

PLANNING COMMISSION

June 2, 2011

The City of Portage Planning Commission meeting of June 2, 2011 was called to order by Chairman Cheesebro at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Three citizens were in attendance.

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None.

MEMBERS EXCUSED:

Rick Bosch.

IN ATTENDANCE:

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

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 19, 2011 meeting minutes. A motion was made by Commissioner Welch, seconded by Commissioner Patterson, to approve the minutes as submitted. The minutes were unanimously approved.

SITE/FINAL PLANS:

None.

PUBLIC HEARINGS:

1. Rezoning Application #10-02, 4815 West Milham Avenue and 6027 South 12th Street. Mr. Forth referred the Commission to a May 26, 2011 e-mail correspondence from Mr. Terry Patterson, on behalf of Milham Crossings LLC, requesting the public hearing for Rezoning Application #10-02 be adjourned to the July 21, 2011 meeting.

The public hearing was reconvened by Chairman Cheesebro. Two citizens spoke in regards to the proposed rezoning: 1) Dave Szybala, 4836 Golden Ridge Trail and 2) Allan Mueller, 6055 Andover Woods Road. Mr. Szybala expressed concern regarding the continued requests for adjournment by the applicant without representation at the meetings. Mr. Szybala also stated two attempts by the neighborhood to contact the applicant have not been returned. Mr. Szybala indicated the neighborhood would be presenting a suggestion for the zoning and use of the property located at the southeast corner of South 12th Street and West Milham Avenue at the July 21, 2011 meeting. Mr. Mueller stated the continued delays by the applicant have created confusion among the neighborhood. Mr. Mueller asked the Planning Commission to dismiss the rezoning request since the applicant has not appeared at three different meetings to explain or support the proposed rezoning. No additional citizens spoke regarding the proposed rezoning.

The Commission and staff discussed the continued requests for adjournment by the applicant and the lack of a specific development proposal with the requested rezoning. Attorney Brown stated there is no requirement that

the applicant present a development proposal with a rezoning request. Attorney Brown further indicated the Planning Commission should consider the appropriateness of the requested zoning district and all uses that are allowed. Commissioner Dargitz referenced previously discussed e-mail correspondence between the applicant and surrounding area neighbors and stated she has not seen copies in any agenda packet. Mr. Forth stated he was provided copies of the e-mail correspondence but they were not requested to be provided to the Planning Commission. Mr. Forth stated the e-mails could be provided to the Commission for the July 21, 2011 meeting.

After additional discussion, a motion was made by Commissioner Patterson, seconded by Commissioner Pearson, to adjourn the public hearing for Rezoning Application #10-02 to the July 21, 2011 meeting, as requested by the applicant. The motion included a statement that the applicant has not been present during the previous three meetings and this would be the last adjournment granted by the Commission unless the applicant was present and provided good cause for another adjournment. The motion was unanimously approved.

2. Final Report: Ordinance Amendment 10-C, Medical Marihuana Home Occupation Ordinance. Mr. Forth summarized the May 27, 2011 staff report regarding the proposed medical marihuana home occupation ordinance. Mr. Forth summarized previous Planning Commission review and discussion regarding the proposed ordinance amendment and the two primary issues that resulted from the May 19th Commission discussion: 1) The home occupation approach vs. the commercial zoning district approach and 2) accessory building use. Mr. Forth summarized the staff analysis regarding these two issues and indicated that staff is advising the Commission to recommend to City Council approval of Ordinance Amendment 10-C, Medical Marihuana Home Occupation as recommended by the City Administration.

Commissioner Dargitz asked if language could be added to the ordinance that specifically prohibits dispensary operations from a commercial area. Attorney Brown stated there is language in the ordinance that prohibits commercial medical marihuana operations. Further discussion ensued between Attorney Brown and Commissioner Dargitz regarding commercial dispensaries. Commissioner Dargitz indicated she could support caregivers operating in residential areas but wants to make sure impacts are mitigated. Commissioner Dargitz also stated that the ordinance should include commercial day care facilities in the 1,000 foot distance separation from a medical marihuana home occupation. Chairman Cheesebro reconvened the public hearing. No citizens spoke regarding the proposed ordinance. A motion was made by Commissioner Welch, seconded by Commissioner Dargitz, to close the public hearing. The motion was unanimously approved.

A motion was then made by Commissioner Reiff to recommend to City Council that Ordinance Amendment 10-C, Medical Marihuana Home Occupation, be approved. Commissioner Welch suggested hearing additional Commission comments before finalizing the motion. Commissioner Dargitz then discussed other ordinance provisions along with suggested changes including adding the word "current" to the registry identification card references, requiring a caregiver to deliver the medical marihuana to the patient or limiting the number of patients that can visit a caregiver to not more than one at a time, and additional language under the definition of a qualifying patient. Commissioner Patterson stated the amount of traffic generated by a medical marihuana caregiver is minimal compared to other types of home occupations including group child daycare homes. Commissioner Welch concurred. Commissioner Welch also stated he could support specifically prohibiting dispensary operations from a commercial area. The Commission and Attorney Brown continued discussion of these issues and other ordinance provisions including patient-to-patient transfers and a definition of medical marihuana dispensaries. As a result of this additional discussion, the original motion offered by Commissioner Reiff was seconded by Commissioner Welch. Attorney Brown indicated he believes the proposed ordinance is the best approach at this time; however, the ordinance may need to be amended in the future. Commissioner Stoffer stated he would support adding commercial daycare facilities to the 1,000 foot distance requirement and limit the number of qualifying patients that can visit a caregiver to no more than one at a time. If these two provisions are not included in the motion, Commissioner Stoffer said he would have a difficult time supporting the current motion. There being no further discussion, Chairman Cheesebro called for a vote on the motion. The motion was approved 6-2 with Commissioners Dargitz and Stoffer opposing the motion.

3. Preliminary Report: Ordinance Amendment 10-D, Business Banner Regulations. Mr. West summarized the May 27, 2011 preliminary staff report regarding proposed changes to business banner regulations that have

been forwarded by City Council for Planning Commission review and recommendation. Mr. West discussed the City Council Ad Hoc Sign Committee review of historical sign related issues and indicated the proposed amendment would expand the opportunity for banner use and provide additional options and flexibility for businesses interested in using banner signs.

Chairman Cheesebro opened the public hearing. No citizens spoke in regard to the proposed ordinance amendment. A motion was made by Commissioner Welch, seconded by Commissioner Reiff, to adjourn the public hearing for Ordinance Amendment 10-D, Business Banner Regulations, to the June 16, 2011 meeting. The motion was unanimously approved.

Commissioner Pearson read a memo dated June 2, 2011 that he had emailed to the Commission earlier in the day regarding the issue of temporary signage. Commissioner Pearson stated that small businesses in Portage have expressed concerns regarding the temporary sign permit process and regulations. Commissioner Pearson indicated he had emailed the Ad Hoc Sign Committee on two different occasions requesting additional information and comments regarding possible changes to the temporary sign ordinance and has not yet received a response. Commissioner Pearson indicated he would report back to the Commission on this issue once he has received a response from the Ad Hoc Sign Committee.

PLATS/RESIDENTIAL CONDOS:

None.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Christopher Forth, AICP
Deputy Director of Planning and Development Services