

**TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING**

7:00 pm

August 18, 2021

Chairman VanVliet called the Special Planning Board Meeting to order. The meeting was held in the Municipal Building located at 232 S. Third Street, Phillipsburg, New Jersey.

A Prayer was offered followed by the Oath of Allegiance

Chairman VanVliet stated “Adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star Ledger and The Express-Times and by posting a copy on the bulletin board in the Municipal Building.”

Present: Members Clymer, Coyle, Pryor, Samson, Weeks, Mayor Mengucci, Chairman VanVliet.

Business:

Ordinance No. 21-07 - Ordinance No. 21-07 - To Prohibit the Operation of Any Class of Cannabis Businesses within its Geographical Boundaries and Amended Chapter 243 “Zoning and Land Use,” Article XIII “ General Regulations,” Creating Section 65.3 “Prohibited Uses,” to Add Cannabis Businesses to the List of Prohibited Uses. Referred by Council to the Board for review as required by the Municipal Land Use Law.

Chairman VanVliet – In short, they’re asking us just to pass or review that it’s in conformance with the Municipal Master Plan. So, basically, that’s the order of business tonight. Any questions? Has everyone read, Joe did you want to expound on it a little bit?

Member Pryor – Well we do have one member of the public here. Maybe for the record I could speak on behalf of Council. I’ll give you two minutes’ worth of background.

Chairman VanVliet – Sounds good.

Member Pryor – How this got from Council here at this rather late date, for everybody who remembers, November 2020, New Jersey voters approved a referendum which essentially made cannabis legal. In February 2021, the governor signed in the NJ Cannabis Regulatory Enforcement Assistant and Market Place Modernization Act and that legalized marijuana in New Jersey but it gave municipalities the option to prohibit or regulate certain classes of businesses

that dealt with marijuana and this included cultivation, manufacturing, wholesaling, distributing, retailing and we had until, we had 180 days until August 21st, 2021, you either prohibit or limit cannabis in the Township and why are we doing this so late? I think initially we've always prohibited it and I think we felt initially that by doing nothing, nothing changed so, we didn't really have to pass a new ordinance and we didn't have to come before Planning Board. It turns out that any existing municipal ordinance regulating or prohibiting cannabis are null and void so, whatever (inaudible) ordinance, we had to do it over again. So, the last decision we had is do we want to allow one of these four categories of businesses or all of them or prohibit all of them for the time being and there was some discussion and it was eventually pointed out to us that if we opted in by allowing any of the six classes or all six, we were bound by that for five years. If we opted out, we can come back in at any time and I think as this unfolds around the state from what I read at any rate, a lot of the municipalities are opting out and want to sit back for a little while, see what unfolds, see what regs. happen, see what problems occur, see how other people are dealing with it and I think Council decided in the end that was the prudent thing to do, to just opt out entirely, sit back and observe and why would we want to opt in? It is a business; there's some tax benefits and so on, but I think for the time being the Council felt we would opt out and that gives us the option of coming back in at any time so, that was the prudent thing to do. We've had a first reading on the ordinance which you have which essentially mimics the act and we're opting out and that's what's before you tonight. So, that's the change in the ordinance; it's going to include language that says we, you know, at least for now we opt out and as an ordinance, it effects the zoning. It has to come before the Planning Board and we decide whether it's consistent or not. So, that's what's before you tonight.

Chairman VanVliet – Any questions of Joe on that? If not, I just have a, you know, I checked with the Board's Attorney and another Attorney, actually, Council's Attorney wanting to know if we had to actually change the zoning in any of the areas that, it's actually all the areas in the Township that would be affected and their opinion was, all we have to do is indicate that's it's in conformance with the Regional Master, with the Municipal Master Plan and we're okay with doing that. So, that was two opinions that were on that side because I was wondering whether we had to do that also and it came up that we just have to make a motion to indicate that it's consistent with our Master Plan and I think it depended on what Mr. Bryce had said to me was that unless we had, it was already in our zoning that uses that are specifically banned or use it didn't matter so,

Member Pryor – Well, I hate to muddle this, I think we just muddled it a little bit. It was prohibited but the act says all those are null and void so, what Township you have in front of it, it is a change to the zoning and it's being added as a, it creates Section 65-3 Prohibited Use so it is a change in our zoning and your resolution tonight says that that proposed change is consistent with the Master Plan. That's what we're looking for tonight.

Chairman VanVliet – All right, so

Member Pryor – And that's one of the reasons this was delayed and it's coming before everybody so late.

Member Weeks – So, which one are we taking out or eliminating something out of the pot? Which one's coming out of it?

Member Pryor – All of it.

Chairman VanVliet – All of it.

Member Pryor – All six uses.

Chairman VanVliet - I don't think we had anything in any of our zoning because I looked over

Member Weeks – (Inaudible) didn't mean cannabis, I meant you're saying that there's rules and certain things that were there before in our Master Plan, all right, and we have to wipe that out because it doesn't exist anymore (inaudible)

Member Pryor – No, it would, what Garry, I don't want to speak for Garry, but I mean the thought was it was always a prohibited use. We didn't allow cannabis in our zoning so it was a prohibited use. So, the initial thought was we don't have to do anything and then upon further review of the act, they said, well, it's null and void, you have to take specific action. You're either going to prohibit or regulate it. We're going to prohibit it. Did I confuse everybody further?

Mayor Mengucci – No, I mean we can opt in at any time.

Member Samson – But if we change the zoning, it would say that we can't have it in the zoning, will that prohibit it like so you couldn't change your mind down the road or?

Member Pryor – No, we can change our mind. If we allowed it today, we could not change that decision for 5 years relative to cannabis. If we opt today, we can change it tomorrow if we want it. So, we're just going to sit back and relax, watch it unfold around the state and see if we want to get involved or not get involved.

Member Samson – So, then a yes vote is that we prohibit it.

Member Pryor – No, a yes vote, you're really looking at the second resolution and it's short so I'll just paraphrase it. It's a resolution of the Planning Board and it says "now, therefore, the Planning Board of the Township of Lopatcong determines that Ordinance 21-07 is consistent with the Master Plan". So, we are opting out and you were saying that's consistent with the Master Plan.

Chairman VanVliet – Based on this legal opinion, that if it doesn't specifically say in our zoning that it's legalized or a permitted use, I should say legalized but permitted use, it's deemed to be not a permitted use. That's basically what it came to. There's nothing that we were changing in

the exiting zoning cause it already existed and now it's official from a legal standpoint that it's, you know, the zoning is not allowing it.

Member Pryor – Now I don't have the act in front of me, but this is an opinion from our attorney.

It says what does this mean for municipalities; existing ordinances, any existing municipal ordinances regulating or prohibiting cannabis are null and void. Right, so, if we prohibited it before that's null and void. We have to take action as a town

Chairman VanVliet – And replace it

Member Pryor – to specifically say it is prohibited.

Member Clymer – But the question is, did we have such a thing; did we have an ordinance?

Member Pryor – It wasn't mentioned it was illegal we didn't, it wasn't in our ordinance.

Member Clymer – There's nothing to take out; it wasn't there to begin with.

Member Pryor – Yeah, but now we have say, it's a prohibited use.

Member Coyle – So, it doesn't matter really what we're looking for. We're just making in tonight...

Chairman VanVliet – Moving forth with the confusion of law.

Member Pryor – Here, I'm going to take our ordinance and I'm going read one paragraph and this is really what we're doing. “Chapter 243 General Regulations of our zoning code: Prohibited Uses – is hereby created and adding to the list of prohibited uses the following – so this is being put into our ordinance. “All classes of cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in the public law blah, blah, blah, blah, but not the delivery of cannabis items and related supplies by a delivery service”. So, I, you know, there are people who get medical marijuana delivered and so on, so, that it's not affecting that.

Member Samson – But they wouldn't be able to get it delivered within the Township.

Member Pryor – Well, this is what, this is what it says. It says “all classes as defined but not the delivery of cannabis items and related supplies by a delivery service.

Member Clymer – They would be able to get it.

Member Pryor – They would be able. We've had people here for a long time that had to have medical marijuana.

Member Clymer – Service couldn't be housed in the Township; that would be a service coming out of Easton or Bethlehem. They could drive in and deliver it because it's just their medicine basically, right, but they couldn't establish a firm in the Township.

Member Weeks – So, you can't grow it. You can have a store with all the pipes.

Member Pryor – I'm going to go back to the six classes; you can't cultivate it, manufacture, wholesale or distribute it, retail it and it says delivery license for businesses providing courier services for consumer purchases that are fulfilled by licensed cannabis retailer in order to make deliveries, purchase item to consumer in which service would include the ability to consumer to make a purchase directly through cannabis delivery service. It appears the way this is written that six is allowed with cannabis delivery. That's the trouble when you don't have a lawyer here but we've had the first reading.

Chairman VanVliet – Any further questions? Do I hear a motion to deem it in conformance with the Master Plan?

Mayor Mengucci – So be it.

Chairman VanVliet – Do I hear a second?

Member Clymer – I'll second it.

Chairman VanVliet – Beth, roll call please.

AYES: Members Clymer, Coyle, Pryor, Samson, Weeks, Mayor Mengucci, Chairman VanVliet.

NAYS: None

Member Pryor – Okay and we've already voted but I found something from our lawyer – reinforces that delivery rights – municipality cannot prohibit the delivery of cannabis items and related supplies by delivery services within the jurisdiction and that's what that phrase in there means, so, what we just did, Township just did and we're having a special meeting tomorrow to have second reading cause we're making our ordinance conform to the new law prohibiting all these new businesses related to marijuana. That's what we did tonight.

Chairman VanVliet – We have another little piece of business is I wanted to memorialize the action we just took. The resolution of the Planning Board of the Township of Lopatcong, Warren County, New Jersey reviewing Ordinance 21-07 and do you have a copy of it in your packet in hand?

Member Pryor – Well, that's what you just did.

Chairman VanVliet – No, we're memorializing that action we just took now.

Member Pryor – This is all you had to do, you have to review the ordinance and deem it consistent.

Chairman VanVliet – Yeah, but we would normally come up on that and pass a resolution on actions we take.

Secretary Dilts – This typically happens at the next meeting but we were able to prepare it

Chairman VanVliet – Yeah, we got it done this way. In other words, this puts it in, you know, memorializes that the Planning Board took the action.

Member Pryor – All right, well, you’re doing the same thing so,

Chairman VanVliet – Basically, yes.

Member Pryor – passing it in the form of a resolution.

Chairman VanVliet – Has everyone looked at it and read the resolution?

Member Pryor – You know, I’m going suggest since we just had a confusing discussion that we read this aloud and vote on it.

Chairman VanVliet – Oh, okay. All right.

Chairman VanVliet read aloud the resolution in full.

**RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF
LOPATCONG TOWNSHIP, WARREN COUNTY, NEW JERSEY,
REVIEWING ORDINANCE 21-07.**

WHEREAS, Ordinance 21-07 amending Chapter 243 “Zoning and Land Use, “Article XIII “General Regulations,” Creating Section 65.3 “Prohibited Uses,” to add Cannabis Businesses to the List of Prohibited Uses was referred to the Planning Board for consistency review pursuant to the Municipal Land Use Law; and

WHEREAS, the Planning Board reviewed the Ordinance at a special public meeting on August 18, 2021; and

WHEREAS, Ordinance 21-07 seeks to amend prohibited uses to include the six classes of recreational cannabis establishments pursuant to P.L.2021, c.16, known as the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act; and

WHEREAS, The Planning Board determined that Ordinance 21-07 is consistent with the Master Plan and had no recommendations;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong that is determines that Ordinance 21-07 is consistent with the Master Plan of the Township of Lopatcong and no recommendations are required.

WITNESSETH, this Resolution was duly adopted by the Planning Board of the Township of Lopatcong at its meeting of August 18, 2021.

CERTIFICATION

I HEREBY CERTIFY the foregoing to be a true copy of the Resolution duly adopted by the Lopatcong Township Planning Board at a special meeting held on August 18, 2021

Beth Dilts, Secretary
Lopatcong Township Planning Board

Chairman VanVliet – Okay.

Member Pryor – All right so just to clarify, we just discussed Ordinance 21-07 and we read that. It prohibits all six classes except delivery by a service within the Township and we agreed that was consistent and this resolution is going to memorialize the discussion we just had.

Chairman VanVliet – Correct.

Clerk Dilts – Notice of Action will be put in the newspaper.

Member Pryor – I’ll make that motion.

Chairman VanVliet – Do I hear a second?

Mayor Mengucci – Second.

Chairman VanVliet – Roll call Beth.

AYES: Members Clymer, Coyle, Pryor, Samson, Weeks, Mayor Mengucci, Chairman VanVliet.

NAYS: None

Chairman VanVliet – Open to the public – John do you have anything?

John Betz – Just you talked about businesses (inaudible).

Chairman VanVliet – All I can do is remind you that it’s still a federal crime. So, you know, maybe the local police won’t do anything or something like that but you can never not think the federal DEA or somebody will come in and do something, but is that it? Okay, in that case,

Member Pryor – The resolution and our zoning regs. talk about licensed businesses so, I don’t think the Planning Board is even involved with what somebody does in their back yard.

Chairman VanVliet – Can I have a motion to adjourn?

Mayor Mengucci – Motion.

Member Clymer – Second.

Chairman VanVliet – All those in favor signify by saying aye.

All members – Aye.

Respectfully submitted,

Margaret B. Dilts
Planning Board Secretary