

**CHARTER TOWNSHIP OF VAN BUREN
PLANNING COMMISSION MINUTES
OCTOBER 27, 2010**

The meeting was called to order by Chairperson Thompson at 7:30 p.m. Commissioners Present: Johnson, Boynton, Koscielny, McKenna, Budd, Kelley and Thompson. Staff present: Director Swallow, Director Carl McClanahan and Secretary Queener. McKenna Associates representative present: Sally Hodges. There was one person in the audience.

APPROVAL OF AGENDA:

Motion McKenna, Koscielny second to approve the agenda as presented.

Motion carried.

MINUTES:

Motion Budd, Boynton second to approve the minutes of October 13, 2010 as presented.

Motion carried.

ITEM #1

TITLE: LOCAL ZONING AND ORDINANCE OPTIONS IN RESPONSE TO MICHIGAN'S MEDICAL MARIHUANA ACT

Director Swallow gave a power point presentation stating the Current Law, Federal Controlled Substances Act classifies Marihuana as a Schedule 1 Drug, prohibiting sales and possession. Similarly, Marihuana is classified as a Schedule 1 drug under the Michigan Public Health Code, MCL 333.212. Ballot Proposal # 1 of 2008 Culminated in the Michigan Medical Marihuana Act-Initiated Law 1 of 2008, permits physician approved use of marihuana by registered patients with debilitating medical conditions such as cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health (MDCH).

Michigan Medical Marihuana Act permits (under State law) registered individuals to grow limited amounts of marihuana for qualifying patients in an enclosed, locked facility. It requires MDCH to establish an identification card system for patients qualified to use marihuana and individuals qualified to grow marihuana. Law creates an exemption to criminal prosecution under State law for certain activities identified in the Act.

A registered "Qualifying Patient" is allowed to possess and amount of marihuana that does not exceed 2.5 ounces of usable marihuana and allowed to cultivate 12 marihuana plants kept in an enclosed, locked facility. Either the "Qualifying Patient" or the "Primary Caregiver" can be allowed to possess the marihuana plants. No minimum age for Qualifying Patient. A Primary Care giver is an individual at least 21 years old who agrees to assist with a patient's (up to 5) medical use of marihuana. They are allowed to receive compensation for their services, but compensation shall not constitute the sale of controlled substances. The Primary Caregiver must identify their patients to the MDCH, but MDCH cannot release that information to the law enforcement.

Problems and Conflicts, Disconnect it is "legal" to grow and possess the marihuana, but it is still illegal under other state law to purchase the marihuana or the seeds. The US Constitution Supremacy Clause states federal law is "supreme" and supersedes state law, but the US Justice Department has not initiated litigation against Michigan or any of the other 13 states that have

created this conflict by the enactment of medical marijuana laws. While many terms and actions are carefully defined in the Act, the terms “compensation and cost” are not defined, leaving this open to abuse. Law Enforcement does not have access to the registry to protect patients’ rights. But they can also not confirm the identity or address of “legal” Qualifying Patients and Primary Caregivers. The Act does not define how local government could or should regulate medical marijuana operations or facilities. Secondary Effects have been shown to be a problem in other states, In a 2009 Los Angeles Police Department report that robberies have increased by 200%, Burglaries 52.2%, aggravated assaults 57.1%, burglaries from autos near cannabis clubs 130.8% and use of armed gang members as armed “security guards have increased.

The connection between primary caregivers and qualifying patients is not easily established. High profit potential and excess product invite the risk for illegal activities and increased danger for law enforcement because they are entering into unknown situations. Regulation of dispensaries or compassion clubs and what sales are occurring is a constant enforcement issue.

Potential Fix to Problems and Conflicts, Amend the State Law which is unlikely, requires $\frac{3}{4}$ vote of the Legislature. Federal Declaratory Judgment, which is also unlikely, US Justice Department has not pursued this issue in other states. Local Governments would likely have to initiate action in federal court.

Local Ordinance Options: Do nothing and Wait to See What Happens, Risk of established uses generating some of the negative secondary effects in community. Recognition of Federal Law: The “Livonia” model, Zoning Ordinance is not supposed to be “exclusionary” of Legal land uses. Potential for legal challenge from advocacy groups. Zoning Regulations, spread them out, limit them to certain districts or separation from sensitive uses.

Home Occupations Ordinance, Limit operations to a secondary use in single family residential, Licensing of growing facilities and dispensaries, at least help law enforcement identify “legal” operations. Moratoria, which is the common approach and has been the short term solution is already exercised by Van Buren Township.

The Directors opinion is that Van Buren Township should look closely at the Recognition of Federal Law. This may be only a temporary measure until there is some more clear guidance from the US Justice Department, State Attorney General, Courts or Legislature. There is a risk of a legal challenge from advocacy groups. Local government’s should take a conservative approach to regulating these activities and land uses until there is more definitive answers from the state or the courts.

Director McClanahan, stated there are many concerns with the new law. Some communities are afraid of being sued so they allow these places. One of the biggest issue is employer and employee relationship, people need to remember that it is still illegal to operate machinery and a vehicle under the influence, the police need to find a way to test for it. The law is poorly written law. Every state where there is a marijuana law where the dispensary are located crime has increased, crimes including money laundry, murder, poisoning. People are putting marijuana in cake, and other foods, and not telling the person that is eating it. At this time, there is a black market for prescription marijuana. Director McClanahan stated he likes the Livonia model and feels the conservative approach is the appropriate approach until the law becomes clearer.

Director Swallow stated there is no regulation for prescription marihuana there is not quality control like there is with prescription drugs. There are no guidelines on how much to the dosage or how many times a day like prescription.

Commissioner Thompson inquired if Director McClanahan was beginning to hear if there will be movement within law enforcement within the state to do a white paper to make recommendation to the state to get additional legislate following this.

McClanahan stated no what is happening law enforcements agency are having regular meeting to study this very closely. Law enforcement going to the legislater is a very good idea. Driving operator heavy equipment and employee and employer relationship should be addressed.

Sally Hodge representing McKenna Associates, this could be addressed under the Township General Ordinance and under the Zoning Ordinance, some communities are addresses this under special use approval.

The Commissioners had concerns regarding the possibility of the Township being sued if an ordinance prohibits this type of business; they feel that the Township should take the conservative approach. They feel the law is not clear, at this time there is no way to track who is allowed to use or who the caregivers are. They requested that staff bring information from surrounding communities.

GENERAL DISCUSSION:

None.

ADJOURNMENT:

Motion Kelley, Boynton second to adjourn at 8:45 a.m.

Motion carried.

Respectfully,

Patricia Queener,
Recording Secretary