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PLANNING BOARD

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MARIJUANA ISSUES FOR PRINCETON

A majority of Princeton voters joined with a majority of Massachusetts voters and approved the referendum in 2016 legalizing adult recreational use of marijuana. The passage of the referendum was followed by an intense level of statewide interest and speculation concerning the implementation of the resulting law, both from a land use viewpoint and a law enforcement viewpoint. The Central Massachusetts Regional Planning Commission ("CMRPC") held a number of informational meetings on the referendum and possible impacts on cities and towns in Central Massachusetts.

The uncertainties and concerns were exacerbated by the rapid timeline to prepare for legalized recreational marijuana activity. At the time of the first CMRPC session on commercialization of marijuana, the Cannabis Control Commission had not been appointed. There were no regulations. There were a multitude of questions about how to implement the legislation, which had been drafted by proponents of legalized commercialization of marijuana, and possible amendments to the legislation. A number of cities and towns followed the statutory procedures for a moratorium. More recently, some cities and towns followed the statutory procedures to prohibit the sale of marijuana.

There was no particular groundswell of interest in Princeton. It was the sense of the Planning Board after passage of the referendum that licensing commercial cultivation of marijuana and retail sales of marijuana should be addressed by the Select Board, similar to the role of the Select Board in issuing licenses for the sale of alcoholic beverages, rather than by zoning by-laws. Absent a properly-adopted prohibition, Princeton must allow licenses for cultivation, and at least one license for retail sales

In 2018, the Cannabis Control Commission promulgated final regulations for commercial cultivation and commercial sales, and began accepting applications for licenses. The Select Board then asked the Planning Board to look into the issues and make recommendations for what actions, if any, should be taken by Princeton in anticipation of applications for licenses for commercial cultivation of marijuana, or for retail sales of marijuana. The Planning Board has approached this topic from a land use viewpoint, not from a law enforcement viewpoint.

Regulatory Overview

Personal cultivation is limited to 12 plants per adult, with a maximum of 24 plants in one household.

Personal sales are not legal.

Commercial cultivation of marijuana, and **commercial retail sales** of marijuana, must comply with the statute and the regulations. While there are provisions for commercial cultivation of as little as 1,000 square feet of canopy, for craft marijuana cooperatives, and for micro marijuana businesses, the application process, the annual licensing fees, and the security requirements are significant financial impediments to casual commercial cultivation and casual retail sales. In addition, Princeton's limited

outdoor growing season and the uncertainties of our weather are practical obstacles to casual field grown commercial cultivation.

The starting point for a license to cultivate or to sell marijuana in Princeton is for an applicant to hold a **Community Outreach Meeting**. This is an advertised public meeting, with specific notice to the Town Clerk, to the Planning Board, to the “contracting authority” (which in Princeton is the Select Board), to abutters, and to anyone else who will be directly affected. This meeting is the first opportunity to discuss the proposed location, the proposed operations, the proposed security, and the anticipated impact on the immediate neighborhood and on the Town generally.

The next step is for the applicant to negotiate a **Community Host Agreement** with the Select Board. Both retail operations and cultivation operations need a Community Host Agreement, which may include a condition that the applicant obtain any necessary permits required by zoning. In addition, if there were specific security concerns or other issues discussed at the Community Outreach Meeting, or in negotiations for the Community Host Agreement, those matters can be included in the Community Host Agreement. For retail sales, a Community Host Agreement may include an **impact fee** paid to the Town. An impact fee must be reasonably related to the costs that will be incurred by the Town as a consequence of having the marijuana facility in the Town.

At an informational program in May 2018, a member of the Cannabis Control Commission strongly recommended that any town negotiating an impact fee carefully document the basis for the fee. For example, it was suggested that a fee might include the cost of inspections of security procedures during construction, regular re-inspections of the security system, regular drive-bys by police, and in the case of commercial retail operations, some estimate of the cost of EMTs for responding to overdoses. A community host agreement can be for as long as five years, but shorter agreements allow towns to monitor actual costs and make adjustments.

Once an applicant can certify that there was a Community Outreach Meeting, and has a signed Community Host Agreement with Princeton, the applicant can file for a license with the Cannabis Control Commission. There is an application fee. The Cannabis Control Commission does an extensive background check. If the Cannabis Control Commission approves the applicant for a license, the next step is for the Town to issue a permit. Any refusal by the Town to issue a permit must have documented reasons. As a practical matter, if the Cannabis Control Commission has approved an applicant, the Town probably has to issue a permit to the applicant, although the permit would be subject to zoning compliance.

Princeton’s Zoning Provisions

Princeton has three zoning districts: residential-agricultural, business, and business-industrial. A marijuana retail facility would be a business use under Princeton’s Zoning By-Law, restricted to areas zoned for business or business-industrial uses. Agriculture is a permitted use in any district.

A marijuana cultivation facility, whether field grown or in a building, would be an agricultural use under Princeton’s Zoning By-Law, and could be located anywhere in Princeton. A building could be a greenhouse with supplemental artificial light, or a totally enclosed building using only artificial light. Any building would have to comply with zoning setbacks.

If an applicant proposed to combine a cultivation facility with a retail sales facility, that combined use would be limited to areas zoned for business or business-industrial. The retail sales of marijuana would not be a “customary home occupation” within the meaning of Princeton’s Zoning By-Laws.

A marijuana retail sales facility would be a new business use, and would require site plan approval under Section XII of the Zoning By-Laws.

A marijuana cultivation facility, whether open field or indoors, would probably not require site plan approval under our existing Zoning By-Laws.

Existing Opportunities for Regulation of a Marijuana Facility

The regulations of the Cannabis Control Commission have detailed and extensive provisions that apply to all marijuana facilities (935 CMR 500.105), some general security provisions that apply to all marijuana facilities (935 CMR 500.110), some specific some specific procedures that apply to cultivation facilities (935 CMR 500.130), and some specific procedures that apply to retail sales facilities (935 CMR 500.140). These provisions would be discussed with an applicant during the Community Outreach Meeting and negotiation of the Community Host Agreement. Specific additional requirements could be written into the Community Host Agreement.

In addition to the provisions in state law and regulations, an applicant for a retail marijuana facility would have to go through site plan review pursuant to the provisions in Section XII of the Zoning By-Laws. The purposes of site plan review are to promote and protect public health, safety, and the general and specific character of the Town; to provide for individual detailed review of developmental proposals which have an impact upon the natural and built environments of the Town; to regulate rather than prohibit uses through reasonable conditions that may be required by the Planning Board concerning design and location of buildings, signs, open space, landscaping, parking areas, access and egress, drainage, sewage, water supply and fire safety; and to minimize adverse effects of surrounding areas.

While site plan review of a marijuana cultivation facility is not required under Section XII of the Zoning By-Laws, the Select Board, in negotiating a Community Host Agreement, could probably discuss with the applicant the site plan criteria in the Zoning By-Laws, and could probably include specific provisions modeled on the site plan criteria in the Zoning By-Laws.

Recommendations Concerning Marijuana Facilities

Despite the extensive publicity involving Community Host Agreements, medical marijuana facilities, commercial cultivation facilities, and retail sales facilities in other Massachusetts cities and towns, as far as the Planning Board is aware, cultivation and sale of marijuana continues to be a non-issue in Princeton. Despite the posting of agendas and coverage in the Landmark, there was public comment at only one meeting of the Planning Board. The public participation at that meeting was supportive of retail sales of marijuana in Princeton. Planning Board members have not been approached by residents with particular issues or concerns. Of course, that could change in the event of a specific proposal for a specific location.

Retail Sales. This is a business use under Princeton's Zoning By-Laws. Princeton has three areas zoned for business uses, and three areas zoned for business-industrial uses. Those areas are not close to schools.

Conceptually, the retail sale of marijuana seems to the Planning Board to be similar to the retail sale of alcoholic beverages, although the security requirements are considerably more stringent.

Through the Community Outreach Meeting and the Community Host Agreement process, there will be ample opportunities for Town officials, Town boards, abutters, and other residents to ask questions and articulate any concerns. It is the sense of the Planning Board that the statutory and

regulatory process, combined with the existing site plan approval process in our Zoning By-Laws, provide sufficient opportunity to address any specific concerns about a specific facility.

It was the sense of the Planning Board that a marijuana retail facility could be a business opportunity in Princeton if no marijuana retail facilities are licensed in surrounding towns. There could be implications for law enforcement and traffic safety, which could be considered by the Select Board in negotiating an impact fee.

Commercial Cultivation. This is an agricultural use under Princeton's Zoning By-Laws, and could be conducted anywhere in Princeton that met the statutory buffer zone requirement of 500 feet from a pre-existing school. The site plan review section of the Zoning By-Laws would probably not apply.

Commercial cultivation is likely to be indoors, hydroponic, and using artificial light, which means that Princeton's mostly thin, nutrient-poor, rocky soils will not be an obstacle to selecting a site. There are practical limitations resulting from the licensing costs and security requirements, the need for on-site water and septic facilities, and Princeton's historically high cost of electricity.

The Planning Board has some concern that a marijuana cultivator could propose to construct a building for totally-enclosed indoor cultivation, and that the building would have the appearance of an industrial facility, out of place on the Princeton residential-agricultural landscape. The appearance of the facility could be addressed in the Community Outreach Meeting and in the Community Host Agreement. Hypothetically, the Select Board, as a condition of the Community Host Agreement, could negotiate with an applicant for a design that was consistent with Princeton's residential-agricultural landscape, and could require that the facility be screened from the road.

It was the sense of the Planning Board that a marijuana cultivation facility could be a business opportunity in Princeton if the practical obstacles can be overcome, and if the aesthetic issues are addressed in the negotiation of a Community Host Agreement.

The Planning Board recommends amending the site plan review section of the Zoning By-Laws to require site plan review for all marijuana facilities so that applicants for a cultivation facility as well as applicants for a retail facility must get site plan approval. The Planning Board expects to prepare an appropriate amendment for consideration by the Town at the 2019 Annual Town Meeting.

Other Recommendations

The analysis of the Zoning By-Laws in the context of marijuana issues suggests that the Town may wish to amend the Zoning By-Laws relating to the size of buildings. The only current limitations on size are in Section VI.1(c) (limiting lot coverage to 30%), Section VI.2(B) (limiting height to 35 feet), and in Section XIX.6(B) (limiting buildings in the Village Overlay District to a footprint of 10,000 square feet).

Size limitation could be absolute ("No building shall have a footprint larger than. . .") or tied to the size of a building lot. Very large buildings could require a special permit and site plan review to insure that there is an opportunity for public input. It could be appropriate to have greater setback requirements for very large buildings.

The Planning Board expects to consider such issues, and to prepare appropriate amendments for consideration by the Town at the 2019 Annual Meeting.