

MERRIMAC PLANNING BOARD SEPTEMBER 11, 2018  
APPROVED MIUTES

CALL TO ORDER: Chairperson Sandra Venner called the meeting to order at 7:03 PM.

ATTENDANCE: Attending at call The Chair and Members Keith Pollman, Arthur Amirault and Denis Brodie. Vice Chair Karol Flannery arrived shortly after the call.

APPROVAL OF MINUTES:

1. **July 10, 2018: Motion:** To waive the reading of the minutes of July 10, 2018 and approve as presented. **Vote 3 YES / 0 NO /1 Abstain Motion approved.**

2. **August 7, 2018: Motion:** To approve the minutes of August 7, 2018 with the correction of a typo in the date of item C of the COMMUNICATIONS Section to read The Ramshead hearing will resume on 9/17/2018 at 7:00PM in Town Hall. **Vote 3 YES / 0 NO /2 Abstain Motion approved.**

**SPECIAL PERMIT AND SITE PLAN REVIEW (SPR) CONSTRUCTION OF 2 STORY MEDICAL OFFICE BUILDING AND MEDICAL MARIJUANA DISPENSARY SPECIAL PERMITTED USE.**

(Attending as SPR Committee Members were Jon Pearson, Conservation Representative and Robert Sinibaldi, Building Commissioner)

The Chair opened the hearing 7:15 PM; arriving shortly thereafter was Board Alternate for Special Permits John Thomas. Attending for the applicant were Attorney James Bowers, Charles Saba CEO, BeWell Organic Medicine, Glen Saba, Builder & Developer and Stephen Sawyer, PE, Christiansen & Sergi, Engineering. The chair opened the hearing by announcing that the hearing had been properly advertised and abutters notified by certified mail as required by law. She also gave a brief history of the site noting that a prior applicant had all but completed the process before withdrawing their application upon the town vote to ban recreational marijuana within the town. She also informed all in attendance that the procedure of the hearing would progress with a presentation by the applicant, questions from the board and then opened to the attending with questions, concerns etc. Attorney Bowers was then asked to begin the presentation. A rendering of the building facade that the applicant wished to build was presented and it was noted that this building was very similar to the one purposed by the prior applicant with the exception of the footprint being slightly smaller and the addition, at the request of the Conservation Commission that the stand of trees be continued and extended around the back of the building. He explained that Chart Holding, a Real Estate Holding Company with ties to BeWell Organic Medicine had purchased the property and would construct the two story building and then lease the building to BeWell Organic Medicine for a licensed certified Medical Marijuana Dispensary. This use requires the Special Permit phase of the hearing. The prior approved stormwater management system is identical to the prior approved plan and has been confirmed as identical by the board's engineering firm, Horsley. The plans are identical with the exception of the reduction of gross floor area from 3,656 square feet to 3,150 sf, of the prior application. Ms. Bernardo, PE did question small discrepancies which were corrected and approved by her, including the revising the open space to 20% revising the footprint on the plan and providing all corrected sheets to the board, which now fully address all concerns of Horsley Witten in regards to the Site Plan. (See HW review of

August 29, 2018, applicant's response of Sept. 11, 2018 and approval from HW of Sept. 11, 2018.) A copy of the revised plan was presented to the board and attending residents by Engineer Stephen Sawyer. Mr. Sawyer also noted that the line of sight was excellent onto Broad Street from the parking area and the entire front of the property.

Attorney Bowers continued on with the Special Permitting Phase of the Hearing and presented copies of the requested Host Agreement signed by the Board of Selectmen. Copies of this agreement were available.

He went on to assure the board that they were pursuing an agreement with the Board of Selectmen to allow the leasing of town owned property abutting rear of their site, the parcel is currently used by the DPW as storage site for salt and other materials. The board has made a condition of the permit that alternative parking be made available for employees and that on-site parking spaces be reserve for clientele only. The prior applicant had signed a license agreement with the BOS and this would be a similar agreement; which would also require the applicant provide a sturdier guardrail system on the small bridge over Cobblers Brook in order for employees to access the parking on the DPW Lot safely. The applicant stated that employees would number 8 at any given time, but could be increased to 15 if the clientele warranted. Details of the parking lease must be worked with the Board of Selectmen: the board has no jurisdiction in this area.

The applicant requested that the facility be open 7 days a week, if town ordinance allowed, with the following schedule Mon-Fri 10 AM to 10PM; Sat 9 AM to 10 PM and Sun 11 AM to 7 PM. Several members of the board thought that 10 PM was late for the town, as most establishments closed at 9 PM. Police Chief Shears also favored a 9 PM closing. The applicant agreed to a 9:00 PM closing

The Chair questioned the viability of the establishment, noting that the prior applicant, ATG withdrew their application when recreational sales were banned, feeling that such facilities in the surrounding area would have an advantage that it would make their facility unprofitable. She wondered why this applicant felt that they could sustain their business with only the medical product. Mr. Saba noted that they are constructing their own growing facility in Lowell and that they would be the only medical facility in the area and their clients were not looking for a recreational setting for their medical needs, but a safe quiet area as they were not looking for entertainment but to relieve pain and symptoms of some ailment. They feel certain they can run a profitable business with only medical marijuana. Mr.Saba also discussed the Host Agreement that would require the Company to annually return 3% of the gross sales to the town, with no strings attached. The Agreement also calls for the firm to donate no less than \$10,000.00 dollars annually to various charities within the town such as veterans, educational programs, elder services, and said charities to be determined by the Company.

Signage would be mandated by the sign by-law and would not be lit. The sign would carry no wording of marijuana but instead only BeWell or BeWell Organic. Most driving by would not associate marijuana in any way with the site. Samples of signage would be submitted to the board for their approval. Much of the above was driven by questions from the residents attending. Other questions involved the possible effect of property values, which from all appearances has not happened in other areas, according to the applicant.

The applicant requested that the Site Plan Review be approved as it met all the conditions necessary and the SPR Project Meeting be closed; this would allow them to prepare

the site for building. They stressed they were not trying to hurry the process of the Special Permit for use, but only asking for the ability to build the facility as fall and winter were not far off. Many balked at this request feeling a need for more time for discussion and questions. However it would appear that no new information would be forthcoming for this site. Granting the SPR only gave permission for the applicant to construct a two story building at their own risk. The building could not be lease to or used for a marijuana facility unless the Special Permit was granted for this use. If the applicant builds and the Special Permit is not granted, then they would have to find another tenant to lease a use granted by right.

The board is requiring new information for the Special Permit, including, but not limited to the Selectmen's' agreement for staff parking, approval of the signage. Alternative staff parking is a condition of approval by the board for permitting. Also it was requested by Earl Baumgardner former Selectmen that he be allowed time to question the ability to lease or license the town property by state law. He feels that the Selectmen could not offer a long term lease, under the statute they are proposing, and he would like the time to pursue this avenue since the parking was a required condition. Such a ruling could also be considered information vital to the decision for permitting

The board decided to continue the Public Hearing for the Special Permit, which pertains to the use on the site and approve the Site Plan Review closing only that aspect of the joint meeting; with the following. **Motion:** To approve the Site Plan Review portion of the by-law allowing a two story medical office building as proposed in the site plan to be constructed at 17 Broad Street, this approval would not allow for the leasing of this structure/ building for a medical marijuana dispensary until and unless a Special Permit was granted by the board, including all required conditions for this use in the Office Light Industrial Zone. **Vote: 5 YES / 0 No Motion is approved.** (Motion made by the Vice Chair and seconded by Member Pollman) This was followed by: **Motion:** To recess the Public Hearing for a Special Permit for the use of a Medical Marijuana Dispensary to be located at 17 Broad Street and resume this hearing on October 16, 2018 at 7:15 PM in the second floor meeting room of Town Hall. **Vote: 5 Yes / 0 No Motion approved.** This will allow for time for any new information pertaining to the use approval for a Medical Marijuana Dispensary to be brought forward for board consideration.

#### **OLD BUSINESS:**

**1. POPLAR HILL CIRCLE: Street Acceptance:** The board has received a report from Janet Bernardo, Horsley regarding the items not completed for the town acceptance of the street at the upcoming town meeting. This list includes, but is not limited to repair of swales, providing copies of as-built plans to the board & DPW, cleaning culverts and Confirm the Homeowners Association is organized and made aware of their responsibilities regarding the open space, and maintenance of landscaping at the cul de sac and entrance. (For a complete list of items to be completed see report #36 from Horsley dated received Sept. 10, 2018. Dennis Page attended the meeting and will walk the site with Bob Sinibaldi, to confirm that the needed items are complete, prior to Town meeting. **Motion:** To allow the Chair, for the board to recommend the acceptance of Poplar Hill Circle as a town street, if a report from Building Commissioner Sinibaldi is provided confirming that the punch list is complete and all is in order for such acceptance and that a copy of the Home Owners Association responsibilities is provided to Mr. Sinibaldi and Chair Venner, prior to that meeting. **Vote 4 Yes / 0 No Motion approved.** The same, minus the Home Owners Association material for the Quail Ridge Road. Which is under

the authority of the DPW Department. The clerk will prepare the articles for the Chair approval and submit to the Board of Selectmen.

**2. PROJET UPDATES:**

1¶ **Abbey Road:** Kevin Groden has requested that a swap be made for one of the Lots released in August. Lots 7 and 8 were released for sale in August 2018 and he now has a buyer for Lot 5. The Building Commissioner has no objection to this Lot being release and Lot 7 being returned to board control. The same number of lots will be held for surety. **Motion:** To release Lot 5 from Abbey Road, 22-32 Bear Hill Rd., surety and return Lot 7 to Board control as surety for completion of the project. **Vote 5 Yeas/ 0 No Motion approved.**

2¶ **Lili Village:** A new construction schedule has been received from Cammett Engineering, and work will begin shortly.

3¶ **Poplar Hill:** a water violation was reported by the Water Dept. The paving company used water from a hydrant without authorization, and has been fined \$600.00 by the dept.

4¶ **Quail Ridge:** Is expected to be ready for street acceptance at the October Special Town Meeting.

5¶ **Regency Village:** No report

6¶ **Regency Lot 3 Commercial:** No report.

**NEW BUSINESS: TOWN MEETING ARTICLES:** See above.

**CORRSPONDENCE:**

**1. WARRANTS:**

A¶ **Motion:** To approve two bi-weekly payrolls for Administrative Assistant Pat True totaling \$316.64 for the period 8/25 2018 – 9/14/2018. **Vote 5 Yes / 0 No Motion Approved.**

B¶ **Motion:** To approve Horsley Witten Invoice # 433988 in the amount of \$472.59 for review of board estimate and attendance at 6/19, 2018 board meeting for Poplar Hill Circle. **Vote 5 Yes / 0 NO Motion approved.**

C¶ **Motion:** To approve Horsley Witten Invoice # 43548 in the amount of \$ 376.20 site visit 7/18/2018 and report for Poplar Hill Circle. **Vote 5 Yes / 0 No Motion approved.**

D¶ **Motion:** To approve payment of a water violation from the Merrimac Water Department in the amount of \$300.00 for Water Consumption and a violation of Merrimac regulations by the unauthorized use of a fire hydrant in the amount of \$300, for a total of \$600. At the Poplar Hill Circle Development. **Vote 5 Yes / 0 No Motion approved.**

E¶ **Motion:** To approve the re-imbusement for Assistant Pat True in the amount of \$402.00 for the cost of mailing certified abutters notices for the Public Hearing for the Special Permit and Site Plan Review for Be Well Organic Medicine. **Vote 5 Yes / 0 No Motion approved.**

F¶ **Motion:** To approve a warrant in the mount of 214.52 for one of two legal notices published by North of Boston for the Public Hearing of a Special Permit and Sit Plan review for Be Well Organic Medicine. **Vote 5 Yes / 0 No Motion approved.**

**G¶ Motion:** To approve Horsley Witten Invoice # 43399 in the amount of \$ 1,711.05 for follow up peer review attendance at hearing, June 19, 2018 and draft decision for Regency Lot 3 sent to board on June 27, 2018 for Regency, Lot 3 Commercial. **Vote 5 Yes / 0 No Motion approved.**

**H¶ Motion:** To approve Horsley Witten Invoice # 43550 in the amount of \$ 376.20 for construction observation, 7/18/2018 and report # 12 for Regency Village 106 West Main Street, (Residential). **Vote 5 Yes / 0 No Motion approved.**

**I¶ Motion:** To approve invoice # 4672 for JMC Construction in the amount of \$5,832.50 for Subcontractor's Certification of Work of adjustment and rebuilding of Road Structures, at Quail Ridge Road to be paid from the Quail Ridge Infrastructure Surety. **Vote 5 Yes / 0 No Motion approved.**

**J¶ Motion:** To approve invoice from JMC Construction in the amount of \$10,000. Finish Sidewalk Paving at Quail Ridge Road to be paid from the Quail Ridge Infrastructure Surety. **Vote 5 Yes / 0 No Motion approved.**

**K¶ Motion:** To approve an invoice from JMC Construction in the amount of \$10,000. for the installation of granite bounds (located by engineer) at Quail Ridge Road, to be paid from Quail Ridge Infrastructure Surety. **Vote 5 Yes / 0 No Motion approved.**

**L¶ Motion:** To approve Horsley Witten invoice # 43549 in the amount of \$376.20 construction observation on 7/21/2018 and report #25 at Abbey Road, 22-32 Bear Hill Rd. **Vote 5 Yes / 0 No Motion approved.**

**2. APPEALS BOARD:**

A. **Petitions:** Charles Graber, 3 Greystone Road, appeal Building Inspector failure to act or his decision.

B. Decisions: None filed at posting.

**3. COMMUNICATIONS, NOTICES & ANNOUNCEMENTS.**

A. Surrounding Towns, Haverhill and West Newbury, no board action required.

B. Next Meeting Date: October 16, 2018. Board will resume the hearing for Special Permit for BeWell Organic Medicine.

ADJOURNMENT: 9:57 PM