

# Town of Berwick



## BOARD OF SELECTMEN/BOARD OF ASSESSORS MINUTES

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Tuesday, February 21, 2017

6:30pm

Selectmen's Room  
11 Sullivan Street  
Berwick, ME 03901

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### 1. Call to Order

Chair Wright called the meeting to order at 6:30pm.

### 2. Roll Call

Board Members Present: Chair Thomas Wright, Vice Chair Edward Ganiere, Selectman Rebecca England, Selectman Mark Pendergast and Selectman Joshua Plante.

Staff Members Present: Town Manager Stephen Eldridge, Planning and Community Development Director John Stoll, Chief Water Operator Chris Weisman, Sewer District Administrator Jay Wheeler, Transfer Station Supervisor Neil Hokinson and Town Clerk Patricia Murray.

### 3. Pledge of Allegiance

Chair Wright led the Pledge of Allegiance.

### 4. Approval of Meeting Minutes

- January 17, 2017

**Motion:** Chair Wright moved to accept the January 17, 2017 minutes as written. Selectman Pendergast seconded the motion.

**The motion carried unanimously: 5-0**

- February 7, 2017

**Motion:** Selectman Plante moved to accept the February 7, 2017 minutes as written. Selectman Ganiere seconded the motion.

**The motion carried unanimously: 5-0**

## **5. First Public Comment**

Chair Wright opened the first public comment.

There being no comments, Chair Wright closed the first public comment.

## **6. Public Hearing**

- Land Use Ordinance Amendments

Chair Wright opened the Public Hearing.

Mr. John Stoll, Planning and Community Development Director, presented. Mr. Stoll presented the [amendments to the land use ordinance](#), including the [table](#) and associated regulations. The main change in the table is the notations have moved into their own sections under article 8, individual performance standard for each use. This will make it easier for staff and residents to decipher and interpret the ordinance. There are a few new line items including medical marijuana.

### **Summary/Explanation of Proposed Land Use Ordinance Amendments**

**Purpose:** The Land Use Ordinance for the Town of Berwick regulates all development within the Town. This document must continually be updated for consistency and to adapt to the changing world around us. This document will only serve as an explanation, please use this with the posted land use ordinance changes.

1.) Definitions. These definitions describe the details for various uses and terms contained within the land use ordinance.

- Drive up Window: No current definition
- Drug Store: No current definition
- Inn: Removed, now will only address bed and breakfast and hotel/motel
- Light intensity industrial: Changing to Low Impact Industrial so this definition is being moved.
- Low Impact Industrial: Will take the place of light intensity industrial. Changed to better reflect ideas from Downtown Vision & Implementation Plan.
- Marijuana, Medical Marijuana, Medical Marijuana Caregiver, Medical Marijuana Dispensary, Medical Marijuana Home Production, Medical Marijuana Production Facility: The Town of Berwick is currently working to adopt regulations that control the placement and operations of medical marijuana within the Town limits of Berwick. Previously these businesses could operate anywhere within the Town as long as they followed State laws. These regulations control location and limit them to the industrial zones as well as issues like odor control.
- Medium Intensity Industrial. This use is redundant and is being removed to provide an accurate and concise land use ordinance.

2.) Non-Conformance. This amendment deals with replacement of non-conforming structures on non-conforming lots of record. Currently the land use ordinance does not allow for the replacement of a structure on a non-conforming lot of record that cannot meet the current land use ordinance requirements. This change provides regulations that will allow a resident to replace these structures.

3.) Article 8. This article of the land use ordinance deals with specific requirements for development for specific uses. Most of the changes are simply moving a notation from one location in the ordinance into a section for that specific use within Article 8. This makes the ordinance easier to interpret for the Code Enforcement Officer as well as residents.

- 8.3 Hotels/Motels, and Inns. Since Inns are being completely removed from the ordinance this is just a consistency change. This also moves the notation for locations that restrict placement of this use into the proper area of the ordinance.
- 8.5. Mobile Home Parks. Moves location restrictions to the appropriate location.
- 8.9 Restaurants. Moves location restrictions to the appropriate location.
- 8.18 Wireless Communication Facilities and Communication Towers. Moves location restrictions to the appropriate location.
- 8.25 Medical Marijuana. These are newly created regulations that will control location and operation of medical marijuana within Berwick.
- 8.26. automobile service/motorcycle repair business. Moves location restrictions to the appropriate location.
- 8.27 Wholesale Business. Moves location restrictions to the appropriate location.
- 8.28 Commercial Mini-Storage. Moves location restrictions to the appropriate location.
- 8.29 Retail Business: Moves location restrictions to the appropriate location.
- 8.30 Vehicle Sales: Moves location restrictions to the appropriate location.
- 8.31 Congregate Housing: Moves location restrictions to the appropriate location.
- 8.32 Clearing or removal of vegetation for activities other than timber harvesting. Moves notation about CEO requirement to appropriate location
- 8.33 Outdoor Wood Furnace. Moves notation for MDEP regulation to appropriate location.
- 8.34 Fringe Financial. Moves notation for landscaping requirements to appropriate location.
- 8.35 Low Impact Industrial. This adds specific requirements for low impact development to this section of the land use ordinance.
- 8.36 Drug Store. This adds notations for location restrictions for drug stores/pharmacies within the Town.

#### 4.) 10.5 Appeal to Board of Appeals

- This removes a line about the time requirement for filing an appeal to the Board specifically the statement “upon a showing of good cause.” This line is difficult for the Board to interpret and leaves the Town open to lawsuits because “good cause” can differ from time to time and Board to Board. By removing this line it simply requires that an appeal must be filed within 30 days.

Selectman Pendergast asked for clarification on the sale of marijuana in commercial districts. Mr. Stoll replied that because there is a dispensary in Biddeford there is not another allowed within the health district. If Berwick were to be selected by the State to host a dispensary then it would only be allowed in the commercial/industrial district.

Chair Wright asked if the wording was coming from the State regulations on medical marijuana. Mr. Stoll replied that some are and a lot are borrowed from the York and Eliot ordinances. Mr. Stoll wrote the medical marijuana cooperative section which resulted from two public hearings with the Planning Board. Selectman Pendergast stated he didn't understand the reasoning why Berwick isn't following other towns and the State and putting in a complete moratorium until there is more direction from the State. Mr. Stoll stated what is being considered by the State for a moratorium is retail marijuana sales. This ordinance deals with medical marijuana which is legal and has been for a while. The goal of the Planning Board is

to get a regulation in place so retail establishments can't be put in anywhere. Presently they would be considered and permitted as agricultural use because there is no comparable use within the ordinance. Agricultural is permitted by the current ordinance in every district. This would establish a process to admit them. Selectman Pendergast asked if we are allowed to tax them. Mr. Stoll replied the taxable property can be taxed. Selectman Pendergast asked if the product could be taxed. Chair Wright responded that the State does not allow towns or cities to impose tax on income or sales. Selectman Pendergast noted he brought several articles to Mr. Stoll regarding moratoriums and believed one mentioned taxes and mentioned that Colorado charges taxes on sales. Mr. Stoll stated a court case is pending for York because they were charging business license fees. Town Manager Eldridge stated the town discussed the recreational marijuana law and decided to hold until the state set boundaries, which could take up to a year. Selectman Ganiere asked if recreational marijuana should be included in this ordinance. Mr. Stoll replied that they were waiting for the State to address that issue.

Chair Wright questioned Section 8.25.5, specifically A. All growing of medical marijuana shall occur inside and only within a completely enclosed structure. He stated State law allows growing outside if the area is fenced in. Mr. Stoll replied that the Planning Board wanted to be more restrictive. Selectman Plante asked why. Selectman Pendergast replied that that's what was pushed for at the Planning Board meeting. Selectman Plante asked why the Planning Board wants it differently than the State. Mr. Stoll replied that one of the primary reasons to have restrictive locations was to control the odor and an inside growing requirement would better control the odor. He also stated this may prove to be inaccurate and the ordinance will have to be edited. Selectman Plante noted that Colorado has not been able to effectively control odor regardless of indoor or outdoor restrictions. He stated the ordinance seems to be more restrictive to stop it from coming here rather than following State law. Mr. Stoll concurred that it could be the motivations of some. Selectman Plante stated it appears that is the motivation. Mr. Stoll stated he is open to suggestions and the Board is welcome to amend the ordinance proposal. Chair Wright stated he has a problem with the inside restriction; there are plenty of research and studies that prove medical marijuana works. He believes a patient or care giver should be able to grow marijuana outside. Mr. Stoll suggested adding "within a production facility" to section 8.25.5 A or striking A and making B become A. Selectman Pendergast stated it should be under caregivers. Selectman Plante asked if the State discriminates between production facility and private medical growing. Mr. Stoll replied the State does not distinguish between the two. Chair Wright agreed with distinguishing between production facilities and home growers and limiting commercial production to inside. Mr. Stoll edited the section to "All growing of medical marijuana within a production facility shall occur inside and only within a completely enclosed structure." Selectman Plante noted that clarification needs to be stated since commercial and private caregivers are being treated differently. Mr. Stoll replied that the production facility would be defined. Selectman Plante clarified that the State does not require a production facility to grow inside an enclosure. Chair Wright stated he believes the State does require an enclosed growing place for commercial production facilities. Selectman Plante would like the Town to stay consistent with State law with the ordinance. Mr. Stoll thinks the State requires a fence. Selectman Ganiere suggested tabling until questions have definitive answers. Mr. Stoll stated the timeline for the warrant won't allow this to be postponed. Mr. Stoll again suggested striking line 8.25.5A. Selectman Plante talked about the importance of supporting the vote which in this case won by over 600 votes. Discussion ensued about rewording Section 8.25.5.

**Motion:** Chair Wright made a motion to accept the change to the proposed land use ordinance Section 8.25.5 to read:

**8.25.5. Security**

**A. All growing of medical marijuana within a commercial production facility shall occur inside and only within a completely enclosed structure. This does not apply to home growing of medical marijuana.**

B. Prior to granting approval, the Planning and/or Code Enforcement Department shall receive a written statement from the Berwick Chief of Police or designee that security measures are acceptable and also consistent with State requirements.

Selectman England seconded the motion.

**The motion carried: 4-1.**

Mr. Stoll continued presenting the proposed ordinance. Chair Wright asked for an explanation of 8.34 Fringe Financial. Mr. Stoll responded Fringe Finance are predatory loan or title loan companies.

Mr. Stoll spoke to Section 8.35 Low Impact Industrial stating that this is added to ensure industrial uses comply with the Vision Plan. Mr. Stoll stated 8.35 A 6: “low impact industrial uses shall not emit any noxious odors or vibrations that are detectable at abutting property lines” is redundant and could be eliminated. The Board concurred.

**Motion:** Chair Wright made a motion to remove Section 8.35 A 6: “low impact industrial uses shall not emit any noxious odors or vibrations that are detectable at abutting property lines”. Selectman Ganiere seconded the motion.

**The motion carried unanimously: 5-0.**

Mr. Stoll continued his presentation. Selectman Plante asked for clarification of Section 8.26 automobile repair service because there is an existing repair shop which is not in the proposed district. Mr. Stoll replied any established businesses would be grandfathered.

There being no further comments or questions, Chair Wright closed the public hearing.

**Motion:** Selectman Ganiere made a motion to accept the definitions and terms proposed in the land use ordinance as presented. Selectman England seconded the motion.

**The motion carried unanimously: 5-0.**

## **7. Reports of Committees**

- BCTV Committee

Negotiations with Comcast are still ongoing.

- Envision Berwick

Town Manager Eldridge reported that EBC has a meeting scheduled on Thursday regarding the traffic study done for the Prime Tanning site. The meeting starts at 5:30pm.

## **8. Appointments/Presentations/Other Guests**

- Shipyard Waste presentation

Oscar Wilkins, principal, Shipyard Waste Solutions, presented. The company is based in Eliot, ME at the site of Aggregate Recycling Corporation which has common owners. They have 16 vehicles in operation and service 1600 commercial accounts including the Kittery Outlets and the Rye (full service) and Rollinsford (single sort) Transfer Stations. The company is 5 years old. Recycling includes wood, shingles, concrete, etc. Mr. Wilkins has been in the waste business for 47 years.

Discussion regarding curbside pickup and pay as you throw program ensued. Mr. Wilkins stated the final decision is up to the voters and he looks forward to submitting a bid.

- Boy Scouts

Chair Wright recognized Boy Scout Troop 653 who is in attendance to fulfill requirements for communications and citizenship in the community merit badges.

## **9. Unfinished Business**

- Pay as You Throw Program/Recycle Committee

Town Manager Eldridge reported that recycling is going well at the Transfer Station and he thanks the residents for their efforts.

- Water Department – Manganese Removal System Update

Mr. Chris Weisman, Chief Operator, presented. The severe drought last year created unusual conditions in the river basically creating a stagnant pool which put manganese into the water. The Water Plant is incapable of removing it. They have taken steps to put in place a system which will remove it. Mr. Weisman gave an overview of manganese levels. The average manganese level in the river has been about 0.1 parts per million which is twice what is considered a problem level. At half that much the EPA would caution for aesthetic problems such as black water or staining. Mr. Weisman stated even at this time of year there is a need to remove manganese from the water. A fairly sophisticated system is required for that to add as much potassium permanganate as necessary. The Water Department has taken steps to get a system in place and it should be on line in May. The Town has spent about \$37,000 so far to alleviate the manganese issue. Costs include a Baffle system, engineering services, monitors, fume hood, and an analyzer. Potassium permanganate is not a major expense at approximately \$100 per month

Selectman Pendergast stated he was disappointed last summer with the handling of the situation. He said the communication level needs to change since there was a lack of communication between the Water Plant and the Town. He asked how the temporary baffle is working in the river. Mr. Weisman replied it's still there and working. Selectman Pendergast asked if a permanent solution is being sought. Mr. Weisman replied they achieved a reduction in manganese for about three weeks by raising the intake of the river. This was a very unusual situation because the water was stagnant and as soon as the flow increased the situation changed. If the Water Plant has an effective removal system it can adjust to changes in the river. Mr. Weisman predicts they can handle any amount of manganese that the river produces ongoing with the new system.

Selectman England asked what Somersworth does since they use the same water supply. Mr. Weisman replied that Somersworth's treatment process is different in significant ways. Somersworth did a \$7 million upgrade to their plant several years ago. They use potassium permanganate in their filters. They also built very large wastewater settling lagoons which allows a steady return of water with predictable amount of manganese. Berwick cannot do that with current set up. He reiterated that potassium permanganate is an effective way to remove manganese.

Selectman Pendergast asked if the bag process outside of the plant is being changed. Mr. Weisman stated they are looking at improving that process.

Selectman Plante asked for the reason why the Town did not apply for the State grant to offset cost of upgrading. Mr. Weisman replied the grant was actually an emergency loan; it is not a grant. The Drinking Water Program noted that Berwick may meet the requirements for the emergency loan however, it is a loan. The only advantage of applying is less paperwork than a traditional grant. There is money in the operating budget to complete the work. Selectman Pendergast suggested applying for the loan in order to fix the lagoons. Town Manager Eldridge replied that the loan fund will not pay for a system but for research and how to solve a problem. Selectman Pendergast asked if we received the \$10,000 grant from the Governor. Town Manager Eldridge replied that it was not grant money, it was an emergency loan fund.

## **10. Town Manager Report**

- The Town’s sidewalk plow broke. We have an opportunity to borrow equipment from Somersworth but only when it’s not being used by them. Crews were out this past weekend removing snow. Hoping to get through this winter without making a purchase. There is a plan to put this item in the coming budget. A replacement plow cost \$180,000 to purchase. Town Manager Eldridge asked the residents to be patient with the snow removal. Cost of repairing the existing plow is expensive at \$12,000 for a fourteen year old machine.
- The Public Hearing on Salmon Falls River ordinance is March 23<sup>rd</sup> from 6:30 – 8pm. Abutter letters have gone out.
- Contractors at Prime will begin heavy equipment work next week.

**11. Selectmen Communications**

Chair Wright read a correspondence from Comcast; as of March 14<sup>th</sup> Comcast will no longer carry Esquire or Esquire HD.

**12. Approval of Warrants**

02-09-2017	A/P Warrant #1732	\$ 80,777.56
02-09-2017	Water Warrant #0732	\$ 4,391.15
02-16-2017	Payroll Warrant #1733	\$ 59,345.34
02-16-2017	A/P Warrant 1733	\$ 91,739.72
02-23-2017	Payroll Warrant #1734	\$ 52,906.80

**Motion:** Chair Wright made a motion to accept the Accounts Payable Warrants as presented. Selectman Plante seconded the motion.

**The motion carried unanimously: 5– 0.**

**13. New Business**

- **Posted roads**

Town Manager Eldridge stated the following roads need to be posted: Pine Hill, Little River, Long Swamp, Cranberry Meadow, Old Sanford, Diamond Hill, Wentworth, Blackberry Hill, Guinea and Old Pine Hill North. The signs will be posted on Friday of this week or Monday of next week.

**Motion:** Chair Wright made a motion to approve the list of posted roads as presented. Selectman Plante seconded the motion.

**The motion carried unanimously: 5– 0.**

**14. Quitclaim Deeds and/or Installment Contracts**

None.

**15. Abatements/Supplements**

None.

**16. Second Public Comment**

Chair Wright opened the second public comment.

Selectman Pendergast asked if Mr. Carboni had filed a lawsuit against the Town. Town Manager Eldridge replied that none had been filed.

There being no further comments, Chair Wright closed the second public comment.

**17. Executive Session**

- Title 1 §405(6)(C) - Discussion of Real Estate, Economic Development
- Title 1 §405(6)(E) - Consultation Concerning Legal Rights and Duties

**Motion:** Selectman Ganiere made a motion to enter into Executive Session per MSRA Title 1 §405(6)(C) – Discussion of Real Estate, Economic Development and Title 1 §405(6)(E) - Consultation Concerning Legal Rights and Duties. Selectmen England seconded the motion.

**The motion carried unanimously: 5 – 0.**

**The Board entered into Executive Session at 7:45pm.**

**The Board resumed its regular meeting at 8:25pm. Chair Wright noted no actions were made during the Executive Session.**

**18. Other Business/Non-Agenda Items**

None.

**19. Adjournment**

The meeting adjourned at 8:27pm.

**Respectfully submitted,**

**Patricia Murray  
Town Clerk**

**The February 21, 2017 BOS Meeting Minutes – Signed as approved at the Board of Selectmen’s March 7, 2017 Meeting.**

**On behalf of the Board**

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