

TOWN OF WINCHENDON



AGENDA & NOTICE OF MEETING

Pursuant to the provisions of Chapter 30A, Sections 18-25 of the General Laws, as amended, notice is hereby given that a meeting of the following board, committee, or commission will be held on the date and time specified below. Said meeting will be open to the public and press and will be recorded.

BOARD/COMMITTEE: Planning Board – Meeting

DATE: May 5, 2020

TIME: 6:30 p.m.

LOCATION: Virtual meeting via Zoom

Meeting Attendance Directions (via Zoom):

Meeting ID: 789 850 459

Password: 073151

To join via computer (option for video and/or audio)

<https://winchendonk12.zoom.us/j/789850459?pwd=WmhXdEhXZi9GWG5KV0dsVVBzVHRQUT09>
or

go to www.zoom.com and click 'join meeting' then follow prompts using info above

To join via phone

One tap mobile +19294362866,,789850459#,,1#,073151# US (New York)

or

Dial in at +1 929 436 2866 and enter the meeting info above as prompted

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Town of Winchendon Planning Board will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on the town's website, at www.townofwinchendon.com. For this meeting, members of the public who wish to observe the meeting may do so via zoom using the information provided above. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the town's website an audio or video recording, transcript, or other comprehensive record of proceedings as soon as possible after the meeting.

Notice- The above topics do not prohibit additional last-minute or unforeseen matters.

The meeting room is handicapped accessible. With advance notice the Planning Board can arrange reasonable accommodation for persons with other disabilities. To request assistance; contact the Department of Planning & Development at 978-297-3537.

TOWN OF WINCHENDON



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BOARD/COMMITTEE: Planning Board – Meeting

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LOCATION: Virtual meeting via Zoom

Meeting Agenda:

1. Call to Order

Town Counsel suggested statement to be made by the Chair of a public body at the start of any public meeting conducted “virtually”:

Pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Town of Winchendon Planning Board is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order. A reminder that persons who would like to observe this meeting while in progress may do so using the zoom meeting information provided above.

2. Announcements

3. Public Comment

4. Business:

6:35pm - Opening and continuation of public hearing for marijuana cultivation facility at 60 Franklin Street.

Discussion of Public Hearings via remote participation

5. Minutes – none

6. Correspondence Update – none

7. Adjourn

Notice- The above topics do not prohibit additional last-minute or unforeseen matters.

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Planning Board



Telephone (978) 297-5410

109 Front Street
Winchendon, Massachusetts 01475-1758

Notice is hereby given that the Winchendon Planning Board will consider the site plan and special permit applications for a Marijuana Cultivation Facility submitted by McCarty Engineering, Inc. of 42 Jungle Road, Leominster, MA 01453 on property located at 60 Franklin Street, Winchendon, MA 01475 identified as Winchendon Assessors Map 5A-2 Parcel 38 owned by Kyle and Wendy Higgins of 442 Howard Street, Lunenburg, MA 01462 at their regularly scheduled meeting on **Tuesday, May 5, 2020 at 6:35pm**. If conditions allow the meeting will be held in the Town Hall Aud., 2nd Fl., 109 Front St., Winchendon, MA 01475; otherwise it will be conducted by remote participation, with participation details posted online in the meeting agenda. Said property is located in the 'I - Industrial zone'. A copy of the application information is posted online with the meeting agenda. All interested persons should plan to attend.

The current remote participation information is:

Join Zoom Meeting

<https://zoom.us/j/789850459?pwd=WmhXdEhXZi9GWG5KV0dsVVBzVHRQUT09>

Meeting ID: 789 850 459

Password: 073151

One tap mobile

+19294362866,,789850459# US (New York)

+13126266799,,789850459# US (Chicago)

Dial by your location

+1 929 436 2866 US (New York)

+1 312 626 6799 US (Chicago)

+1 301 715 8592 US

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US

Meeting ID: 789 850 459

Password: 073151

Find your local number: <https://zoom.us/u/aML7DZRlx>

BY: Guy C. Corbosiero, Chair
Winchendon Planning Board

Governor Baker Declares a State of Emergency in Response to Spread of Novel Coronavirus COVID-19

By now, you have likely heard about Governor Baker's issuance of Executive Order No. 591 yesterday afternoon, declaring a State of Emergency, in response to the growing number of presumed positive cases of COVID-19 in Massachusetts. This declaration is in effect until further notice, and will be revisited in 30 days, if not sooner. Amongst other things, the Governor recommended that "large" group activities should be limited, if possible, and, further, that persons who are likely to be highly susceptible to the COVID-19 virus not participate in such group activities.

While this declaration enables the Governor to take or authorize certain emergency actions at the state level, including imposing curfews, travel bans, and road and building closures, it does not confer upon local chief executive officers any similar authorities. In many communities, administrative and executive officials have been examining their emergency response plans in recent days, to determine what actions may be authorized at the local level in response to the spread of COVID-19. The Governor's declaration of a State of Emergency reinforces the need for communities to have reasonably and thoughtfully considered how its elected and appointed officials and personnel will respond to this fast moving and continuously evolving situation. We suggest that whenever possible, you choose approaches that are limited, practical and planned, and avoid reactionary responses. While we all need to be prepared to respond quickly to this rapidly-changing landscape, we also need to be mindful that we cannot predict what the situation will be in a week or a month, and therefore, we also suggest limiting decision-making to matters for which immediate decisions or planning must be addressed.

The conduct of municipal and other governmental operations is subject to significant statutory and regulatory governance. There may be compromises that have to be made; each situation must be carefully analyzed on a case by case basis, balancing the relative benefits and harms of action or inaction.

In order to assist you in your emergency preparedness efforts, we have compiled some useful information. We will continue to update this information as necessary and appropriate, particularly in light of any new legislative, judicial, or administrative agency action(s). Also, to the extent we are able, we will also post updates on our website at www.k-plaw.com.

Coronavirus "hotline": In addition to the information provided below, we have designated a group of KP Law attorneys to respond to your coronavirus questions on an expedited basis. Those attorneys are: Janelle M. Austin, Gregg J. Corbo, Deborah I. Ecker, Lauren F. Goldberg, Michele E. Randazzo, and Mark R. Reich. They can be reached via a dedicated e-mail address, coronavirusinfo@k-plaw.com. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary or labor contact, and you should of course feel free to contact your primary and/or labor attorney(s) directly with COVID-19 related questions.

Updated Information on COVID-19: The state's website, at <https://www.mass.gov/resource/information-on-the-outbreak-of-coronavirus-disease-2019-covid-19>, contains the latest information from the Department of Public

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Health. The federal Centers for Disease Control (“CDC”) website can be accessed at the following link:
<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>.

Emergency Powers of Municipalities: [Click here](#) for our summary of the Emergency Powers of Municipalities. This summary covers such topics as emergency waivers from public bidding and procurement laws, expenditure of monies in excess of existing appropriations to address “major disasters,” and the imposition of local curfews. Be reminded that the Governor’s declaration does not automatically grant similar authority to cities and towns. To the extent that there is interest in declaring a “local” state of emergency, analyzing what action can or should be taken as a result thereof involves analysis of a municipality’s emergency powers generally, and the particular issue being addressed.

Board of Health Authority to Address COVID-19: We have received many questions about the role of local boards of health with respect to infectious diseases. Of course, as you are well aware, effective emergency response plans include a coordination of efforts on the part of all public health and safety personnel, as well as with the municipality’s executive branch, and throughout all levels of government. We will provide more detailed guidance as to the powers and duties of local boards of health in a separate document.

Rescheduling or Continuation of Upcoming Town Meetings: As we approach the spring town meeting season, some towns are deciding whether they should reschedule or postpone town meeting, particularly in those towns with early meetings. The process for rescheduling or postponing town meeting depends upon whether the warrant for the meeting has been posted or not.

1. If the warrant for Town Meeting has not been posted:
 - a. If the date of town meeting is not set by charter or bylaw, the Board of Selectmen/Selectboard can delay scheduling the meeting, in order to see how the situation develops; or
 - b. If the date of town meeting is set by charter, special act or bylaw, G.L. c.39, §9, authorizes the Board, notwithstanding the same, to hold town meeting at a date later than normal, and absent further legislative or judicial action, on or before June 30, 2020. If a municipality experiences circumstances that make it very difficult or impossible to meet this June 30th deadline, there may be legislative, judicial and/or administrative options to address that community-specific situation.
2. If the warrant for town meeting has been posted:
 - a. There is a specific process under which the Moderator, may, in advance, recess and continue town meeting due to weather-related or public safety emergencies. That process is set forth in G.L. c.39, §10A. [Click here](#) for our summary of that process.
 - b. The traditional process for continuing Town Meeting may be used when no quorum is required, i.e., the Moderator and Town Clerk appear for the meeting with one or two others, a vote is taken to continue the meeting to a specified time, date and place. Often, tools such as running a banner on cable tv, on the Town’s website, or even use of reverse 911 can help to “get the word out”.

- c. If a meeting is already underway, in accord with G.L. c.39, §10, the Moderator may, if they determine that qualified voters are being excluded for whatever reason, with the approval of the Board, recess the meeting to another date, not later than fourteen days following the date of said meeting,

Town Elections: Unlike for Town Meetings, there is no ready statutory mechanism by which Town Elections can be postponed or rescheduled. As recently as yesterday, the State Elections Division contacted city/town clerks with respect to contingency planning for elections and town meetings. We further understand that the Elections Division expects to re-file legislation that it generally files annually, to provide it with authority to postpone or reschedule an election, and make temporary changes to process, to allow for the orderly administration of elections. In the meantime, however, changes cannot be made to the schedule and process for upcoming town elections, unless and until further authorization is received from the Legislature and/or the courts, as necessary. If a municipality is interested in changing the date of its election, because it is concerned that it will not have a sufficient number of poll workers, or that turnout will be low, for example, this statutory scheme and these practical issues must be analyzed to determine whether some reasonable approach can be taken. As of this writing it has been reported that the Secretary of the Commonwealth has filed legislation to address some of these issues.

Conducting, Rescheduling, or Continuing Public Meetings (other than Town Meetings): You will likely be faced with questions concerning the postponement or cancellation of meetings of public bodies, including “public hearings.” As a general rule, “public meetings” need only comply with the notice and posting requirements under the Open Meeting Law (“OML”), while “public hearings” often have additional notice, posting, and in some instance, advertising, requirements. Local charter, special act, or by-law/ordinance provisions may provide even further community-specific notice, posting, and/or publication requirements for either public meetings or public hearings, or both. It is, of course, possible that the Division of Open Government could relax the rules on remote participation, or provide other guidance concerning what constitutes an “emergency” for purposes of the law, which may help communities avoid cancellation of meetings. Such guidance would likely “alter” the general rules typically applicable to holding open meetings. Even if such guidance is issued, we recommend complying with the law to the extent possible to minimize potential challenges.

With that in mind, here are some general considerations when determining whether to cancel, postpone, or continue a public meeting or a public hearing. If the meeting can or should be held, then consider the location of the meeting. What is the anticipated turnout? Does the room provide enough space to allow for social distancing? Can the agenda be shortened to include only those items that are essential? Can some board members participate remotely? Can the meeting be live-streamed or videoed and played on the cable channel? Can relevant documents be posted on the municipality’s website so that persons not in attendance can follow along? Is there a way to use the internet, skype, Facebook live or other streaming service, to allow the public access to the meeting? Has the room in which the meeting is to take place been cleaned and disinfected? Does the municipality have tissues and disinfectant wipes available? Will the meeting notice remind people to stay home if they are sick, exposed to COVID-19, or recently been to a Level III travel warning country?

Also, please note the following:

1. **Public Meeting:** The OML allows for “emergency” meetings that do not comply with the strict notice and posting requirements that otherwise apply to meetings of public bodies. An “emergency” is defined under the OML as “a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.” G.L. c.30A, §18. It is reasonably foreseeable that you may be faced

with a situation calling for an emergency meeting of a public body (such as to determine any necessary local response to a presumed positive or confirmed case of COVID-19 within your community, decide the need for government closures, and/or to exercise emergency powers). In these types of situations, a public body may meet with less than 48 hours' advance notice and posting of the agenda, and in our opinion, may "meet" via telephone where in person attendance is impossible or ill-advised (particularly where a member or members of the public body have been diagnosed with COVID-19 or been exposed to someone so diagnosed). In any event, however, the standard "rules" with respect to emergency meetings still apply – comply with the law to the extent possible. For example, if possible, post the meeting as soon as is reasonable; meet in a public place where the public has access, if possible; take detailed minutes, including taking and recording a roll call on all votes; and, later, ratify, validate and confirm any actions taken at an emergency meeting, at the next-regularly scheduled meeting by including an item on the agenda for such purposes

2. **Public Hearing:** A public hearing is subject to different laws, case law and substantive considerations, in addition to OML requirements. Once notice of a public hearing has been published or provided in accordance with the underlying statutory scheme, cancellation of that hearing can trigger the requirement to re-advertise or re-publish the hearing notice, may require that new notifications to abutters or other parties in interest be mailed (depending upon the applicable statutory requirements), and importantly, may result in a constructive grant or approval, where the public body does not act within statutorily-established deadlines.

Where circumstances dictate that a public hearing ought not to go forward because of weather or other emergency, we typically suggest that the Town Hall or other meeting location be opened for such purposes (where possible), and that a quorum of the board or committee appear at the stated time and place solely for the purpose of opening the hearing and continuing it to a stated time, date and place that also complies with the OML (i.e., at least 48 hours later, not counting weekends and holidays, so that notice under the OML can be posted). If it is not possible for a quorum to meet, we typically advise that less than a quorum could appear for such purposes. We generally take the position that, as a matter of parliamentary procedure, the only action a public body may take when less than a quorum is present is to continue a meeting/hearing to a different time, date and place. Even so, it is always possible that such action could be challenged, and we strongly recommend obtaining the written assent of the applicant to any continuation of a public hearing, whenever possible.

School Closures: In connection with the Governor's declaration of a State of Emergency, the Department of Elementary and Secondary Education ("DESE") has issued guidance relative to school closures, found at <http://www.doe.mass.edu/sfs/emergencyplan/covid19.html>. The guidance provides for relief from certain attendance and school year requirements. We understand that DESE will continue to provide updated information as the situation develops.

Employment Impacts of Government Closures, and Mandated vs. Voluntary Quarantines of Personnel: There are numerous personnel-related questions that arise in the event of a department, building, or government closure, and mandatory or voluntary quarantines. Because of significant local variations in terms of employee demographics, unionized vs. nonunionized staff, and locally-adopted policies, procedures and by-laws, the answers to these questions may not necessarily be the same from community to community. As a result, you are encouraged to contact your Labor Counsel for specific advice as to how to handle the employment impacts of governmental closures and quarantines. We are developing a list of employment-related "Frequently Asked Questions (FAQ)," and we will inform you when that FAQ is available.

Annual Budgets: In the unlikely event that budgets cannot be voted by June 30, 2020, be aware of the following. General Laws c.43, §32, addressing CITY budgets provides, in relevant part, “Notwithstanding any provisions of this section to the contrary, the mayor may submit to the city council a continuing appropriation budget for said city on a month by month basis for a period not to exceed three months if said city has not approved an operating budget for the fiscal year because of circumstances beyond its control.” Similarly, in accord with G.L. c.71, §16B, although preceded by certain other requirements, it appears that there is some precedent for DESE to “certify an amount sufficient for the operation of the district and order the appropriation thereof in an amount not less than 1/12 of the total budget approved by the region in the most recent fiscal year. Similar sums shall be certified and appropriated for each successive month to insure the continued provision of services by the district until such time as a budget is adopted and approved by the regional committee and member towns in the manner otherwise provided herein.” As of this writing, there is no similar statutory authority granted for TOWNS to establish a 1/12 budget.

Access to Counsel: Finally, be aware that in the event our offices, or even our building in Boston, were closed, we will continue to be reachable, whether on our office phones or mobile phones, as well as by e-mail. Should it be needed, we will update our office line to provide dial by name instructions. As noted above, we will also continue to monitor our hotline at coronavirusinfo@k-plaw.com to provide swift answers to pressing problems. To the extent appropriate, we will try to update an FAQ on our website, posting responses to questions that would be useful for all clients.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

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Governor Baker Issues Order Temporarily Suspending Certain Provisions of the Open Meeting Law – March 13, 2020

In follow up to Wednesday's declaration of a State of Emergency, on Thursday evening Governor Baker issued an "Order Suspending Certain Provisions of the Open Meeting, G.L. c. 30A, §20." That Order, which is effective immediately and until it is rescinded or the State of Emergency is terminated, can be found [here](#).

This Order addresses one of the biggest obstacles faced by communities when determining the scope and extent of any closure of government operations in response to the COVID-19 outbreak - namely, the limitations imposed by the Open Meeting Law ("OML"), under which public bodies generally must meet in public settings, in person, and in view of the public. The Order provides much needed relief to boards, committees and commissions across the state faced with making immediate, critical decisions to ensure continued functioning of government at a time when federal and state officials and agencies are urging "social distancing" and avoidance of large gatherings to reduce possible transmission of the virus.

The Order makes the following important changes:

- Public bodies otherwise governed by the OML are temporarily relieved from the requirement that meetings be held in public places, open and physically accessible to the public, so long as measures are taken to ensure public access to the bodies' deliberations "through adequate, alternative means."
- Where a municipal public body is unable to provide alternative means of public access enabling the public to watch a meeting in real time, due to economic hardship and "despite best efforts", that public body may instead, as soon as it is able following the meeting, post on the municipal website "a full and complete transcript, recording, or other comprehensive record of the proceedings".
- All members of a public body may participate in public meetings by remote or virtual means, and the ability to utilize remote participation does not depend upon any previous decision by the municipality's chief executive officer to authorize remote participation generally.

The Order defines "adequate, alternative means of public access" as "measures that provide transparency and permit timely and effective public access to the deliberations of the public body," including but not limited to:

- Telephone, internet, or satellite enabled audio or video conferencing
- Any other technology that enables the public to follow the meeting in real time

Thus, meetings of public bodies may now be conducted via teleconference, "Skype," on-line meeting services (i.e., GoToMeeting or WebEx), and social media or other internet streaming services, so long as the public is

provided an avenue to watch or listen to the proceedings “live” (unless, as noted above, a municipal public body is unable to provide this alternative means of public access, due to economic hardship and “despite best efforts”). Importantly, any person who is entitled or required to appear before the public body must be allowed to also participate remotely. These alternative means of access must be offered at no charge to the public.

Notably, in cases of public hearings required by state or local law or regulation, where the rights of the public to attend, participate, and be heard, are implicated, any “alternative means of public access” **must** provide the applicants and/or the applicants’ representative(s) and the public with the ability to participate remotely as well. You may wish to consult our client alert issued on Wednesday, available [here](#), for further explanation of the distinction between public hearings and public meetings.

In light of the challenges for holding a public hearing, however, we continue to recommend that extensions be requested, and confirmed in writing, for matters with pending statutory or regulatory deadlines. Each licensing and permitting authority should assess all ongoing matters to identify those that may require extensions of time in light of pending deadlines. Given the information of which we are presently aware, and the rapidly changing nature of the response to this virus, we suggest you request 90-day extensions of time in all instances. In the event such extensions are not necessary or agreed to by the applicant, you will have to reassess an appropriate mechanism for holding necessary public hearings.

All other requirements of the OML remain in effect. Thus, meetings of public bodies must still be posted at least 48 hours in advance, not counting Saturdays, Sundays and legal holidays, unless the conditions for an “emergency” meeting under the OML are met. Minutes must still be taken, and approved in accordance with state requirements. All other rules governing “remote participation” apply, aside from the requirement that a quorum of the public body (including the chair or acting chair for the meeting) be physically present in the meeting location. Even with the relief provided by the Governor’s Order, we still advise compliance with the OML to the greatest extent possible, and as feasible and appropriate under the particular factual circumstances at issue.

We will shortly post on our website guidance concerning the process for providing notice and implementation of remote participation under these circumstances.

Finally, because Town Meetings are not covered by the OML, this Executive Order suspending certain provisions of the OML does not impact Town Meeting in any way.

We will continue to keep you updated on developments in the face of this rapidly-evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary, land use, or labor contact, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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