

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
APRIL 5, 2021**

Mr. Franko called the Regular Meeting of the Planning Board to order at 7:30 P.M.

Adequate notice of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2021, and January, 2022 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy was filed with the Municipal Clerk and a copy was placed on the bulletin board in the main hallway of the Municipal Building.

Answering present to the roll call were Mr. Franko, Mr. Nelson, Mrs. Ozdemir, Mrs. Abbott, Mrs. Ewald, Mr. Hoffmann, Mrs. Ness and Mr. Kahn.

Mr. Coviello arrived a couple minutes late. Mr. Choi was absent.

Also present were Township Planner Frank Banisch, Board Engineer John Ruschke and Attorney John Kaplan in place of Board Attorney Steve Warner.

Approval of Minutes

Mr. Nelson moved to approve the minutes of the February 22, 2021 meeting. Mrs. Ewald seconded the motion, which carried unanimously.

Announcements

Mr. Franko announced that Board Manager Kathleen DeRosa has resigned and taken a job with another municipality, and Kali Tsimboukis has returned from retirement as interim Board Manager. Mr. Franko also reported that Salil Sheth has resigned from the Planning Board due to increased work responsibilities. Mr. Franko further noted that Attorney John Kaplan is attending the meeting in place of Board Attorney Steve Warner, and Mr. Kaplan has recently joined Ventura, Miesowitz, Keough & Warner, P.C. as a senior associate.

Master Plan Consistency Review – Ordinance 2021-08

Mr. Franko said that the Planning Board has been tasked to perform a Master Plan Consistency Review on Ordinance 2021-08 which addresses operation of business related to cannabis.

Mr. Banisch was sworn in to give testimony. Mr. Banisch said that the Township Committee adopted an ordinance in 2018 to prohibit cultivation, manufacture, distribution and sale of cannabis in the Township. Due to recent State Legislation, the Township Committee has introduced an ordinance to exercise the “opt-out” option to disallow cannabis cultivation, production, or manufacturing facilities, testing facilities and retail stores in all zones the Township. Mr. Banisch said that the option to opt out allows municipalities time to assess the

impact of the legalization of cannabis. He also said that municipalities are disallowed from prohibiting delivery of cannabis products from businesses in municipalities that have not prohibited retail sale of cannabis.

Mr. Banisch explained the nuance of finding an ordinance to be not inconsistent with the Master Plan rather than finding an ordinance to be consistent.

Mr. Banisch said that in the 1999 draft of the Master Plan, there was an objective of monitoring planning activities at the State and County level that would impact local planning and development. He said that the State legislation allows municipalities to monitor the impact of legalized cannabis before allowing it as a permitted or conditional use. Mr. Banisch also said that one of the goals of the Master Land Use Law is to promote the health, safety, morals and general welfare. He further said that the 2011 Land Use Plan addresses protecting and enhancing quality of life. Mr. Banisch also said that the Master Plan seeks to protect the Township's residential character from non-residential intrusions. Mr. Banisch further stated that the Open Space Plan reiterates a goal of enhancing the quality of life for all residents. He further said that while the Land Use Plan has never addressed marijuana land uses specifically, the concern for quality of life and maintaining the Township's residential character indicate that the opt-out ordinance is the appropriate first step for the Township. Mr. Banisch recommended that the Planning Board recommend to the Township Committee that Ordinance 2021-08 is not inconsistent with the Master Plan and that it be adopted.

Mrs. Ozdemir asked why delivery of cannabis and related items are not prohibited by the ordinance. Mrs. Ewald said that the new Statute does not allow municipalities to prohibit delivery of cannabis and related products. Mrs. Ozdemir said that people would still be able to buy cannabis elsewhere. Mr. Banisch said that businesses would not be able to produce or sell cannabis within the Township.

Mr. Kaplan recommended that the ordinance be deemed to be not inconsistent with the Master Plan. He also said that Ordinance 2021-08 is a land use ordinance rather than a policy statement regarding the legality of recreational use of cannabis. Mr. Franko noted that the Planning Board's review of Ordinance 2021-08 is limited to the consistency of the ordinance with the Master Plan.

Mrs. Ness said that in 2018 a medical marijuana advocate stated at a Township Committee meeting that medical marijuana can be used anywhere that tobacco products can be used, and she asked if that should be addressed. Mr. Kaplan said that would be a matter for the Township Committee to address. Mr. Hoffmann said that there is an ordinance that addresses smoking in public places. Mrs. Ewald said she has addressed similar questions to the Township Attorney and is awaiting a response.

Mr. Franko opened the floor to the public for comments and questions. Seeing no public comment, Mr. Franko closed the floor to the public.

RESOLUTION PB-21-012
RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF CHATHAM
FINDING ORDINANCE NO. 2021-08 ("REGULATION OF CANNABIS RELATED

USES") TO BE NOT INCONSISTENT WITH THE MASTER PLAN PURSUANT TO N.J.S.A. 40:55D-26(a) AND -64 OF THE MUNICIPAL LAND USE LAW

WHEREAS, the Municipal Land Use Law (hereinafter referred to as the "MLUL"), specifically N.J.S.A. 40:55D-62, authorizes the Township Committee (hereinafter referred to as the "Township Committee") of the Township of Chatham (hereinafter referred to as the "Township") to adopt or amend the Township's Land Development Ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

WHEREAS, on March 25, 2021, the Township Committee introduced, on first reading, Ordinance No. 2021-08 which repeals and replaces Section 30-96.9b of the Revised General Ordinances of the Township of Chatham, which is part of Section 30-96.9 titled "Prohibited Uses," to address the concerns of the Amendment to the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called "cannabis" for adult at least twenty-one (21) years of age, a true and accurate copy of which is attached hereto and made a part hereof as Exhibit A; and

WHEREAS, on April 5, 2021, in accordance with N.J.S.A. 40:55D-26(a) and N.J.S.A. 40:55D-64, the Planning Board of the Township of Chatham (hereinafter referred to as the "Board") reviewed Ordinance No. 2021-08 and considered the March 22, 2021 Memorandum of Frank Banisch, P.P., the Board Planner, a true and accurate copy of which is attached hereto as Exhibit B; and

WHEREAS, on April 5, 2021, after hearing the testimony of the Frank Banisch, P.P., the Board Planner, and discussion amongst the members of the Board and its professionals, the Board determined that Ordinance No. 2021-08 is not inconsistent with the last comprehensive Master Plan prepared in 1999 and the 2011 Land Use Plan Element.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Chatham on this 5th day of April 2021, as follows:

1. The foregoing recitals are incorporated herein as if set forth in full;
2. Based on the testimony of the Board Planner, the Planning Board hereby finds that Ordinance No. 2021-08 is not inconsistent with the 1999 Master Plan and the 2011 Land Use Plan Element, and hereby recommends that the Township Committee adopt the proposed amendment to the Land Development Ordinance (attached hereto as Exhibit A);
3. The Secretary of the Planning Board shall forward a copy of this Resolution to the Township Committee upon adoption. This Resolution shall serve as the report to

the governing body in accordance with N.J.S.A. 40:55D-26(a) and N.J.S.A. 40:550-64; and

4. This Resolution shall take effect immediately.

Mr. Nelson moved to adopt Resolution PB-21-012. Mrs. Abbott seconded the motion.

Roll Call: Mr. Franko, Aye; Mr. Nelson, Aye; Mrs. Ozdemir, Nay; Mr. Coviello, Aye; Mrs. Ewald, Aye; Mrs. Abbott, Aye; Mr. Hoffmann, Aye; Mrs. Ness, Aye; Mr. Kahn, Aye.

Mr. Nelson moved to adjourn at 7:47 PM. Mr. Hoffmann seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary