



*Town of Danvers*  
**Planning Board**

Danvers Town Hall  
One Sylvan Street  
Danvers, MA 01923  
www.danvers.govoffice.com

Planning Board Members:

Aaron Henry, Chairman  
Kristine Cheetham  
Margaret Zilinsky  
William Prentiss  
James Sears

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**Danvers Senior Center**  
**April 16, 2013**  
**7:00 p.m.**  
**MINUTES**

Chairman Aaron Henry called the meeting to order at 7:00 p.m. Planning Board members Aaron Henry, James Sears, Margaret Zilinsky and William Prentiss were present. Planner Kate Day was also present.

Henry read the Legal Notice to open the public hearing.

Day addressed the Board and stated as everyone was aware, and as previously discussed, the ballot initiative passed allowing 35 medical marijuana treatment facilities statewide. At the time of passing, there were no regulations in place, so the Department of Public Health (DPH) prepared draft regulations. Knowing these were going to be crafted, there was discussion among the planning community and town government as to how to regulate this locally. Not knowing the regulations, it seemed instituting a moratorium until they were crafted was a good idea. She stated that the Attorney General's office found that towns and cities cannot ban them, however, a moratorium could be instituted. Day stated that the courts have found it reasonable to ask for a time period, but it needs to be a finite period showing a good faith effort to respond to the conditions at hand. She indicated that a year seemed to be the appropriate amount of time for the moratorium, and Ipswich was having a moratorium of 18 months. She pointed out that the drafts that the Planning Board members were given indicated a moratorium for one year. Day stated that they received models from the Selectmen, Town Manager, the Town of Burlington and the Town of Ipswich. She pointed out that Henry did thoughtful work in reviewing the longer articles and condensing it to the basic elements.

Henry stated that the longer articles lay out everything in great length. He said we know this is going to pass, and all we are looking for is a moratorium. Day stated that town counsel had said it was the Planning Board's discretion whether they wanted to craft a long or short article.

Zilinsky is concerned about the length of the article because it allows for more interpretations and she likes Henry's thoughts/comments on the moratorium.

Prentiss stated that he did not have a problem with the original draft. He understands that Henry felt it was lengthy, but people need to know the history, especially citizens at the Town Meeting as well as Town Meeting voters. He stated questions arise on the Town Meeting floor and he has been witness to how things can change at that time. He would prefer to keep the article the way it is, but he has no problem making it shorter since the town counsel stated it was acceptable.

Henry responded his reasoning for making it shorter was to reduce the repetitiveness.

Prentiss would prefer to see the history remain on the warrant. He stated that when the Town Meeting members receive the packets, there is a summary packet and a second packet which is warrant articles with Fin Com's recommendations. He stated that information needs to be available to the new Town Meeting members.

Sears stated that he had not had time to analyze the proposed Article, but he is for the moratorium until further guidance is received from the state, and he is willing to be further educated.

Henry stated the moratorium bylaw has passed Attorney General scrutiny. He felt this will work and the Attorney General's office has approved it. He stated the moratorium is needed to figure out what to do with all this information. He felt the bylaw falls short since it defines Medical Marijuana Treatment Centers, but there is no definition as to what is being applied to the moratorium. In the end, it misses that the actual final public policy result of the moratorium will be replaced with a permanent piece and the question arises as to when the moratorium goes away. He did not see the line and the final ending, and there is the need to start thinking about how this will work. He pointed out that this is a model bylaw. He stated they have not started the planning process and stated if these are our words, we need to mean it. We need to say what we are thinking.

Prentiss asked about a comment that Henry had said "in the interim." He read some of the notes on the side of the moratorium and he felt that this will confuse people and asked whether they are getting ahead of themselves.

Day felt that one solution was to craft a set of FAQ's and put them on the town website where people could read them and pay attention to them.

Zilinsky felt the moratorium focuses on what needs to be done and sets forth deadlines. She felt it would be defined and could be seen quickly and clearly.

Daniel Bennett, Selectman for the Town of Danvers, addressed the Board and gave a brief history of the ballot proposal that would allow Medical Marijuana Facilities in the communities with very little planning. He stated that in January, the Town Manager was asked for zoning regulations where these facilities would be placed given there were going to be five allowed in Essex County, however there was nothing to go by so he condensed Cambridge's moratorium. He stated he liked Henry's comments and felt there was not a lot of history to give to Town Meeting. There are people looking for property to put one of these facilities in Danvers, and felt Danvers is a prime suspect for a facility. He stated that the town needs zoning for the facility, but time is needed to draft it. The intent was twelve months from Town Meeting to get to the next Town Meeting to have something to adopt. He felt the language covered everything in the original and he stated he could support the article as written.

Gardner Trask, Selectman for the Town of Danvers, stated he supported Bennett's position. He is a member of the Massachusetts Municipal Policy Committee and there was a meeting which the Department of Public Health (DPH) presented as well as Keenan. DPH is holding a series of public forums on the 19<sup>th</sup> of April and closing on the 20<sup>th</sup> of April. For those people who need medical

marijuana, it should be available, however, he pointed out that people do not need a prescription. He stated that people can go to a provider and get a recommendation, not a prescription, which can then be taken to the DPH who will issue a medical marijuana card allowing him to purchase. They are looking to tighten up the fact that the person could go to multiple dispensaries. Trask stated that some communities have outright tried to ban this, but if every community in the county did this, it would lock the county out and you would be going against the will of the voters. Trask explained that the Attorney General has embraced the moratoriums to make thoughtful reactions to what will become DPH regulations. There are others, such as Senator Keenan from the south shore, who has proposed a law pointing out that you cannot have the distribution and the manufacturer in the same place, and all deliveries will be through courier so there will be no storefront locations. The drug would have to be registered on the medication database so there will not be any overfill. His proposals will be woven in without going against the law that has been passed. Trask feels the DPH draft is jello which needs to be firmed. There will be another process that will happen after the 20<sup>th</sup>. He stated that a lot of people have said that it is a federal law and you cannot go against the federal government and the Attorney General has stated that it will not rule on that as being a condition for denying the opportunity. The DPH brought many people together and it was determined that you cannot break the law. He felt the best tool for being able to understand the final regulations and work them in appropriately for the Town is the moratorium.

Prentiss inquired whether there was going to be a special Town Meeting to bring the regulations forward.

Day stated that the odds of the DPH getting the regulations together will be a long process so in the event it takes them 6 months, it would bring us to the fall Town Meeting which would allow us to bring this to Town Meeting in the fall. This will give the Planning Board the time to offer other zoning articles and may work out well in an odd way for crafting zoning regulations.

Prentiss asked the Board if they are not getting what they need from the state, would it be better to put it into a separate Town Meeting instead of putting it into the budget meeting.

Trask agrees with Prentiss and suggested to make it sometime after the final regulations. They anticipate legal challenges, and he agrees that 18 months allowed them the latitude of timing a fall Town Meeting. He recommended to consider zoning not unlike the adult zone. You may want to accomplish both by saying a period of time after the final regulations have been published.

Henry asked for confirmation from Trask that he felt 18 months from the effective date of the regulations would work.

Trask replied yes. He felt if the clock started in May, they may only have two months to get the work done.

Mike Dennis, from Newton, Massachusetts, addressed the Board. He stated the DPH regulations were completed in light speed. He is afraid if a moratorium is enacted, the effect is to prevent any Medical Marijuana Treatment Centers (MMTC) to open in Danvers. The reason being is if a MMTC wants to apply to the DPH, they need approval and need to meet zoning requirements of the municipality. He

told the Board that if a moratorium is in place, it is very likely that zoning ordinances are in place. He felt in enacting a moratorium, it would completely cut off the chance of a MMTC facility coming to Danvers.

Henry stated he has read the regulations and asked Dennis to confirm that the application requirements showed the local process going first.

Dennis stated that the regs require any applicant be in compliance with all local regulations zoning or otherwise as part of their application process, and if there is no zoning in place, this will be impossible.

Bennett stated that it was suggested to the Town Manager that we work on zoning, but since there is nothing from the state, it is difficult to put zoning into place to have applicants comply. Also, he pointed out that the law says a limit of 35 now, and if one is not put in Danvers now, it does not prohibit more in the future.

Trask stated even if we did nothing, there is no by right for medical marijuana facility. He asked if applicants came to the town, could they open a facility.

Day indicated that this falls into the medical clinic zone which includes the word dispensary.

Trask stated this would open home growing. He stated that the medical treatment centers are only for the hospital zones and no hospital or pharmacy will take the card because it would endanger medicare and medicaid funding.

A discussion ensued as to the possible zone this facility could be placed in the Town.

Day stated their interpretation as staff is that this falls in the definition of Health Care Facility which allows dispensaries. She pointed out that they are presently allowed in all I2 zones which is Industrial Drive, the Cherry Hill industrial park, the old Sylvania building on Sylvan Street and the Partners facility on Endicott Street.

Maloney felt that the Healthcare District, the former Hunt Hospital property, is defined in a way that would allow such a dispensary. She pointed out that there are five areas by right that someone could come in to begin operation, so Day asked whether they want to get ahead of this with overlay zones, etc. to further define where it can go.

Dennis stated that he wanted to clarify that the law states if you are given a card as a patient, you do not have permission to grow at home and it was confirmed, that only in a hardship instance this would take place. He stated when he read the Coakley decision, he saw a wide latitude for the Towns to regulate this industry. He pointed out that Taunton and Attleboro have not put in a moratorium. They have put in overlay districts and he felt that this would be effective for them by not having a moratorium to stop people from applying.

Dennis brought up Bennett's comment of waiting for the DPH to give guidance how to zone. Bennett clarified that the Health Department is waiting for the state to tell them how to regulate, since they will

be the ones overseeing this. Dennis asked if this included permitting at the municipal levels and Bennett responded no.

Trask pointed out if you sell in a brownie form, there are certain health regulations that need to be followed.

Dennis stated there are rules about that in the DPH guidelines which will not be able to be preempted by the local Departments of Health.

Henry responded he would be shocked if the local Boards of Health are not going to be involved.

Dennis asked what would happen if there was a conflict between the rules of the DPH and locals and Henry said the locals would lose. Henry felt the Board of Selectmen will be involved.

Trask stated that the DPH will not be able to cover all the nuances. He felt they will need to match regulations with the medical marijuana regulations to be sure there is no lack of definition.

Henry stated they would lay out what they thought would be the best strategy, but they may have to tweak it. If we mean what we say, there is nothing wrong with it. He is grateful for the conversation to make this their own.

He felt Dennis's opinion that a moratorium of any length will freeze Danvers out from ever getting an MMTC would not disappoint Danvers. He stated that Peabody and Salem are right down the street.

Bennett stated from a business perspective Danvers has been identified as a good location since all highways come through Danvers. He stated if business people want to open in Danvers, they will still come later.

Henry stated he did not feel they were going to get five of them out of the gate.

Trask stated that national companies are pursuing this.

Joe Russo, from Newton Massachusetts, addressed the Board. He stated that Essex County could get four facilities because of the population. Russo stated the draft regulations are the strictest in the nation and felt there were not going to be many changes to the draft. The town would want to consider if an MMTC is going to benefit their budgets.

A discussion ensued regarding non-profits.

**MOTION:** Prentiss moved to close the public hearing for the discussion of a Moratorium for Medical Marijuana Treatment Centers. Zilinsky seconded the motion. The motion passed by unanimous vote.

Prentiss would like to move the board to change the time frame to 18 months. He stated that this Board has seen sites that they would like to take back and other sites that they have approved of. He would

like to take the time to allow the town to come up with better zoning which would allow them to come up with better sites.

Sears stated the adult zone took many years and he is fine with 18 months.

Henry stated he is okay with 18 months, but there is an element of risk since the Attorney General has not approved 18 months. There is no salvaging it if we change 12 months to 18 months.

Prentiss asked if any other towns had requested 18 months, and Day responded Ipswich had. She indicated that after talking to Ipswich, it makes sense to have a moratorium.

Henry stated we have made edits, but should staff and town council not approve, they could advise the selectmen to go back to 12 months.

Discussion ensued between the Board whether to change the time frame to 18 months from 12 months.

Sears stated they could say 18 months or less.

Henry says they should start with 18 and if town counsel or staff are nervous, we will support 12 months. He would like to have it in our normal time frame of doing zoning in the fall.

Prentiss stated he would like to have 12 months instead of 0 months.

Day stated she could check with Ipswich and other communities to see if they are doing 18 months vs. 12 months.

Prentiss pointed out that some fall Town Meetings have been held in November and once in January. He would prefer not to present with the budget matters.

**MOTION:** Sears moved to vote to recommend to the Town to amend the Zoning Bylaws Section 40, Definitions, by adding a definition for “Medical Marijuana Treatment Centers” and a new Section 8, “Moratorium on Medical Marijuana Treatment Centers”.  
Prentiss seconded the motion. The motion passed by unanimous vote.

## **ADJOURNMENT**

**MOTION:** Prentiss moved to adjourn. Zilinsky seconded the motion. The motion passed by unanimous vote.

The meeting adjourned at 8:05 p.m.

Respectfully submitted:

Francine T. Butler

The Planning Board approved these minutes on May 14, 2013.

Planning Board Minutes

April 16, 2013