

## PLANNING COMMISSION

April 21, 2011

The City of Portage Planning Commission meeting of April 21, 2011 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Approximately 12 citizens were in attendance.

### **MEMBERS PRESENT:**

Miko Dargitz, Bill Patterson, Allan Reiff, Rick Bosch, Paul Welch, Jim Pearson, Mark Siegfried and Chairman James Cheesebro.

### **MEMBERS ABSENT:**

Wayne Stoffer.

### **MEMBERS EXCUSED:**

None.

### **IN ATTENDANCE:**

Christopher Forth, Deputy Director of Planning and Development Services; Michael West, Assistant City Planner and Randall Brown, City Attorney

### **PLEDGE OF ALLEGIANCE:**

The Planning Commission, staff and the audience recited the Pledge of Allegiance.

### **APPROVAL OF MINUTES:**

Chairman Cheesebro referred the Commission to the April 7, 2011 regular meeting minutes. A motion was made by Commissioner Dargitz, seconded by Commissioner Patterson, to approve the minutes as submitted. The minutes were unanimously approved.

### **SITE/FINAL PLANS:**

1. Site Plan (re-approval): Fifth-Third Bank, 2610 East Centre Avenue. Mr. West summarized the staff report dated April 15, 2011 involving a site plan to construct an approximate 4,300 square foot bank building and associated site improvements. Mr. West indicated the site plan had been previously reviewed and approved by the Planning Commission in May 2009, November 2009, May 2010 and then again in November 2010, however, construction had not yet commenced and the approval was scheduled to expire on May 4, 2011. Mr. West stated the site plan is being resubmitted for approval with no changes from the November 4, 2010 approval.

Mr. Craig Hondorp, Progressive AE, was present to support the plan. Mr. Hondorp stated that Fifth-Third Bank prefers to keep the site plan approval active, as oppose to allowing the approval to expire. After a brief discussion, a motion was made by Commissioner Dargitz, seconded by Commissioner Bosch, to re-approve the Site Plan for Fifth-Third Bank, 2610 East Centre Avenue. The motion was unanimously approved.

### **PUBLIC HEARINGS:**

1. Preliminary Report: Rezoning Application #10-02, 4815 West Milham Avenue and 6027 South 12<sup>th</sup> Street. Mr. Forth summarized the preliminary staff report dated April 15, 2011 regarding the request received from Milham Crossings, LLC to rezone 4815 West Milham Avenue and 6027 South 12<sup>th</sup> Street from B-2, community business to B-3, general business. Mr. Forth discussed the three adjacent properties that were also zoned B-2, but not included in the rezoning consideration, and the impact the proposed rezoning of the two parcels would have on these adjacent properties. Mr. Forth indicated that staff believes all five B-2 zoned parcels located at the southeast corner of South 12<sup>th</sup> Street and West Milham Avenue should be included for rezoning

consideration. Mr. Forth summarized the zoning history at the southeast corner of West Milham Avenue and South 12<sup>th</sup> Street, discussed the Comprehensive Plan designations and the differences between the B-2 and B-3 districts in regards to building height, setbacks and permitted/special land uses. Finally, Mr. Forth referred the Commission to an April 20, 2011 email communication from the applicant, Mr. Terry Patterson, requesting the rezoning consideration be tabled.

Commissioner Dargitz asked if the existing B-2 zoning is consistent with the Future Land Use Plan designation of general business. Mr. Forth stated it was and then discussed the three business designations contained in the Comprehensive Plan (local business, regional business and general business). Mr. Forth also noted the area is designated as a secondary commercial node.

The public hearing was opened by Chairman Cheesebro. Two citizens spoke in regards to the proposed rezoning: 1) Dave Szybala (4836 Golden Ridge Trail) and 2) Mr. Aaron Conant (4670 Golden Ridge Trail). Mr. Szybala read a statement into the record expressing concerns with the proposed B-3, general business zone and the wider variety of uses that are allowed. Mr. Szybala indicated a major concern was a possible gas station at the corner if the property was rezoned to B-3. Mr. Szybala stated many others in the Andover Woods subdivision oppose the rezoning and asked that the Commission and City Council protect the neighborhood and retain the existing B-2 zoning designation for these properties. Mr. Conant stated the neighborhood opposes the proposed zoning change and questioned the possible expanded rezoning consideration. The Commission, staff and Attorney Brown next discussed the proposed rezoning and related impacts, the three "concept" rezoning scenarios included in the staff report and whether to expand the rezoning consideration to include the additional three properties also zoned B-2. Commissioner Reiff stated the report indicates that staff suggested the applicant contact these three additional property owners; however, the applicant did not initiate contact. Commissioner Reiff asked if staff knew why the applicant chose not to contact the adjacent property owners. Mr. Forth indicated staff had suggested on more than one occasion that contact be initiated regarding an expanded rezoning consideration and was unaware why the applicant chose not to make these contacts. Mr. Forth stated the owners of the three adjacent B-2 zoned properties have been provided notice of the rezoning but have not contacted the Department of Community Development. The Commission asked staff to contact these three adjacent property owners to obtain input regarding a possible expanded rezoning application. After additional discussion, a motion was made by Commissioner Bosch, seconded by Commissioner Welch, to adjourn the public hearing for Rezoning Application #10-02 to the May 5, 2011 meeting. The motion was unanimously approved.

2. Final Report: Rezoning Application #10-01, Portage Road and Fairlane Avenue. Prior to discussion of the agenda item, Commissioner Reiff indicated he would be abstaining due to a potential conflict of interest and excused himself from the Council Chambers.

Mr. West then summarized the final staff report dated April 15, 2011 regarding the request received from Residential Opportunities, Inc. (ROI) to rezone 9616 and 9602 Portage Road, 1704 South Shore Drive and 1712, 1720, 1726 and 1806 Fairlane Avenue from I-1, light industrial and R-1C, one family residential to OS-1, office service. According to the applicant, Mr. West stated the rezoning was being requested to facilitate reuse of the former Moose Lodge building/site for the Great Lakes Center for Autism Treatment and Research, a residential treatment center for up to 12 children combined with an outpatient clinic. Mr. West reviewed the Comprehensive Plan and Future Land Use Map designations, surrounding zoning/land use pattern, differences between the I-1/R-1C and OS-1 districts and the impacts of the proposed zoning change. Mr. West stated that staff was supportive of the proposed zoning change to OS-1, office service. Mr. West then referred the Commission to a letter from Ken and Suzanne Andres received on April 19, 2011 and a short response from the Department of Community Development that were included in the final agenda packet.

Mr. Tom Ihling (Residential Opportunities, Inc. - ROI) was present to support the rezoning application and explain the planned reuse of the former Moose Lodge building and site. Mr. Ihling stated ROI would ensure the facility is secured and the children were confined to the building and site at all times. Mr. Ihling also indicated that ROI would retain the existing mature trees that were present along the west and southwest portions of the site. The public hearing was then reconvened by Chairman Cheesebro. No citizens spoke in regards to the proposed rezoning. A motion was then made by Commissioner Welch, seconded by Commissioner Bosch, to close the public hearing. The motion was unanimously approved.

After a brief discussion, a motion was made by Commissioner Welch, seconded by Commissioner Patterson, to recommend to City Council that Rezoning Application #10-01 be approved and the seven parcels/lots be rezoned to OS-1, office service. The motion was approved 7-0.

**PLATS/RESIDENTIAL CONDOS:**

None.

**OLD BUSINESS:**

None.

**NEW BUSINESS:**

1. Proposed Medical Marihuana Home Occupation Ordinance (referral from City Council). Mr. Forth reviewed the April 15, 2011 staff report and the April 4, 2011 transmittals to City Council regarding the proposed medical marihuana home occupation ordinance as referred by City Council. Mr. Forth summarized the major provisions of the proposed ordinance that would allow a caregiver to operate from a dwelling unit as a home occupation and provide medical marihuana for up to five patients. Mr. Forth indicated the proposed ordinance is consistent with the State Act and retains the caregiver/client relationship and confidentiality and privacy provisions. Mr. Forth stated the Commission is advised to review and discuss the proposed ordinance and set a public hearing for the May 19, 2011 meeting: A recommendation from the Planning Commission to City Council was needed by June 3, 2011.

Commissioner Welch inquired as to whether the home occupation approval would follow the caregiver or the address of the caregiver operation. Attorney Brown stated that as currently written the ordinance does not require a permit or registration, however, additional consideration may be given to a registration process to ensure distance requirements of the ordinance are satisfied. Commissioner Welch asked if a caregiver established the medical marihuana home occupation at a particular location and a public pool was established next door, would the caregiver need to discontinue the home occupation. Attorney Brown indicated the caregiver would be allowed to continue if the caregiver use was established prior to the public pool. Commissioner Patterson stated he believes a registration process, at a minimum, should be considered to allow the city to know where these caregivers are located. Attorney Brown indicated the City Administration committee decided not to require a permit or use a registration element to preserve confidentiality clauses of the State Act, but additional discussion could occur. Commissioner Pearson and Attorney Brown next discussed the confidentiality clauses of the State Act the permit requirement, FOIA issue, penalties in the statute and the requirement for any local ordinance to maintain the privacy and confidentiality of the caregivers and patients per the intent of the Act. Commissioner Pearson asked if the "white paper" referenced in the agenda materials was available for Commission review. Attorney Brown stated the "white paper" is very lengthy and he believes is available on-line.

Commissioner Dargitz stated she was having difficulties understanding the differences between dispensaries, which are prohibited in the ordinance, and the dispensing of marihuana between a caregiver and a patient. Also, Commissioner Dargitz asked why sales of marihuana was allowed under the proposed ordinance, but was removed from the recently adopted passive/active home occupation ordinance. There was a discussion of retail sales and the prior home occupation ordinance as approved by Council. Attorney Brown stated the issue of dispensaries and the dispensing of marihuana to people other than qualified patients was still not resolved in the court system. Attorney Brown stated the State Act prohibits the "sale" of marihuana, but does allow a caregiver to be compensated for costs incurred. Commissioner Dargitz asked why the ordinance could not restrict the exchange between a caregiver and a patient to a commercial district and prohibit in residential districts. Attorney Brown stated some communities have and further commented the courts have not yet decided on the dispensing aspects of the Act. However, he does not believe that restricting the activity to commercial districts is consistent with the intent of the Act. The Act is silent with regard to roll of municipalities and that creates difficulties. In his opinion, he did not believe a caregiver relationship with five patients would be economically feasible in a commercial zone. Attorney Brown indicated preserving the personal relationship between a caregiver and patient seems more

appropriate in residential districts as a home occupation similar to the ordinances recently adopted by the City of Kalamazoo and City of Grand Rapids. This was consistent with the intent of the Act. Although there is no permit as indicated, Attorney Brown emphasized it is still a regulation and can be enforced. Mr. Forth commented that when a complaint is made, as is current practice, it would be researched and enforced. Additionally, Commissioner Dargitz commented that she preferred that caregivers travel to the patient home to provide care. There was a discussion of the use of medical marihuana at the caregiver residence. Attorney Brown commented that the ordinance does not regulate qualifying patients. Ordinance is a regulation from a zoning perspective involving caregiver activities, and these activities could be looked at and discussed. Discussion ensued about the City Administration decision to not allow in a commercial, business setting. Concern was about larger establishments and this did not seem consistent with the Act. Commissioner Patterson also commented about the responsibility of both the caregiver and patient to act responsibly wherever they are located inasmuch as Kalamazoo and other communities have similar medical marihuana uses and applicable ordinances. There was brief additional discussion of a permit requirement, other municipal approaches that were reviewed, the "sales" issue with the home occupation and limited number of "customers" involved, and the medicinal purpose of the Act.

Mr. Chris Chiles spoke in regards to the proposed ordinance. Mr. Chiles stated he is a registered caregiver and is currently operating from a business district in the City of Portage. Mr. Chiles indicated he would not conform with the proposed ordinance since he does not operate from his home. Mr. Chiles stated he believes medical marihuana operations are better suited for commercial districts. Commissioner Patterson asked Mr. Chiles if locating in a business district was economically viable serving only five patients. Mr. Chiles stated there are current court cases that may allow patient-to-patient transfers and/or dispensing operations where more than five patients are served. Mr. Chiles also stated that the Act allows a caregiver to recover costs that he believes can also include services provided. Mr. Chiles indicated that he does not want to operate his business from his home and prefers a professional business environment that is maintained, controlled and safe. Attorney Brown stated the Act does not provide for patient-to-patient transfers and he believes the courts will confirm this opinion. Additionally, Attorney Brown indicated that he believes these patient-to-patient transfers and dispensing activities would be necessary to make operation from a commercial district economically viable. In response to an inquiry from Commissioner Dargitz, Attorney Brown commented that the distance requirements and definitions referenced on the map are consistent with the ordinance language and will be again reviewed, and discussed with the Planning Commission, particularly, for example, wording involving daycare activities.

After additional discussion, a motion was made by Commissioner Welch, seconded by Commissioner Reiff, to set a public hearing for Medical Marihuana Home Occupation Ordinance for the May 19, 2011 Planning Commission meeting. The motion was unanimously approved.

**STATEMENT OF CITIZENS:**

None.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Christopher Forth, AICP  
Deputy Director of Planning and Development Services