

## Hightstown Planning Board Regular Meeting – Zoom Meeting May 10, 2021, 7:30 p.m.

OPEN SESSION
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Fred Montferrat, Chairman, called the meeting to order at 7:58 p.m. and read the Open Public Meetings Act statement: “Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act, pursuant to Public Law 1975, Chapter 231. Said notice was sent to the Trenton Times and the Windsor-Hights Herald and is posted on the Borough’s website. Due to Covid-19 and self-distancing protocols, this meeting was held remotely through [www.zoom.com](http://www.zoom.com).

Flag Salute

Roll Call

	PRESENT	ABSENT	LATE ARRIVAL
Mr. Montferrat, Chairman	X		
Mayor Quattrone		X	Arrived 8:05 p.m.
Councilman Misiura	X		
Ms. Asselstine	X		
Ms. Jackson	X		
Ms. Watkins	X		
Mr. Searing		X	
Mr. Laudenberg	X		
Mr. Balcewicz, Alt. #1	X		
Mr. Cabot, Alt. #2	X		

Also in attendance: Sandy Belan, Planning Board Secretary, Carmela Roberts, Engineer, Jolanta Maziarz, Attorney and Brian Slaugh, Planner.

### APPROVAL OF AGENDA

Mr. Montferrat asked that the May 10, 2021, agenda be approved.

Motion made by Mr. Cabot and seconded by Ms. Asselstine to approve the May 10, 2021, Planning Board Agenda.

**Roll Call Vote:** Mr. Montferrat, Mr. Misiura, Ms. Asselstine, Ms. Jackson, Ms. Watkins, Mr. Balcewicz Mr. Laudenberg and Mr. Cabot. Mayor Quattrone and Mr. Searing were absent. Motion passed 8-0.

### APPROVAL OF MINUTES

Mr. Montferrat asked if there were any changes to the April 12, 2021, Meeting Minutes. Motion made by Mr. Balcewicz and seconded Mr. Cabot to approve the April 12, 2021, Minutes.

**Roll Call Vote:** Mr. Montferrat, Mr. Misiura, Ms. Asselstine, Ms. Jackson, Ms. Watkins, Mr. Balcewicz and Mr. Cabot. Mr. Laudenberg abstained. Mayor Quattrone and Mr. Searing were absent. Motion passed 7-0 and one abstention.

### PUBLIC COMMENT

Mr. Montferrat opened the floor for any public comments.

There being no comments, Mr. Montferrat closed the public comment.

## OLD BUSINESS

1. Affordable Housing – Mr. Slaugh informed the Board that the Affordable Housing Subcommittee (Mr. Montferrat, Mr. Misiura and Mr. Slaugh) has not had an opportunity to meet. Tentatively scheduled a meeting for Thursday, May 20, 2021, at Mr. Slaugh's office.

## NEW BUSINESS

2. Railroad Avenue and Dey Street Sidewalk Improvements – Ms. Roberts reviewed her memorandum dated May 3, 2021. This memorandum was also distributed to the Mayor and Council, Environmental Commission, Shade Tree, Complete Streets and Recreation for their comments.

Three options for the way to develop the Railroad Avenue. Borough received grant from NJDOT to be used to improve Railroad Avenue in anticipation of new borough hall that will exit on Railroad Avenue.

Add sidewalks starting at Summit Street to Dey through Railroad Avenue out to Morrison Avenue and wrapping around to intersection of Mercer Street and S. Academy Street.

These improvements must be advertised, and a contract awarded prior to grant deadline of November 2021.

In all three of these scenarios, Mercer Street and South Academy intersection is going to have new handicap ramps and improved crosswalk. Summit Street sidewalk on north side of Dey. In all scenarios, these two remain the same.

### Railroad Avenue (Dey Street to Morrison Avenue)

- a. Provide a new paved roadway in place of the existing stone roadway.
- b. Provide concrete curb on both sides of road.
- c. Provide 30-ft. wide driveway entrance to the future Borough Hall site
- d. Maintain the existing Greenway.
- e. Provide a 3-way STOP at the intersection with Dey Street and Center Street.
- f. Provide a new crosswalk at the new Borough Hall Driveway with concrete ramps, detectable warning surfaces, and bollards.

### Concept No. 1

- Provide a 24-ft. wide road.
- Allow for 2-way traffic with no on-street parking.
- Utilize existing Greenway for pedestrian access route.
- Approximately 10 existing trees must be removed.

### Concept No. 2

- Provide a 15-ft. wide road.
- Allow for 1-way traffic with no on-street parking.
- Approximately 10 existing trees must be removed.

### Concept No. 3

- Provide a 15-ft. wide road.
- Allow for 1-way traffic with no on-street parking.

- Provide new 4-ft. wide concrete sidewalk along north side of roadway.
- Provide a new crosswalk across Center Street.
- Approximately 9 existing trees must be removed.

Dey Street (Summit Street to Railroad Avenue)

- a. Construction concrete curb on both sides of road where none exist.
- b. Replace existing curbs as needed.
- c. Extend 4-ft. wide sidewalk for entire length along north side of roadway.
- d. Mill and pave roadway.
- e. 8 existing trees to be removed.

Center Street (Dey Street to Morrison Avenue)

- a. Construct concrete curb on west side where none exists.
- b. Extend 4-ft. wide sidewalk for entire length along west side of roadway.
- c. Approximately 4 trees to be removed.
- d. If budget allows, milling and paving could be added to the contract.

South Academy Street (Morrison Avenue to Mercer Street)

- a. Replace concrete curb and sidewalk as needed.
- b. Reconstruct/realign curb ramps and crosswalks at the intersection with Mercer Street.
- c. If budget allows, milling and paving of South Academy could be added to the contract.

BOARD DISCUSSION

Suggested renovating the Greenway during this process.

Intersection Mercer and South Academy – Mobility Plan shows three crosswalks and cement islands – could this also be part of this project. Ms. Roberts - We could do some of this if it did not extend to any state roadways. Ms. Roberts review this aspect of the Mobility Plan (page 87).

Railroad Ave. – The Police would probably prefer two-way traffic. This will need to be reviewed by the Police. There will be police presence at Borough Hall. Will modify plans to show two ways to Morrison and one way to Center and four-way crosswalk for Council presentation.

Ms. Roberts will make modifications to be reviewed by the Borough Council. Will also receive comments from Police and make another presentation to the Planning Board.

PUBLIC COMMENT

Mr. Montferrat opened the floor for any public comments.

There being no comments, Mr. Montferrat closed the public comment.

3. Ordinance 2021-06 – An Ordinance Prohibiting the Operation of Any Class of Cannabis Businesses within the Geographical Boundaries of the Borough of Hightstown in Mercer County, New Jersey, and Amending and Supplementing Chapter 28, Entitled “Zoning” of the Revised General Ordinances of the Borough, to Establish a New Section Thereof to be Known as Section 28-12, Entitled “Cannabis.”

Ms. Maziarz reviewed her memorandum dated May 10, 2021, inserted below.

*This memorandum addresses the Planning Board’s obligation under N.J.S.A. 40:55D-26 with regard to Ordinance 2021-06 prohibiting cannabis that was recently introduced by the Borough Council.*

*According to both the Municipal Land Use Law (the “MLUL”) and the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act (the “Cannabis Law”), local governing bodies are tasked with the authority to determine whether to take no action regarding cannabis regulation, prohibit cannabis, or regulate cannabis uses. Since Ordinance 2021-06 constitutes an amendment of the zoning ordinance, the governing body is required by the MLUL in N.J.S.A. 40:55D-64 to refer it to the Planning Board. The Planning Board is then required to study the ordinance and determine whether or not it is “not inconsistent” with the Master Plan. The Board has 35 days from the date of the governing body’s referral to make and transmit its determination back to the governing body. If the Planning Board fails to send its determination to the governing body within the 35 days, the governing body may proceed to hearing and may adopt the ordinance on a simple majority. If the Planning Board finds that the ordinance is inconsistent with the Master Plan, the governing body may amend the ordinance upon the advice of the Board or may proceed to hearing without any amendment and adopt upon a super majority.*

*Hightstown’s Ordinance 2021-06 is responsive to the time limitation to act that has been established by the Cannabis Law. Municipalities have been afforded 180 days from enactment to take some action; the choices are 1. to do nothing, 2. enact enforcement and zoning regulations to allow it, or 3. to prohibit it.*

#### *1. Doing Nothing.*

*If Hightstown were to choose to take no action within those 180 days, the danger is that cannabis uses would be permitted to locate within the Borough without regulation, control or oversight. The Borough will not have the power to choose which licenses would be permitted or the appropriate locations or to enact any rules regulating the uses. The legislature has said that operations engaged in the growing, manufacture, etc. of cannabis will become permitted uses in any industrial zones and that retail cannabis uses will become “conditional” uses in any commercial/retail zones. However, one note about conditional uses, if a municipality does not adopt any regulations, conditions will not exist for regulating the cannabis retail sale use, therefore, without conditions, the use will presumably be permitted.*

*The Cannabis Law also states that once a municipality has effectively “opted-in” due to its inaction, thereafter it will not be permitted to prohibit any cannabis uses for a period of 5 years. And after 5 years, a municipality will only be permitted to prohibit new businesses from establishing but will not be able to do anything about already established uses, even if they have proven to be problematic for the municipality (for example, have created a parking problem) in the location where they are established.*

*Clearly, this is the worst option as it bars Hightstown from regulating all cannabis uses for 5 years and uses established during the 5 years forever.*

#### *2. Enacting Regulations.*

*Hightstown may choose to enact rules to regulate cannabis uses but such rules require zoning changes. In order for a zoning change to occur, Hightstown should perform a planning analysis and study to determine the best zones for the use. Hightstown will also have to decide what types of licensed users to permit and what conditions or regulations to impose on the uses. Thereafter, there will need to be a master plan amendment and a zoning ordinance amendment. This process will likely take longer than 180 days. The date by which municipalities must decide is August 21, 2021.*

*If Hightstown were to seek to enact regulations, it is now too late to begin the process. However, opting out for the time being will allow more time to study the issue properly, observe its implementation in other municipalities in the State, and learn from everyone else’s mistakes in*

*regulating the uses.*

*3. Prohibiting or “Opting-Out” within 180 days.*

*Hightstown has chosen to prohibit all classes of cannabis uses within the proscribed 180 days in Ordinance 2021-06. There is nothing in the Cannabis Law, as currently adopted, that would stop the Borough from opting back in at a later date, the Borough does not need to wait 5 years to allow cannabis uses. The benefit of this approach is that it gives the Borough more time to determine where to allow the uses and how to regulate them without the pressure of a deadline. It also allows the Borough to observe the rollout of cannabis sales in other municipalities and the manner in which it proceeds. The Cannabis Law is new, and its implementation is unknown.*

*The League of Municipalities is recommending opting out for now, as Hightstown has done, in order to study and better understand the ramifications of this legislation and how it will work.*

*The review that the Board is being asked to perform with regard to Ordinance 2021-06 only involves its consistency with the Master Plan, it has nothing to do with the propriety of prohibiting cannabis uses. I leave the discussion regarding the Master Plan to the Board Planner.*

Mr. Slauch reviewed his memorandum dated May 10, 2021, inserted below.

*Fred Montferrat has requested that I put this memorandum together as guidance for the Planning Board this evening as to the referral from Borough Council of Ordinance 2021-06. Ordinance 2021-06 would create a new section of the Zoning Ordinance of the Borough Code replacing a reserved section, Section 28-12, and is intended to prohibit the operation of cannabis businesses in Hightstown to the extent permitted by state statute<sup>1</sup>, at least temporarily. For an overview of the law, please see my memorandum of March 4, 2021, “Cannabis Legislation and Land Use”.*

*Like any ordinance that involves land development – in this case the zoning ordinance –the Planning Board is required to issue a report within 35 days of the referral of the document from the governing body. The report is to identify any provisions that are inconsistent with the Master Plan, if there are any. The Planning Board may also make other recommendations that it deems appropriate. In practice this means about the matter at hand, rather than in general.*

*Master plans deal with various aspects of the built and natural environment and the use of land. The last full Master Plan was adopted in 1998 and was periodically reexamined in 2002, 2005 and 2013. Additional elements and technical appendices have been added since that time. Medical marijuana was first legalized in New Jersey in 2010 and recreational cannabis just in February. Both versions remain interdicted by federal law. The concept of the use of land for a marijuana or cannabis dispensary, production or growing facility, or warehouse, simply does not appear in any of the land use policies of the municipality, either because it is so new (cannabis) or of limited occurrence in the state (medical marijuana).*

*Secondly, there is also the unusual nature of the state legislation. Normally, if there is a type of land use that the state believes is of great importance, it simply mandates its use and/or location. Examples include community residences for the developmentally disabled, community residences for persons with head injuries, childcare centers in non-residential zoning districts, and wind energy systems. In this instance, however, the ordinance transmitted for review changes no aspect of any zoning district, use or operation in the Borough that exists today. By extension, it also proposes nothing inconsistent with existing master plan policy since it proposes no change, but only to maintain the status quo of land use and development regulation. Consequently, Ordinance 2021-06 is not inconsistent with the Borough’s master plan policies and recommendations.*

May 10, 2021

Planning Board

## BOARD DISCUSSION/QUESTIONS:

The Borough Council has established a subcommittee that will continue to review this matter – checking with schools and churches, other municipalities, police and neighboring towns and states. They will be working on this for the next several months.

## PUBLIC COMMENT

Mr. Montferrat opened the floor for any public comment.

Patrick Byas, 124 Grant Ave. – Currently have a cannabis retail store in Oklahoma City. Do not feel there is any difference between medical and recreational marijuana except the loss of tax revenue. Not many black businesses in town. Additional diversity needed in the town. There is nothing wrong with marijuana use. If you decide to “opt out” you will miss this opportunity. I am proposing a business not in the immediate downtown area where traffic and parking will not be an issue. Majority of voters did vote to legalize recreational marijuana.

Mark Emmatusi, 314 Lincoln Ave. – Recently saw headline in the local paper: “Hightstown to ban sale, cultivation and distribution of cannabis.” You are telling people you are out and not interested. Majority of voters approved recreational marijuana. Why is the Borough not prepared for this? How much more information is needed? When we do not take advantage of this, big business will come in and take over the business. Confused as to why we do not have enough information. Information is available across the country. Increase ratables, businesses and jobs within Hightstown.

Paulette Byas, 24 Washington Court, East Windsor – Moved here from the Bronx. I am a teacher and upstanding citizen. Disheartened by what is being presented here tonight. We are not provided the same opportunity as other businesses due to the “nature” of this business. Believe we deserve the right to open a business of our own choosing. I will have to pay more attention when I vote in the future.

There being no further comments, Mr. Montferrat closed the public comment portion of the meeting.

This Ordinance “opting out” from permitting any cannabis use currently. Borough Council will continue to review.

Motion made by Ms. Asselstine and seconded by Mr. Balcewicz that the Planning Board has reviewed the proposed Ordinance 2021-06 and find this ordinance to be “not inconsistent” with the Borough of Hightstown’s Master Plan.

Ordinance 2021-06 – An Ordinance Prohibiting the Operation of Any Class of Cannabis Businesses within the Geographical Boundaries of the Borough of Hightstown in Mercer County, New Jersey, and Amending and Supplementing Chapter 28, Entitled “Zoning” of the Revised General Ordinances of the Borough, to Establish a New Section Thereof to be Known as Section 28-12, Entitled “Cannabis.”

**Roll Call Vote:** Mr. Montferrat, Mayor Quattrone, Mr. Misiura, Ms. Asselstine, Mr. Balcewicz and Mr. Cabot voted yes; Ms. Jackson, Ms. Watkins and Mr. Laudenbergler voted no. Mr. Searing was absent. Motion passed 6-3.

Mr. Montferrat requested that all questions to the Planning Board professionals should be directed to the Board Secretary, Chairman or Vice Chairman only. Individual Board members should not be contacting

Planning Board professionals with questions. All Board members need to be apprised of all information from our professionals. This is also a billing issue which needs to be considered.

#### COMMITTEE AND PROFESSIONAL REPORTS

- 1) Pedestrian and Bike Safety Month – Ms. Asselstine - Pedestrian and Bike Safety Month – Street Smart Program – community education. Link to Survey. Speed monitoring in town; website you speed monitor.
- 2) Environmental Commission – Mr. Laudemberger reported that the Commission will be planting additional trees throughout Hightstown.
- 3) Ms. Roberts gave an update on Stockton Street project: construction started; curb installed from Center to Dutch Neck on south side; project completed by end of month. Paving will begin July.

#### CHAIRMAN AND BOARD MEMBER COMMENTS

Mr. Montferrat informed the Board that Sandy Belan, Board Secretary, will be retiring the end of June.

There being no further business Mr. Montferrat asked for a motion to adjourn. Motion made by Mr. Balcewicz and seconded by Mr. Laudemberger. All ayes. Meeting adjourned at 10:10 p.m.

Submitted by:

Sandra Belan  
Planning Board Secretary