

The Chester Planning & Zoning Commission held a continued public hearing for the Amendment to Zoning Regulations to add new Section 117 Medical Marijuana Dispensary and Production on Thursday, January 14, 2016, at the Chester Town Hall, 203 Middlesex Avenue, Chester, Connecticut. In attendance and seated were Jon Lavy, Mel Seifert, Sally Murray, Steven Merola, Henry Krempel, Peter Zanardi, Doreen Joslow and Michael Sanders. Non-seated members in attendance were Pat Bisacky and Jacqueline Stack. Chairman Lavy asked Steven Merola, Doreen Joslow and Michael Sanders if they had listened to the taped recording of the previous hearing on November 12, 2015. All 3 (Merola, Joslow, Sanders) replied yes. There were about 10 citizens present as well.

Chairman Lavy opened the continued hearing at 7:35 PM.

Chairman Lavy read into the record the following 3 documents -

- Email from Torrance Downes to Judy Brown, dated December 7, 2015 Re Marijuana Regs, indicating there was no need for the Gateway Commission to approve this.
- Letter from Astrostrike to Chester Planning & Zoning Commission dated January 14, 2016, Re Petition to Adopt Regulations Regarding Medical Marijuana.
- Letter from John Schiavone to Chester Planning & Zoning dated January 14, 2016.

Attorney Michael Cronin introduced himself as attorney for Keith and Maria Scherber. He made the following points for the record -

Keith Scherber was a member of the Planning & Zoning Commission and disqualified himself on this matter. He was representing his own views personally, no neighbor or spouse in this matter. He lives on Route 145 right opposite the Industrial Park Road.

Attorney Cronin noted the Scherbers are in a residential zone, have been there for many years and have 2 children. There are lots in the Industrial Park that might

be the location for a production facility in this regulation that is being proposed.

Attorney Cronin asked Chairman Lavy if they were aware of any development proposal for this type facility. Chairman Lavy responded the Commission is not aware of any facility. Sally Murray noted to her knowledge the State has not approved any facility.

Attorney Cronin noted the reason for this is there was an approval for 2 buildings on this road. Those buildings have not been built yet and perhaps those properties could be proposed for that use. Cronin also noted he was aware the Commission is concerned if there is no regulation, this would be a permitted use under the category of agricultural in town.

Attorney Cronin noted the obvious concern to the Scherbers is their children, the neighborhood and property values. A residence could be within 500' of one of these facilities.

Attorney Cronin submitted 12 photos of a facility in Portland (marked Exhibit A). Keith Scherber noted these facilities smell off site and generate a bad odor in the neighborhood. Sally Murray noted that would be an integral part of any Special Exception process.

Attorney Cronin noted other towns have taken time to investigate these facilities and gotten input from health and fire departments. This Commission might want to consider that.

Attorney Cronin asked Mr. Scherber if these were photos taken of that facility in Portland and that there were no residences anywhere in that area. Mr. Scherber replied that was true.

Keith Scherber, 70 Winthrop Road, introduced himself. He explained he parked under the bridge and walked around the facility. There was a very distinct odor. He suggested Commission members go there themselves and smell the odor. One can smell it off site. Scherber noted he was within 200-300'. Sally Murray asked how far away Mr. Scherber smelled the odor. Scherber replied 300-400'.

Mel Seifert noted laws have been passed by the State Legislature. Does the Commission have the lawful authority to say “not in our town?” He asked Attorney Cronin if there was case law that the Commission could not be challenged. Would the town have to spend money to defend itself? Does the town have lawful authority to prohibit this use?

Attorney Cronin replied there was no case law that says a town can zone it out. That has not been decided, however, he noted he was willing to provide that answer for the Commission. Cronin also noted to make a decision by this Board based on legal fees later is illegal.

Attorney Cronin noted it was his understanding the proposed regulation is almost word for word the same as the Killingworth regulation. He submitted a copy of Killingworth Zoning Regulation Article XXXVII Medical Marijuana for the record (marked as Exhibit B). He pointed out Section 500-229 Separation Requirements B. of the Killingworth Regulation is 1000 feet of a school, church, temple or other place used primarily for religious worship, public building, private recreation area, playground, park or child care facility, or any other site containing a Medical Marijuana Producer. He indicated the figure of 1000 feet has been pretty much a constant. Chester's proposed regulation cuts it down to 500 feet. Cronin noted he was not familiar with any other regulation cutting it down to 500 feet.

It was explained because of the layout of the particular zones in Chester, 1000 feet would erase large portions of the commercially zoned areas. It removes most of Route 154 because of Town Hall. Because of the existing locations of the applicable zones and restrictions on businesses, 1000 feet would be an undue hardship. It didn't seem proper to rule them out of the zones available in Chester.

Attorney Cronin asked what the reason was for eliminating private recreation area, playground, park and child care facility. Sally Murray noted it was largely geographical. We felt an indoor growth house was not a huge risk.

Attorney Cronin noted the 1000 feet has been the subject of discussion by other boards. Madison adopted a regulation (marked as Exhibit C). Their concern was whether 1000 feet was enough. Comments from the audience were that it should be increased to 1500 feet.

Henry Krempel suggested doing 500 feet from municipal and 1000 feet from the others. Attorney Cronin noted the 1000 feet should be the accepted rather than the 500 feet.

Attorney Cronin submitted a copy of Ridgefield's Memorandum and Adoption of Regulation Sections 7.13B1. and 2. prohibiting these activities (marked as Exhibit D). They felt it was not appropriate and gave the reasons. Cronin added he didn't believe this regulation had been appealed, but would check.

Attorney Cronin noted there is a production facility in Portland, no dispensing area.

Mel Seifert noted Chester is currently under a moratorium.

Attorney Cronin confirmed there are 3 facilities in Ridgefield, but anything after that has been prohibited.

Attorney Cronin suggested amending Section 117.4A to increase it to 1000 feet and add "residential property." He also suggested eliminating the RLM (Research and Light Manufacturing District). There are 3 RLM areas. He noted the greatest concentration of single family homes backs up to the RLM. He didn't feel the area on Denlar Drive was a suitable place for such a facility. Under the proposed regulation this would be permitted. Cronin noted over by the Airport there are the same concerns. Single family homes are all along the roadway. This RLM area is not suited for this use.

Attorney Cronin noted the CDD (Controlled Development District) regulations are more restrictive than the RLM. Three acres is required. A facility should only be allowed on a large piece of land. Plants have to be planted, fed and watered. This all occurs indoors. A one acre lot seems a little small. The Airport Industrial Park (RLM) is a one acre zone. The CDD zone is three acres and allows hospitals and medical facilities. The uses in that zone are more appropriate. Cronin noted the last reason is there are several industrial type buildings in that area any of which would be suitable for this use. There are no houses anywhere. He also mentioned security in the neighborhood. He noted the CDD is much superior than the RLM

zone. He proposed eliminating the RLM from this regulation and urged the Commission to consider it. He also asked that the public hearing be kept open to answer the question regarding the law. Smell should also be looked into, especially if one acre lots are being considered.

Attorney Cronin agreed the Commission was taking an aggressive stance on putting in a moratorium. He urged the Commission to take it's time before making a snap decision.

Chairman Lavy noted one reason the Commission looked at this was because agricultural use is allowed. This should be put in a proper place. Attorney Cronin noted the Right to Farm Law overrides all zones. State Statutes defines this that one of these facilities could go in any one of these zones.

Chairman Lavy noted this is a Planning Commission and this will eventually happen. The Commission wants to make sure it is ahead of it and not behind it. Cronin noted he didn't think the State considers it to be agricultural, but it really is. He also suggested referring this matter to the Town's State Legislator.

Chairman Lavy noted Attorney Cronin brought up some very valid points which were very much appreciated.

Chairman Lavy asked if anyone else from the audience wished to speak.

Maria Scherber, 70 Winthrop Road, submitted a copy of the Portland Zoning Map along with some pictures (Mrs. Scherber did not leave the pictures for the record). She noted there is already the Portland facility which is only 17.3 miles away. She mentioned the smell from that facility and that her daughter has asthma. Mrs. Scherber urged the Commssion to prohibit this or add back the things that were eliminated that were contained in the Killingworth Regulation (mentioned earlier in this meeting). She also submitted for the record 2 pages from the Plan of Conservation & Development Pages 4-9 and 4-15 both referencing Economic Development along with a copy of a letter from J. H. Torrance Downes from Regional Planning Committee dated October 28, 2015. Mrs. Scherber noted the Commission should go back to what Killingworth had and add not take out.

Madaline Meyer, 41 Winthrop Road, noted she has asthma. The Scherbers are young and have young children. Mrs. Scherber has done a lot of research. Mrs. Meyer noted all on the Commission are great people and you have to be unbiased. She was convinced the Commission was totally going to push this regulation through and nothing was going to change your minds. Maybe this discussion has swayed you a little bit. She indicated she would vote no, no, no anywhere in town. If this regulation is passed, there will be a lawsuit by someone. Once this regulation goes in, it is opened up and you can't say no because of the way the regulation is worded. The character of Chester doesn't need the word marijuana connected with it in any way, shape or form.

Madaline Meyer noted Chester is an active town. If marijuana is allowed, they won't want to come to our town and people will leave. Its Federally illegal and will cause crime. We have spoken to policemen in this area and they are totally against it. She noted there are 53 homes on Winthrop Road, 13 on Cross Road, 23 on Butterjones Road and 2 horse farms. The smell will bother the horses. On the Deep River side there are 32 homes on Cedar Lake Road, 10 empty parcels which could have homes. Its probably ½ mile to Route 80 and all those homes could be effected. Mrs. Meyer noted her husband, Jack, had a recent doctor appointment and the doctor doesn't see any reason to have marijuana in Chester.

Mrs. Meyer noted they saw the effects of marijuana recently in Portland, Oregon. They were scared walking the streets. People sitting on the street corners smoking marijuana. They passed 22 people either drunk or smoking marijuana on the way to Church. She urged the Commission to say no and take the chance of being sued.

Maria Scherber noted this is a cash business which may have consequences of criminal activity. There may also be recreational uses in the future.

Bill Sangster noted the proposed regulation specifically permits this in RLM. He referenced Torrance Downes letter. He also noted a near neighbor to the Portland facility could smell a skunk smell about 1100 feet away. He referenced hours of operation 24 hours ? Regulation says 7 to 5 all days of the week. The Commission recently introduced a regulation that allows laboratories or chemical processing in the RLM with no notice. He opposed such use as well as a cash business. Mr.

Sangster noted the Industrial Park is not a town road and is only plowed on an ad hoc basis. Another concern is the close proximity to the airport. He urged the Commission to just ban it.

An unknown person noted zoning laws are prohibitive to some businesses. If can't be banned outright, make it very restrictive. He personally was against it, has lived in town since 1973.

Bill Sangster, 65 Airport Industrial Park Road, noted at the last meeting the Commission voted not to invest the \$350 to ask Mr. Royston to look into the legality of constitutionality. Chairman Lavy noted the Commission may change their minds tonight. Attorney Cronin noted he would offer to give a legal opinion on behalf of his client at the next meeting. He noted he was at the last meeting and was surprised when the Commission decided not to do so.

Madaline Meyer submitted an article from The Hartford Courant, dated Thursday, January 14, 2016 from the Police Brief page entitled Medical Marijuana Card, Police: Still Can't Smoke Pot and Drive.

Henry Krempel asked what the procedure would be for adding substantive changes to the regulation. Chairman Lavy noted if the Commission added changes it would probably withdraw the petition, rework it and come back. He preferred to recycle it around again. Mr. Krempel noted he felt asking for a legal opinion was key now.

Peter Zanardi agreed Commission members should understand all legal matters before approving this. There's a real question here as to what can be done and the Commission hasn't looked as far as it should yet.

Steven Merola noted the Commission was trying to be proactive and protect residences and businesses and used the Killingworth regulations as a sample.

Mel Seifert noted the question is "can we outlaw this in our town through zoning?" Could he ethically vote to say no when the State has said it's an allowable thing? He felt the Commission knew a lot about it, including the odor issue and that's why Section 130 was included to protect adjacent property values and the safety of

the community. It would be the responsibility of the applicant to prove burden.

Doreen Joslow noted she agreed with Mel Seifert.

Sally Murray noted the hearing should be continued and members should visit the Portland site, although the Special Exception process would cover the odor issue. She also noted she would like to know if there is any increase in police activities in other towns where there are these facilities. She was leary about restricting the activity outright.

It was agreed the hearing should probably be continued and the moratorium extended. The Commission should ask Attorney Royston to comment on the Ridgefield regulation and suggested changes by Attorney Cronin and see where we end up next month. Also, is there any case law.

Peter Zanardi agreed the Commission should get opinions from both Attorney Royston and Attorney Cronin.

Bill Sangster noted he understood the 500 feet was to make more places available. If the Commission adds "residential property" to the schools, churches, etc. paragraph, it should also add back the 1000 feet.

Maria Scherber noted we don't want doors opened like what happened with the propane facility.

Michael Sanders noted hours of operation had been raised. Does a production facility need a 24 hour operation? Dispencaries close at 5 PM. Would there be a hardship if a production facility can't have traffic 24 hours?

Motion by Zanardi, second by Murray, to continue public hearing for Amendment to Zoning Regulations, New Section 117, Medical Marijuana Dispensary and Production until February 11, 2016 Meeting. Unanimously Approved (it is noted for the record, Keith Scherber recused himself).

Motion by Seifert, second by Murray, to hold a public hearing on

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**February 11, 2016 to extend the Marijuana Moratorium. Unanimously
Approved (it is noted for the record, Keith Scherber recused himself).**

Respectfully submitted,

Sally Murray /jrb

Sally Murray, Secretary