



# EAST PROVIDENCE WATERFRONT DISTRICT COMMISSION

---

## Hearing Panel Meeting Minutes September 28, 2017

*Attendees:* Steven Hardcastle, Chair  
William Fazioli  
Paul Moura  
Peter Willey

*Members absent:* Jay Kern

*Staff:* Pamela M. Sherrill, AICP, Executive Director

*Legal Counsel:* Rebecca Briggs, Hinckley, Allen & Snyder

---

The chair called the meeting to order at 6:20 PM.

### 1. Old Business

- A. Unanimous vote to approve the minutes of August 23, 2017, motioned by Mr. Fazioli and seconded by Mr. Moura

### 2. New Business - Public hearing

- A. VOTE: RX ORGANICS, LLC appeals the May 24, 2017 decision of Edward Pimentel, Zoning Official for the City of East Providence Department of Public Works and Jeanne Boyle, Executive Director of the East Providence Waterfront Commission, regarding the issuance of a Zoning Certificate in which it was determined that RX Organics, LLC's proposed use of the below described property for marijuana cultivation is not an expressly allowed principal land use in accordance with Section 19-481 Schedule of use regulations and is therefore prohibited at:

**Location:** 127 Valley Street  
**Parcel ID:** Map 105, Block 04, Parcel 002  
**Zoning:** Waterfront Crook Point Sub-district  
**Owner:** Dexter Investment Corp.

Peter Petrarca, representing the applicant Rx Organics, provided a brief history indicating that the appeal is based on RIGL §45-24-37 (g) "Notwithstanding any other provisions of this chapter, plant agriculture is a permitted use within all zoning districts of a municipality, including all industrial and commercial zoning districts, except where prohibited for public health or safety reasons or the protection of wildlife habitat." Upon the determination by the Zoning Officer and the Executive Director of the Waterfront District that a marijuana cultivation operation is expressly prohibited in the use tables of the zoning ordinance, he filed a Writ of Mandamus in Superior Court. The

judge found that all administrative remedies had not been exhausted. Mr. Petrarca indicated that his client proposes a micro cultivation facility and requests zoning approval or will appeal to Superior Court. He indicated that the Department of Business (“DBR”) Regulation had approved the micro cultivation facility subject to local zoning approval (the application had been submitted to the Waterfront Commission staff). The DBR application includes safety and security procedures.

Mr. Petrarca indicated that the pesticides Rx Organics intends to use for marijuana cultivation is food grade and biodegradable. The facility is environmentally controlled and uses mites in lieu of pesticides and will not adversely affect wildlife habitat. Mr. Petrarca represented that a representative of Rx Organics submitted an affidavit and stated under oath that the Rx Organics intends only to grow marijuana. Mr. Petrarca argued that Judge Gallo in a South Kingstown case found that marijuana cultivation is plant agriculture and thus allowable in any zone. He further argued that yesterday Judge Licht issued a decision that the Town of Smithfield cannot enforce an ordinance to restrict medical marijuana.

By regulation, the micro facility will have no more than 2.5 lbs of dried product on hand at any time. Approximately \$100,000 will be invested by the applicant at buildout. Cultivation facilities can only sell to compassion centers. No product will be sold at the site and Rx Organics has a plan of how to transfer the product to compassion centers.

Michael Arena, manager of the proposed facility, was sworn in. He indicated that he didn’t know the total number of plants to be grown but the micro facility is the smallest level of license granted by the DBR. Less than 2,500 sf will be used for growing. The facility will include controls inside with cameras and alarms for security. He indicated that there will be a slight smell inside but charcoal filters will be used so that there will be no odors on the exterior of the building.

Mr. Moura noted for the record that the DBR application is very rigorous.

Mr. Arena indicated that 1000-watt light bulbs will be used. He estimates that his electrical bill will be \$2,000 to \$3,000 per month. Three phase, 480 volt electrical service is available in the building.

Mr. Fazioli referred to the Waterfront District schedule of use table and indicated that farming is a prohibited use.

Mr. Moura indicated that when the zoning ordinance was approved in 2004 it was not the legislative intent to prohibit uses that might evolve in the next 13 years. Zoning in waterfront sub-districts is flexible to allow mixed use.

Mr. Arena indicated that three employees will work 9 to 5 on site. He has an arrangement with several compassion centers to purchase his product. No edibles will be produced and marijuana will not be processed into any other products. The

cultivation facility will occupy one unit in the building. The other unit is used by the owner for storage.

The floor was opened for public comment. Dylan Conley, Assistant City Solicitor for East Providence, spoke in support of the zoning certificate. Appeal of the decision is a narrow issue. Section 19-98A indicates that “any use not specially listed or otherwise permitted in a district hereinafter established by this chapter shall be deemed prohibited.” The former executive director was bound to deny as the use is not specifically listed. He disagrees that this product is food or fiber under the definition of agriculture in the R.I. General Laws. In *Carlson v. Town of South Kingstown* – Judge Gallo’s recent case cited by Mr. Petrarca, Judge Gallo did not find that R.I.G.L. § 45-24-37(g) provided that marijuana cultivation was permissible in any zone; rather, he addressed a zoning board decision and did not have to address the primary argument as to whether marijuana cultivation was permissible. The ruling did not make a determination regarding plant agriculture. Judge Gallo’s finding was limited to the zoning board’s determination that the marijuana cultivation at issue constituted prohibited manufacturing. Judge Gallo determined that the zoning board did not have sufficient facts on the record to support its determination that the cultivation at issue constituted manufacture. Mr. Petrarca’s citation therefore is unfounded. Regarding public health and safety, he recommends that fire and police opinion be sought. However, he indicated that there is no other option but to deny because the proposed use is not in the use table.

Ms. Sherrill noted for the record that Sec 19-481 indicates “PROHIBITED USES: the specific prohibited uses enumerated herein and in Sec 19-96 are in addition to any and all other uses which are prohibited in accordance with sections 19-4 and 19-98.”

Mr. Petrarca made a closing statement. *Carlson v. Town of South Kingstown* specifically references that under state law plant agriculture is permitted in all zones. The applicant is on a tight nine-month time frame and understands that this is going to Superior Court.

Mr. Fazioli queried how the Waterfront District Commission could amend the ordinance to permit other uses.

Ms. Briggs presented clarification. The role of this hearing is to find facts. Ms. Sherrill indicated that the recommendation of the Hearing Panel will be presented to the Waterfront Commission at its October 19 hearing.

The hearing panel included as evidence the DBR application that they received in advance of the hearing.

Mr. Fazioli presented a motion to deny the appeal, based on the facts, specifically that the proposed cultivation facility is not a permitted use. The motion was seconded by Mr. Willey. Discussion followed that some members would like to see the zoning use table amended in the future to allow uses not anticipated when Waterfront zoning was approved 13 years ago. Vote was taken on the motion to recommend to the Waterfront Commission to deny the appeal:

Fazoli	AYE	Willey	AYE
Moura	AYE	Hardcastle	NAY

The motion passed.

Mr. Moura made a motion to recommend to the Waterfront Commission to amend the use tables to approve marijuana cultivation, seconded by Mr. Harcastle. Vote was taken:

Fazoli	AYE	Willey	AYE
Moura	AYE	Hardcastle	AYE

The motion passed.

**3. VOTE: Adjournment**

A motion was made by Mr. Moura, seconded by Mr. Hardcastle, and voted unanimously to adjourn. Hearing adjourned at 7:03 PM.

Respectfully submitted,

PAMELA M. SHERRILL, AICP  
*Executive Director*