

**Elk Rapids Township
Planning Commission**

Meeting Minutes – Tuesday January 17, 2012

Chairwoman Mischel called the meeting to order at 6:30 PM at the Government Center, 315 Bridge Street.

Present: William Larson, Emile Sabty, Shen Smith & Renee Mischel

Absent: Dorance Amos, Jean Derenzy & Jim Lundy

Also Present: Leonard Harrett, Zoning Administrator. Larry Nix, Planning Consultant.

Adoption of Agenda: M/S – Smith/Larson. Agenda for 1-17-2012 meeting was adopted unanimously.

Approval of Minutes: M/S – Smith/Larson. Minutes for 12-20-2011 meeting were approved unanimously.

Public Forum: None

Old Business

Medical Marijuana Zoning Ordinance

Mr. Nix was asked to apprise the PC on the proposed MM Ordinance draft presented in the December 29, 2011 memo. Mr. Nix stated that one concern raised during the last meeting was whether a caregiver person should be allowed to grow Marijuana in their home especially with children around. In that case there is hardly any information available and whatever information there is, it is not conclusive.

He went on to suggest keeping the proposed Ordinance language the same as currently suggested and only permit what the State law states and intends to have occur. A person can use Medical Marijuana (MM) but can't have a dispensary; he can be a caregiver and have up to five patients, six including one's self and can grow the Marijuana at the home in accordance with State rules and regulations. A patient can come to a caregiver home and pick up the product. A caregiver does not have to go out to a public place or transport it to them, which is not what the Act really says.

Inquiry was raised pertaining to the Ordinance draft Section 2.22-A-8 that states, "*The cultivation or manufacture of medical Marijuana shall not occur in connection with or at a location at which any other commodity, product, or service that is not related to the medical use of Marijuana is also available.*" Mr. Nix expanded on the inquiry by example and explained that a person engaged in some other kind of business out of their home is prohibited by law under item #8 from selling or being a caregiver of MM. That would constitute two businesses at the home. MM is being done as a home occupation out of the same residence. Also in #8 it does not prohibit a caregiver who is also a home occupation provider, if s/he goes to someone's house, pick up an item to work on, bring it back to their home, do the work on it and take it back to the customer; because that customer does not come to the home for that service and is not exposed to the MM caregiver operation taking place at the home. Further discussion took place and questions were asked and examples cited to make sure that the #8 statement is clear. The explanation given above was the basis for the answers given. It was the consensus of the PC to leave the #8 statement as is.

Again a question was raised about locating MM caregiver operation in a Commercial Zone. During the December 2011 meeting it was determined by PC that MM should not be allowed in a Commercial Zone because the disadvantages far outweigh the benefits. It would not be right to have a business in a Commercial Zone, and restrict it from the privileges accorded to other businesses in the Zone. As to allowing the operation in the TWP Commercial Zone, there is a very limited area there that can be used. At the same time the strict rules would have to apply to MM there because it would not be considered a commercial business. MM is not a commodity

that is being retailed. MM is a commodity that the State of MI had authorized a caregiver to sell primarily out of their home, but the law is not specific or clear on that; MM is not a business. MM is an operation licensed by the State that a caregiver can have five (5) patients. The TWP don't want to limit somebody in the Commercial District to only five customers (patients), which the TWP will be doing if MM is put in a C Zone. MM now can happen in a single family home and that complies with what the law states; follow this principle and have something on the books that gives the TWP some sort of control over MM. That is what municipalities are doing now; they are trying to get some kind of a handle on MM.

A question was raised as to the difference between Growing & Distribution vs. Consumption of MM and if that affects the ordinance? A caregiver/grower has five patients who come to the home to pick up the MM product and leave. They can consume the MM in the privacy of their home with no problem. The law does not say anything about two or three getting together to consume, nor does the ordinance try to control that.

The discussion moved on to having the MM in R-1 and Ag residential districts. It was questioned if the PC really wants to see MM caregivers in R-1 Residential district, why not locate it only in the Ag Residential district where the homes are few, spread out and are located on 1½ acre minimum lots as compared to many homes on many smaller lots in the R-1 Zone. At least it would limit the number of MM caregiver growers for five patients in the TWP. It was pointed out that, as proposed, it would be a home occupation in R-1 and Ag Residential districts. By definition of Home Occupation in the Zoning Ordinance, it says that the Home Occupation person is a resident of that dwelling. So the caregiver is the resident who lives in the dwelling where the MM is located. After discussion It was determined to revise Section 2.22-A-3 to add "*and the primary caregiver shall be a resident and occupy the dwelling.*" It was also pointed out that there are no limitations to the distance between caregiver locations, the only distance limitation is the 1,000 ft which pertains to public places, schools etc. Later another point raised drew attention to the draft Ordinance text in Section 2.22-A, "permitted as a *matter of right*" and that the Ordinance does not have anything in it that defines that as we deal with home occupation. It was determined to replace the text to read "permitted as a *permitted use.*"

It was pointed out that the MMMA of 2008 proved to have many shortfalls and lacked clarification and guidance. The MI Legislators have not shown the initiative to rectify that problem and revise the Act. The Courts and the Attorney General are doing that now; but what they do does not officially affect the existing Act until the Legislators take action and revise it. The PC now have a draft of a MM Ordinance, and it is well prepared and stays with the Act. We should adopt it and move on. If the Act gets to be revised, then we can revise our Ordinance if needed, but until then let us adopt the MM Ordinance with minor adjustments as discussed. At the same time it is apparent that the PC is not much in favor of utilizing the R-1 Zone for MM, rather it is more inclined to having it in the Ag Residential district. If that is the decision, then we follow that direction. There are many things we wish we could do one way or the other, but in the long run if we stay with the Current MMMA, it would be the least of problems for the TWP.

The discussion reverted back to locating MM in Ag Residential and must it stay in the R-1 district? Mr. Nix explained that the Act implies "Residence," and in the TWP we have R-1 or Ag Residence districts where a single family residence is found, however the Act is not clear on that. If the R-1 is not desirable then limit it to the Ag Residential, and adopt it that way, but first be certain that a community problem does not evolve. It was determined to ask Mr. Nix to contact the TWP Supervisor Mr. White and Mr. Amos the TWP PC representative and discuss this with them, if there is consensus, then we move in that direction, and bring it up at the next PC meeting. This process might go beyond the April 14 moratorium date limit, but it is felt that since we have an ordinance on the table and it is being worked on, we should be able to complete the work without a problem.

M/S – Smith/Larson. Move to ask the Planning Consultant to discuss with the TWP Board members White and Amos and get their opinion on limiting the MM caregiver location to the Ag Residential area.

Passed 4-0-0.

New Business

Adequate Zoning Administrator Determination on Nonconforming Use

Mr. Nix was asked to apprise the PC of his memo of 12-29-2011 on Nonconformities. He referred to the Court case that brought forward this subject and stated that our Ordinance is adequate on this subject. As to whether we should be adopting rules on the detailing of the enforcement and notification process in the Ordinance when a nonconforming use has been abandoned; it was noted that with the Zoning Administrator's explanation of the current process used and after discussion, it was determined that this subject is not needed.

M/S – Mischel/Sabty. Move to remove this item from our agenda for any further discussion. **Passed 4-0-0.**

Easement Setbacks

Mr. Nix was asked to review his memo of 12-20-2011 on Easements. He stated that easements here pertain only to Private Roads and Access Easements. The Ordinance does not explain the access easement concept clearly and the proposed added new text would make it easier to be clear on what is meant by Access Easement and how that fit in the Ordinance. Briefly put, when one creates an Access Easement they also create a Setback. The PC felt that the proposed text would be beneficial to the Ordinance and should be adopted.

M/S – Smith/Mischel. Move to put forward the Access Easement definition and new Section 2.19-G on Setback for a public hearing at the next Planning Commission meeting. **Passed 4-0-0.**

Correspondence – None

Public Comment - None

Members Comments

Ms. Smith brought up an advisory question as to the procedure followed should there be a major fire problem with a structure on a Hardship Lot where insurance is involved. The Zoning Administrator responded that it starts with his involvement; he calls the insurance Co. on the damage extent & severity degree, then the owner is advised of that. To rebuild he would go by Chapter 4 of the Zoning Ordinance and whether there would be a ZBA involvement as to requirement. Usually the ZBA would consider the Hardship Lot as a unique situation that the ZBA would look at in such situations.

Future Agenda Item

The Chair advised that the Antrim County Soil Erosion and Stormwater Control Ordinance is being presented to the Townships for Review and would coordinate with the Soil Erosion Control Office to have them make their presentation at our Next meeting.

M/S – Mischel/Sabty. Move to schedule an Antrim County Soil Erosion and Stormwater Ordinance presentation at the ER TWP PC meeting on April 17, 2012. **Passed 4-0-0**

As there was no further business Chairwoman Mischel adjourned the meeting at 8:35 PM.

The next scheduled quarterly meeting will be on Tuesday April 17, 2012 at the Government Center, 315 Bridge Street, Elk Rapids MI.

E. S. Sabty, Secretary
1-17-2012

Approved 4-17-2012

Minutes are subject to approval at the next regular Planning Commission Meeting.