

**St. George Planning Board  
St. George Town Office  
October 13, 2020 - 8 p.m.**

The Planning Board meeting was called to order at 8:00 p.m. via Zoom. Members present were: Anne Cox, Chair; Ray Emerson, Mary K. Hewlett, Michael Jordan, and Alan Letourneau. (Jane Brown was absent.) Also present: CEO Terry Brackett, Richard Bates, Kyle Murdock, John Murdock, Mark Munger and Kate Bourne, Ellen Sudow, Joe Higdon, Holly Carlson, J. Dayne Lamb, Anne Cogger, Paula Rytke, Jeanette Lombardo, Scott Lord, Kate Johanson, Malcolm Beam, and Judy Smith.

**Quorum:** Ray Emerson was elevated to voting status prior to the Public Hearings. A quorum was present.

**Conflict of Interest:** None.

**Adjustments to Agenda:** (Chair Cox stated she had updated CEO Brackett's agenda and emailed it to the Planning Board.) The following minutes were not reviewed by the Planning Board as they were received late and they did not have sufficient time to review them.

- The September 22, 2020 Planning Board Minutes
- The October 5, 2020 on-site Inspection Minutes for 56 Mussel Farm Road
- The October 12, 2020, on-site Inspection Minutes for 87 Haupt Road

**Change of Use Application:**

Midcoast Marijuana Company, Kyle Murdock, 56 Mussel Farm Road – The applicant was present. The application is to utilize an unused portion of the existing structure to operate an agricultural business cultivating medical marijuana, located at 56 Mussel Farm Road. Existing Use: Commercial Fishing and Processing. Shoreland Zone District is CFMA. Floodplain Designation is AE-12. An on-site inspection was held on October 5, 2020 and a Public Hearing was held via Zoom on October 13, 2020 at 7:02 p.m.

Chair Cox explained that the Planning Board has not accepted the application as complete. She stated one issue Mr. Murdock argues is that according to the town's Land Use Chart in the Shoreland Zoning Ordinance, agriculture is allowed in this district, and therefore, he should be allowed to operate his business. Chair Cox stated, "But the Land Use Chart also states that in this particular district, the only commercial activities allowed are functionally water dependent uses and uses accessory to such water dependent uses."

Jordan, "I spent a good deal of time over the last three weeks looking at this question and reviewing the ordinances with that question in mind. Just for background, when this was last decided by the Board of Appeals, their choice was that the use was either agricultural or industrial. They came down on the side of it being industrial. From the minutes of that meeting and the Findings in the record decision, it seems to me their rationale was that there was a lot of intensive management over the lighting and a lot of use of electricity. That is what made them decide by the divided vote that it was industrial and not agricultural.

“Now, my reading is a little different from that. The idea of an industrial use is one that takes something and turns it into an end product which is not what you started out with. Like a bakery uses flour and butter, sugar and ends up with a cake, this operation as described in the application would take a plant and end up with a plant and the product would be sold is a part of that plant and the only thing that has happened to it in the meantime is that it has grown, flowering, it’s taken off the rest of the plant, it’s dried and then put into a bag and sold to somebody. It is true this uses a lot of electricity, and it is true that it uses a lot of plant resources and many artificial ways of producing it; but that is true of a lot of agriculture these days. This is clearly not a saltwater farm, but a lot of agriculture happens with big combines. I come down that I think the Board of Appeals got that issue wrong. But I think they failed to consider another issue.”

Jordan asked the Planning Board members to refer to page 15 in the Shoreland Zoning Ordinance and review Table 1. Land Uses.

Jordan, “In that Table, you will see Item 13 is Agriculture and in every district in the Shoreland Zone the answer to that is yes, agriculture is allowed. Then go to Item 15h. It talks about Industrial structures and that is where the Board of Appeals progressed. If you go 15d., that is about Commercial uses. It seems to me to be fairly clear that this agricultural use is Commercial. It is a money-making enterprise. It is not a family farm. It is not a home occupation. It is for money making purposes. If you look the requirements there in Commercial Fisheries and Maritime Activities, third column, the answer is that it requires Planning Board approval with a reference to Note 5. That is the same note that the Board of Appeals considered in the Industrial line item and if you turn the page to Note 5, it says that it is permitted only if it is a functionally water-dependent use.

“Now, when the Board of Appeals was considering this as an Industrial use which I don’t think it is, they decided it is not functionally water-dependent. I would look at it as a Commercial use and I think it is also not functionally water-dependent. It needs water but it doesn’t need water from the body of water that makes this the Shoreland Zone. So, to me that is a problem. I spent several hours looking at everything I could find in the ordinances and I didn’t come up with anything that made me feel differently.

“If you want to look at the Site Plan Review Ordinance, early in Section III on the first written page after the Table of Contents there is an Applicability Section. For the most part, the Site Plan Review Ordinance applies to commercial activities, but I think it is pretty clear from Section III that it does not apply to agricultural uses. I think we are not under the Site Plan Review Ordinance, but I think we are under the Shoreland Zoning Ordinance. My reading of it is that we need to take it through the requirements of Section 16(D) which deals with water pollution and similar topics. It also refers you back to Section 15 which has a lot that doesn’t apply but some that would. That is the framework in which we should be reviewing this.

“I am just dropping this on everybody pretty much for the first time because we are not allowed to talk to the applicant in private. I think we all need to think it out independently and wait and see what we think. I think that Mr. Murdock should have the opportunity to weigh in on this and tell the Board why I am all wet, wrong.”

Chair Cox thanked Jordan and stated that was along her line of thinking. She stated, "This is a commercial activity. Does he intend to make some money, and does it need to be located by the body of water that it is located by? We as a town, established this as a Commercial Fishing District, and in our Comprehensive Plan have said the working waterfront in our Commercial Fishing Districts are of primary importance. That is a big issue in terms of long-range planning. In terms of process, I do think we need to figure out what to do." Chair Cox explained that the Board did not have a completed application and they needed more information. Because of this, she did not think the Planning Board could make a decision to accept the application it as complete.

Chair Cox referred Murdock to page 50 of the Shoreland Zoning Ordinance, points 1-9 and explained that the Planning Board would be reviewing these with him.

Hewlett, "I reached the same conclusion that Jordan did. I was trying to figure out how is water used in this facility and if there is a saltwater use, but from what Murdock says it is fresh water that is used to grow these plants. The other thought I had was the town's Comprehensive Plan. Commercial Fisheries and Marine Activities is very strong throughout the Comp Plan report and this happens to be one of the places that is zoned for such an activity. I also heard John Murdock say that he has been trying to sell the facility for five years and no one has actively looked. I have no idea how you market this property, but I do not see how a medical marijuana facility needs to be in this building. Truthfully, I do not think we need to keep dragging this out."

Emerson stated he was willing to listen to the information presented.

Letourneau, "I am leaning to the argument that this is not a functionally water-dependent use as intended for the coastal marine property and maybe inclined to object to the proposal on that basis."

Chair Cox asked Kyle Murdock if he wanted to respond to those statements.

Kyle Murdock, "I too did a lot of research around this because it is a convoluted land use issue. The ordinance does make things a little confusing at times, at least for me. But I want to, as the Board mulls it over, draw your attention to the definition section of the Shoreland Zone Ordinance where agriculture is defined as the production, keeping or maintenance for sale or lease of plants or animals. So, it becomes pretty clear right in the first line of that definition, at least for me.

"Now what you are talking about is agriculture as a business not home gardening. This is the raising of plants for sale or lease. It is an inherently money making endeavor and if you scroll down to Commercial Use which is defined as the use of lands, buildings or structures...the intent of which and result of which activity is the production of income from the buying and selling of goods. So, that seems to me to be more like a store front where you purchase your inventory and then sell it at a mark-up and that is how you make your money. I totally agree with Michael. The industrial. I came to the same conclusion when I cross referenced it with Federal definitions and it just brings me back to agriculture. Where that is in the supply chain, is if you are talking

about growing a plant and selling it or its products then you are talking about an agricultural use. In one of the documents I sent you, I wrote out quite a bit of the research that I went through to kind of reach this conclusion, if that is of any help. I hope it is. I'd put a lot of effort into it."

Jordan, "I read it, and thank you. It was helpful."

Murdock, "Thank you. I just wanted those points to be in your mind as you consider your final decision on this."

Chair Cox, "I do agree that this is not entirely clear but where I come down is it says, we've got two things. Agriculture is permitted and Commercial must be water-dependent. I see that as an 'and' and not an 'or' in this case."

Hewlett, "I do think that Note 5 is an important note."

Chair Cox, "I see that tied in with our Comprehensive Plan really wanting us to keep the working waterfront for entirely for the working waterfront and preserve that."

Murdock, "I do agree that the business is not functionally water-dependent. I do have some patients on offshore islands that I may, at some point, make use of the waterfront access to dispense to them. It may be a point of access for me to get them their medication, but I don't really see that as a functional part of the business, so I don't think in of itself makes the business functionally water-dependent. But I still feel pretty strongly that it's not commercial because I am not buying product exclusively from other growers and having like a store front for people to come and buy that product. I am exclusively growing and exporting the products that I grow which makes it agriculture, in my mind, according to the definitions in the Shoreland Zone Ordinance."

Chair Cox, "Are you not buying your seed, starter plant, your soil material and whatever fertilizer that you will use? All of those things?"

Murdock, "I am but I don't sell those things. I only sell the products from the plants that I grow. That is my use for the property; raising these plants for which I am going to sell my products."

Jordan, "That is kind of a new definition. What is commercial? I always thought that when I was practicing law, I was engaging in a commercial activity because I sold my services. I didn't buy services and resell them. I bought office space, paper, and I sold my services."

Murdock, "That is an interesting point. I encountered a similar case example in my research. Auto mechanics, who although they might seem to fall under an industrial use because they are assembling something that they are commercial because what they are essentially selling is their labor. But I am not really selling my labor, I am selling a plant product that I have through my labor, grown. The same thing if I filled that building with chickens and raised eggs, certainly it would be my labor of feeding and watering those chickens and collecting the eggs everyday and packaging them but at the strictest definition of it, I am raising animals to sell their products. I've got selling my services of raising someone else's chickens, for instance."

Jordan, "You are buying chickens, but you are not selling chickens. You are selling eggs. Right? That sounds commercial. That is buying and selling."

"Anyway, that is the whole thing. We may need just to give this a bit more thought. This is the first time this idea been exposed to the Board, and I think it would be unfair to Kyle to not give him a better chance to respond. And for the rest of us to think about it more because it would be fair. Also, I do not think we have anything we can act on tonight."

"You said a couple of times Anne, 'We don't think the application is quite complete.' If the Board were to differ from my conclusion about this, then we would have to go through the points in Section 16 and that would require us, I think, to get some more information. One of the biggest issues I've heard tonight is discharge of wastewater. So, what do we need to satisfy ourselves that this requirement in Section 16(D) is met? Would we not be doing damage to the water? We have heard what Kyle had to say but with all due respect, he is not a geologist or a hydrologist. What do we know about runoff?"

Chair Cox, "That is exactly where I was going given the fact that we are on granite. First, the numbers have changed in terms of the amount. What exact amount of fertilizer would there be spread given one level of production and then another level of production because you have talked from having 12 plants that you can do up to 30 plants. That is a big change. So, what are the exact numbers that you expect?" Chair Cox stated that to be satisfied, she would like to have an engineer discuss the amounts of nutrients in fertilizers, such as phosphorus or nitrogen. She asked, "How would this kind of fertilizer behave given the geology in this manner? If it wouldn't be a problem, it wouldn't be a problem. If it would be a problem, it would. I think we need to know very clearly. That is the one area an expert is needed in order for this to be a complete application."

Brackett, "He keeps talking about fertilizer, but he doesn't tell us what the fertilizer is."

Chair Cox, "That was my question. Phosphorus, nitrogen? The levels and different types. So for me to begin to be able to accept this as complete, I would like to have not just verbal numbers, but actually as we'd asked in our previous meeting, some bullet points of what exactly is your plan. What exactly is your plan for developing this?"

Jordan, "I think this evening and at the on-site, I heard two different numbers for the wastewater amounts. One was 100 gallons a week and the other was 10 gallons a week unless I didn't hear that right."

Chair Cox, "I made a note of that. There are three different levels of growing and three different rooms you were talking about. Is it just 12 plants that are going to be in one room and they are going to be moved, the same 12 to another (room)? Are you going to be starting 12 more and so you will really have 36 plants growing at a time but only harvesting 12 at the time? I would like to know specifically if we are going to fully explore this, exactly what your plan is and how many plants and the level of waste. I think to help you with all of these issues, if you do look at

those nine points on page 50 of the Shoreland Zoning Ordinance, you will get a clear idea of what we need to look at.”

Chair Cox asked the Board if the application should be tabled and taken up in two weeks which would allow Murdock more time to gather his information. She asked Murdock if he could provide the Board with concrete and clear information on his proposal.

K. Murdock, “Yes. I think that I can rewrite anything I’ve already submitted and give you a much more concrete idea of how the scalability of the business will affect the wastewater because I realize I probably created some questions around that; and cover all these nine points, in a clear, concise with a heading.”

Chair Cox, “Basically, what is your plan and take us through the amounts of material.” She asked Murdock to submit the information in writing by October 20th.

K. Murdock, “I will endeavor for that. Finding an environmental engineer to weigh in on this is probably going to be more time consuming, so maybe I can put in a contingency such as the wastewater would not be done until we had a plan signed off on by an environmental engineer.”

Chair Cox explained to Murdock that the Planning Board wants a clear business plan, i.e., this is the plan; this is how it will happen; and amounts.

The Murdock application was continued to the October 27, 2020 Planning Board meeting.

There was no further business to come before the Board. On a motion by Jordan, seconded by Letourneau, it was voted 5-0 to adjourn the meeting at 8:33 p.m.

Respectfully submitted,

Marguerite R. Wilson  
Planning Board Recording Secretary