

MINUTES
VILLAGE OF ELBURN PLANNING COMMISSION/ZONING BOARD OF APPEALS
SEPTEMBER 4, 2019

Members Present: Commissioners Ryan Anderson, Rob Houtz, Carolyn Jansons, Chris Mulvihill, Brian Techter, Chairman Jeff Metcalf

Members Absent: Chris Gould

Staff Members Present: Village Administrator John Nevenhoven, Building Commissioner Tom Brennan, Village Attorney Bill Thomas, Mayor Jeff Walter

Others Present: Residents Leroy Herra, Mr. Matthys, Hannah King, Chad Eagan; Elburn Herald Reporter Susan O'Neill; Chaz Garcia, Laura & Patrick Gampfer; Bill Robinson, Land Acquisition Manager for Lennar; Rich Olson, Planner for Gary R. Weber Associates

1. Call to Order – Chairman Metcalf called the meeting to order at 7:00 p.m.
2. Pledge of Allegiance – Chairman Metcalf led the assembly in the Pledge of Allegiance.
3. Roll Call – A roll call ensued.
4. Public Comment – None
5. Approve Minutes – A motion to approve the June 4, 2019 Planning Commission and the June 4, 2019 Tree Board minutes was made by Commissioner Jansons and seconded by Commissioner Mulvihill. The motion unanimously carried by voice vote.
6. Open the Public Hearing Regarding the Proposed Text Amendment to Allow “Adult-Use Cannabis Dispensing Organizations” as a Special Use in the B-1, B-2 and the CM Zoning Districts – A motion to open the public hearing was made by Mulvihill and seconded by Houtz. A roll call vote ensued. Ayes: Anderson, Houtz, Jansons, Mulvihill, Techter, Metcalf. Nays: None. Motion carried.
7. Public Hearing Regarding the Proposed Text Amendment to Allow “Adult-Use Cannabis Dispensing Organizations” as a Special Use in the B-1, B-2 and the CM Zoning Districts – Village Admin Nevenhoven stated the Village Board’s Committee of the Whole (COW) has discussed zoning for a cannabis dispensary as a “permitted” or “special use” in the B-1, B-2 and C-M zoning districts. The Statute allows local units of government to enact ordinances or rules not in conflict with the Act governing time, place, manner and number of cannabis business establishment operations. There are six types of businesses covered in the Cannabis Regulation and Tax Act and the Village is only considering a dispensary business at this time.

Chairman Metcalf stated this is not a public hearing to discuss whether or not you approve of the concept. The Planning Commission has been charged by the Village Board with recommending a framework that would allow such a facility with guidelines. Commissioner Jansons disagreed in that the Village has the option to prohibit such facilities or limit them further. It was clarified the Village Board has decided to allow dispensaries as a special use with restrictions. The following discussion ensued.

Commissioner Mulvihill said the Village is trying to bring in commerce. The Village does not hide bars which was illegal at one time. A business is a business and Mulvihill sees no reason why the Village would opt out. Mulvihill continued dispensaries should maintain a respectable distance from schools and felt the Village could limit the number of dispensaries in town just like liquor licenses. Perhaps the number of facilities should be based on population.

Commissioner Anderson traveled to Colorado recently and got to see firsthand where dispensaries are located in communities. Not one was on a main street, they were tucked back, were not near major stores and are very regulated. Anderson said he is in favor of this use but does not want to see in downtown Elburn. Anderson continued he does not feel the use should be allowed in B-1 zoning but is OK in B-2 and CM. The Village will be reviewing the comprehensive plan and the downtown business district and does not think this should be downtown but is OK with it being in an industrial park or near the Jewel. When Anderson spoke with Colorado representatives, they stated \$16B in revenue has been received. Colorado does not call it recreational marijuana, they call it retail marijuana.

Commissioner Techter previously lived in a town in California and there were dispensaries everywhere—even on the main street. It was odd at first but there was no crime, trouble or public consumption—patrons went inside the dispensary, got what they wanted and left. Techter agreed with eliminating dispensaries in B-1 zoning district but is in favor overall of a dispensary in town with the proper restrictions (distance from schools, etc.). Techter said he is against onsite consumption. Nevenhoven said the local municipality can decide this and added the Village Board does not want onsite consumption either.

Chairman Metcalf said he does not want a dispensary downtown either but is OK if there is one near the Jewel. Does not think it should be in a dark part of town that would create a creepy place for people to go to. Metcalf said overall, he is all for it and for free enterprise. This seems to be the direction the State and country wants to go and feels similar restrictions related to liquor should be in effect in this situation. Consumers must be 21 years of age to purchase cannabis and Metcalf said he does not see crazed people coming out of the woodwork into Elburn to purchase.

Nevenhoven reiterated there are six different types of businesses related to the Act and Elburn is only considering dispensaries. Yes, product will be delivered to the dispensary but the product will not be altered (i.e., create edibles, etc.)—this will be a storefront. Attorney Thomas said there will be some growing pains once the Act goes into effect on January 1, 2020 and added there are some “trailer bills” in the works that will be put in place in the meantime. Thomas added the analogy of a liquor license is good but not necessarily accurate in that liquor is licensed at the local level and cannabis licensing is under State control.

Commissioner Jansons said she did some research and there is so much we don't know about dispensaries and it is what we don't know that concerns her. Elburn is a small town with a small town budget and what we don't know could bankrupt us. As far as municipal resources, what if Elburn can't afford to handle the problem? Larger towns have the tax base to support. Jansons said she is 100% in favor of business in Elburn but there are other issues. 1) Dispensaries cannot use federally funded banks because the sale of marijuana is still illegal at the federal level—so this will primarily be a cash business. Cash-based business could cause issues with law enforcement. 2) How do you regulate a cash-based business in a small town? There could be a lot of cash going into pockets. 3) There is a set number of licenses available for the State. What are the odds a dispensary wants to come to Elburn? If the number of licenses are filled, the State can add more. If dispensaries make a load of money, they will want their stores on high profile corners in downtown store fronts. 4) The products sold will be packaged. We don't want to make it any easier to get cannabis in the hands of minors. Jansons said she doesn't know what we don't know about this and does not believe enough research has been conducted—especially how a dispensary will affect a small community like Elburn. Yes, Elburn wants to generate revenue but does not believe dispensaries should be allowed in B-1 or B-2 zoning districts but with the right stipulations under a special use (distance requirements from schools, daycare centers and residential), perhaps it is doable. Jansons said she would be more willing to consider in an industrial area—she does not want Elburn's downtown to be a string of bars, liquor stores and a dispensary. Elburn has a great small town feel and does not see this is the way to go. As a non-home rule municipality, Elburn does not have a lot of authority and thinks Elburn should take the authority we have seriously and determine what we want in the downtown area, areas near residential and the impact it will have on our small town in the future. Jansons said the Village could

re-visit this in the future if we don't feel comfortable voting on it now. How much of the revenue will Elburn see and is it worth exposing our children to this. If people want cannabis, they will find it in our industrial district or in other towns—a dispensary will not suffer because it is not located in downtown Elburn. Jansons continued she does not know if this is a guaranteed revenue stream and does not have enough information to know if this will benefit the Village as a whole financially or morally. Jansons said she does not think Elburn is set up for growing pains and should let other communities deal with growing pains—the State will not stop at 75 licenses and feels more research on the benefits and impact of our downtown area is needed. Jansons said she is not in favor of dispensaries overall and would only consider them dependent on restrictions.

Commissioner Houtz said Jansons made some good points. Houtz said he is very liberal and pro-business. As a country, we have lost out on the taxing benefit of marijuana and doesn't know why this wasn't taxed 30 years ago. As far as banking and a cash business, Nevenhoven stated dispensaries use credit unions which are not governed by federal law. Houtz said he does not see this as a long range problem and seems similar to liquor licenses which the Village regulates. Requiring a special use is very important because it will require all requests come to the Planning Commission and the Village Board in addition to the State. Houtz discussed tax revenue and wondered if the Village could put a tax on a permit dependent on estimated revenue. Houtz agreed there is no rush to approve this now—we can wait for a year and see how it all shakes out. Jansons added if a municipality wants to prohibit dispensaries, they must do so prior to the end of the year—if it is not prohibited now, the Village will not be able to prohibit after January 2020. Mulvihill said there are many standards in place by the State and does not foresee cash going into pockets—there will be inventory control and bookkeeping measures in place. Houtz said he feels the Village should reconsider in January 2021.

Chairman Metcalf opened the floor for public comment.

Village President Jeff Walter gave a background as to why we are here tonight. The Village of Elburn has been approached by someone who has applied for a recreational dispensary license and they need Elburn's zoning to be in place in order to accommodate the use. The Village Board has agreed to allow this use and is asking the Planning Commission for their input on restrictions. Someone who has gone to a dispensary was consulted and they spoke about how controlled it is—only a certain number of customers allowed in the store at a time and the staff is very knowledgeable. There will be no minors sneaking in. Dispensary companies have big money invested and they will not want their business or license at jeopardy. The Village currently does underage liquor checks throughout the year and the same will happen with dispensaries. Minors are already purchasing illegally on street corners whereas the most likely customer for a dispensary is an older person who does not want to purchase product on a street corner. The Village of Elburn will get a percentage of the tax revenue and additional from the State toward police funding (via grants, etc.). The Village Board is interested in restrictions the Planning Commission recommends. The Village Board has already made their decision and they are in favor of it. As of now, the Board is only hearing positive things from the community that this is an opportunity for additional revenue and it's coming.

Commissioner Jansons asked who controls the environment inside the dispensary and it was answered the dispensary hires their own private (armed) security. In addition, it was stated all patron IDs will be checked (twice) and scanned. Jansons inquired if there are studies about smaller communities with dispensaries and inquired if we do studies before stop lights are put up, why we wouldn't want evidence of what this will cost the municipality. Jansons continued it is important the Planning Commission understand that once the use is approved as a special use in our Zoning Ordinance, the Planning Commission will not be at liberty to recommend denial of a petition just because residents are in opposition—if the petition meets the qualifications and restrictions, it doesn't necessarily prohibit the Planning Commission from denying a request. Nevenhoven said in Elburn's general area, there are medical marijuana dispensaries—one in North Aurora across from the Police Department and one on east side of St. Charles. Nevenhoven spoke to village managers for both municipalities. North Aurora has had no incidents and St. Charles had one which was dealt with by the police department. When asked if there will be a difference between medicinal and recreational

dispensaries, Nevenhoven said existing medical marijuana dispensaries will have first dibs for a recreational dispensary. The major difference is you don't need a doctor prescription for the recreational marijuana.

Richard Matthys, 430 E Reader Street – Commended the Village for getting ahead of this because there is a lot of unknown. Matthys said dispensaries use crypto currencies as well. His elderly aunt uses medical marijuana and the procedure at the dispensary is very secure. Matthys suggested considering a dispensary more in the light of a liquor store than a bar whereas the product is not consumed at the facility—it is purchased and taken home. Considering limited parking in downtown Elburn, patrons of a liquor store or dispensary would be quick turnover whereas patrons at a bar could be parked for hours. Before condemning downtown as a possibility, Matthys said there are depressed communities elsewhere where downtowns have died and only have bars in their downtown and encouraged the Village to look at the big picture.

Hannah King, 110 Read Street – Stated she is only 19 years old but has seen a lot come and go in Elburn's downtown area. Elburn holds up a standard and encouraged the Village to keep Elburn's standards high and not allow dispensaries in the downtown area. She continued Elburn's downtown has grown (i.e., Corner Grind, etc.) and we have so much to be proud of.

8. Close the Public Hearing Regarding the Proposed Text Amendment to Allow "Adult-Use Cannabis Dispensing Organizations" as a Special Use in the B-1, B-2 and the CM Zoning Districts – A motion to close the public hearing was made by Mulvihill and seconded by Anderson. A roll call vote ensued. Ayes: Anderson, Houtz, Jansons, Mulvihill, Techter, Metcalf. Nays: None. Motion carried.

The following discussion ensued as far as the Planning Commission's recommendations to the Village Board.

- As far as zoning, there was further discussion whether or not dispensaries should or should not be allowed in B-1, B-2 and C-M zoning. Commissioner Mulvihill recommends dispensaries be allowed in all three zoning districts and thinks it will fit in the downtown just fine. While typically users of marijuana are not violent, sometimes overly imbibed patrons of bars are.
- When asked if a special zoning classification for a dispensary should be created in the Village Zoning Ordinance, Attorney Thomas said it is possible to fit it into the current Zoning Ordinance—there is no need to create a new district. Thomas continued as this applies to Elburn, we believe the existing zoning districts allow for this as a special use. Pharmacies are allowed in B-1 and B-2 districts. The Village Board will ultimately decide what zoning districts will allow dispensaries and Mayor Walter said the Board will be told some Planning Commission members do not agree with B-1 zoning.
- It was stated the direction from the Village Board is for the Planning Commission to recommend restrictions for a special use under the B-1, B-2 and C-M zoning districts; and we have to stop chasing businesses out of town.
- Commissioner Jansons said in addition to B-1 zoning, she does not believe dispensaries should be allowed in B-2 zoning. Can restrictions for a special use be crafted to allow denial if it doesn't fit with the character of the neighborhood? C-M is not as much of a concern but some C-M areas are close to schools and neighborhoods. The State allows for onsite consumption, does Elburn want to allow this? The Village liquor ordinance requires 100' from schools—is this far enough from schools and our children?
- Commissioner Anderson read aloud requirements for Dillon, Colorado for reference.
- Discussion ensued as far as required distance from schools and childcare facilities. If 1500' (the same distance requirement between dispensaries), it will remove the Jewel area as a possibility.
- Jansons expressed concern with potential stress on resources in the community. She agreed that typically pot smokers are not violent however, we don't really know the impact it will have on the community.

- Chairman Metcalf said logistically, dispensaries will have their own security and patrons will be required to present IDs (unlike liquor stores) to enter the store. Metcalf continued the Village Board has already decided dispensaries will be allowed in town and is looking for restrictions from the Planning Commission on this newly regulated business. Metcalf suggested mirroring the Village's liquor ordinance requiring 100' distance from schools and child daycare facilities. Further discussion ensued as to the appropriate distance requirements from schools and child daycare facilities. Some industrial areas are close to John Stewart Elementary and some B-2 areas are close to residential.
- Commissioner Jansons agreed Elburn needs revenue and new businesses and does not understand why we are rushing into this when we haven't performed proper research. Mayor Walter said there is an interested party looking at a location in downtown Elburn due to security (the building will allow vehicles to enter the building and close the overhead door). Jansons said there must be smaller municipalities in other states we could research as far as their restrictions on distance from schools and child daycares, etc. We have ideas of what might be reasonable, but we don't know what works in practice. Mayor Walter said the Village Board is looking for input from the Planning Commission who may postpone recommendations until a future meeting if you like. Walter said most likely, conducting research will find there will be as many rules as there are towns—the Village Board is asking what is appropriate for Elburn.
- Further discussion ensued regarding the appropriate distance from a schools and child daycare facilities and residential. A few distances were suggested: 300', 100'. It was suggested perhaps a decision should be delayed in order to determine various distances from schools, child daycare centers and residential from the various zoning classifications being considered. Mayor Walter stated the Village has denied liquor licenses for being too close to a daycare facility. Commissioner Jansons made a motion to table in order to allow more research. Chairman Metcalf said he is not interested in doing a lot of research on other communities—more importantly, he is concerned about what these numbers will mean in our community. Uses change over time—for example, a preschool facility recently moved from one location to another in town—the distance should be reasonable enough to allow for change. Some Commissioners felt a decision should be made this evening—the Village Board has already stated they are in support of this use and is looking to the Commission to determine restrictions. Some Commissioners felt 300' from schools and child daycare facilities is overkill and there was agreement that 150' is a good compromise.
- When asked for their opinion for on-site consumption, Commissioners said no.
- When asked about the number of facilities allowed in town, the Commissioners considered if they wanted to mirror the State's 1500' requirement between facilities. Commissioner Houtz suggested a restriction based on population of 10,000 or fraction thereof. There was overall agreement by the Commissioners with the 10,000 population restriction.
- It was asked how the Village Sign Ordinance might be affected. In some communities, use of a marijuana leaf on signs and packaging is prohibited. Due to the Supreme Court ruling regarding signage, Attorney Thomas felt hesitant to restrict a leaf on a sign in that it may be considered content.

9. Vote on the Finding of Facts – Chairman Metcalf read aloud the findings of fact as follows:

VILLAGE OF ELBURN
 Zoning Amendment Standards
 Village of Elburn Zoning Code, Adopted 1993
 Section 15.12 F. Standards

The Village Board may, after receiving a recommendation from the Planning Commission in the manner hereinafter set forth, approve, approve with conditions, or deny a text amendment, pursuant to the procedures set forth herein. (Ord 2011-12)

The Planning Commission shall not recommend the approval of an amendment to alter the zoning district boundary lines, unless it shall determine, after specifying reasons for or against, based upon the evidence presented to the Planning Commission in each specific case, that:

- 1) The amendment promotes the public health, safety, comfort, convenience and general welfare of the Village, and complies with the policies and Comprehensive Land Use Plan and other official plans of the Village of Elburn. A roll call vote ensued. Ayes: Anderson, Houtz, Mulvihill, Techter, Metcalf. Nays: Jansons. Carried.
- 2) The trend of development in the area of the subject property is consistent with the requested amendment. A roll call vote ensued. Ayes: Anderson, Houtz, Jansons, Mulvihill, Techter, Metcalf. Nays: None. Carried.
- 3) The requested zoning permits uses which are more suitable than the uses permitted under the existing zoning classification. A roll call vote ensued. Ayes: Anderson, Houtz, Mulvihill, Techter, Metcalf. Nays: Jansons. Carried.
- 4) The amendment, if granted, will not alter the essential character of the neighborhood and will not be substantial detriment to adjacent property. A roll call vote ensued. Ayes: Anderson, Houtz, Mulvihill, Techter, Metcalf. Nays: Jansons. Carried.

10. Recommendation to the Village Board Regarding the Proposed Text Amendment to Allow "Adult-Use Cannabis Dispensing Organizations" as a Special Use in the B-1, B-2 and the CM Zoning Districts – A motion to recommend approval of the following restrictions was made by Mulvihill and seconded by Techter:

- a. Minimum 150' distance from schools and daycare facilities
- b. No onsite consumption
- c. Number of dispensary locations limited to one per 10,000 population or fraction thereof
- d. Hours of operation will only be 6am-9pm 7 days/week

A roll call vote ensued. Ayes: Anderson, Houtz, Mulvihill, Techter, Metcalf. Nays: Jansons. Motion carried.

At 8:53pm, Chairman Metcalf called for a five minute break. The meeting was called to order by Chairman Metcalf at 8:58pm.

11. Discuss the Proposed Lennar Homes Development – Bill Robinson, Land Acquisition Manager for Lennar, and Rich Olson, Planner for Gary R. Weber Assoc. (consultant for Lennar) were present. Nevenhoven stated Lennar has had several meetings with Village staff. They are requesting annexation of the subject property and a PUD development. The purpose this evening is a pre-application workshop and is the Planning Commission's opportunity to review, make comments, etc. Lennar will incorporate the comments for annexation and PUD approval.

Robinson stated the subject property is known as the "old Meredith Farm" and is just north of the Prairie Valley North Subdivision. It consists of approximately 75 acres and the request is for 154 units consisting of two products—Pod 2 to the north is age targeted with cottage homes and the southern portion of the property is an R-1 single family product similar to housing near Walgreens. Robinson continued the Village's Comprehensive Plan calls for residential (R-1) in this vicinity and the Comprehensive Plan also calls for housing diversity.

Olson said Lennar would like to bring a nice development to Elburn. The drainage of the property was highlighted along with storm water retention facilities on the property. The main entrance to the development will be off Route 47 at the highpoint of the road. Landscaping and entry features will be included and the entrance will lead to a central open space feature with a proposed tot lot. Buffering will be installed along Route 47.

Regarding access on Route 47, turn lanes will be required by IDOT. Further discussion ensued as to drainage to the west of the subject property and the Virgil Drainage Ditch. Robinson stated Lennar is very familiar with drainage in the vicinity and added water cannot be released from the subject property any faster than it currently is and explained plans for wetland/prairies as well as working with FEMA for detention and storage areas. In addition, Robinson has been working with Village engineers. Olson explained once developed, the runoff will be detained and released at a slower rate.

When asked about capacity at the WWTP, Nevenhoven replied it is at less than half capacity.

Commissioner Anderson expressed concern with 6' side lot setbacks and asked if they can be increased to 10-12'. Robinson explained this will be a PUD and setbacks are not the same as conventional zoning. Robinson explained the original request was for 210 units but due to the flooding issue, was decreased to 154 lots. Increasing the setbacks will result in fewer lots. Anderson noted every standard within the development is nonconforming with the Village. Olson stated the developer is not requesting traditional zoning, they are pursuing a PUD with smaller products. The standards are what fits for this particular development rather than traditional zoning products.

Robinson described the type of product that will be offered on the site. For the age targeted, there will be ranch/cottage homes (some as small as 1300 SF) with snow removal and lawn cutting managed by the HOA. There will be a park and open space within the development as well as pathways which will stub at the property line allowing future connectivity.

Chairman Metcalf mentioned impact fees the developer will be responsible for and Robinson acknowledged and agreed. Metcalf asked what Lennar is bringing to Elburn. Olson stated Lennar is bringing a new product (adult active). Lennar has been introducing this product in other communities for some time and there is a desire for it. Lennar can get the development done quickly when offering the two products. Robinson continued Lennar will remain in town with future developments—when Lennar is in a community they like, they remain and move forward as part of the community and will be here for the long haul. Lennar is the largest builder in the nation. Metcalf stated it appears Lennar has confidence in the economy. Robinson estimated full buildout at no more than 3 years. Lennar will start looking for add-on property to continue development and typically rolls one unit into another with expansion around the subject property.

There was overall consensus from the Commissioners for the development to move forward.

12. Other Business – None.

13. Adjourn – Commissioner Houtz motioned to adjourn the meeting at 9:34 p.m. with Commissioner Mulvihill seconding the motion. The motion passed by a unanimous voice vote.

Respectfully Submitted,



Diane McQuilkin
Village Clerk