May 8, 2017

Dear Town Meeting Members:

Three (3) articles on the Warrant for the Annual town Meeting to be held on Wednesday, May 10, 2017 relate to the Planning Board including a Zoning Bylaw amendment. Massachusetts General Laws, pursuant to Chapter 40-A, Section 5 requires that the Planning Board prepare and submit to Town Meeting a report with recommendations regarding any proposed Zoning By-Law or amendment thereto before any vote to adopt shall be taken by that body. The following Final Report relates to all 3 of the Planning Board-related articles including the Zoning Bylaw amendment submitted by the Planning Board.

1. **Article #10** would establish a moratorium on Recreational Marijuana establishments until July 1, 2018. This Article will provide an opportunity for the Town to engage in a planning process to address the effects of potential Marijuana Establishments in the Town and to adopt provisions of the Zoning Bylaw (and other Bylaws as warranted) in a manner consistent with sound land use planning goals and objectives.

2. **Article #15** would accept Red Bridge Lane and East Red Bridge Lane as Town ways. This Article involves acceptance of the two streets in Phase 1 of the Mountainbrook Subdivision off Westbrook Road and Mountainview Street – Red Bridge Lane and East Red Bridge Lane. Both streets have been constructed according to the Town’s Subdivision Regulations.

3. **Article #24** would amend the Zoning Bylaw in regard to Retail Sales and Microbreweries. This Article will amend the Zoning Bylaw to allow “Retail Sales” in the Industrial A zoning district with limitations. It will also define “microbreweries” and specify how the use may be permitted in the Business B, Industrial A, and Industrial B zoning districts.

**Planning Board Recommendations**

At their meeting on Monday, April 24, 2017, the Planning Board unanimously voted to endorse approval of Articles #10 and #15. At their meeting on Monday, May 8, 2017, the Planning Board unanimously reaffirmed their recommendation that Articles #10 and #15 be approved.

In accordance with Chapter 40A, Section 5, MGL, the Planning Board conducted a public hearing on Article #24 on May 8, 2017. Following the public hearing, the Planning Board voted
Five (5) out of Five (5) to recommend approval of Article #24 to amend the Zoning Bylaw as presented in this Final Report.

Remember, Zoning By-Law amendments require a two-thirds (2/3’s) vote. If you have any questions about these reports, please feel free to contact me.

Sincerely,

Jeff Squire, Chair
May 10, 2017 Annual Town Meeting

Article 10

RECREATIONAL MARIJUANA MORATORIUM

Article 10: To see if the Town will vote to allow a moratorium be placed on retail sales or establishment of a retail operations for the purpose of selling recreational cannabis in the Town of South Hadley. The moratorium would be in effect for permits or licenses applied for, sought, or otherwise requested until July 1, 2018 in order to allow the Town to put in place appropriate zoning, health regulations or other necessary conventions or protections for the safe and propert retail distribution of cannabis/marijuana in all forms, or take any other action relative thereto.

BACKGROUND: Article #10 reflects what is being done in many communities throughout the Commonwealth given a number of factors including the fact that the creation of this new industry raises novel and complex legal, planning, and public safety issues and communities need reasonable time to study and consider the regulation of such Establishments. The State has not promulgated regulations which will establish the framework for Marijuana Establishments. Once these regulations are in place, communities will need to be positioned to ensure that their regulations can address Marijuana Establishments on the local level. Local regulatory changes are likely to include Zoning Bylaw amendments but also General Bylaws and possibly other regulations. The State law enacted by the voters provides limited roles for voters to restrict Marijuana Establishments.

Without amendment, the South Hadley Zoning Bylaw would allow the sale of Recreational Marijuana in any of the Business districts and in the Industrial B and Industrial Garden districts. It would be treated the same as any other retail merchandise. With Medical Marijuana, the Town amended the Zoning Bylaw to limit places at which the product could be produced or sold. A similar approach to reviewing the State regulations (once they are promulgated) and the Town’s Zoning Bylaw needs to be undertaken. This moratorium will allow for such a review of not only the Zoning Bylaw but other bylaws and regulations.

At a meeting in March 2017, a representative of the Attorney General’s Office indicated that a moratorium through June 30, 2018 would be reasonable. This should provide sufficient time to thoroughly review the issues and develop the regulatory framework communities need. During the time of the moratorium, the Town will need to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw (and other Bylaws as warranted) in a manner consistent with sound land use planning goals and objectives.

RECOMMENDATION: The Planning Board, at their April 24, 2017 meeting, voted to recommend approval of this article as presented. The Board reaffirmed this recommendation at their May 8, 2017 meeting.
May 10, 2017 Annual Town Meeting

Article 15

RED BRIDGE LANE & EAST RED BRIDGE LANE ACCEPTANCE

Article 15: To see if the Town will accept Red Bridge and East Red Bridge Lane(s) from Westbrook Road as further defined in the “Mountainbrook Definitive Plan Overall Lot Plan” and approved by the South Hadley Planning Board and as described in Appendix “D”, or take any other action relative thereto.

BACKGROUND: On February 8, 2006, the Planning Board approved the Definitive Plan for Mountainbrook. Plans for this 52-lot subdivision were broken into two phases with the first phase involving construction of Red Bridge Lane and East Red Bridge Lane and creation of 33 of the total lots. Over the past 10 years, the developers undertook the roadway and related infrastructure improvements for Phase 1 in compliance with the Town’s infrastructure regulations except where the Planning Board waived the strict application. At their March 23, 2015 meeting, the Planning Board unconditionally released the Subdivision Performance Guarantee. Prior to this action, the Board received certifications of completion by the project engineer, DPW Superintendent, Fire District #1 Water Superintendent, and SHELD. The developer has submitted a deed.
conveying the right of way to the Town. While the deed is not signed by all of the owners yet, it will be fully executed upon a vote of Town Meeting to accept the roadways. The developer will be responsible for having their attorney certify that the ownership listed on the deed is up to date and then record the executed deed.

A “layout” hearing pursuant to MGL was held by the Selectboard April 21, 2015.

**RECOMMENDATION:** The Planning Board, at their April 24, 2017 meeting, voted to recommend approval of this article as presented. The Board reaffirmed this recommendation at their May 8, 2017 meeting.
May 10, 2017 Annual Town Meeting

Proposed Planning Board Article 24

MICROBREWERY AND RETAIL SALES

Article 24: To see if the Town will vote to amend in the Zoning By-Law Section 3 DEFINITIONS, Subpart (B) Definitions to insert the term and define “Microbrewery” and renumber the definitions in alphabetical order; Section 5 USE REGULATIONS, Subpart (E) Use Regulations Schedule to incorporate the use “Microbrewery” into the Industrial Uses classification and provide whether they are permitted by Right, Site Plan Review, and/or Special Permit in various zoning districts and change the use “Retail Sales” (in the Business Uses classification”) from “prohibited” in the Industrial A zoning district to “permitted by Site Plan Review” in the Industrial A zoning district subject to a footnote and insert a footnote regarding restrictions on the “Retail Sales” use in the Industrial A zoning district (as detailed in the Planning Board Report) or take any other action relative thereto. (Proposed by the Planning Board).

The proposed changes are as follows:

1. In Section 3, DEFINITIONS, Subpart (B), Definitions insert and define the term “Microbrewery” and renumber the definitions in alphabetical order.

   “Microbrewery” is proposed to be defined as follows:

   68. Microbrewery. A facility, licensed under the relevant state and federal statutes, with a capacity of not more than fifteen thousand (15,000) barrels, (a barrel being equivalent to thirty-one (31) gallons a year), for the production and packaging of malt, wine, or hard cider beverages for retail or wholesale distribution, on or off the premise, and which may include a tap room where beverages produced on the premises may be sold and consumed. May include other uses such as, but not limited to, a restaurant and/or outdoor dining, entertainment for limited hours a few days per week in association with the tap room, etc. The term “microbrewery” is to be interpreted as referring to similar facilities such as, but not limited to, “distillery”. A “microbrewery” shall be considered to be a “General manufacturing use which is not commonly considered hazardous or noxious”. Retail sales associated with the operation of a Microbrewery and events held in association with the tap room shall be accessory and incidental to the operation of the tap room.

2. In Section 5, USE REGULATIONS, Subpart (E), Use Regulations Schedule insert the use “Microbrewery” in the Industrial Uses classification and provide that the use is permitted by Special Permit in the Business B zoning district, permitted by Site Plan Review in the Industrial A and Industrial B zoning districts, and prohibited in all other zoning districts.
3. In **Section 5, USE REGULATIONS**, Subpart (E), Use Regulations Schedule change the use “Retail Sales” in the Business Uses classification from prohibited “N” to permitted by Site Plan Review “SPR/o” in the Industrial A zoning district and attach a footnote to read as follows in regard to “Retail Sales” in the Industrial A zoning district:

   o. Retail Sales is limited to those items produced on site and incidental accessory products produced off site but relates to the operation of the primary use and only comprises a small portion of the total retail sales on the site. The “incidental accessory” products could include the sale of merchandise by persons who perform at events held on the site and by businesses which conduct operations at the site.

**OBJECTIVES:** The objectives of this article are to 1) make clear provision for development and operation of microbreweries (also referred to as craft breweries) in appropriate districts compatible with existing zoning provisions and 2) allow for sale of items largely manufactured on premises in the Industrial A zoning district.

**SUMMARY:** This article succinctly and simply fulfills the objective stated above by defining the term “microbrewery” and inserting the use “microbrewery” into the Industrial Uses and noting it is permitted only in Business B, Industrial A, and Industrial B the same as “General Manufacturing” and changing the prohibition of “Retail Sales” in the Industrial A district to permitted by Site Plan Review with a footnote to be inserted which establishes limits on such Retail Sales.

**BACKGROUND:** The Town was recently approached by several business persons seeking to develop and operate a “microbrewery” in a building in the Industrial A zoning district. This discussion led to a realization that 1) the Industrial A zoning district does not allow ANY Retail Sales including the sale of items produced on the property and 2) the Zoning Bylaw is vague about “microbrewery” in that it says nothing about the use but the manufacturing aspect could be interpreted as being allowed under the use classification of “General manufacturing uses not commonly considered hazardous or noxious”.

A microbrewery involves a small scale production of beverages (wine, beer, etc.). Often times, the facility has a “tasting room” or “tap room” which allows visitors to taste the beverages for a fee and to purchase bottles of the beverages – generally, small quantities – for their personal use. Many of these facilities will have “entertainment” in the form of a music group, a “painting event”, magician, etc. for a few hours for a few days per week. Persons providing the entertainment may also sell cd’s or paintings while the facility may also sell souvenir glasses, t-shirts etc. However, the principal retail activity is the selling of the product brewed on the premises.
Several aspects regarding this issue and the current South Hadley Zoning Bylaw should be noted:

- “Microbrewery” as a manufacturing use fits into the “General manufacturing uses not commonly considered hazardous or noxious”. This use is presently allowed by Site Plan Review in the Industrial A, Industrial B, and Industrial Garden zoning districts. It is also allowed with size and employment restrictions by Special Permit in the Business B zoning district.
- Restaurants are also allowed by Site Plan Review in the Business B, Industrial A, Industrial B, and Industrial Garden zoning districts.
- Retail Sales are allowed by Site Plan Review in the Business B, Industrial B, and Industrial Garden zoning districts but prohibited in the Industrial A zoning district.

Wholesale sales are allowed by Site Plan Review in the Business B, Industrial A, Industrial B, and Industrial Garden zoning districts. However, “wholesale sales” is generally defined as “the sale of commodities in quantity usually for resale (as by a retailer)” (source: Merriam-Webster: https://www.merriam-webster.com/dictionary/wholesale). Thus, the use “wholesaling” would not permit retail sales of product to end users.

Thus, the “Retail Sales” component of a “microbrewery” is the only aspect which would presently prohibit it from occurring in the Industrial A zoning district. However, this issue of an absolute prohibition on “Retail Sales” in the Industrial A zoning district has potentially significant implications for other “manufacturing” entities. For example, a firm which makes landscaping materials would be prohibited from selling the materials to a home owner for use in their yard; a custom door or cabinet manufacturer could be prohibited from selling a door or cabinet to a home owner or small business doing work in their own building – they would have to purchase the product from a contractor to install the items. It is very likely that some such retail transactions are taking place under the current Zoning Bylaw but, “technically” they are not permitted.

This amendment, in addition to addressing the “microbrewery” issue would also free up other current and future manufacturing operations to offer their products to retail customers.

**ANNOTATED ZONING BYLAW:** If the Warrant Article is approved, the “Business” and “Industrial” use classifications in Section 5(E) of the Zoning Bylaw would be altered by insertion of the text highlighted in “blue” and by deletion of the text highlighted in “yellow” as shown on the following two pages. Additionally, the definition of “Microbrewery” would be inserted into Section 3(B) of the Zoning Bylaw as presented previously.

**PUBLIC HEARING:** The Planning Board held a public hearing on the proposed Zoning Bylaw amendment on Monday, May 8, 2017. Approximately 5 persons (in addition to the Planning Board members and Town Planner) were in attendance at this hearing. Comments from the Board members questioned the language regarding “entertainment”
contained in the definition of “microbrewery” in light of the fact that the Selectboard regulates entertainment licenses and no such language is present in the definition of “restaurants”. Other comments from persons in attendance at the hearing questioned the “size” of a microbrewery as they felt 15,000 barrels is rather large and were concerned about truck traffic etc. and whether a “restaurant” is being proposed. It was pointed out that 1) the 15,000 barrels is an industry standard for the upper limit of a “microbrewery” and 2) “conventional breweries” measure production in hundreds of thousands of barrels. As to the “other uses”, it was discussed that some microbreweries (brewpubs, for example) have restaurants and primarily serve their product in the restaurant. But, the parking and other requirements would have to be addressed on a case by case basis.

RECOMMENDATION: The Planning Board, at their May 8, 2017 meeting, voted to recommend approval of this article with one modification. The Board recommends that the definition of a “microbrewery” be revised in regard to the following sentence:

May include other uses such as, but not limited to, a restaurant and/or outdoor dining, entertainment for limited hours a few days per week in association with the tap room, etc.

The Board recommends that the phrase “for limited hours a few days per week in association with the tap room” be deleted and the word “accessory” be inserted between “other” and “uses” such that this sentence would read as follows:

May include other accessory uses such as, but not limited to, a restaurant and/or outdoor dining, entertainment, etc.

Accordingly, the definition of “microbrewery” would read as follows:

68. Microbrewery. A facility, licensed under the relevant state and federal statutes, with a capacity of not more than fifteen thousand (15,000) barrels, (a barrel being equivalent to thirty-one (31) gallons a year), for the production and packaging of malt, wine, or hard cider beverages for retail or wholesale distribution, on or off the premise, and which may include a tap room where beverages produced on the premises may be sold and consumed. May include other accessory uses such as, but not limited to, a restaurant and/or outdoor dining, entertainment, etc. The term “microbrewery” is to be interpreted as referring to similar facilities such as, but not limited to, “distillery”. A “microbrewery” shall be considered to be a “General manufacturing use which is not commonly considered hazardous or noxious”. Retail sales associated with the operation of a Microbrewery and events held in association with the tap room shall be accessory and incidental to the operation of the tap room.