

OSHTEMO CHARTER TOWNSHIP  
PLANNING COMMISSION

MINUTES OF A MEETING HELD MAY 26, 2011

---

**Agenda**

**TEXT AMENDMENTS – PUBLIC HEARING – SECTIONS 78 AND 11 RE MEDICAL MARIHUANA CAREGIVERS AND SECTION 76 RE FREESTANDING SIGNS**

**HUDSPETH – REZONING (PUBLIC HEARING TABLED ON APRIL 28, 2011) – 1283 N. 9<sup>TH</sup> STREET – (PARCEL NO. 3905-14-105-041) – AND POSSIBLY REZONING OTHER PARCELS**

---

A meeting of the Oshtemo Charter Township Planning Commission was held on Thursday, May 26, 2011, commencing at approximately 7:00 p.m. at the Oshtemo Charter Township Hall.

MEMBERS PRESENT:     Bob Anderson, Chairman  
                                  Kitty Gelling  
                                  Carl Benson  
                                  Dave Bushouse  
                                  Fred Gould  
                                  Millard Loy  
                                  Richard Skalski

MEMBERS ABSENT:     None

Also present were Jodi Stefforia, Planning Director; Attorney Porter and about 50 other interested persons.

**Call to Order and Pledge of Allegiance**

The meeting was called to order at about 7:00 p.m., which was followed by the “Pledge of Allegiance.”

**Agenda**

The Chairman asked if there were any changes to the Agenda. Ms. Stefforia suggested changing the order of Items #6 and #7 because of the number of people who wanted to address the proposed text amendment under Item #6. Ms. Gelling made a motion to approve the Agenda as amended. Mr. Benson seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

**Public Comment on Non-Agenda Items**

The Chairman said the next item on the Agenda was public comment on Non-Agenda items. Hearing none, he reminded those in attendance of the four-minute limitation provided for under Planning Commission rules. He also asked that people who wished to address the Planning Commission on the remaining Agenda items provide their name and their address.

### Minutes

The Chairman stated that the next on the Agenda was consideration of the May 12, 2011 minutes. Ms. Gelling noted a needed change on page 4 in the first full paragraph, line 3. She asked that the word "thought" be struck from the sentence. The Planning Commission members concurred. Ms. Gelling then made a motion to approve the minutes, as corrected. Mr. Skalski seconded the motion. The Chairperson called for a vote on the motion, and the motion passed unanimously.

### **HUDSPETH – REZONING (PUBLIC HEARING TABLED ON APRIL 28, 2011) – 1283 N. 9<sup>TH</sup> STREET – (PARCEL NO. 3905-14-105-041) – AND POSSIBLY REZONING OTHER PARCELS**

The Chairman said the next item up for consideration was the application from Scott Hudspeth for conditional rezoning of his property at 1283 N. 9<sup>th</sup> Street, Parcel No. 3905-14-105-041, from "R-2" Residence District to "R-3" Residence District. The Chairman called for a report from the Planning Department.

Ms. Stefforia submitted her report to the Planning Commission dated April 28, 2011 and amended May 26, 2011. Ms. Stefforia noted that, since the last time the applicant appeared, the request had been changed from a commercial rezoning to a conditional rezoning of the first 200 feet from "R-2" to "R-3" Residence District as it fronted upon N. 9<sup>th</sup> Street. Ms. Stefforia set forth the proposed request including conditions on the proposed rezoning. Ms. Stefforia proceeded to take the Commission through a review of the consideration of the rezoning request as more fully set forth in her report.

The Chairman asked if there were any questions of Ms. Stefforia. Hearing none, he asked to hear from the applicant.

Mr. Scott Hudspeth introduced himself to the Planning Commission members. He said he thought that Ms. Stefforia had covered the proposal, and said he believed that it fell well within the Township guidelines for a conditional rezoning.

The Chairman asked for public comment.

### Public Comments

Kelley Pattison introduced herself to the Planning Commission. She said ~~her~~ she and her family own property immediately north of subject property and objected to the rezoning from "R-2" to "R-3" Residence District or to "C" Local Business District. She said she thought it would devalue their land and create additional traffic. She noted that they had drainage problems, and they did not want this rezoning to exacerbate those drainage problems on their property. She also said, if this property was rezoned, she thought it would set the stage for additional rezoning which would be incompatible with the Rural Residential properties in the area.

The Chairman asked if there was any further public comment. Hearing none, he called for Planning Commission deliberations.

Ms. Gelling said she was against the proposed rezoning. She said she thought it would set a bad precedent for additional requests for rezoning in this area, thought that the Master Plan should be followed, and that the property should be kept low density residential.

Mr. Bushouse said there was an insurance agency on Drake Road, south of West Main Street, located immediately in front of a large residential district, and for the most part, he did not think people were even aware that the office was there. He said as long as it retained its residential appearance and was only used during the day, he did not think it would be inappropriate to use the house as an office. He did say that he would like to see the two-car garage maintained and suggested putting two of the cars in the garage so the garage was not converted at some later date to additional office space.

Mr. Benson asked, once the applicant sold the property if the rezoning would revert. Attorney Porter stated that was not a condition which had been placed on the property that he was aware of, and therefore, it would not necessarily revert to its previous zoning classification.

Mr. Hudspeth said he had asked that one of the conditions of the rezoning be that, if for any reason he sold or discontinued use of the property, the property would revert to its "R-2" zoning. Ms. Stefforia said that Mr. Hudspeth had offered that as one of the conditions but it was not noted in the list of conditions.

Mr. Skalski said that he would support the conditional rezoning. He stated that this was a transitional area, and he thought there should be some type of buffer between heavy commercial and low density residential, and the "R-3" rezoning, as proposed by the applicant, would serve that purpose.

Mr. Loy said he supported the conditional rezoning provided, that when the property was no longer used as an office, it would revert back to its "R-2" zoning classification. He agreed with Mr. Skalski that this conditional rezoning would provide a buffer or transitional zone from heavy commercial to low density residential.

Mr. Gould said he agreed with the previous statements and with this stipulation of limitations proposed, he would support the conditional rezoning. He said he thought it was better than leaving the property vacant.

The Chairman asked if there were any other comments regarding this matter.

Ms. Stefforia said she had heard a request regarding the use of the garage. Mr. Hudspeth said he was concerned about trying to use the garage as a parking space for customers. Mr. Bushouse said he did not think that the garage would be used by customers, but he was hoping it could be used by staff in order to retain the residential appearance of the structure. Mr. Hudspeth said he would agree that the garage would be maintained and used by staff for parking.

Ms. Gelling asked Mr. Hudspeth if he knew that his home in Texas Charter Township was zoned "R-3." Mr. Hudspeth said he was not sure what the zoning was, but he lived in the back of a large subdivision on a dead-end cul-de-sac, and he believed that was not an appropriate place to operate a business. He also noted that he did not want to bring his business to his home where his kids and his dog were.

The Chairman asked if there was any more discussion, and hearing none, he said he would entertain a motion. Mr. Benson made a motion to grant the conditional rezoning for the first 200 feet of the subject property from "R-2" Residence District to "R-3" Residence District subject to the following conditions:

- (1) The number of on-site employees will be no more than 3-5 employees.
- (2) An identification sign in the front yard, if placed, will be no larger than 30 square feet and have a height not greater than 6 feet and be in compliance with other requirements of the Ordinance.
- (3) The applicant will pave and expand, as little as necessary, the current driveway leading to the house to create parking for himself, staff, clients or customers per Ordinance requirements for a maximum of 5-6 spaces.
- (4) No exterior changes will be made to the building which take away from its residential character other than those required by the Building Code for accessibility purposes.
- (5) No exterior changes to the "yard" area will be made to take away from its residential character. Routine maintenance and pruning of the trees will only be done for health of the plantings and overall residential aesthetics of the property.
- (6) Business hours will be typical office hours with only occasional evening or weekend meetings held in the office.

- (7) At such time as the property is no longer used by the applicant for office purposes or sold, the property will revert back to the "R-2" Residence District classification.
- (8) The garage will be retained and used for employee parking.

The motion was seconded by Mr. Skalski. The Chairman called for a vote. The motion passed 5-to-2, with Mr. Anderson and Ms. Gelling dissenting.

### **TEXT AMENDMENTS – PUBLIC HEARING – SECTIONS 78 AND 11 RE MEDICAL MARIHUANA CAREGIVERS AND SECTION 76 RE FREESTANDING SIGNS**

The Chairman said the next item on the agenda was a public hearing on proposed amendments to Sections 78 and 11 of the Zoning Ordinance regarding medical marihuana, and Section 76 regarding freestanding signs. Ms. Stefforia asked that Attorney Porter review the provisions regarding the proposed medical use of marihuana.

Attorney Porter explained to the Planning Commission that the subcommittee which had worked on this issue had looked at the matter extensively. Attorney Porter also noted for the record that ~~that~~ the Planning Commission had been furnished with a memo from himself on behalf of the subcommittee, along with a copy of the Medical Marihuana Act and the regulations relating thereto. Also, Attorney Porter noted that the Planning Commission had been provided a copy of a "White Paper" entitled, "A Local Government View of the Michigan Medical Marihuana Act," by Gerald A. Fisher dated October 5, 2010. Attorney Porter noted, taking all of that information collectively and applying it in the best manner to comply with the spirit and intent of the Act is how the subcommittee came up with the proposed Ordinance.

Attorney Porter then proceeded to take the Planning Commission through the definition section as set forth in Section 11.365 of the proposed Ordinance. He then took the Commission through a review of proposed Section 78.910, the home occupation provisions, dealing with medical marihuana. After reviewing all the pertinent sections of the Ordinance, he noted that all primary caregivers would be required to annually register their facilities in accordance with an Ordinance which would be submitted simultaneously with the Zoning Text Ordinance to the Township Board.

Ms. Stefforia then took the Planning Commission through the proposed text changes regarding signs as more fully set forth in her report.

The Chairman asked if there was any public comment.

#### **Public Comment**

Mr. Gesh Avery introduced himself to the Planning Commission. He said that he was a cancer survivor, and he thought that an extract from the cannabis plant could kill

cancer by lowering the Ph levels in the body. He thought the Planning Commission should allow for the use of marihuana as a chemotherapy drug.

Ms. Christina Hatfield introduced herself to the Planning Commission. She explained that her brother had chemotherapy and needed medical marihuana to relieve the nausea that he experienced from the treatment. She said, at the time he was ill, that she did not have access to quality marihuana and had purchased some which was moldy, which made him sick for several weeks. She said he thought the Compassionate Care Centers, like the one in the Township, should be allowed, and people needed to accept the changes taking place in society. She said she supported The Med Joint and Midwest Compassion Care.

Ms. Loretta Bates introduced herself to the Planning Commission. She said she had a number of medical conditions, and she got relief through medical marihuana. She did not think it was a "big deal" to sell medical marihuana. She said, compared to the crack on the north side, the facilities in the Township were much more acceptable. She said that medical marihuana was not about smoking pot and getting high.

Mr. David Johns introduced himself to the Planning Commission. He said that he did not think there were problems with medical marihuana in that it was not a dangerous drug. He said he thought the assumptions that there would be crime and problems related to medical marihuana were way overblown. He suggested maintaining a temporary moratorium and see what happens in the area. He said there is currently no evidence of crime or robberies taking place. He said, if there was such a thing, he thought the community was being racist against pot.

Mr. Vaughn Topekas introduced himself to the Commission. He said medical marihuana patients were not criminals and should not be lumped together with criminals. He stated that he is on disability and had been a medical marihuana patient for years. He said he has seen the benefits of medical marihuana, including benefits to his father-in-law who had been bedridden for years. It is too cost prohibitive for patients to grow their own.

Mr. Steve Goodman introduced himself to the Planning Commission. He expressed concern that patients often outstrip the number of caregivers and by restricting the Compassion Club or The Med Joint or other dispensaries, we would be reducing the medical marihuana available to individuals who would have to look to the illegal drug trade for their medicine. He said he supported allowing dispensaries to fill in the gap and to be used to sell the excess marihuana grown by other patient caregivers.

Mr. Saul Ali introduced himself to the Commission. He said he wanted to support those persons in Oshtemo Township using medical marihuana. He stated that he thought the scare tactics being used by MTA and MML were untrue and that what the Township was proposing to do would force people to go to the street to get the marihuana which will create more crime. He also said that trying to shut down existing

facilities would result in lawsuits and would thwart the will of the people. He said that they would not go away.

Ms. Brennan introduced herself to the Planning Commission. She said she thought the Township should try to work with people on this issue, and she encouraged the Planning Commission to be more open to the needs of the people.

Ms. Monica Baker introduced herself to the Planning Commission. She said she was at this public hearing to speak for the patients and the caregivers. She said she thought the White Paper which was issued was unfortunate and misleading. She said she thought the proposed Ordinance was overly restrictive, would violate the Zoning Enabling Act and the Right to Farm Act, and that they were ignoring the best avenue for providing medical marijuana, which was the dispensary method.

Mr. Chris Lowry, on behalf of Midwest Compassionate Care, said he did not understand why the Township was fighting a lawful business which was in business to do nothing but relieve pain. He said dispensaries like theirs provided a legal access to medical marijuana by providing marijuana from licensed caregivers, and if they were shut down, it would cause chaos. Mr. Lowry then read a letter from one of their patients in support of his dispensary.

Mr. Saul Ali spoke again. He said he thought it was wrong to try to prevent smokehouses in the Township. He said many people needed a place to go to get medicated and that people in federal housing needed a place to smoke the marijuana because they could not smoke in federally-regulated housing.

Mr. Paul Tolanda introduced himself to the Planning Commission. He said he was an attorney from Detroit. He questioned the proposed Ordinance and whether it was pre-empted by state law. He suggested that litigation was quite costly and implied that if the Township passed the Ordinance, the Township would be sued. He also took exception to the White Paper issued by Mr. Fisher, and stated that the White Paper was not legitimate because of Mr. Fisher's association with Seacrest Wardell, a municipal law office, which was paid for drafting and defending municipal ordinances. He suggested maintaining a moratorium rather than getting sued.

Mr. Daniel Corse introduced himself to the Planning Commission. He said he was the President of a local chapter of NORMAL. He said they would like to see further reform in medical marijuana laws. He suggested that, if the Planning Commission took the action which it was proposing to take, it would impact their political futures. He noted that marijuana was not as bad as tobacco or alcohol and should be delisted from the list of illegal drugs.

Dr. Mitchell Cohen spoke on behalf of medical marijuana patients. He said many of them cannot grow marijuana, and any type of restriction which comes between them and their medicine is wrong. Therefore, he thought dispensaries should be permitted.

The Chairman asked if there was any further public comment, and hearing none, he closed public comment at 8:25 p.m. The Chairman said he appreciated the comments of the public. He stated that the Planning Commission is well aware that 63% of the Michigan voters had supported the proposal to allow medical marihuana. He noted that the Planning Commission was not attempting to prohibit caregivers from growing or providing medical marihuana and that the Ordinance merely addressed the issue of where medical marihuana businesses could operate.

Mr. Benson said he was not overly concerned about the federal aspects of the regulation. He also noted that 63% of the voters approved medical marihuana but the law was quite specific about what would be allowed, and it involved a caregiver providing medical marihuana for five patients or individuals growing medical marihuana for themselves. He said the law was silent about any other type of operation. Therefore, the types of operations for which people spoke in support of were simply outside the bounds of what was allowed under Michigan law and that the Planning Commission could not support anything other than what was permitted under Michigan law. He said he supported the Ordinance as written.

The Chairman asked if there were any comments from Attorney Porter. Attorney Porter said he thought that the proposed Ordinance, as drafted, was totally in compliance with the Michigan Medical Marihuana Act. He said that the proposed Ordinance was not overly restrictive or in conflict with Michigan law, but the Ordinance was meant to provide and accommodate caregivers as provided under Michigan statute.

Attorney Porter said he was not concerned about litigation. He explained that he was in-house counsel for the Township and that it did not matter to him whether he worked 40, 50 or 60 hours a week, and it did not matter to the Township because he was a salaried employee. He also explained that the Township has one of the best insurance policies available on the market which provided for additional legal defense, if it was necessary, with a cap of \$10,000,000. He said that the Planning Commission should be concerned with following the law and not be worried about possible litigation. He said the law did not provide for smokehouses or dispensaries; it did not allow compassion clubs; it did not allow patient-to-patient transfer of marihuana, and it would be illegal for the Planning Commission to allow what state law does not allow. He also noted that the federal authorities were beginning to take action against local units of government and state governments which were going too far in what they were permitting. He again suggested that the Planning Commission follow the proposed Ordinance which was drafted in compliance with state law.

The Chairman asked if there was any further discussion. Hearing none, he said he would entertain a motion. Mr. Benson made a motion to recommend the adoption of the Ordinance provisions regarding medical use of marihuana, as well as the proposed amendments to the freestanding sign and billboard provisions of the Zoning Ordinance as recommended by the Planning Department. Mr. Skalski seconded the motion. The Chairman called for a vote on the motion, and the motion passed unanimously.

## **Other Business**

Ms. Stefforia mentioned to the Commission that there was not a lot on their Agenda and asked what their pleasure was with regard to the June 9, 2011 meeting. Mr. Loy made a motion to cancel the June 9, 2011 meeting. The motion was seconded by Mr. Skalski. The Chairman called for a vote on the motion. The motion passed unanimously.

Mr. Bushouse mentioned possibly coming up with a method to allow people to post garage sales or yard sales at individual corners. He asked that the Commission consider and determine what possible solutions there might be to accommodate such postings. Ms. Stefforia said perhaps a public notice board at certain corners. The Chairman said it would help if people would take down the signs they put up.

## **Planning Commissioner Comments**

The Planning Commission Chairman thanked the members for their deliberations and consideration of issues at the meeting.

Mr. Benson said he thanked the subcommittee which worked on the Medical Marihuana Ordinance for their efforts.

Ms. Gelling said the subcommittee had taken into consideration a great deal of information before bringing their recommended language to the Ordinance.

Mr. Gould said he was pleased with the tenor of the meeting. He said he thought that the people were respectful. He also thanked the Planning Commission for being respectful of their concerns and said that there were a lot of people hurting, and he thought the meeting went quite well.

## **Adjournment**

There being no further comments, the meeting was adjourned at approximately 8:45 p.m.

Minutes Prepared:  
May 31, 2011

Minutes As Amended:  
July 14, 2011