

Town of Raymond, Maine Zoning Board of Appeals (ZBA)

Findings and Decision

October 18, 2022 ZBA Special Meeting:

- In Attendance: Greg Dean, Tom Hennessey, Pete Lockwood, Fred Miller, David Murch
- Absent: None

Application:

- Appeal Request: Administrative Appeal - RE: Denied Business License
- Appellant: Adam Nappi / High Wire Hydroponics
- Property Owner: Adam Nappi / High Wire Hydroponics
- Property Address: 1 Murray Drive, Raymond, Maine
- Map/Lot/Block: 004/18A/000
- District: Industrial (I)

Background:

On Tuesday, October 18, 2022, the Town of Raymond ZBA held a public hearing on an administrative appeal regarding a denied business license (No. 2018-186). This appeal had previously been tabled at the August 30, 2022 meeting when the appeal was unable to be addressed by the Board due to time considerations.

At the beginning of the meeting, ZBA member Fred Miller provided information regarding an appearance for a potential conflict of interest on his part. All parties, including the Board, did not have any concerns with allowing Fred Miller to participate in this appeal in his role as a Board member.

During the meeting, the Board voted unanimously (5-0) to accept into the public hearing a letter dated August 22, 2022 from Scott S. Dvorak who is the former Code Enforcement Officer (CEO) for the Town of Raymond, Maine, and who was the CEO for the Town of Raymond, Maine at the time the business license application was submitted on September 13, 2018.

Discussion:

ZBA discussion took place following the public hearing. Refer to the video record accessible online through the Town of Raymond website or by DVD from the Raymond Town Office.

Findings of Fact and Conclusion of Law:

TOWN OF RAYMOND, LAND USE ORDINANCE

ARTICLE 6 - BOARD OF APPEALS

B. Powers and Duties

1. The Board of Appeals shall have the following authority:

a. Subject to the provisions of this Ordinance, to hear and decide appeals, on a de novo basis, from orders, decisions, determinations or interpretations made by the Code Enforcement Officer or the Building Inspector. [

Comments: The ZBA has the authority to hear and decide this administrative appeal.

C. Appeals Procedure

5. Any person and any municipal official or board of officials aggrieved by a decision of the Code Enforcement Officer or who wishes to request a variance from the Land Use Ordinance or who wishes a Conditional Use Permit may file an application with the Board of Appeals. An appeal of a decision made by the Code Enforcement Officer must be filed within thirty (30) days of the date of the decision.

Comments: The written decision by the CEO for denying the business license was dated July 1, 2022. The appellant's application for an administrative appeal was marked as received by the Town of Raymond on July 22, 2022. The receipt of this appeal was within the 30-day deadline, and therefore, it can be reviewed by the ZBA.

C. Appeals Procedure

3. When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At that time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

Comments: It had been presented to the ZBA that the date for the statutory opt-in requirement for medical marijuana establishments was December 13, 2018. After that date medical marijuana establishments are prohibited unless a municipality opts-in to allow their operation. Any medical marijuana establishment that was operating with municipal approval prior to December 13, 2018 could continue to operate even if the municipality decides not to opt-in (i.e. they are grandfathered). The phrase "municipal approval" is defined in 22 M.R.S. § 2429-D(2) as "an examination and approval of the store, dispensary or facility for the use of the premises consistent with conduct authorized under this chapter, including, but not limited to, a conditional use approval or site plan approval. 'Municipal approval' does not include issuance of a building, electrical or other similar permit or authorization that does not address the use of the structure or facility for which the permit or authorization is issued.". Raymond has never been an opt-in Town.

The ZBA also acknowledges the following written testimony from Scott Dvorak:

"I had every intent and had planned to approve the permit before the statutory deadline when the grandfather period ended for these licenses. That application would have been approved had the permit not been lost and attached behind a paperclip on another piece of paper on my desk.

The error was on my part and not the error of High Wire Hydroponics. It should have and would have otherwise been approved back on September 18, 2018 before any moratorium went into effect."

Based on current statutes, the Board does not find Alex Sirois, the current CEO for the Town of Raymond, erred in his July 1, 2022 denial of the appellant's business license.

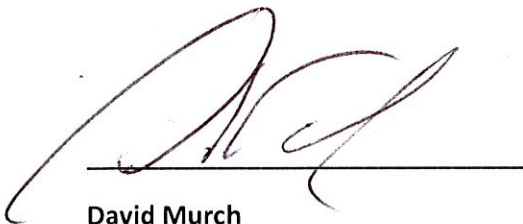
However, a majority of the Board finds that Scott Dvorak erred in his former role as CEO for the Town Raymond back in 2018 by temporarily losing the business license application and thereby not addressing the application prior to the December 13, 2018 statutory opt-in requirement. A majority of the Board also finds that had the application not been lost, it would have been approved within the 90-day timeframe between September 13, 2018, when the application was submitted to the Town, and December 12, 2018, which was one day prior to the statutory opt-in requirement. Given the information and testimony provided to the ZBA, a majority of the Board finds that this administrative appeal should be granted, and that the appellant's business license application should be retroactively approved.

Decision:

Based on the above Findings of Fact and Conclusion of Law, the ZBA voted to **GRANT** the appellant its administrative appeal and retroactively approve the appellant's business license application (No. 2018-186).

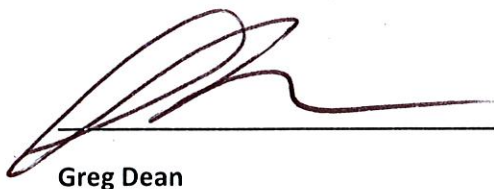
ZBA Vote:

- Grant: 4 (GD, PL, FM, DM)
- Deny: 1 (TH)



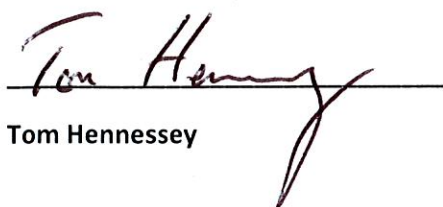
David Murch

10-25-2022
Date



Greg Dean

10/25/2022
Date




Tom Hennessey

10/19/2022
Date



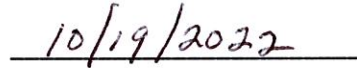
Fred Miller



Date



Pete Lockwood



Date