

PLANNING COMMISSION

May 19, 2011

The City of Portage Planning Commission meeting of May 19, 2011 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Two citizens were in attendance.

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Mark Siegfried.

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 May 5, 2011 meeting minutes. Commissioners Dargitz, Bosch, Cheesebro and Welch stated that would be abstaining from voting since they were not present at the May 5th meeting. A motion was made by Commissioner Patterson, seconded by Commissioner Reiff, to approve the minutes as submitted. The minutes were unanimously approved.

SITE/FINAL PLANS:

None.

PUBLIC HEARINGS:

1. Preliminary Report: Ordinance Amendment 10-C, Medical Marihuana Home Occupation Ordinance. Mr. Forth summarized the May 13, 2011 staff report regarding the proposed medical marihuana home occupation ordinance. Mr. Forth summarized major ordinance provisions and summarized previous issues discussed by the Commission during the April 21st and May 5th meetings. Chairman Cheesebro asked for clarification regarding the phrase "normal residential lighting" and hours that a qualifying patient can visit the site (8:00am-8:00pm). Mr. Forth stated there are existing ordinance standards for residential lighting and Attorney Brown indicated limiting the hours of the home occupation were reasonable and consistent with other ordinances. Commissioner Pearson asked why the ordinance prohibited any aspect of the home occupation from occurring in an attached or detached accessory building. Attorney Brown stated it was intended that the home occupation be conducted within the main residential structure. Mr. Forth also indicated that accessory buildings are less secure than the dwelling unit. The Commission and Attorney Brown next discussed trends in local municipality regulation of medical marihuana, liability issues and differences between a caregiver-patient interaction and a commercial dispensary.

Commissioner Dargitz asked why the caregiver-patient interaction could not occur within a commercial district, as opposed to the residential district. Attorney Brown indicated the administrative committee believes

regulation as a home occupation in the residential zoning districts is most consistent with the intent of Act and best preserves the personal/confidential relationship between the caregiver and patient. Attorney Brown stated the administrative committee believes that regulation in a commercial district would likely necessitate a caregiver providing marijuana to more than five patients, which is contrary to the Act and would likely result in a dispensary operation. Attorney Brown indicated the Act specifically states a caregiver can only receive "compensation for costs" and that the transaction between a caregiver and a patient are intended to be personal/confidential and are not intended to be a business. If allowed in the commercial zones, Attorney Brown stated the administrative committee believes the regulation would encourage dispensary-type, business operations. Attorney Brown referenced the Michigan Municipal League commissioned White Paper and the secondary, negative affects associated with dispensaries. Commissioner Dargitz indicated she still has concerns about restricting medical marijuana locations to the residential districts and asked whether the ordinance could require the caregiver to travel to the patients and not allow the patients to ingest marijuana at a caregiver location. Attorney Brown restated the ordinance is not intended to regulate the use of marijuana (Act regulates the use), but rather where a caregiver can operate. Attorney Brown also indicated that an ordinance provision that would require the caregiver to travel to the patient can not be regulated as a zoning issue.

The Commission and Attorney Brown discussed removal of day care facilities from the distance provisions section of the ordinance, consistency with the federal Drug Free School Zone requirements and definitions section of the ordinance. Commissioners Dargitz and Stoffer expressed concerns about elimination of day care facilities that care for elementary school aged children from the distance provisions section of the ordinance. Attorney Brown stated the intent was to maintain consistency with the federal Drug Free School Zone requirements. Commissioner Bosch stated he believes the Commission consideration of additional regulations involves an "over-management" of the medical marijuana issue. Commissioner Bosch indicated the ordinance is consistent with the State Act and federal Drug Free School Zone requirements and believes the direction the administrative committee has chosen is the best way to go. Commissioners Cheesebro, Welch and Patterson agreed. Additional discussion between the Commission and Attorney Brown ensued.

Chairman Cheesebro opened the public hearing. One citizen (Troy Fleckenstein, 275 West Michigan Avenue, Galesburg, Michigan) spoke in regards to the proposed ordinance. Mr. Fleckenstein voluntarily stated that he was a registered caregiver and patient and indicated he agrees with Commissioner Bosch and believes the Commission is attempting to over-regulate the issue. Mr. Fleckenstein indicated the State of Michigan already has a registration process and another registration through the city is unnecessary. Mr. Fleckenstein stated that he disagrees with Attorney Brown and believes the Act allows a caregiver to receive compensation for expenses and reasonable fees for services rendered. Mr. Fleckenstein also indicated that he believes the Commission discussion about "protecting children" is not relevant to the medical marijuana issue. Mr. Fleckenstein stated he does not believe the ordinance should restrict a caregiver to a residential area since there are various aspects to a caregiver operation including growing, harvesting, processing, storage and distribution that may not be appropriate at one specific location. No additional citizens spoke regarding the proposed ordinance.

The Commission, Attorney Brown and staff continued the discussion regarding the proposed ordinance language and issues related to prohibiting caregiver activities in an attached/detached accessory building and whether the ordinance should be expanded to also include commercial districts. After additional discussion, a motion was made by Commissioner Bosch, seconded by Commissioner Welch, to adjourn the public hearing for Ordinance Amendment 10-C, Medical Marijuana Home Occupation Ordinance, to the June 2, 2011 meeting. The motion was unanimously approved.

PLATS/RESIDENTIAL CONDOS:

None.

OLD BUSINESS:

1. Proposed Business Banner Ordinance (referral from City Council). Mr. West introduced the item and reviewed the City Council transmittals regarding the proposed business banner ordinance as referred by City Council. Mr. West also summarized the Planning Commission review and discussion during the May 5, 2011 meeting. Mr. West stated the proposed language would amend the sign ordinance regulations and expand the ability of a business to use a banner by eliminating the provision regarding the “name of business”, increasing the area for “copy” to 50% of the banner and by adding the language to all of the business zones (B-1, B-2, B-3, CPD and PD districts).

Commissioner Pearson referred the Commission to the November 3, 2010 memo from Mr. Erickson to City Manager Evans regarding the City Council retreat information and signage issues. Commissioner Pearson stated that he believes there is a problem with temporary signs in regard to the fee and time involved for processing requests. Commissioner Pearson indicated he sent a communication to the City Council Ad Hoc Sign Committee inquiring as to whether temporary signs were included in the discussion, however, has not yet received a response. Commissioner Pearson suggested holding off on the business banner regulations until he receives a response from the Ad Hoc Sign Committee. Mr. West stated the Ad Hoc Committee and City Council reviewed and discussed various aspects of the sign regulations and chose to forward the business banner regulations to the Planning Commission for action. Mr. West indicated the public notice was specific to the business banner regulations and a public hearing was scheduled for June 2, 2011. Mr. Forth stated the Commission may choose to move forward with further discussion of temporary signs as a separate matter, but Commission action on the business banner ordinance as requested by City Council is appropriate. The Commission and staff briefly discussed the definition of a banner, the permanent or temporary nature of banners and specific ordinance provisions. Mr. West stated examples of banner signs would be provided with the preliminary staff report.

NEW BUSINESS:

1. 2010 Census of Population and Housing – Analysis and General Trends. Mr. Forth provided a summary of the 2010 Census of Population and Housing – Analysis and General Trends report as prepared by the Department of Community Development. Mr. Forth summarized major findings of the report and stated additional census related information would be provided to the Commission as it becomes available.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

Chairman Cheesebro indicated there seems to be two primary areas of discussions by the Commission regarding the medical marijuana ordinance: 1) location in residential vs. commercial district and 2) prohibitions in a detached and/or attached accessory building. Chairman Chessebro asked the City Attorney and staff to again summarize these two issues for the next meeting.

There being no further business, the meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Christopher Forth, AICP
Deputy Director of Planning and Development Services