd

Chris Larabee, Greenfield Recorder

Thomas Lesser, 195 South Part Rd

John Moore, 40 Whately Glen Rd

Dorothy Thorne-Thomsen

Meeting called to order 6:30 p.m. by Chair Beth Girshman

Beth welcomed George Forcier as a new member of the Planning Board!

1 Review and approve minutes of previous meeting, November 4, 2021

Motion to approve minutes as submitted by Bill, seconded by Jenn.

Vote:

Girshman - Aye

Moebius – Aye

Mullins - Aye

Motion passed.

2 Nexamp – outstanding issues, reports

Beth will submit latest invoice from Tighe and Bond. Per Joe, this is the next-to-last invoice, the budget is 75% spent. Per last communication with Nexamp, they are awaiting a delayed delivery of a mat material meant to prevent erosion.

3 Flood plain bylaw revision work

Next meeting will talk about next steps that Kimberly of FRCOG is suggesting she can help with.

Plan is for this to be on the warrant for the June 2022 Town Meeting. Information session will be part of the regular PB meeting on March 3, 2022. Required Public Hearing will be part of the regular PB meeting on April 21, 2022.

4 **Master plan update**

Waiting to see how much help PB can get from FRCOG. Hoping to get grant funding which can be used to hire a consultant. Peggy Sloan said the request for funding would come out in December – the District Local Technical Assistance Grant that PB applies for it every year. And that money can probably be used for this purpose.

Peggy sent Beth a scope of work for the Whately master plan process. Beth will resend it, to see how another town is doing the same work.

5 **Citizen Planner Training workshops – reports back**

Jenn went to Zoning Bylaws. She has 2 more coming up. George is signed up for one tonight, couldn't attend but will access a recording of it. And then he has another one next week on Roles and Responsibilities of Planning Board members.

Attendance at these webinars counts as points towards a discount on the town's insurance.

6 **Mail/email**

Planning Board gets emails asking how to navigate various town processes. Beth has spoken to Veronique about the need for a town FAQ on the website. Beth and Lara have created a few documents that address specific things people often ask about. Jenn says she can help out as a reader on these.

7 **Old business**

none

8 **New business/public comments (not anticipated 48 hours in advance)**

none

Motion to adjourn by Bill, seconded by Jenn.

Vote:

Forcier - Aye

Girshman - Aye

Moebius – Aye

Mullins - Aye

Motion passed. Meeting adjourned at 6:55.

Public Hearing for Modification of Special Permit with Conditions for Roaring Glen Farms, LLC.

Hearing called to order 7:01 p.m. by Chair Beth Girshman. Beth notes that Joe Strzegowski is a voting member for this matter. Beth notes that meeting is being recorded.

Attorney Tom Lesser spoke on behalf of the applicant. (He also submitted a memo that is attached to the end of these minutes). The bylaw doesn't have a provision for including additional owners. If the special permit were to lapse, getting approval from MA Cannabis Control Commission (CCC) is an expensive, long process, so RGF is trying to avoid having to do that again. Starting a business like this is very expensive and you need investors unless you are very wealthy. RGF is asking for a waiver, not for what PB has already said about how the farm should be run. What is important to the neighborhood is how the farm operates, not who owns it. Not practical to have to keep coming back every time someone new gets involved.

Planning Board members questions and comments.

PB:

Requiring a new special permit if 10% of the ownership changes might be overkill, but it seems like if they sell the farm, the town should have the right to amend the special permit. So maybe they give up 49 or 50%, town has the right to request a new special permit. Town should have the right if ownership of LLC or farm changes.

TL:

The applicant was RGF, LLC, and the owners of the property were Lisa and John. What he's asking is if they can include other members of LLC. It was the LLC that applied, not the owners individually. Why does it matter who owns it?

PB:

Why are we talking about the change in ownership? Is this change being contemplated or has it happened?

TL:

It is being thought about because money is needed.

PB:

How does a craft cooperative work? Is the nature of a cooperative that you would add members on a regular basis?

TL:

The cooperative wants to grow and doesn't have that ability right now.

PB:

Every time you add members you have to come back to PB?

TL:

Yes, you'd have to come back to PB. And why would PB say no to someone becoming a part of the cooperative? The concern is that that would happen.

PB:

When new coop members join, do they each have to be approved by the CCC?

TL:

Yes. There is extensive vetting by the CCC for the licensing process.

PB:

If this provision didn't exist, how would the townspeople know who was operating the farm?

TL:

Does the CCC tells local municipalities when there is something before the board that is local? RGF doesn't object that each time they go to CCC they would notify town beforehand.

PB:

There are legitimate reasons to know what people in town are involved in what operations.

Who is Matthew Martin? He shows up in early applications.

TL:

He was someone who was initially involved, but he left the organization.

PB:

Reflecting back to our previous deliberations. Confusion here is in my assumptions about what a co-op meant. We might not have understood at the time that the bylaws would end up in opposition to this business model. Confusing that it didn't come up during the previous process.

TL:

Co-ops by regulations of the CCC can't be multinational corporations. They have to be MA residents for at least 12 months.

PB:

In the interest of compromise, if we change 10% to 50% would the problem go away? Would that satisfy your needs?

TL:

These are two different matters. The scale of the property and who is in control of the LLC. Doesn't matter what the percentage it is. They need financing, and that person is going to want interest in it. They can't go to a bank for financing.

PB:

If they intend to stay as owners and maintain 50% ownership, then if we say 50% it should resolve it. Are you going to sell off 90% of company?

TL:

No intention of doing that, but can't foresee the future. If, for example, someone wants to buy the property with the business in the future.

PB:

One of the reasons this is in the bylaw is because the government often puts things in laws and doesn't get funding to enforce it. Putting it in the bylaw gives us the position to do something, to enforce it.

There's also the concern about management groups coming in and buying control of a cannabis company. That's not what we thought we signed up for.

TL:

We are trying to be straight-forward about this. Don't want to do creative legal things to bring in a management company. Intention is to be out there farming and have employees. John will be the one responsible for it. Getting a waiver is a long process. Need to be able to move faster to get investors.

PB:

Special Permit was issued in August 2020, runs for 5 years. After 5 years will need to be reissued.

PB:

Should PB be involved in personnel, which isn't their turf? The way something is run is not our decision. Problematic to ask about employees.

TL:

In order to hold license RGF must have special permit, if special permit revoked, license revoked.

PB:

Does that mean you have to go through whole process again?

TL:

Yes, automatically revoked. RRG LLC would still be the applicant, just the make up of cooperative would change.

Members of the Public questions and comments.

MofP:

Why say "manner and operations?" Why not just say operations and leave manner out? Manner and operations are duplicate terms. Manner must mean something else? Wouldn't that include ownership?

TL:

Manner means how something operates. Town has the right to regulate how something operates, to define is how it functions. It is a legal term – manner means how it operates.

MofP:

The state has the CCC in place, who is really providing oversight, so why should the town be involved? As far as I know no one from the CCC lives locally. We the local residents have to

deal with the consequences. We live here. That's why the people here should be involved.

TL:

The bylaw talks about regulating site and location, regulating what happens on the site. No need to be re-vetting when the CCC has already done that.

Additional Planning Board questions.

PB:

When we were first meeting with them, one PB member asked John and Lisa if there would be any other funding. One PB member noticed another name. They answered it was just the two of them. Did something happen, was there a change of plan? If the plan was this model all along, why wasn't it brought up?

TL:

Their intention all along was to fund it independently. But they realized reality requires more money than they have personally available.

PB:

That is understandable, and from that flows our need to examine how that change impacts our original decision. Wanted to clarify how we got here. We might have failed as a group to dig deeper into the concept of craft cooperative.

PB:

If we strike that whole section PB has given up its rights to do anything on this.

TL:

You're only giving up your right in regard to ownership. You're not giving up rights in regard to other conditions placed on it.

PB:

For the remainder of the 5-year license, we would have no rights regarding the future of the property. As long as it's approved by the CCC we wouldn't have a say.

TL:

The property could be sold tomorrow. PB only has control over the applicant, Roaring Glen Farms, LLC. Doesn't have to do with ownership of property.

I have a comment that no member of the public spoke in opposition. Doesn't seem to be a particularly live issue for the public.

Beth proposes to accept public comments until next meeting (Dec. 16), via planningboard@townofconway.com.

Jenn moves to close public hearing and open Planning Board deliberation. Joe seconds.

Vote:

Forcier - Aye

Girshman - Aye

Moebius – Aye

Mullins – Aye

Strzegowski – Aye

Motion passed. Public hearing closed at 8:08 p.m.

Planning Board deliberations.

- No problem with getting rid of 10% but if we get rid of whole section it is setting us up for massive pushback. Marijuana is different than any other business. If this was plain business the government wouldn't be involved. Town should be involved in licensing process, like liquor license. Don't want to give it all away. In spite of the fact that we weren't told there would be many small owners. When we issued the special permit, everything said 50% Lisa, 50% John ownership. Never hinted that it would change, and now it hasn't even started and there are all these members. That bothers me. Maybe PB has local information about applicants CCC wouldn't have. Maybe a list of owners submitted to PB. Also they are required to give something to Selectboard too.
- I wish it had been brought up when originally deliberated special permit, seems like it could have been brought up and it wasn't. Willing to figure out how to do this without setting a precedent. Keep integrity of bylaws that were vetted and approved, but come to a compromise so business can operate.
- Question of how much control should PB have over who runs farm? That makes sense because some people are unsavory. Nothing can be done even if PB doesn't like new owners. Could go running to CCC to get license pulled. Practical matter of how we would judge fitness of prospective owners, what criteria use. So how functional is it?
- It's in hands of CCC, they can vet or not vet and we're stuck with it. We don't really have any power
- I have noticed it's hard to figure out public access through CCC. Better to find compromise where we get info from RGF. Don't want it to be that difficult to get information. Don't want to have to go searching for it.
- We have to realized we have limitations as a board. We can't choose personalities as a criteria. Personal things are out of the picture. We're about how this will impact the community.
- What if next week CCC says they aren't doing background checks? We would have something in the bylaw to fall back on

- Liquor license analogy - local government involved in liquor licensing.

All Planning Board members will come to the 12/16 meeting prepared to continue the discussion and to make a decision by end of that meeting.

Beth will share additional public comments as they come in.

Motion to adjourn by Joe, seconded by Bill.

Vote:

Forcier - Aye

Girshman - Aye

Moebius – Aye

Mullins – Aye

Strzegowski – Aye

Motioned passed. Meeting closed at 8:27 p.m.

MEMORANDUM IN SUPPORT OF ROARING GLEN FARMS, LLC'S
APPLICATION TO AMEND ITS SPECIAL PERMIT

This memorandum is submitted on behalf of Roaring Glen Farms LLC ("Roaring Glen") in support of its application to the Planning Board to amend its special permit by granting a waiver under Section 11.2 of the Conway Zoning By-laws from compliance with Section 11.5(R) of the Conway Zoning By-laws.

Section 11.2 allows the Planning Board "...in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of this Article, [to] waive strict compliance with the requirements set forth in sections 11.4 and 11.5."

Section 11.5(R), the section from which Roaring Glen is requesting a waiver, is the section of the by-law titled "Change in Ownership". More specifically, it states, "A Special Permit issued under this Article shall lapse upon any transfer of ownership or legal interest of more than 10%." Roaring Glen then would have to apply for a new Special Permit with the Town of Conway, and approval by the Cannabis Control Commission, a process which would take a minimum of two years.

The waiver from compliance with Section 11.5(R) of the By-laws is requested because it is not inconsistent with the intent and purpose of the marijuana by-law, as is discussed below. Moreover, Section 11.5(R) exceeds the scope of what a municipality is allowed to regulate under G.L. c. 94G § 3.

G.L. c. 94G, §3 allows a municipality to adopt ordinances and by-laws that impose reasonable safeguards on the operating of marijuana establishments, but only "provided, they are not unreasonably impracticable and are not in conflict with this chapter or with regulations pursuant to this chapter," and that they "govern the time place and manner of marijuana establishment operations..." A copy of G.L. c94G § 3 is attached as Exhibit 1.

In other words, a local ordinance or by-law regulating a marijuana establishment is valid only if it meets all three of the above prerequisites:

- (1) it governs "the time, place and manner of marijuana establishment operations":
- (2) it is not "unreasonably impracticable", and

- (3) it does not conflict with Cannabis Control Commission regulations.

Section 11.5(R) of the zoning by-laws fails to meet any of the three pre-requisites, let alone all three.

First, it does not govern the time, place and manner of marijuana establishment operations.

- (a) Time means the hours of operation of a marijuana facility (Roaring Glen's hours of operation were addressed in its application for a special permit);
- (b) Place means the location of the marijuana facility (that is addressed in Section 11.4 of the by-law); and
- (c) "Manner of Marijuana establishment operations" means how a facility is operated or functions. (that is well addressed in depth in Sections 11.5 E, F, G, H, I, J, K, L, L, M, and O of the by-laws).

The key word here is "operations". The statute could have read that a municipality could regulate the "Manner of marijuana establishments". That language would have been significantly broader than the term "marijuana establishment operations" and might have allowed a by-law like Section 11.5(R), which is directed to who owns or controls a marijuana establishment, (not how it operates) to be enacted. But the statute only allows municipalities to adopt by-laws that regulate "operation" of marijuana establishments." And operations, according to its dictionary definition, means how an establishment functions, not who controls that operation.

And the "Purpose and Intent" section of the Conway marijuana By-Law supports that conclusion. It states that:

It is the purpose of this article to promote public health, safety and general welfare, and to support the availability of recreational and medical marijuana in accordance with State law and regulations (935 CMR 500.000 et. seq.) and (935 CMR 501.000 et. seq.). To mitigate potential impacts to adjacent areas and the environment this by-law will regulate the locations and site development to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods and to protect the safety of children and young

people in the vicinity of schools, public parks and other areas where children regularly congregate.

In other words, the purpose and intent section of the by-law is directed to "regulate the locations and site development of marijuana establishments" not ownership. Therefore, a waiver from Section 11.5(R), which does not regulate either the location or the site development of marijuana establishments, would be consistent with the purpose and intent section of the by-law.

And who has an ownership stake in a marijuana establishment, whether it be Elon Musk, Jeff Bezos or a third party, is totally unrelated to regulating "the locations and site development [of marijuana establishments] to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods and to protect the safety of children and young people in the vicinity of schools, public parks and other areas where children regularly congregate."

Second, on its face 11.5(R) is unnecessarily impracticable. Section 11.5(R) is clear - transfer 10% of ownership and your special permit is gone. Do that and you have to begin the two-year process again. Accordingly, a waiver would be consistent with the second purpose in Conway's marijuana by-law, set forth in Section 11.1, "to support the availability of recreational and medical marijuana in accordance with State law and regulations (935 CMR 500.000 et. seq.) and (935 CMR 501.000 et. seq.)."

Increasing ownership access would support the availability of marijuana establishments.

Third, I would call your attention to Town Counsel's July 22, 2021 opinion, which raises the question of whether Section 11.5(R) conflicts with the third requirement in G.L. c. 94G § 3: that a local by-law not conflict with G. L. c. 94G or any regulations enacted by the Cannabis Control Commission:

What has concerned me from the beginning, however, is the question of why the Planning Board should be concerned about these transfers in the first place. The Cannabis Control Commission (CCC) already has detailed regulations in place to deal with changes in the ownership or control of a Marijuana Establishment. See 935 CMR 500.104 (1). I believe

that the CCC has the resources and is better equipped to vet any proposed new owner or stakeholder of a Marijuana Establishment than the Planning Board is. The regulations also use the 10% figure as the threshold figure for further inquiry. Why does the Town care about the internal financial structure of a Marijuana Establishment (aside from knowing the identity and address of all owners) when the State already undertakes a vital role in vetting any new owners of the business?

There is a concept in law known as "preemption." Essentially, if the State has extensively regulated an area, a local municipality is "preempted" from passing ordinances or bylaws regulating the same subjects or area. G. L. c. 94G, section 3(a), entitled "Local Control" provides:

Town counsel cannot say definitely that Section 11.5(R) violates G.L. c. 94G, section 3(a); that decision would ultimately have to be decided by the Courts. I do, however, urge the Planning Board to consider these issues in their deliberations tonight. The Board should ask itself what is the purpose of this bylaw?

Attorney Fitz-Gibbon's questioning of why the Planning Board should be concerned about the ownership of Roaring Glen is correct.

The issue of transfer in the ownership or control of a marijuana establishment is fully addressed in the state regulations. The Conway Planning Board should not be in the business of picking and choosing what type of person or entity it feels is entitled to hold a special permit. Its interest should be in insuring that a marijuana establishment to whom the Planning Board has granted a special permit functions/operates in a manner that protects the town. Who makes or loses money from that functioning should be of no concern to the Town.

For these reasons Roaring Glen would request that its Special Permit be amended to include a waiver exempting it from compliance with Section 11.5(R).