

**ALPINE TOWNSHIP PLANNING COMMISSION REGULAR MEETING
Thursday, July 15, 2010**

10-23 CALL TO ORDER/ APPROVAL OF MINUTES/ PUBLIC COMMENT

The Alpine Township Planning Commission held its regular meeting on Thursday, July 15, 2010, at 7:30 PM at the Alpine Township Center, 5255 Alpine Ave., NW, Comstock Park, MI 49321, with due notice. Present were Chair Bruce Lee, Vice-Chair Nelda Johnson, Secretary Jerry Byrne, and members Ron Cordes, Greg Madura and Matt Van Heulen. Absent was Max Dunneback. Also in attendance were Township Planning Director Sue Thomas and Recording Secretary Patricia Kolkman.

Chair Lee called the meeting to order at 7:30 PM with the Pledge of Allegiance, and then called for a motion on the minutes for the June 17, 2010 regular meeting. Johnson pointed out a misspelled word on page 2.

Madura then moved, with support from Byrne, to accept the minutes of the regular Planning Commission meeting of June 17, 2010 with the correction noted.

Ayes: 6

Nays: 0

Motion carried.

There was no audience to provide comments.

10-24 DISCUSSION: Michigan Medical Marihuana Act and Alpine Township Moratorium

On direction from the Chair, Thomas summarized the Michigan Medical Marihuana Act (MMMA). She reminded the Planning Commission that the Alpine Township Board had adopted a 6-month moratorium on the sale and dispensing of medical marihuana earlier this year. The moratorium will expire in August, so the Planning Commission should review the MMMA impacts on Alpine Township and determine whether the moratorium should be extended, which she recommends. Thomas thinks that additional guidance is required from both the Township Board and Township Attorney before the Planning Commission can recommend amended ordinance language for this land use.

Because there remain unanswered questions regarding the administration of this land use, no proposed ordinance language has been drafted. Many other nearby communities are also reviewing the Act and how it impacts local zoning issues. Some have already adopted ordinances which regulate the use and cultivation of marihuana, citing the City of Grand Rapids. A "Compassion Club" was also established in 2009 in Stanton for qualifying patients in the Montcalm County area. Several other municipalities are addressing the need of regulations under the Michigan Medical Marihuana Act, especially since the Act conflicts with Federal Laws regarding the use, acquisition, and growing of marihuana.

Under the MMMA, "Qualifying Patients" are those who: obtain certification from a physician (MD or DO) that they have a debilitating medical condition. These patients then apply for an annual Registry Identification Card from the Michigan Department of Community Health (MDCH). A Qualifying patient who has obtained certification through the MDCH may legally obtain, possess, cultivate/grow, and use medical marihuana. The patient may also have 2.5 ounces of usable marijuana, and 12 marijuana plants, which must be kept in an enclosed, locked facility. At the time a Qualifying Patient is

registered, s/he *may* designate one primary caregiver to provide his/her Medical Marijuana, but in doing so, s/he loses the right to grow and manufacture the marijuana until the next annual registration date.

Because the Act is written without clear guidelines on administration, Thomas has spoken with representatives of the Kent County Sheriff Department, as well as the state program manager for the Right to Farm Act for his perspective. Sheriff Department representatives foresee some difficulties in enforcement, since the State will not identify qualifying patients and/or their registered primary caregivers. Without this information, unnecessary resources may be wasted by law enforcement following up on reports of marijuana use. The Right to Farm Act program manager has not added marijuana to its list of crops included in the Right to Farm Act. Thomas said because of these and other unanswered questions, she will pursue further direction from the Township's Attorney.

In addition to the concerns about enforcement issues, Thomas explained the parameters outlined under the MMMA. The law allows each qualifying patient to tend up to 12 marijuana plants, and each primary caregiver could also provide marijuana for up to 5 patients. A caregiver could therefore grow up to 60 plants and keep a supply of up to 12.5 ounces of "ready to use" marijuana for his/ her five patients, at 2.5 ounces each. The law specifically requires that both the plants and the "ready to use product" are kept in a secure, locked facility.

Thomas addressed the various ways any community could choose to regulate land use under the MMMA:

- Do Nothing. While this option would be an "easy out" for a community, it could also invite entrepreneurs into Alpine Township, though law enforcement (Kent County Sheriff Department) would be handling most enforcement.
- Prohibit Uses in Conflict with Federal Law. (This is the "Livonia" approach.) This ordinance would be simple to draft; i.e., "No business in conflict with federal regulations" but could also be legally challenged, since it does conflict with the spirit of the MMMA, as well as defining exclusionary zoning for a land use identified as needed under the Michigan law. This could therefore generate legal expenses for the Township in defending its ordinance.
- Prohibit dispensaries. (part of the Grand Rapids' approach.) This choice is considered to be a "simple fix", since the Act itself does not address dispensaries. A community is therefore not required to provide for them.
- Allowing dispensaries only as a special land use in commercial and industrial zoning districts. (as is being done in the cities of Auburn Hills and Roseville.) Positive aspects of this amendment could mean that non-residential properties might be better suited to provide security, lighting, and parking than properties in a residential area. This might also utilize vacant commercial and industrial properties. A larger commercial or industrial property could also provide enough space for one caregiver to grow for multiple qualifying patients, and a central location (address) for multiple caregivers to tend to their plants (e.g., a "co-op").

There may be negative aspects to allowing dispensaries as a special land use: distribution establishments could still be in violation of the Federal Controlled Substance Act, since local law enforcement must still report a find of over 100 marihuana plants to the DEA; public noticing requirements for special uses may also violate privacy rights under the MMMA.

- Allowing caregivers as a Home Occupation. (this option is included in the Grand Rapids ordinance.) One positive aspect of allowing caregivers as a home occupation is that there wouldn't be a single geographic concentration of buildings growing, manufacturing, or distributing medical marihuana. It is also possible that if caregivers are required to *deliver* the medical marihuana to their patients, there would be fewer land use impacts (i.e. increased vehicular and pedestrian traffic, parking). In reality though, home occupations are difficult to regulate. The City of Grand Rapids requires home occupations to obtain a business license, while Alpine Township does not. Thomas will meet with the Township Clerk to discuss this possibility further.
- Prohibiting Dispensaries, but allowing cultivation in industrial or agricultural districts with a special land use. A plus to this choice is that there would be less visibility to the public, especially if no "pick-up" is allowed. In addition, industrial areas generally have public water and higher voltage electrical service available, which might be required for ventilation, etc.

A geographic concentration of medical marihuana activities could, of course, result. If the regulations adopted are not specific enough, a community might end up with a large concentration of growing facilities. Public noticing requirements in the Zoning Enabling Act may violate the privacy rights defined in the MMMA. Currently there are no Generally Accepted Agricultural and Management Practices (GAAMPS) related to cultivating marihuana established by the Michigan Commission on Agriculture.

- Another option a community might consider would be to regulate dispensaries under a General Ordinance, rather than Zoning Ordinance ("Police Power". (This is what the City of Niles has chosen.) Using this approach regulations would be retroactively applied to even a pre-existing operation, with enforcement becoming strictly a police matter. Unfortunately, since a General Ordinance does not cover land use issues, a municipality would still have to address them.

General discussion among Commissioners then addressed the following:

- What, exactly, are "Qualifying Patients"? Qualifying patients are those who after visiting either an MD or DO, are provided a medical statement which says that marihuana use would be beneficial to their condition. A debilitating medical condition (such as cancer, glaucoma, AIDS, etc.) including any which cause chronic pain could qualify. After obtaining their doctor's statement, the patient submits it to the State Health Department to become registered as either a patient who will grow for self-consumption, or s/he may identify a specific caregiver who will grow it for him/her.

Each patient can tend up to 12 plants, and a designated caregiver could care for up to 5 patients. Each qualifying patient may possess up to 2 ½ ounces of

marihuana that is “ready to use”, with a designated caregiver allowed to have up to 12 ½ ounces ready for his patients. Commissioners questioned how big a 2 ½ ounce container of “ready to use” marihuana was (weight, volume, etc.), no one could clearly say, although the consensus was that it could be a “large baggie”.

- Commissioners asked how any growing facility might meet the requirement of “an enclosed, locked facility.” In a home environment, this could mean a locked closet or any other room that isn’t accessible to children or other residents.
- Federal laws prohibit the use of medical marihuana, but prosecutors have chosen to not proceed with criminal charges in some cases. Local law enforcement operates under the rule that the DEA must be notified if more than 100 marihuana plants are discovered. This 100-plant quantity would exceed the limit of 60 plants for any registered caregiver so a 100-plant site would be in non-compliance. This presents the potential legal issues for a co-op.
- Planning Commissioners spoke about how helpful it would be to know which addresses have been issued a State registration as either a qualifying patient or designated caregiver. Having a list of addresses would eliminate local law enforcement’s unnecessary investigations of a report. Thomas said that both names and addresses are protected under the privacy provisions in the law.
- Commissioners questioned the possibility of marihuana-growing “co-ops” if an industrial building were selected for tending the plants . A large industrial building could provide the space, utilities, parking and security required to a number of designated caregivers if the DEA requirements were addressed.
- Madura asked if a designated caregiver could be denied the ability to grow marihuana in their home if underage children were there. This led to a discussion about other medications and controlled substances which are legal prescriptions. Commissioners discussed whether child care should be allowed if a caregiver is a qualifying patient. Thomas pointed out that even if a crop is intended for human consumption and regulated by the Right to Farm Act, it doesn’t mean it might not also be covered by other regulations under Federal law.
- There was also curiosity and general discussion about including regulation of drug paraphernalia in any ordinance adopted.
- Thomas said that the Sheriff’s Department has investigated 12 separate large marihuana-growing operations in the area and only two were completely legitimate.
- VanHeulen asked whether adopting a Business Licensing Ordinance would give Alpine Township more regulatory authority. Thomas again said that Alpine Township does not currently issue business licenses, but she will continue a discussion with the Township Clerk, who would be responsible for issuing them.
- There was general discussion about the amount of space necessary for a qualifying patient or registered caregiver to plant and maintain the maximum 12 plants per patient. Based on information about the size of plants, it was stated

that approximately 3 square feet of soil per plant, with a plant growing as tall as 4' to 9' per out community police officer. Thomas said that there have been examples of multiple family members being designated as qualifying patients or caregivers, resulting in a larger scale operation at one address than was anticipated. Commissioners finally agreed that only one caregiver per property should be allowed.

- Commissioners agreed that the moratorium should be extended another 6 months, but that the Planning Commission should discuss progress on drafting a new ordinance regularly until one is finalized for recommendation, considering the implications of the various options reviewed.
- A consensus was reached that the Planning Commission does not wish to allow “dispensaries” in the Township.
- Most Planning Commissioners are opposed to “growing co-ops” in non-residential areas. Further discussion took place on what land use regulations should be adopted in various zoning districts regarding caregivers growing marihuana. Thomas emphasized that both the Township Board and Township Attorney should provide input on this.
- Thomas clarified that “Drug- Free Zones” include both public and private schools, daycare centers, churches, and similar uses. There was further discussion on daycare homes which may have a designated caregiver on the site. This question will also be referred to both the Township Board and the Township Attorney.
- Byrne suggested that future meetings addressing this topic also include the Kent County Sheriff himself (Stelma) or his designate, rather than a deputy in the field who deals primarily with “one on one” enforcement. Cordes agreed that if local law enforcement will be charge of enforcing the law, then local communities should invite its input to ensure the ordinance language is clear and enforceable.

Thomas said she would be providing members of the Township Board with a summary of the Planning Commission’s views and recommendations when she recommends that the Marihuana Moratorium is extended another 6 months.

10-25 PUBLIC COMMENT/ STAFF UPDATES/ ADJOURNMENT

Chair Lee noted that no audience members were present to provide further comments.

Lee then said he would like to review the last regular meeting. He thought the meeting became far more contentious than necessary and that the “one on one” comments between the applicant and Commissioners were more confrontational than necessary. He reminded Commissioners that their comments should be directed to the Chair rather than the applicant and he would be more vigilant in monitoring this in the future.

Commissioners thought that a larger audience than usual could make a Commissioner more dramatic than necessary, especially if some audience members make comments. Cordes reminded the Planning Commission that it has approved several special land use requests in various zoning districts in recent years.

Cordes said that all adjacent property owners (including himself) would hear the sound of the motocross vehicles practicing if they were outside. Byrne agreed that a

Commissioner did get argumentative with the applicant because of the presence of some audience members clearly opposed to the request for the practice track.

Thomas commented that the role of the Planning Commission is a difficult one, especially when Commissioners know the members of the audience. These are Commissioners' friends and neighbors, and each of the seven commissioners represents a segment of Alpine Township's community. To those making application for a review of their business proposal, the Planning Commission represents the Township. It is also important to note that its meetings are generally better attended than those of the Township Board.

Lee then asked for confirmation of the procedure for handling a motion that has been made. Thomas said that if a motion is made and no one supports it, the motion dies. After a motion is seconded, however, further discussion can be requested before a vote is taken. It was also clarified that even after a motion is made and seconded, the motion may be amended, which would require another Commissioner to support it.

There was discussion about the energy an audience can generate during a difficult discussion. Audience members have accused the Planning Commission of not listening to their concerns, when in fact Commissioners listened but may not have agreed with the audience's point of view. The Chair should clarify and confirm his understanding of a speaker's comments, and the rationale used for disparate views can also be presented.

Some Commissioners asked Cordes for his summary of the site visit made by the Township Board to the Fremont practice track facility. Cordes said there were six riders on the track the day the Board attended. He spoke with a neighbor about whether the track was very dusty or noisy. The neighbor did not indicate that the noise was generally an issue. Usually, the track is watered down to reduce dust but had not been that day since rain had been predicted. Cordes did not find the track terribly dusty during the Board's visit.

Cordes then asked whether a motocross training track could be built at the southwest intersection of M-37 and 10 Mile Rd., since that land had been for sale for an extended period. Thomas said that commercial outdoor off-road vehicle tracks are specifically prohibited in the Agricultural district and the site he has identified is zoned agricultural.

Thomas then provided Commissioners with information regarding the August Planning Commission meeting:

- The Family of Christ Lutheran Church, which owns land to the west of Wal-Mart, has applied for a rezoning, special land use and site plan review for the new church they hope to build on the site. The church has been meeting at the J-MAR Commercial Development behind Plumb's Grocery on 4 Mile Rd. Access to the new church will be from Henze St. just east of Cordes Ave.
- Tim Kidder, K & K Manufacturing on 9 Mile Rd., is applying for site plan approval to add an accessory building to his business.

Westgate Bowl has indicated they have a multi-faceted site improvement project in the works which may involve some alterations to the façade at the site, 4486 Alpine Ave. Initial plans are to repaint the exterior after the new entrances and the possible addition of new parapet walls. Some interior alterations may also be proposed in the future. The owner is working with an architect to draft plans.

Commissioners noted that several new businesses have opened in the Township along Alpine Avenue:

- A new sporting goods store, focusing on hunting, fishing, and camping;
- An authentic Italian restaurant at the former Kansas City Dip 'n' Grill site;
- A new bakery outlet store;
- And a clothing resale shop, in the Goodwrench Plaza building.

Commissioners commented that they were pleased to see the service drive between Applebee's restaurant and Sam's Club has been repaired and resurfaced.

In response to a question from Commissioner Johnson, Thomas said that the Planning Commission will begin addressing the Capital Improvements Program, now that a new fiscal year is underway.

Thomas commented that she is following up on educational offerings from MSU for Madura and VanHeulen.

Cordes then moved, with Van Heulen's support, to adjourn at 9:48 pm.
Ayes: 6 Nays: 0 Motion carried.

Jerry Byrne, Secretary

Patricia Kolkman, Recording Secretary