

**Pennington Borough Council
Special Meeting – February 28, 2022**

Mayor Davy called the Special Meeting of the Borough Council to order at 7:00 pm. The meeting was held via Zoom due to the COVID19 pandemic. Borough Clerk Betty Sterling called the roll with Council Members Angarone, Chandler, Gnatt, Gross, Marciante, and Stern in attendance.

Also present was Borough Attorney Walter Bliss.

Mayor Davy announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times and was posted on the door at Borough Hall at 30 North Main Street and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor's Business

Mayor Davy stated that there are a few things that he would like to discuss before Council hears presentations from the three applicants for a Resolution of Support. Mr. Bliss will discuss Considerations in awarding a Resolution of Support prior to the applicant's presentations.

Mayor Davy stated that first is that one of the representatives of Fine Fettle, Jeremy Perlman is a good friend of his sons, was in his son's wedding. Mayor Davy stated that he does not think there is a conflict, he does not have a vote in this process and he feels that he can facilitate this process fairly. Mr. Davy stated that he has discussed this with Council and with Borough Attorney Walter Bliss but he would like to give the applicants the opportunity to express whether they have a problem and if so he will recuse himself from the process. Mayor Davy invited a representative for each applicant to respond.

Mayor Davy asked that Jeremy Perlman for Fine Fettle, Rachel Donington for Cannique and Alan Hans-Cohen to comment on whether anyone had any objections to him facilitating the process. Ms. Hans-Cohen stated that Jersey Meds stated that she did not think that her clients had any objection, Rachel Donington and Jeremy Perlman had no objection.

Deb Gnatt stated that she has a personal relationship with Janice Mintz who is in her book club who is a partner in Cannique. Ms. Gnatt asked if anyone had an issue with her situation. Alana Hans-Cohen stated for Jersey Meds that they currently had no objection, Jeremy Perlman had no objection and Rachel Donington had no objection. Mayor Davy asked Mr. Bliss if Ms. Hans-Cohen's answer "not currently was a problem" and Mr. Bliss stated no and that the proceedings should continue.

Mrs. Chandler stated that for full disclosure her children went to school with Ms. Donington and Ms. Mintz children. There were no concerns from the applicants.

Mayor Davy stated that the Ordinance that created the permitted use of Cannabis talked about an application and the ordinance does not specifically use the language of Resolution of Support and we have received three applications. Mayor Davy stated that we have recently found out that Council can only issue one Resolution of Support. Mayor Davy stated that each of the applicants has submitted a check in the amount of \$2,500 and the Borough has incurred legal fees and other fees though out this process. Mayor Davy asked Council whether the intent is to keep all three application fees or keep only the one of the applicant who receives that Resolution of Support. Mr. Bliss stated that the Ordinance was written on the assumption that the application process starts when the State sends the Borough an application which would then be reviewed by all of the departments involved. Mr. Bliss stated that the proceedings tonight as we understand it will terminate any further applications and in fairness he does not feel that justifies keeping the fees from the two who are not awarded a Resolution of Support. Mr. Bliss stated that he would recommend that only the applicant who receives the Resolution of Support would not receive a refund of the \$2,500.00 application fee. Mr. Marciante asked if the fees could be applied towards time spent by Mr. Bliss. Mr. Bliss stated that is not what the ordinance contemplates which is what governs what we do here. Mr. Bliss stated that the ordinance is subject to interpretation, but he would recommend that the fees be refunded. Mr. Marciante stated that there should be a charge to recover some of the legal fees. Mr. Bliss stated that maybe there ought to be but there isn't. Mr. Bliss stated that we did not contemplate a mandatory Resolution of Support limited to one applicant. Mrs. Chandler stated that she will make a motion to refund the application fees to the applicants who do not receive a Resolution of Support with the understanding that if the applicant who does get the Resolution of Support is unsuccessful in getting a license from the State we do not refund the money and then if the other two applicants want to reapply they would have to reapply with the application fee. Ms. Gnatt seconded the motion with all members present voting in favor.

Mayor Davy stated that Mr. Bliss has prepared a short one page document with considerations that Council should give to the applicants when making a decision to award a Resolution of Support. Mr. Bliss reviewed the following list in particular what a Resolution of Support is. Mr. Bliss stated that the focus is the suitability of the location of the premises. Mr. Bliss stated that it is not intuitively obvious whether the Borough can issue more than one Resolution of Support. Mr. Bliss stated that Resolution of Support must contain language that we guarantee to the CRC that issuance of a license will not exceed the limit imposed. Mr. Bliss asked the applicants if they had a different interpretation whereby the Borough could issue more than one Resolution of Support. Mayor Davy asked if the applicants should address that question now or as they make their presentations. Mr. Bliss stated that as they make their presentations would be fine. Mr.

Bliss asked if any members of Council had any questions on the list of considerations. Ms. Stern stated that she had a question regarding proximity to schools because a resident raised a question today and she would like to know if the proximity from a school was a consideration in terms of drug free school zones. Mr. Bliss explained that it was deliberately omitted from the ordinance and its pertinence remains to be seen. Mr. Boss stated that distance from a school under State law is not applicable because cannabis is no longer considered dangerous and is now considered a controlled substance. Mr. Bliss stated that whether it is applicable is at the applicant's discretion and risk. Mr. Bliss explained that when the applicant applies to the State, they have to provide distance from places of worship, schools, daycares and the like. Mr. Bliss stated that it would be good to have that information also provided to the Borough. Ms. Stern asked if Council should be considering the Federal Law where cannabis has not been legalized. Ms. Stern stated that the applicants should provide the distance to the Cambridge School as part of their presentation. Mr. Bliss stated that can be included as part of the process.

CONSIDERATIONS IN AWARDING RESOLUTION OF SUPPORT

1. What is a Resolution of Support?
2. The Limits of Local Jurisdiction: **Number, Hours, Location and Manner of Operation**
3. Applicant's Ability to Comply with Restrictions in the Borough Ordinance
 - a. Only one (1) retail store for personal use cannabis is permitted
 - b. Must be located in either B-H Highway Business or O-B Office Business Zone
 - c. The "floor area" of the business is not to exceed 2,500 sq ft
 - d. Operating hours must be between 9 AM and 8 PM daily
 - e. Access from right-of-way through entrance separate from other retail
 - f. No cannabis product visible from public place
 - g. Secure storage of product indoors and onsite
 - h. Cannabis consumption prohibited inside or adjacent grounds (CCA's prohibited)
 - i. Effective odor control/ventilation
 - j. Effective security protocols/video recording and monitoring
 - k. Design of store to conform with the general character of the area
 - l. Sufficient parking/manageable projected car trips
 - m. Direction of traffic flow away from residential areas
4. Overarching Local Priorities
 - a. Protecting the well-being of our youth
 - b. Avoiding unwelcome images to non-customers and passers-by
 - c. Compatibility with surroundings
 - d. Other
5. Factors Affecting Feasibility of Applicant's Plan of Operation as proposed
 - a. Operating Experience
 - b. Attention to Local Priorities
 - c. Commitment to the Pennington Community
 - d. Other
6. Priority/Likelihood of State Licensure (ordered by first in time)
 - a. Conditional v Annual license
 - b. Social Equity Businesses
 - c. Diversely Owned Businesses
 - d. Impact Zone Businesses
 - e. Bonus Points per NJSA 24:6I-36.d(2) and Notice of Approval
 - f. Other

Presentations and Q & A

Mayor Davy stated that as this time applicants will be given fifteen minutes each to make their presentation followed by Q & A from the Council. Mayor Davy stated that we will be taking the applications in the order that they were submitted to the Borough.

Mayor Davy asked that Alana Hans-Cohen be brought into the meeting as well as any other representatives from Jersey Meds. Dr. Prathibha Potharanka, Venue Nagli and Kapil Mansharamani were admitted to the meeting.

Ms. Alana Hans-Cohen started a power point presentation and stated that she represents Jersey Meds and she asked each of the representatives in attendance to introduce themselves and make their presentation. Following the presentation Mr. Marciante stated that during the presentation it was stated that Jersey Meds owns other businesses in Pennington, one CBD, two liquor stores and two gas stations and he would like to know where they are located. Dolly responded that their businesses are located on the Pennington circle.

Mrs. Chandler asked that Council be provided a copy of the power point presentation.

Mayor Davy stated that during the presentation there was a lot of discussion about medical marijuana and he would like to just clarify that this is an application for a recreational marijuana store which Jersey Meds confirmed. Mayor Davy asked about the proposed location at Shoppes of Pennington and whether they have a lease agreement. Dolly stated that the location is the former site of House of Music and they do have a lease agreement. Mayor Davy asked if they have looked into the location to local schools and they stated that they would provide that information when they provide the power point presentation.

Mr. Marciante stated that this location is probably within 100 feet of a school and he wants to be sure that if the State approves the application then the Borough is not responsible. Mr. Bliss stated that the applicant is responsible for compliance and since this is a factor that the State considers then it should be part of our process.

Mr. Bliss asked regarding location the applicant stated that they are considering the Shoppes of Pennington for their location and the submitted materials indicate a conditional lease and he asked that the applicant provide the details of the lease. The applicant explained that they have a five plus five lease which is five years with an option to renew for another five years. Mr. Bliss stated that is conditioned upon the CRC approval. The applicant explained that since the application process starts March 15, their application is more favorable if they have an actual location. The applicant has a rental agreement and the space will remain vacant until they open for business. Mr. Bliss requested a copy of the lease.

Mr. Bliss asked Alana Hans-Cohen if she is in agreement with the Borough's determination that they can only issue one Resolution of Support. Ms. Hans-Cohen stated that she could argue both ways, but she is of the opinion that the Borough could identify applicants that they feel qualify to submit to the State because the Borough will have final approval. Ms. Hans-Cohen stated that her personal opinion is that the State would want to have options. Mr. Bliss stated that the regulations seem to indicate that the Resolution of Support is permissive and yet the Resolution of Support is mandatory for applying for a license and so by implication, the State requires the Resolution of Support and yet is silent on how many can be issued. Mr. Bliss stated that we are going on the assumption that we can issue only one Resolution of Support and any input from the applicants would be helpful.

Mrs. Chandler stated that a memo that was received in December made it pretty clear that we can issue only one Resolution of Support.

Mr. Bliss asked for clarification on the March 15th deadline. Ms. Hans-Cohen stated that the application is being released on March 15th, but a lot of applications are ready to go when the application is released on March 15th. Mr. Bliss asked how Jersey Meds will obtain zoning approval and a floor plan to submit with the application. Ms. Hans-Cohen stated that they are working on a floor plan and one of her colleagues is working on the zoning requirements. Mr. Bliss stated that the timing set by the State does not leave room for obtaining zoning approvals and so what is the plan for getting zoning approval prior to submitting to the State. Ms. Hans-Cohen stated that all of that would need to be done prior to submitting an application but as far as a defined plan she would have to consult with her colleague. Mr. Bliss stated that it would then make sense to make the Resolution of Support contingent on getting zoning approval. Mr. Bliss asked about the bonus points within the law and Ms. Hans-Cohen stated that they are woman owned and minority business. Mr. Bliss asked for clarification on the State Statute regarding sale of food or alcohol. Ms. Hans-Cohen explained that the premises is the location of the store where there is only one entrance and no connection to any other store.

Mayor Davy asked that representatives from Fine Fettle be admitted to the meeting. Benjamin Zachs, Eric Zachs, Jeremy and Danielle Perlman, Justin Singer and Ryan Kennedy were admitted to the meeting. Danielle Perlman introduced the team from Fine Fettle and thanked Mayor and Council for the opportunity to make their presentation. Fine Fettle presented their power point presentation outlining their experience and plan for their business. Mr. Zachs stated that Fine Fettle is involved in all aspects of the cannabis industry including dispensaries and cultivation and they operate in several states. Mr. Perlman stated that they submitted a copy of their power point.

Mr. Marciante stated that the location that they are considering is the TD Bank site and he asked if they are aware that there is no left turn out of the location. Mr. Zachs stated that they are aware of the site and the recent interest by Starbucks. Mr. Zachs stated that there is an easement that might allow for a second entrance or exit.

Ms. Stern asked about the Perlman's relationship with Fine Fettle. Mr. Perlman stated that Fine Fettle always uses local partners in every State where they are located and they are that connection in New Jersey. Ms. Stern asked if the Perlman's would be operating the site here in Pennington. Ms. Zachs explained the roles of each of the partners but Fine Fettle will be running the operation of the business. Ms. Stern asked if they are planning to operate more than one location in New Jersey. Mr. Zachs stated that they are only allowed one but they also have an application in Hamilton for a cultivation license.

Mayor Davy stated that the site of the location is more than the 2500 square feet requirement. Mr. Kennedy stated that Fine Fettle will only be using 2500 square feet of the building and they will rent out the other part of the building, though they will work with the Zoning Board on what they do with the additional area. Mr.

Kennedy stated that they did look at the proximity to schools and they will be submitting those results to the Borough.

Mr. Bliss asked if Fine Fettle would share with the Borough a copy of the document regarding the property. Mr. Zachs stated that they have a letter of intent and they will provide that to the Borough.

Mr. Bliss stated that part of the application to the State must include zoning approvals and how would that be obtained in time for submitting that application to the State. Mr. Justin Singer, Attorney for Fine Fettle stated that the application does not require full zoning approval it is a letter from the municipality stating that the property is properly zoned for the proposed business thought it is still subject to local land use requirements.

Mr. Bliss asked about bonus points. Mr. Singer explained that they are a certified women owned business, they have a labor peace agreement and they have 5 years New Jersey residency. Mr. Singer stated that these priorities identify the order in which applications are reviewed. Mr. Singer stated that the application is available and most of it can be filled out in advance of March 15th, applicant just can't submit until March 15th.

Mayor Davy asked that representatives of Cannique be admitted to the meeting. Rachel Donington, Dr. Jill Farmer, Janice Mintz, Dave Knowlton, Rob Moroni, Killian Strong and Delroy Williams were admitted to the meeting.

Rachel Donington introduced the Cannique team and presented their power point proposal for a cannabis business in Pennington. Ms. Donington stated that they are a hyper-local board who live, work and are committed to the Pennington community. Ms. Donington stated that the location they are proposing is 144 W. Franklin Avenue where they will be constructing a free standing structure to house their business.

Mr. Marciante asked how long it will take to construct a building. Ms. Donington stated that their plan is to construct a small simple building which can be put up fairly quickly. Mr. Marciante stated that it sounds like a yearlong process once a license is issued and zoning approval is obtained in order to even start construction.

Mayor Davy asked if they have a signed lease agreement or letter from the property owner. Mr. Moroni stated that they are in the process of getting a lease agreement. Mr. Moroni stated that they are looking at getting up and running within a year of getting the license and approvals.

Mrs. Chandler asked what happens if for some reason the building can't be built on proposed site. Mr. Moroni stated that they would have to apply for a modification of their license.

Mayor Davy asked if they have looked into proximity to schools. Mr. Strong stated that they will get back to the Borough on distance to schools.

Mr. Bliss asked that a copy of the lease agreement or commitment to the property be provided to the Borough. Mr. Bliss stated that the turnaround time for the application once the Borough receives it is tight. Mr. Bliss asked if the certified women owned application has been submitted and do they expect to have that certification by March 15th. Mr. Bliss asked if Cannique will be submitting on March 15th or will they have to wait for the State to approve the certification first. Mr. Singer stated that they expect to have the certification, but they do understand that it may not be by March 15th so they plan to submit their application as soon as they can once the certification is received.

Mayor Davy asked if there were any further questions from Council and hearing none he stated that to the applicants that a decision on this will not be made tonight, it will be considered further at the March 7th regular meeting.

Mayor Davy thanked all of the applicants for their presentations.

Mayor Davy asked if Council would like to further discuss what was heard tonight or are they comfortable proceeding to the Public Comment period. Council Members agreed to move to Public Comment.

Public Comment

Mayor Davy asked that anyone wishing to speak, please raise your hand so the Borough Clerk can acknowledge you. Please state your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.

Mayor Courtney Peters Manning raised her hand to speak. Ms. Manning stated that she is here tonight only in her role as Director of Finance and General Counsel of the Cambridge School. Ms. Manning stated that she missed the beginning of the first presentation and that is the one that she is particularly concerned about. Ms. Manning stated that the slide that was put up said that they are far from all schools which is untrue and it is disturbing to her that the applicant did not know that. Ms. Manning stated that the Cambridge School is a Kindergarten through Twelfth grade school for students with language based learning disabilities. Ms. Manning stated that they have a shared parking area and if you measure from property line to property line the distance is zero feet. Ms. Manning stated that they also stated that the location is discreet but it is right

next to the restaurant Villa Francesco which is full of Cambridge High School students at lunch time. Ms. Manning stated that this is still a controlled substance under the Federal law and this location violates the Drug Free School Zone regulations.

Ms. Manning stated that she is also concerned about the Cannique location because they stated that they did not know if they were near a school or not but she can tell you that their location is right across the street from the Cambridge School, maybe 200 feet although that one is at least across a busy highway.

Ms. Manning stated that she is in favor of legalized marijuana but the location is very important and the Jersey Meds location is very concerning.

Mayor Davy asked if Council has any further comments. Mrs. Chandler stated that she would like to look at the slides and review the documents further. Ms. Stern asked if each of the applicants could provide documentation of proximity to schools and the method for measurement should be defined. Ms. Stern asked if we can get clarification on the Federal law. Mr. Bliss stated to the extent that the Federal law is violated is a problem for the business owner and this will be a problem throughout the entire State. Mrs. Chandler stated that it is really the applicants issue to deal with, because just selling cannabis is a violation of the Federal law. Mr. Marciante stated that the one location is definitely too close to a school. Ms. Stern stated that all of the applicants made great presentations.

AT, 9:52 PM, with no further business to address the meeting was adjourned.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk