



# Fairhaven Board of Selectmen

## February 5, 2018 Meeting Minutes

**Present:** Chairman Robert Espindola, Vice Chairman Daniel Freitas, Clerk Charles Murphy, Town Administrator Mark Rees, Town Council Tom Crotty and Administrative Assistant Vicki Paquette.

Mr. Espindola called the meeting to order in the Town Hall Banquet Room at 6:30 p.m. The meeting was recorded by Cable Access. An audio recording was also being made for the purpose of minutes.

### MOMENT OF SILENCE

Chairman Espindola called for a moment of silence for retired Fairhaven Fire Lieutenant Earle Faunce, who passed on February 5, 2018. A moment of silence was also given for the Town's Art Curator Al Benac who passed away on February 1, 2018.

### TOWN ADMINISTRATOR REPORT

Mr. Rees updated the Board on several matters:

- Mr. Rees told the Board that the Green Fairhaven Committee had recently met on January 22, 2018 and heard presentations on the Green Community Program and Recycling
- The Capital Planning Committee will meet with HKC concerning the facilities improvement study
- Economic Development has recently met and received a draft economic development plan
- Anne O'Brien, Human Resources Director and Mr. Rees have started the process of the wage classification for union and non-union employees
- Courtney Benoit will begin employment next week as the new part-time clerk for the Shellfish/Harbormaster's office
- Jane Bettencourt will fill in for Veteran's Agent Jim Cochran upon his retirement in February until the position has been filled
- The Position of Planning and Economic Development Director has been advertised in the newspaper. Connie Brawders will fill in on a temporary part time basis until a permanent person is hired
- Ashlee Lentini has vacated her position as the Health Insurance Clerk, Paula Medeiros has been hired in her place

- Health Agent, Mary Kellogg, Mr. Rees and Town Council, Tom Crotty met with other towns to discuss ABC surcharge issues to develop a joint strategy

### **COMMITTEE LIAISON REPORTS**

Under committee liaison reports:

- Mr. Murphy reported that the LAGOA Friendship Committee will begin to meet soon to discuss the upcoming visit from Mayor Cristina Calisto from Lagoon, Portugal
- Mr. Espindola will be meeting with the Cable Access Committee. He is encouraging the Committee to be proactive in their negotiations with Comcast.

### **NORTH FAIRHAVEN IMPROVEMENT ASSOCIATION**

Mr. Freitas made a motion to approve the North Fairhaven Improvement Association's (NFIA) use of the Oxford School Auditorium on May 5 and 6, 2018 to hold an indoor yard sale and to assist in the cleanup of the school. Mr. Murphy seconded. Vote was unanimous. (3-0)

### **FAIRHAVEN GETTY**

Mr. Rees explained to the Board that there has been an ongoing issue regarding the Fairhaven Getty on 371 Huttleston Ave and the multiple violations that have occurred on this property. In attendance was Getty station owner, Hatem El Rifai. Mr. Rees informed the Board that Mr. El Rifai is over the limit for the amount of cars he is allowed according to his Town Car Dealership License. The overage of cars are being parked on Grinnell Street and are also blocking the fire lanes.

Mr. Freitas said he has gone to the Getty Station and has observed the Getty station employees park the extra cars onto Grinnell Street. Mr. Freitas feels that if there was ever a fire it would be a danger to the neighborhood because the fire apparatus would not be able to get down the street. He said that since the most recent inspection on January 19, 2018, Fairhaven Getty had 7 days to come into compliance and the issue would have brought to the Board. Mr. Freitas would like to see the number of cars reduced. He feels there are a lot of cars there and would like to see the removal of the extra vehicles done in seven days. He feels the cars in the fire lanes need to be removed immediately.

Mr. Murphy, too, had concerns about the extra cars and the fire exits being blocked by these. Mr. Murphy would like to see the Fairhaven Getty come into compliance and correct the violations. Mr. Espindola expressed his concerns and felt that this is very troubling. Chairman Espindola noted that Mr. El Rifai is 77% over what he is allowed for cars at his service station. Mr. Espindola noted that he has already had the same conversation with Mr. El Rifai several years ago about the same issue. He would like to see the issues taken care of within the seven days. Mr. El Rifai spoke to the Board and asked for the 30 days to allow him extra time because he has recently acquired a new location in Westport and needs time to move the vehicles there. He told the Board that the cars parked on Grinnell Street aren't all his and they belong to the neighbors. Mr. Freitas made a motion to have the Fairhaven Getty move the cars in seven days and come into compliance. Mr. Espindola seconded. Vote carried (2-1)

Mr. Murphy made a motion to have the exits and fire lanes cleared in 14 days. There was no second.

Mr. Rees will send the Fairhaven Fire Department over to Fairhaven Getty on February 6, 2018 to check the fire violations and to confirm that they have been cleared.

### **ONE DAY LIQUOR LICENSE**

Chairman Espindola read a letter from Buzzards Bay Coalition requesting a one day liquor license for the Buzzards Bay Swim. Mr. Murphy made a motion Mr. Freitas abstained. (2-0-1)

### **PARKING METERS**

Mr. Rees explained that Harbormaster, Tim Cox, is requesting the expenses from the parking meter project at Hoppy's Landing be charged to the Hoppy's Landing Revolver account. Mr. Cox is requesting \$18,342.05 for the purchase and programming of a parking meter at Hoppy's Landing. The balance of the account as of December 31, 2017 is \$ 38,822.71. Mr. Freitas made a motion to approve the funds from Hoppy's Revolver Funds for parking meters. Mr. Murphy seconded. Vote was unanimous. (3-0)

### **MEETING DATE CHANGE**

Mr. Freitas made a motion to move the Thursday, March 1, 2018 Board of Selectmen's meeting to Monday, February 26, 2018. Mr. Murphy seconded. Vote was unanimous. (3-0)

### **FATHER'S DAY ROAD RACE**

Mr. Freitas made a motion to approve the 44<sup>th</sup> Fairhaven Father's Day road race to be held on Sunday, June 17, 2018. Mr. Murphy seconded. Vote was unanimous. (3-0)

### **WELLNESS COMMITTEE APPOINTMENT**

Mr. Freitas made a motion to appoint Health Agent, Mary Freire-Kellogg to the Fairhaven Wellness Committee. Mr. Murphy seconded. Vote was unanimous. (3-0)

### **TOUR DE CRÈME BIKE RIDE**

Mr. Freitas made a motion to approve the Mattapoisett Land Trust "Tour de Crème" bike ride on May 20, 2018. Mr. Murphy seconded. Vote was unanimous. (3-0).

### **BRISTOL COUNTY ADVISORY BOARD**

Mr. Rees explained that there is a meeting of the Bristol County Advisory Board on Thursday, February 8, 2018. Due to a conflict with another committee meeting Mr. Freitas will not be able to attend. Mr. Espindola has offered to attend on behalf of Mr. Freitas for this meeting.

Mr. Freitas made a motion to temporarily appoint Chairman Espindola to the Bristol County Advisory Board. Mr. Murphy seconded. Vote was unanimous. (3-0)

## **CDBG 2018 GRANT APPLICATION**

Bill Roth, Planning Director, reviewed the 2018 CDBG Application process of how the application project was determined. Mr. Roth then recommended that the Town's CDBG 2018 application be Phase 1 reconstruction of Hedge Street, which is from the bottom of the street adjacent to the Acushnet River up to the Cherry Street intersection. He described the scope of the project and the budget, which included using the Town's CDBG Program Income of approximately \$22,000. None of the Selectmen had any additional questions and were comfortable with the project. Ms. Ann Richard, 46 Hedge Street, spoke in favor of the project and felt it was desperately needed. The selectmen closed the hearing. Mr. Freitas motioned to submit the CDBG 2018 Hedge Street Phase 1 Road Reconstruction Project and to authorize the chairman to sign any and all necessary documents for the grant application. Second by Mr. Murphy?? Vote was unanimous. (3-0)

## **PUBLIC FORUM ON RECREATIONAL MARIJUANA**

Town Council, Tom Crotty spoke to about 35 people who attended the Public Forum on Recreational Marijuana. Mr. Crotty explained that in November of 2016 Massachusetts voters voted to legalize recreational marijuana. Massachusetts is the 6<sup>th</sup> state in the United States to legalize marijuana. Under President Trump's administration, Federal Law can decide to enforce the laws against marijuana. State Law says that retail prior to consumption is legal. This allows someone to grow a small amount and give it to another person but not sell it. To sell it is still a federal crime. The Town needs to decide how to set up the rules and how marijuana will be sold. All licensing comes from the State level through the Cannabis Control Commission, unlike liquor which comes from the local level. Mr. Crotty explained that the Town can control this by zoning laws, where to grow and sell commercially.

Tom Riley, owner of Fairhaven Wine and Spirits, had a concerns and asked Attorney Crotty under whose jurisdiction this falls under? Mr. Crotty explained that it depends on where the marijuana is being sold. It could fall under zoning, licensing, or Board of Health.

John Pond spoke to the Board and is worried about how the Town will prohibit the sale of marijuana. Attorney Crotty explained that if the Town wants to prohibit any sales it would have to go to a Town vote and would depend on what is being limited weather it would go to a Town vote or to Town Meeting. Zoning restrictions could go before Town Meeting because it doesn't prohibit.

Ann Richard wanted some clarification about the current moratorium that was in place. Mr. Crotty explained that the moratorium says that no place in Town can anyone open a retail sale, cultivation or production or sell until December 2018.

Planning Board Chair, Wayne Hayward has concerns that after April 1, 2018 if the State issues a license, someone open a shop once the moratorium is released. Attorney Crotty explained that because it is a zoning issue someone could be "grandfathered" in but only until the zoning Board issues a public notice that it has changed.

Jeff Lucas asked if there is no by-law to change but Planning wants to create one, does it have to be specific. Attorney Crotty answered the same rule would apply. If you aren't already selling before the Public Notice, then you aren't "grandfathered."

Shawna Lapointe asked if the Town would get additional tax breaks because we have this in Town. Town Council told her this would be up to Town Meeting.

Aimee Bonneau feels that Town is missing an opportunity from the tax revenue by not regulating marijuana.

Karen Vilandry spoke to the Board about the effects that toxic chemicals have on people. She feels the FDA doesn't regulate our food properly therefore how can they regulate marijuana. She has concerns about second hand smoke from marijuana smokers. Attorney Crotty explained that smoking marijuana is prohibited where tobacco cigarettes are not allowed, but it does allow it to be smoked where smoking would be allowed, such as a marijuana retail store.

Hans Doherty, Director of Sales for Growing in Health, told the Board that most people don't smoke marijuana, they get it from other forms such as liquid or edible form. Most growers know that if it is not cultivated properly then consumers will not purchase it.

Bernie Roderick is concerned and feels that retail marijuana will be a huge issue for the police.

Tim Keogh, President of BASK Inc. (formerly Coastal Compassion Inc.) explained to the Board that Massachusetts has some of the highest standards for testing. There are no pesticides, no chemicals and plants are tested for mold, mildew and yeast.

Shane Sher and Wayne Vieira both feel that by regulating marijuana it will be safer than buying it from the underground.

Dr. Barbara Acksen told the Board she has worked in drug treatment since 1971 and wants to see the Town do research before we make a decision and get more information.

Michael Lincoln asked what will be on the ballot. Attorney Crotty said the Board of Selectmen need to consult with Town Council on this issue. Selectmen discussed having another week to consult with Town Council and to get the results of the questionnaire that was made available to residents.

Mr. Freitas made a motion to make the next Board of Selectmen's meeting on Monday, February 12, 2018 at 7:00 pm. Mr. Murphy seconded. Vote was unanimous (3-0) (Attachment A)

### **COMMERCIAL (RECREATIONAL) MARIJUAN BY-LAWS**

Selectmen covered this topic at the Forum and will have a Board of Selectmen's meeting on Monday, February 12, 2018 at 7:00 pm to discuss this further and to decide on how they would like to proceed.

### **FY 19 OPERATING BUDGET AND CAPITAL BUDGET**

Mr. Rees passed out the Operating Budget and Capital Budget Book to the Selectmen to be discussed at the next Board of Selectmen's meeting on February 12, 2018.

### **FAIRHAVEN HIGH SCHOOL CLASS OF 2019**

Chairman Espindola read a letter from the Fairhaven Fire Chief to the class of 2019 for their generous donation to the Fire Department gift account.

## **BASK, INC**

Timothy Keough, President of BASK, Inc. (formerly Coastal Compassion, Inc.) met with Selectmen to discuss the opening of the new medical marijuana facility on Pequod Road. He extended an invitation for the Board and Mr. Rees to tour the facility.

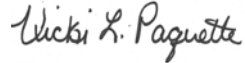
## **OTHER BUSINESS**

In other business:

- Mr. Espindola expressed to residents that there are currently openings on The Historical Commission and the Capital Planning Committee. Residents who wish to serve need to submit a letter of interest to the Selectmen's Office.

At 9:21 pm Mr. Freitas made the motion to adjourn the meeting. Mr. Murphy seconded. Vote was unanimous. (3-0).

Respectfully



Vicki L. Paquette

Administrative Assistant

(Minutes approved 03/12/2018)

## **Documents appended:**

**A: Memorandum on Local Regulation of Recreational Marijuana Establishments**

## MEMORANDUM

tpc 2.1.18

### **Re: Local Regulation of Recreational Marijuana Establishments**

This memo will address the current status of the law allowing the cultivation and sale of cannabis products in Massachusetts, and the authority of the Town of Fairhaven to regulate establishments engaged in that business.

### **Legalization Legislation and Local Moratorium**

In November 2016 the voters of the Commonwealth approved a law authorizing the cultivation and sale of marijuana for recreational purposes. (The voters of the Town of Fairhaven voted in favor of that law, 55% in favor to 45% against.)

In May 2017 the Town of Fairhaven enacted a broad zoning moratorium prohibiting the use of any property in the Town for the cultivation, manufacture, testing or distributing of marijuana products until December 31, 2018. The Town has a medical marijuana zoning by-law which allows a medical marijuana facility by special permit, and which requires a new special permit for the expansion of such a facility.

The legislature subsequently amended the voter-approved law, and created the Cannabis Control Commission (the “Commission”), giving it authority to license and regulate recreational marijuana establishments.

At the same time, the law as amended authorizes local control over the cultivation and distribution of recreational marijuana, and provides special procedures for enacting the more restrictive local controls.

### **Regulation and Licensing to Date**

In December 2017 the Commission held a series of public meetings at which it established the framework for its proposed regulations, which it issued on December 21, 2017. The commission will follow up with a tour of the commonwealth holding public hearings on its

proposed regulations. A public hearing will be held in Dartmouth at the UMass Law School at 2:00pm on February 6, 2018.

Among other things the Commission has established various categories of licenses, and the process for application, review and issuance of those licenses. The Commission also established two categories of applicants - priority and standard. The priority category includes medical marijuana establishments licensed on or before July 1, 2017. (Compassionate Care was apparently issued Final Certification to operate a medical marijuana dispensary in Fairhaven in June, 2017.)

The various categories of licenses which the Commission intends to license are:

- Marijuana cultivation – grows marijuana plants
- Craft marijuana cooperatives - cultivates, manufactures, packages and delivers products to retailers
- Marijuana product manufacturer - manufactures and delivers products to retailers
- Independent testing labs - tests product contents
- Marijuana retailer - distributes and sells to consumers
- Transportation license - delivers to retailers
- Social consumption, primary use - more than 50% of revenue from cannabis, effectively, marijuana cafes
- Social consumption, mixed use – less than 50% of revenue from cannabis which would probably be restaurants, coffee shops, bars
- Micro business – cultivates, manufactures, and delivers in small quantities
- Marijuana research facility – studies marijuana use

The Commission will begin accepting applications for licenses on April 1, 2018. The Commission plans to grant, or deny a provisional license no later than 90 days following notification to the applicant that its application is complete.

As part of the application process, the municipality will be asked whether the proposed establishment complies with all local laws. The Application of Intent portion of the license application packet must also include verification by the municipality that the application is in compliance with adopted local zoning by laws. The licensing law also provides that a marijuana establishment must enter into a host community agreement with those communities which allow such an operation.



### **Local Regulatory Authority**

The marijuana law allows town meeting to adopt by-laws which place reasonable safe guards on marijuana establishments and that govern the time, place, and manner of operations of marijuana establishments, but zoning by-laws may not prevent a medical marijuana business that was licensed on or before July 1, 2017 from converting to a recreational marijuana facility.

The town meeting may also adopt by laws that:

- restrict the licensed cultivation, processing and manufacturing of marijuana that is a public nuisance
- establish reasonable sign restrictions
- establish a civil penalty for by-law violations

Certain more restrictive local regulations may only be adopted if they are approved by the town voters. Those are:

- Prohibiting the operation of one or more types of marijuana establishments
- Limiting the number of recreational marijuana retailers to fewer than 20% of the number of retail liquor licenses in town
- Limiting the number of recreational marijuana retailers to fewer than the number of medical marijuana treatment facilities in town

If those specific regulations are approved by voters, then the town meeting may adopt them.

In its regulations the Commission has required applicants for marijuana establishment licenses to certify that the proposed establishment complies with all local by-laws. This requirement does not directly address moratoria (that is a temporary ban on all marijuana establishments), as opposed to more discrete limitations. But I see nothing in the regulations to suggest that the Commission would challenge the validity of a moratorium.

The Commission makes specific reference in its regulations to local rules and laws at 935CMR500.170 where it provides that marijuana establishments shall comply with all local rules and by-laws, and that nothing in the regulations shall be construed to prohibit local oversight and regulation that does not interfere with the operation of the state regulations.

At 935CMR500.101(A)(1)(i) the Commission also includes a provision that marijuana establishments must show compliance with local licensing requirements for the adult use of marijuana. Taken literally, that language suggests that the Commission is acknowledging local licensing authority over the use of marijuana.

### **Time Constraints**

The Commission plans to start accepting applications for recreational marijuana establishments on April 1, 2018.

It has been suggested that April 1, 2018 is a “deadline” for acting on any proposed by-law, as that is the date that the Commission will be accepting applications. If the Town were to actually act on a proposed by-law by that date it should eliminate any challenge that the adoption of the by-law was “too late”. However, it is not clear that April 1, 2018 is a drop-dead date for adoption of a by-law.

The town has enacted a moratorium which remains in effect until December 31, 2018. That zoning by-law was adopted by town meeting in May 2017, and preceded the later amendment of the marijuana statute, which now requires a vote by the town voters to approve a by-law which prohibits marijuana establishments. Although numerous towns had adopted the same moratorium (as recommended by the Attorney General’s Office) the legislature did not address those moratoria when it amended the marijuana law. As a result, whether or not the moratorium is effective may ultimately be determined by a court.

The Commission requires an applicant-led community outreach hearing to be held within six months before an application is filed. The Commission will also request input from the municipality as to whether the applicant is in compliance with local law. It appears that the Commission will not approve a license if it violates a moratorium. And it will require an executed Host Community Agreement between the applicant and municipal contracting authority before the license application will be acted upon. These requirements will likely push the actual issuance date past the effective date of any local bylaw which is adopted by the annual town meeting. (The marijuana law itself recognizes that municipalities may enact restrictive local laws past December 31, 2019.)

The marijuana law does not purport to change the procedural rules relating to the amendment of zoning bylaws. In general, a zoning by-law amendment will apply to any structure or use which was not in existence (or for which a building permit was not issued) prior to the publication of notice of the planning board hearing on that amendment. So the only deadline with respect to zoning by-laws may be to notice the zoning board hearing on an amendment before the marijuana establishment starts operation. As a result an amendment to the

zoning by-law should be effective with respect to licenses issued after the amendment process is initiated.

In summary, there is no express time limit for the enactment of local by-laws, and there are many arguments against considering April 1, 2018 a “drop dead” date, including the Commission’s own language recognizing local authority, without challenging the fairly many moratoria enacted by numerous towns.

### **Scheduling Action on Local Regulation**

**February 5, 2018:** Public forum on local marijuana regulation.

**February 23, 2018:** Submission of ballot questions to town clerk for annual election.

**March 2, 2018:** Publication of notice for planning board hearing on zoning by-laws.

**March 5, 2018:** Submission of articles for by-laws for town meeting warrant.

**April 2, 2018:** Town Election

**May 5, 2018:** Town Meeting

### **Local Sales Tax**

The recreational marijuana law allows cities and towns to impose a local sales tax on the retail sale of recreational marijuana. This is in addition to the state sales tax, and is in addition to any host community fee that may be collected by agreement with the marijuana facility. The local sales tax may be no more than 3% of the sale price of the product, and it applies only to sales for recreational use (not medical use) and to sales to consumers (not sales between marijuana facilities). The local sales tax would be collected by the state DOR and paid to the town quarterly.

Enactment of the local sales tax is by vote of town meeting by accepting section 3 of chapter 64N, the applicable section of the statutes, and determining the rate (up to 3%) to be applied.

## **Recommendations**

A. Certain specific local by-laws may only be adopted if approved by the voters. These are by-laws which prohibit one or more types of marijuana facilities, or which limit the number of retail operations to fewer than twenty percent of package store licenses in town; or which limit the number of retail operations to fewer than the number of medical marijuana facilities in town.

The February 5, 2018 public meeting will help the Board of Selectmen decide if there is sufficient public support for any of these options to justify holding an election.<sup>1</sup> The deadline for putting a question on the ballot for the annual town election is February 23, 2018. No petition is required for that purpose. The question may be put on the ballot by vote of the selectmen.

B. Based on public input at the February 5, 2018 public meeting, the advisory Committee will make recommendations to the Board of Selectmen, the Planning Board, and the Board of Health for zoning, general by-laws and/or regulations which do not require voter approval. Those proposals should be prepared as articles by March 5, 2018.

With respect to proposed zoning amendments, those should be submitted in sufficient time to hold the required planning board hearing prior to town meeting. The notice of public hearing should go to the paper by March 2, 2018.

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<sup>1</sup> The Board of Selectmen may, but is not required to, place any of these questions on the ballot, with one exception. With regard to the consumption of marijuana at the point-of-sale, the marijuana law as amended by the legislature provides as follows:

“The city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition (i) signed by not fewer than 10 per cent of the number of voters of such city or town voting at the state election preceding the filing of the petition and (ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of marijuana and marijuana products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election. If a majority of the votes cast in the city or town are not in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall be taken to have not authorized the consumption of marijuana and marijuana products on the premises where sold.”

The law is unclear whether a vote under this provision would need to be followed by the enactment of a town by-law prohibiting point-of-sale consumption. It is also arguable that in the absence of such a vote, the commission should not license point-of-sale consumption in the town, because it has not been authorized. The Commission’s regulations do not reference that statutory provision in the proposed regulations.

These are some of the regulatory questions to consider:

- Should the town prohibit outright any of the various types of recreational marijuana establishments?
- Should the Town regulate social consumption? If so should it be limited to primary use? Mixed use? Should it be restricted to certain zones? (The proposed regulations would allow use of marijuana purchased at a different licensed establishment – “BYOM”; allow licensed restaurants to cook with marijuana; prohibit the sale of alcohol at the same time that marijuana is being used; would not allow take home of unconsumed marijuana – “doggie bags”; and would prohibit smoking marijuana at a social consumption establishment prior to October 1, 2018.)
- Should the Town regulate smoking marijuana in social consumption and other settings? (This may be done by Board of Health regulation, or by general by-law. Under GL c. 94G§ 13 smoking marijuana is already prohibited in the same public places where smoking tobacco is prohibited, such as restaurants, bars, theaters, stores and public buildings. But tobacco can be smoked in retail tobacco shops. Apparently the Commission contemplates similar social consumption settings where, after October 1, 2018, smoking marijuana will be allowed.)
- What other health or safety rules should the Town consider? (For example, the commission’s proposed regulations would license restaurants and bars to sell marijuana as social consumption establishments, and would prohibit the consumption of marijuana when alcoholic beverages are also being sold at those establishments. However, the proposed regulations do not purport to license or control restaurants and bars that do not sell marijuana, but which allow the consumption of marijuana if it is purchased elsewhere. In other words, a restaurant or bar that doesn’t sell marijuana, can allow customers to bring their own, with no restrictions. A local by-law or regulation could limit or prohibit that practice.)
- Should the Town try to prevent or regulate the conversion of the current licensed medical marijuana facility into a recreational sales facility? (This will apparently be a priority application.)
- Should the Town establish zones for the various operations which the Commission will be licensing? Most of the uses would be commercial (sales, social consumption, testing, research), some would be industrial (processing, transportation), and cultivation may qualify as agricultural. So we need to be aware of where in Town these uses would be allowed under the current zoning by-law.