



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, January 24, 2011

Meeting called to Order with the Pledge of Allegiance at 7:05 p.m.

Members present: J. Zollinger (Chair), B. Carstens (Vice Chair), C. David, S. Feringa, R. Hardin, V. Tegel, D. White
Members excused: D. Krause, P. Yamaguchi
Staff Present: S. Vreeland, Township Manager/Recording Secretary
J. Jocks, Legal Counsel

APPROVAL OF AGENDA: Motion by David, support by Carstens to approve the agenda as amended to add an update on last week's public meeting regarding the Marina Feasibility Study and a discussion about money set aside by the township for new urbanist planning relative to the VGT project. The order of old and new business was reversed. Motion carried unanimously.

INQUIRY AS TO CONFLICTS OF INTEREST: White expressed a potential conflict of interest with considering the minor amendment to the Woodland Creek SUP. His sister-in-law is employed at that establishment. Jocks stated that under the township's conflict of interest policy this is not a close enough relationship to automatically constitute a conflict, but the Planning Commission can vote on the matter. Jocks asked White if he can be fair and objective in his deliberations. White stated he could be, but would prefer to recuse himself to avoid any appearance of impropriety.

1. **Continuing Education:** None
2. **Consent Calendar:**

Motion by Hardin, support by White to approve the Consent Calendar as amended to remove the surface water quality report and approval of the December 2010 Planning Commission meeting minutes to New Business for additional discussion, including:

Receive and File:

- a) **Draft Unapproved Minutes of:**
 1. [01/04/11](#) Board
- b) [December 2010](#) Planning & Zoning News
- c) [Status Update](#) – VGT-Phase I SUP Application #2009-01P
- d) ~~[Surface Water Quality Testing Report](#)~~

Action:

- d) ~~Approve [12/20/10](#) Planning Commission meeting minutes~~

Motion carried unanimously.

3. **Correspondence:**
 - a) [01/21/11 e-mail from Donald Cox regarding the VGT Traffic Study](#): read into the record.
 - b) [01/14/11 GT County Road Commission Letter](#) regarding review of VGT SUP Application: summarized by Vreeland for the record.
4. **Limited Public Comment:**

Rachelle Babcock, 4810 Bartlett Road, asked if the township owns Bunker Hill Road and if the township can significantly reduce the speed limit on it. Vreeland responded that in Michigan townships do not own local public roads, they are owned by the County Road Commissions. Speed limits are set by the State Police in conjunction with speed studies and some input from local road agencies and local units of government.

Nels Veliquette was present on behalf of Cherries R Us. In July he submitted a letter recommending that the township allow stand-alone wine tasting rooms in the A-1 Agricultural zoning district. He is again asking the township to consider this matter, as he has again been approached by a winery that is interested in locating a tasting room in such a fashion in Acme.

5. Public Hearings:

- a) **Potential Zoning Ordinance Amendment 012 - [Medical Marihuana Moratorium](#)**: Jocks summarized the proposed moratorium resolution. David asked what would happen if a medical marihuana business were to wish to open in the township before a moratorium were to take effect. Jocks replied that it would be considered as would be any land use permit in the township and would have to meet all applicable regulations

Michael Hedden, 7020 Deepwater Point Road, stated that there is a medical marihuana establishment operating in Acme Township at this time, and asked how it would be affected by the proposed moratorium. Zollinger stated the public would have an opportunity to ask questions during the public hearing portion of the proceedings.

Tegel attended the discussion of medical marihuana regulation at the quarterly County Planning lunch last Wednesday. She was particularly struck by the speaker's point of view, which would be that federal law prohibiting marihuana use pre-empts local zoning regulation of associated land uses, and that local governments permitting such uses would be violating federal law. Zollinger suggested this discussion would be appropriate under the New Business item for discussion about medical marihuana ordinance creation.

Public Hearing opened at 7:31 p.m.

Mr. Hedden asked if there are any zoning regulations on the books in Acme Township currently that would prevent a medical marihuana establishment operating according to state law in the township from continuing to operate. Jocks stated that if the use is occurring in the proper district and has the appropriate permits according to the zoning ordinance it could operate. He cannot discuss a specific scenario without complete and detailed information about the scenario. Mr. Hedden stated that a facility is operating at 4160 M-72 East, next to the Stained Glass Cabinet Company on the south side of the street. It has been operating for 10 days as an LLC with operating papers approved by the State. Vreeland stated that the space, formerly occupied by a Chateau Grand Traverse tasting room, has a valid special use permit for retail use. To the extent that a retail sales business is occurring at the site, it would seem to be allowable under the existing SUP. If there are non-retail activities occurring on the site, an SUP amendment would be required to legitimize them.

Carstens stated that in reading the materials provided in the Planning Commission packets, he understood that properly done medical marihuana transfer should not be a commercial transaction. The purpose of the state law is to meet the needs of very sick patients and not in his opinion to provide for a profitable enterprise. Therefore, can the land use Mr. Hedden mentions truly be categorized as a legitimate retail use?

Jocks stated that without knowing precisely what is occurring at the establishment he can't fully answer as to whether the use can be classified as "retail." Jocks believes that the Medical Marihuana Act clearly indicates that it is not supposed to be used to support any sort of retail operation, whether cultivation or transfer or anything else. Caregivers should be limited in their compensation. The questions of patient to patient transfers seems to be a gray area, and this seems to be the primary methodology by which patients are getting around the stated limitations on the numbers of patients a caregiver can serve. It is being debated whether patient to patient transfers under the law are intended to include sales between patients. To make a full determination he would need an application before him. Just as with a court, they don't issue an opinion unless a specific case is before them. He can't opine on whether a use is permissible without the specific situation before him.

Public Hearing closed at 7:40 p.m.

Carstens believes a moratorium is necessary based on the information provided in the meeting packets. David feels that the questions regarding the existing business underscore the need to study the question and develop appropriate regulation.

Zollinger noted that the Commission has been provided with a suggested motion resolution urging the Board to adopt the provided medical marihuana moratorium zoning ordinance amendment.

Mr. Hedden asked again whether the adoption of the moratorium would have a negative effect on the existing Great Lakes Helping Hands business. Zollinger stated that the township cannot answer the questions unless and until it has all the facts. Vreeland countered that according to the moratorium language if the use is a lawful use established before the moratorium, it would be grandfathered. If the township has a reason to believe that the use is not a lawful use under existing ordinances it will need to work with the landowner and business owner to learn more and make a determination, and/or might have to pursue enforcement action if the use is found not to be lawful. If anything interferes with the operation of the business, it will arise from the nature of the business and existing ordinances but not from adoption of the moratorium.

David noted that the packet materials mentioned that some municipalities have simply adopted moratorium resolutions rather than adopting moratorium zoning ordinance amendments. Doing the former would be speedier. Jocks stated that there is case law in the 13th Circuit Court, our circuit, indicating that moratoria should be conducted as zoning ordinance amendments, which is why he has recommended we proceed in this slower fashion. If the validity of the moratorium were to be challenged in court and this procedure were not followed, the moratorium would likely be overturned for procedural reasons.

Tegel asked what would happen to the existing grandfathered business, if lawful, when permanent regulations are enacted for this land use if it does not precisely conform to those regulations. It would be able to continue operation as a grandfathered non-conforming land use as long as it conformed to all other ordinance requirements.

Hardin asked what would happen if the LLC operating the grandfathered non-conforming use ceased business and a different medical marihuana provider opened operations in the same space. Would the new operation have to conform to the regulations? Jocks stated that the answer would depend to some extent on the details, but as long as the non-conforming use is not abandoned a new operator could

continue it. The use becomes a vested right that is difficult to lose.

Motion by David, support by Hardin that the Planning Commission adopt Resolution PC-2011-01 recommending that the Township Board adopt a temporary moratorium on permitting, licensing or approval of all land uses associated with the sale, dispensation or use of medical marihuana as presented by enacting the attached zoning ordinance. Motion carried unanimously.

6. Old Business:

- a) **2010-05P** – **Minor Amendment to Woodland Creek Furniture SUP to permit Outdoor Sales** (continued from 12/20/2010 meeting): Rob Evina of Woodland Creek was present in support of his application. Vreeland summarized the materials presented in the meeting packets. She is recommending that parking spaces and roadside landscaping be provided on the one of the three total parcels on which the new land use would be instituted. The parking area would not be paved as long as it is maintained as a dustless surface.

Tegel expressed strong regret that a dedicated pedestrian area was not provided between the ice cream shop and the new area. Mr. Evina stated that this would violate the fire department's requirement for a 44' area between the buildings the fire trucks can navigate. It was suggested that some signs could be put up at the spaces between the two areas to heighten vehicle/pedestrian awareness and caution.

Motion by Carstens, support by Tegel that the Planning Commission approve SUP Minor Amendment 2010-05P for 4290, 4386 and 4444 US 31 N, Traverse City, MI as presented and based on the Acting Zoning Administrator's findings as presented with the condition that signage warning drivers that pedestrians are present in the area will be erected between the buildings. Motion carried unanimously.

- b) **Update – VGT Traffic Impact Study Discussions:** Zollinger and Vreeland displayed one of the plans from the appendix of the VGT Traffic Impact Study (TIS) and gave an overview of the discussion about the TIS held at a meeting at MDOT's Lansing offices on January 11. A brief summary of the meeting was also included in the monthly VGT status update. Some needed tweaks to calculations and scenarios were discussed. MDOT stated unequivocally that left turning movements into the secondary driveways proposed for the project will not be permitted, and they may require raised median strips for M-72 along the project frontage to ensure that people don't attempt them anyway. While both signalization and roundabouts are being discussed as alternatives for the Lautner/M-72 and main entrance/M-72 intersections, a strong preference for roundabouts is being expressed by MDOT as compared to five lane, dual left-turn lane signalized intersection cross-sections.

- c) **Action List Update:** received and filed.

7. New Business:

- a) **Discussion/Study regarding Medical Marihuana regulation:** Jocks stated that this a matter of high interest in the planning and legal communities. The packet materials for this evening focus on basic background information about the state enabling statute and the wide range of positions about what it means and what can be done.

Some municipalities have chosen to adopt complete bans on medical marihuana establishments, and they are engaged in lawsuits over these decisions. Jocks suspects that based on the state statute the municipalities will lose, but if the issue becomes whether federal law pre-empts state and local regulation regarding marihuana that the

municipality will prevail and that further the state law may be struck down.

Jocks stated that under the state law, at the most basic level caregivers can grow up to 12 plants each for up to 5 patients, plus themselves if they are registered patients. He had been wondering how this could lead to the types of businesses that are cropping up and how it could yield a profitable business model. Several township representatives toured the medical marihuana cooperative on State Street two weeks ago, and learned that under their model they are largely engaging in patient to patient transfers. State law specifically protects the transfer of marihuana between patients, although it is unclear and opinions vary as to whether it was intended that protected transfers should include transactions for cash.

It is believed that Traverse City currently has four medical marihuana establishments. The city is considering adoption of a requirement that establishments be spaced apart by a certain amount that would have the result of limiting the total number of establishments that could be created in the districts where it is allowed.

We have a number of sample ordinances, either models or actually adopted, from which we can begin working. Jocks needs to know what general concepts the Commission would recommend including in an ordinance. For instance, in what zoning districts should the use be allowed? Should it be permitted in residential areas? Should there be required separations between medical marihuana establishments and places such as churches, schools and/or public parks? Should they be clustered together or spaced out at a certain rate?

Tegel is curious whether Jocks recommends crafting a permissive ordinance or a complete ban. Jocks does not recommend completely banning the land use. The attorneys present at last Wednesday's presentation, aside from the presenter, Robert Whims, all agree that they cannot recommend a total ban to their clients. Such bans are quite likely to be tested in court, and small townships such as ours cannot afford the risk of the cost of a lawsuit and potential takings monetary judgment.

White is personally opposed to the legalization of medical marihuana establishments. He would like to see some ordinances already in effect to get some ideas. Hardin is still trying to understand the whole situation. He does not understand why medical marihuana is not required to be dispensed with other prescription medications through a pharmacist. He is also aware of safety concerns related to using things like herbal supplements that are not tested or quality controlled, and feels this is a concern with medical marihuana as well. He is trying to understand safety issues. Will there be more break-ins or shootings related to attempted thefts of marihuana? What is the difference between medical marihuana and other prescribed medications, and why is state law treating it so differently? Vreeland stated that Mr. Whims asserted that pharmacists are prevented by federal law from dispensing drugs such as marihuana. Jocks would recommend that our ordinance require things like steel reinforced doors and other safety measures at the facilities.

Carstens needs to study more before he feels confident expressing an opinion. At heart, as long as the federal government classifies marihuana as illegal he feels the township will be "chasing its tail." The situation fundamentally is senseless, so it is difficult to react appropriately. Feringa first considered the matter from the perspective of retail business and how it might differ from a conventional pharmacy. He would not agree with a ban, but he now supports a moratorium where he did not before because we need to make sense of the regulations for our community until further clarification comes from the state and/or federal level.

David asked for more clarification on how collectives are “circumventing” the rules for caregivers and the number of patients they can serve. Jocks read from the statute concerning the rights of medical marijuana patients and caregivers and protections from prosecution for “medical use.” The definition of medical use includes not just the use of marijuana, but acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer or transportation. The collectives are interpreting this protection and definition as permitting them to transfer marijuana between patients, and not just between caregiver and patients.

Zollinger invited Deputy Matteucci to comment. He stated he is learning a lot tonight, and that the medical marijuana laws are making his job difficult. He is not always certain what his rights are when he encounters a citizen who has a medical marijuana license and he smells marijuana in their vehicle. The registration cards don’t always have photos of the patients on them, and he does not have access to a state registry to check the validity of the registrations. He wonders if the law was left intentionally vague to facilitate future complete legalization of marijuana use.

Tegel asked if anything in state regulation requires that medical marijuana be grown using legal means. The law states that a patient can grow 12 plants. A primary caregiver can grow 12 plants per patient, up to 5 patients. With themselves, they could grow a total of 72 plants at a time. There is no tracking of the provenance of the marijuana.

Zollinger feels that the township should consider requiring background checks and barring convicted felons from operating medical marijuana establishments. He feels there should be required separations from churches and schools, and perhaps other types of public places, and that we need to look at zoning maps of the township to think about where the use should be allowed and what the separation distances should be. The township needs to develop reasonable and context sensitive regulations, and if they are preempted by the federal government in the future then it is what it is.

Discussion turned to whether the township should encourage such businesses to be clustered together or whether we should require them to be dispersed. There was discussion about the customary rationale for requiring separation distances from churches and schools, which is usually related to the “secondary effects” of the primary use (things that happen outside the site, volume of people coming and going, etc.) Some consideration may be given to which operational models might be permitted or prohibited, and whether it may vary by district. Site security measures could be required. Some ordinances limit the number of caregivers per household, or require them to operate as home occupations out of their homes.

The commission asked for perhaps three existing ordinance to compare, and a list of the variety of issues Jocks would recommend for consideration. Minimizing negative secondary effects in the community and promoting the intent of the state law to mitigate legitimate suffering as opposed to promoting profit were seen as potential desirable goals.

- b) **Marina Feasibility Study Update:** Tegel asked if staff could provide a brief overview of the public input meeting held on January 18. Vreeland spoke briefly about the information presented, using concept drawings from the presentation that were posted to the wall.
- c) **New Urbanist Planning Money:** The township received a 2% grant from the Tribe several years ago for the purpose of partnering with the owners of properties identified as potential town center locations to hire a planning consultant to develop a

cohesive and appropriately-sized new urbanist downtown concept. Landowners included Lanny Johnson, the VGT, Meijers, the Andres family and the Gokey (now Critchfield property) south of the VGT. Over the intervening period we have not been able to get all of the players together with the same level of interest in participating conceptually and financially, and this project has never been performed. Tegel The total amount is \$50,000; \$25,000 from the Tribal grant and \$25,000 of match money, and it has been segregated in the township's funds.

Tegel suggested that the waterfront and marina visioning provide a clear indication that now might be a good time to try again to move that project or, or a similar one forward. Something is needed to pull all the various initiatives together under the Master Plan. She asked what it would take to repurpose the money to move township community planning forward. Vreeland stated that a first step would be to ask the Tribal Council whether they would permit the proposal submitted for the grant funds to be amended. Zollinger felt it would be a Board decision whether to do so and if so in what way. We can certainly talk to the various major landowners in the town center target area to see if they are willing to bring themselves and some funding to the table to work with the township, or if the township might proceed on its own.

Tegel stated that if the money is not used towards the VGT project, there's no point in having it at all. Vreeland asked for clarification on "using it towards the VGT project" means, but Tegel did not expand on the idea regarding the VGT specifically. She did talk about all the different local and state discussions about planning and placemaking and capitalizing on them. She is just generally asking the question of how the money set aside can be put to work for the benefit of the community.

David was excused at 9:45 p.m.

- d) **Surface Water Quality Testing Report:** Tegel asked if Maureen McManus has responded to Vreeland about compiling the township's water testing data with data from other sources such as the Watershed Center. Vreeland has shared the township's information with the Watershed Center but has not received any compiled data in return.
- e) **Approve 12/20/10 Planning Commission meeting minutes:** Tegel was concerned that the minutes might appear to represent her concerns regarding traffic related to the VGT increasingly using Bunker Hill Road as being limited to concerns about the intersection of Bunker Hill Road and Bartlett Road where she lives. She is concerned with all of the major interections of subdivision roads with Bunker Hill Road, such as but not limited to Scenic Hills Road, David Drive and Hampshire Drive It was decided that the mention of this clarification in the minutes of tonight's meeting would be sufficient.

Motion by Carstens, support by Feringa to approve the minutes of the 12/20/10 Planning Commission meeting as presented. Motion carried unanimously.

- 8. **Public Comment/ Any other Business that may come before the Commission:**
Relative to Mr. Veliquette's comments earlier, Carstens asked whether Peninsula Township requires all wineries in their jurisdiction to be associated directly with farm acreage and farmers within their township. Vreeland can't accurately quote their ordinance, but recalls it being very stringent about the wine fruit being both grown and processed on the Peninsula for a winery to be located there. She stated that in discussions earlier this year she heard clearly that the Commission might entertain stand-alone tasting rooms in the agricultural district only if owned, operated and or representing those who farm in our township. Carstens expressed concern that perhaps the interested party of whom Mr. Veliquette speaks is not affiliated with

Acme agricultural families and production. Vreeland stated that from what she knows of the party's identity they do have a relationship with Acme agriculture, but she will be curious to see how the Planning Commission interprets that relationship relative to this concept.

Tegel asked Vreeland to forward a request to the Road Commission for an estimated cost per mile for paving the unpaved portion of Bunker Hill Road within the township, along with an estimate of the cost per mile to improve failing sections of the paved portions of the road. She also asked how such road repairs would generally be funded. Vreeland stated that funding would have to come in some way or form from the general public. In some cases a township or county might have a widespread millage to support road maintenance, but such initiatives have been defeated locally twice. Quite often special assessment districts are formed wherein those having frontage on the road areas to be improved are assessed a portion of the cost. Often that portion is assessed by front footage. Tegel noted that the County has some property fronting on Bunker Hill Road and asked if they would have to pay a special assessment if one were instituted; Vreeland believes they would. The problem the township has encountered with roads such as Bunker Hill or Holiday is in the way the laws regarding special assessments for their repair are written. The people having frontage on the roads are able to petition either for or against an assessment, but only they can do so. In situations such as these where there are few property owners with frontage on roads that are critical to a significantly higher number of residents of adjacent roads and developments who might reasonably be thought should share the cost, the township finds it questionable that those people can lawfully be included in the assessment district. This leaves a heavy burden on few shoulders, and results in the road deterioration we have seen.

Vreeland announced that the township has been selected by the Land Policy Institute, if the Board chooses to accept, to participate in a Waterfront Smart Growth Readiness Assessment Tool session. If any Commissioners would like to be part of the participation group, please let her know to aid the Board in the selection process.

Vreeland also announced that the township has received a \$20,000 grant from the Coastal Zone Management Program applied for last summer for redevelopment planning for the shoreline district. Combined with other initiatives going on as discussed earlier, this might be one example of a way that the new urbanist money could be repurposed if the Tribe and township Board were amenable. Tegel thought this was a good concept, and Zollinger encouraged her to share her feelings with the Board. She felt uncomfortable doing so as one individual. Vreeland suggested that as an individual who raised the question before the Commission she could make a motion seeking their support for approaching the Board as a body.

Motion by Carstens, support by Tegel to recommend that the Board consider repurposing funds set aside for the New Urbanism project as originally proposed to other immediate planning initiatives such as shoreline, marina and associated central development planning. Motion carried unanimously.

Meeting adjourned at 10:05 p.m.