



Rochester Hills

Minutes

Planning Commission

1000 Rochester Hills Dr.
Rochester Hills, MI
48309
(248) 656-4600
Home Page:
www.rochesterhills.org

Chairperson William Boswell, Vice Chairperson Deborah Brnabic
Members: Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas O. Kaltsounis,
David A. Reece, C. Neall Schroeder, Emmet Yukon

Tuesday, June 7, 2011

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson William Boswell called the Regular Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 9 - William Boswell, Deborah Brnabic, Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas Kaltsounis, David Reece, C. Neall Schroeder and Emmet Yukon

APPROVAL OF MINUTES

2011-0260 May 3, 2011 Regular Meeting

A motion was made by Kaltsounis, seconded by Schroeder, that this matter be Approved as Presented. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

COMMUNICATIONS

- A) Planning & Zoning News dated April 2011
- B) Trailways from the Friends of the Clinton River Trail for September 17, 2011
- C) City Council Districts

NEW BUSINESS

2007-0221 Request for Recommendation of the Extension of the Tentative Preliminary Plat for Grace Parc, a 16-lot subdivision located north of South Boulevard between Livernois and Rochester Roads, zoned R-4, Parcel Nos. 15-34-402-066 & -057, until April 20, 2012, William Mosher, Apex Engineering, applicant.

(Reference: Memo prepared by Ed Anzek, dated June 1, 2011 had been placed on file and by reference became part of the record thereof.)

Present for the applicant was Gwen Bismack, owner of the property, 2742 Powderhorn Ridge Rd., Rochester Hills, MI 48309.

Mr. Anzek advised that there had previously been Extensions granted for Grace Parc, and there were new owners now. The property had returned to the bank before Mr. and Mrs. Bismack purchased it. Mrs. Bismack submitted a letter stating that they would bring the development into compliance with new Engineering standards. They were requesting a one-year Extension, which would ultimately go before City Council.

Chairperson Boswell asked Ms. Bismack if she had anything to add. She indicated that Mr. Anzek had summarized everything well.

Mr. Schroeder noted the vacant lot to the west of the property, and he recalled that the owners had been before the Commission because they might develop something there in the future. Mr. Schroeder asked if anything was happening with that.

Ms. Bismack said that she believed they were waiting until she got her property developed before investigating anything further. Mr. Schroeder asked if the same two young people owned it, and Ms. Bismack said that they did, as far as she knew.

Chairperson Boswell commented that everyone should be fairly familiar with the proposal. Hearing no further discussion, Mr. Kaltsounis moved the following motion:

MOTION by Kaltsounis, seconded by Hetrick, in the matter of City File #04-011 (Grace Parc Subdivision), the Planning Commission recommends that City Council approve an Extension of the Tentative Preliminary Plat until April 20, 2012.

Mr. Kaltsounis said that he was a little concerned about setting a precedent because it had gone on so long, but he acknowledged that it was still a tough market.

Mrs. Bismack said that they hoped to get the Final in by August.

A motion was made by Kaltsounis, seconded by Hetrick, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell wished Ms. Bismack good luck.

2010-0441 Request for a six-month extension of the Moratorium for medical marihuana uses (to January 16, 2012).

Mr. Anzek stated that a year ago, Staff was before them to discuss the issues regarding Medical Marihuana, including implementation, developing regulatory standards, the sale, cultivation, delivery and others. At that time, little was known about the Medical Marihuana Act and what other communities were doing, and they had hoped that other communities would take the lead on setting a course of action that would be defensible. The Planning Commission supported a Moratorium for six months, allowing Staff and Mr. Staran to do extensive research into various Ordinances and look at how other communities were dealing with it. Six months later, they recommended another Extension because at that time, there was much chaos, and Staff could not provide clear guidance. There were concerns, and Staff did not want to take the City and its officials down a path resulting in a court date and liability. He and Mr. Staran continued to monitor the situation. He recalled that the Planning Commission had written letters to State Legislators, asking them to provide guidance for implementation at the local level. They subsequently learned from one Council member that the State Legislature had no interest in taking up the matter with a new administration. There were economic issues to deal with, and medical marihuana was not on the front burner. Staff had continued to watch things, share articles, and Mr. Staran attended conferences by the Michigan Association of Municipal Attorneys. The matter was discussed at great lengths, and although Mr. Staran had learned a lot, he had not learned enough to help set a clear path for implementation. Mr. Anzek stated that it was very challenging.

Mr. Anzek advised that recently, there was a 180 degree change in direction from the Federal Government regarding how they viewed the Controlled Substance Act for marihuana at the local level. He had included a memo from 2008 that stated that the Federal Government would not enforce controlled substance materials in states that had approved medical marihuana referendums. There had recently been a rash of letters to State Attorney Generals from the Federal Government, and copies had been provided in the packet. He had underlined the key language from the letters that was outlined in his memo to the Planning Commission. There were statements discussing whether State officials

that developed ordinances to allow use of marihuana could be prosecuted, which he felt was very discouraging. There was not much distance from the State level legislating it forward to the local level. His role and responsibility was to see that the Mayor, City Council or the Planning Commission were not in a position to be prosecuted for adopting an ordinance that supported the use.

Mr. Anzek further advised that nothing was in place regarding regulating card carrying patients who grew and used marihuana. It was the sale, cultivation and distribution that they should be able to control through land use standards. He turned the discussion over to Mr. Staran, and noted that the four cities that totally prohibited the use were being taken to court, but it was hard to get information about it. He had also provided some other cities' ordinances, but no standards seemed to work.

Mr. Staran indicated that Mr. Anzek had summarized things well. There was not too much to report from the courts, and they were staying tuned. The Planning Commission was aware that there were several communities that took the approach of adopting a very simple and short ordinance, which stated that the land use was prohibited completely because it would be in violation of the Federal law of prohibition. Under the Federal law, medical marihuana use was not permitted by zoning. The communities that prohibited it were being sued by a sponsor of the ACLU. It was his understanding from those closer to the situation that they did not expect any type of dispositive rule by the court until later this summer. There had been some circuit court cases in the paper. They were getting some inconsistent and conflicting decisions from the circuit courts as to interpretations. It looked like they were not going to get any clarity from the State Legislature in the near future, and they would have to wait for the court interpretations. He did not expect anything more definitive from the Court of Appeals for a while. There was a concurring opinion from Judge O'Connell, which was a very thorough analysis of the Medical Marihuana law and what he viewed to be the problems and issues and conclusions. For their purposes, unfortunately, it was a concurring opinion that went well beyond what the issues of the case were. They could view it as forecasting, but it was not legal precedent. He stated that they were in a position a lot like they were the last time they discussed it. He questioned whether they should move, but he was not sure "how the dust would settle." They had to decide if they should continue to monitor, study and operate under a moratorium. He said he was happy to answer any questions, but concluded that it was the status quo.

Mr. Anzek noted that a year ago, before the first moratorium, part of his concern was that he had no less than 20 individuals who wanted to know where they could locate dispensary and growing facilities. They were card carrying care givers and could grow up to 72 plants. He recalled that several of the Commissioners had gone to a Rochester Avon Youth Council sponsored seminar, in which Judge Jessica Cooper was in attendance, to learn about some of the finite issues of growing medical marihuana. Now, however, that level of activity had dropped to virtually nothing. He was getting no inquiries. Those that had called were informed of the moratoriums, and he had not heard from them in five to seven months. They had either gone to another community that supported marihuana or were doing it without the City's knowledge. There were questions, but there was not pressure like a year ago. He and Mr. Staran discussed that if the City did not have standards, it could be difficult to remove someone, and the City did not have the tools. He did not feel that they needed to do something immediate. He acknowledged that people did not like to have three moratoriums, but the matter could get them in trouble with the Federal government, or there could be enforcement issues locally.

Chairperson Boswell asked Mr. Staran if there were any legal ramifications if they issued another moratorium. He asked if they had to have an ordinance.

Mr. Staran responded that there was nothing that said they had to create an ordinance. They could do nothing and operate under current ordinances. The courts had generally upheld almost all moratoriums as legitimate when they were for a legitimate purpose of studying and developing a solution and defined length of time. They had typically been shot down when they had been seen as a delaying tactic. The farther out they got with moratoriums with extensions, the more they would be opening the door and making themselves more vulnerable to challenges of validity. He felt that it was a legitimate request, and that the Planning Commission needed to revisit the issue. Staff needed to continue to keep the Planning Commission and City Council comprised of new developments, and they needed to get closer to deciding whether they wanted to develop an ordinance or not. He felt they were on firm ground, but acknowledged that there was always a chance of a challenge. They might have someone force their hand.

Mr. Kaltsounis indicated that one of the requirements for a moratorium was that they did due diligence and found out what was happening in the courts and with the police and try to make a decision about which

direction to go. Now, he felt it was a volatile subject - perhaps even worse than six months ago. There were raids in various cities and the sheriffs were involved. Mr. Staran agreed, and added that there was now Federal involvement. It was very uncertain right now as to how the Federal Government was viewing it. They were taking a hands-off approach, and now some States had received a letter from them. He did not believe any officials in Michigan had received one of those letters. The local and State officials would not be immune from enforcement from Federal prosecution for actions in violation of the Controlled Substances Act. Whether that was a shot across the bow or a new position or just legalese, they did not know. A few days ago, he was copied on correspondence that suggested that the Michigan Association of Municipal Attorneys and the Michigan Municipal League (MML) might join forces to request some written clarification about their position from the U.S. Attorney General's Office and the State Attorney General. He added that it would not happen overnight.

Mr. Kaltsounis agreed, and said that on a Federal level before, it was illegal, but they might not prosecute. There were three or four letters in the packet in response to some cities' ordinances that said it was illegal and that the Feds would look at addressing it. If they wrote to the Department of Justice, they would get a similar letter. They already wrote to the State legislature. He wondered if they should do the same and write the Department of Justice. They had a hand in it, too. He noted the statement in one of the Attorney General letters that stated in part, "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the Controlled Substances Act." It was something they had to think about.

Mr. Anzek said that his and Mr. Saran's support to the City was to provide advice, but they could not tell the Commission what to do. If the members wanted to recommend that a certain ordinance be adopted, they would carry that message forward. They had no clear guidance or a frontrunner for a good ordinance for enforcement purposes. The stack of Attorney General's letters they received two weeks ago threw a new wrinkle into the ballgame.

Mr. Kaltsounis asked if they should write a letter to the Feds seeking advice, as they did with the State. Mr. Anzek remarked that they never did get a response. Mr. Kaltsounis wondered if the next step was to write to the Department of Justice. He felt a moratorium for another six months was worthy.

Mr. Anzek suggested that the key to the whole discussion was the individuals who were really in need who could find relief and were not prohibited from receiving and growing their own and taking care of their needs. The issues were with the sale, cultivation, transportation, retailing, and things the City could have some control over. They were not denying that lone individual; they were discussing getting involved in regulation. Mr. Kaltsounis said that he shared the same thoughts. In the news were people taking advantage of the law and cultivating for a profit. That was the big situation, and they were asked to look at it.

Mr. Anzek said that he and Mr. Staran had talked about it at length. At a meeting last Thursday, one staff member from another community had a totally different opinion about how the Act was written and how it applied. In that instance, the card carrying patient could go to any care giver at any time, and buy up to two-and-a-half ounces of medical marihuana. That was not his (Mr. Anzek's) or Mr. Staran's understanding of the law. It was not clear at the local level how to interpret the Act, and they could not find a model ordinance to follow. Mr. Kaltsounis asked again if they should write a letter to the Department of Justice. Mr. Staran said that efforts would be better directed to encourage the MML to move forward and request clarification. They would have more clout, and he felt it was better to be indirect.

Mr. Hooper summarized that nothing had happened in the last year that caused him to want to take any action. They were at the same point as a year ago. He asked if they could have a moratorium for longer than six months - perhaps a year - since it was their third Extension, and he did not think anything else would happen in the next six months. Mr. Staran replied that it was their prerogative. He thought that it was more of a habit to go in six-month increments. It was all they had needed, and it created an opportunity to more frequently revisit it. If the Planning Commission and City Council wanted to go for longer, he would not say they could not do it. Mr. Hooper said that he saw no reason for not making it a year, and short of any legislation from the State, he did not feel there was a reason to take action. Mr. Anzek did not think that a year's moratorium precluded them from acting on the matter if they found clear guidance or clarification. If something surfaced, and it was tested in the courts so they knew where they stood, and they could activate it. Mr. Staran said that new developments that had a material impact on their deliberations would be brought to the Planning Commission immediately. There could be a court decision that gave clear direction, and Staff would keep them apprised.

Mr. Dettloff asked Mr. Staran which four cities were challenged in court. Mr. Staran believed they were Birmingham, Livonia, Bloomfield Hills and Canton. Mr. Dettloff asked about cities that were allowing it, such as Ann Arbor. Mr. Staran said that Ann Arbor had bounced around in their approach. Mr. Dettloff asked if there was any Federal interference in that process, and Mr. Staran said that no one in Michigan had received any contact from the Federal government yet, but it might still come. The range of regulation came from the four communities included total prohibition to others that had taken a hands-off to some that had allowed it as a home occupation. Others have allowed it as a special land use with locational restrictions. When he talked about uses, he was talking about dispensaries and compassion clubs. They saw registered patients not as a land use, but just people using it for personal use. Beyond that, distribution and commercialization was where regulation came. Communities were going in all different ways, because no one was quite sure as to the best way to do it. Mr. Dettloff asked if all the communities were coming to the table. Mr. Anzek said they were all going in different ways and still evaluating the merits. Auburn Hills did a complete reversal. Their original ordinance was set aside, and they adopted another one with complete prohibition. Mr. Staran said that many cities were operating under moratoriums, so Rochester Hills was not alone. Mr. Anzek added that Rochester was right behind Rochester Hills, and many were still looking to see what was right. They were not looking to be the front runner. Mr. Dettloff stated that he agreed with Mr. Hooper to go for a year, noting that it could be amended earlier if necessary.

Ms. Brnabic agreed that there was a lack of clarity, and there was no way to make an informed decision. There was greater uncertainty now than six months ago. She said that Mr. Anzek mentioned that it was not a priority for the State Legislature. She realized that there was a lot going on with the economy, but she wondered if there was a good explanation about why they felt it was not a priority.

Mr. Staran said that he heard directly from an MML lobbyist and others that the State's focus was the budget. It was now turning to job creation. The lack of interest was probably not totally correct; it was simply low on the priority list. What was viewed as a very formidable hurdle was that the Michigan Medical Marijuana Act was an initiated citizen's referendum. Under the Constitution, it would require a $\frac{3}{4}$ vote from the State Legislature to amend the Medical Marijuana Act. If they looked at the voting statistics, short of some simple proclamations, they would not get a $\frac{3}{4}$ vote on anything. It was a very formidable task, and he reiterated that they should not look for relief from the State in the foreseeable future.

Ms. Brnabic said that it was a hard one because of the true intentions of the law. There was more than one agenda. If the true intention was compassion, that was one thing, but there was a group working on legalization. Mr. Staran agreed that was the ultimate end game for some. In California, there was an election to legalize marihuana. The election might have had a lot to do with the Federal Government taking another look at their position and re-evaluating. They did not want legalization. Ms. Brnabic said that it was a lower priority, but she wondered about sending the letter in the middle of an election year. She questioned if it might be worth it to try again, because at the time, the requests might have been shuffled aside due to the elections. Mr. Staran did not think people had forgotten about it at the State. There was not a legal or municipal seminar that went on in the State that did not have a medical marihuana topic on it. It was a high profile issue; it was just something the State Legislature was not able or ready to tackle at this point. They did not know how it would turn out or if it would become clearer. They were waiting for case law to come out, which might be conflicting. Mr. Anzek said that if the PC wanted them to, Staff would send a letter to the MML to represent to the State.

Ms. Brnabic wondered if everyone was aware that there was a hydro garden center in the City. It was in the South Hill Plaza, and they sold things to help grow things. There were special chemicals added. Mr. Anzek said that the Sheriff's Department was aware of it. He noted that there was a special edition of Metro Detroit just for those types of facilities and where to find doctors. There was a sub-culture that was developing quickly. It was adventurous for people to seek a buck and deal in illicit business. Ms. Brnabic said that she was curious to see what the store offered, and it was apparently legal. Mr. Anzek said that they had contacted him. He had to be careful because he could not assume things. He looked at it as a retail component. Mr. Staran said that was an issue, and it made it hard to develop an ordinance, because so many of the products that could be sold for illicit activities had legal issues. Criminals used tools and duct tape to commit crimes, but he asked if that should be banned. There were fine lines drawn, and many of those businesses knew where the lines were and how overt they could be in advertising. They could use things from the hydro garden store to grow tomatoes.

Mr. Hetrick said that given the volatility of the situation, he would be supportive of a moratorium, but given the legislature's ability to change the law, he would bend toward the Auburn Hills perspective of a flat out

ban. Given that they did not have a lot of information, he felt that they should do the moratorium for a year, as long as there was something in it about taking action as soon as they knew something. He would like to stipulate that the MML be asked to get involved. He felt it would be a good way to influence legislators so the Commission could take action. He thought marihuana was fine for people who used it for medical reasons. Mr. Anzek explained that the City did not legislate that, it was just not being addressed. It was a private matter in a private home.

Mr. Schroeder said that there was one major change - they knew where the Federal Government stood. He felt that they should go with a one-year moratorium and contact the MML and the State reps again.

Mr. Reece added that he supported a one-year moratorium, but he would like to see a six-month update on where they stood. They could discuss things ahead of time and start to prepare rather than have it expire. Mr. Anzek said that rather than update at six months, they would email updates as they got them. Mr. Reece said that he supported a six month update for general purpose information for the public. They could get updated if they wished. Relative to the shops popping up, he was seeing them all over up north in small towns. It was becoming more frequent. Some of the radio stations actively promoted the shops and had commercials.

Hearing no further discussion, Mr. Kaltsounis moved the following motion:

MOTION *by Kaltsounis, seconded by Schroeder, in the interest of promoting and protecting the health, safety and welfare of the public, and in view of the need for clarification of the Medical Marihuana Act and the resulting need for further study and analysis, the Rochester Hills Planning Commission hereby recommends that City Council extend the Moratorium for Medical Marihuana uses an additional twelve months from the date of passage at the City Council meeting with a six-month update by Staff, with the following four (4) findings:*

Findings:

- 1. There is uncertainty with cases currently in court*
- 2. There is concern about Federal involvement in the enforcement of drug laws*
- 3. There is great disparity and an untested nature of regulatory ordinances*

4. *There is a lack of Best Management Practices for regulating medical marihuana uses*

Recommended for Approval to the City Council Regular Meeting

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell stated for the record that the motion had passed unanimously.

2011-0292

MOTION by Kaltsounis, seconded by Yukon, the Rochester Hills Planning Commission requests that Staff write a letter similar to what was sent to the State Legislature requesting assistance from the Michigan Municipal League to use its best efforts to move the State Legislature toward clarifying the Medical Marihuana Act.

A motion was made by Kaltsounis, seconded by Yukon, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell again stated for the record that the motion had passed unanimously.

ANY OTHER BUSINESS

Mr. Anzek was pleased to report that the City had hired Ms. Pamela Valentik as the Economic Development Manager. She started about a month ago and came from the City of Troy. She was well connected in the business community and knew many of the business leaders in Rochester Hills. She was aware of the State initiatives and incentives for attracting business. They had also completed interviews for the Manager of Planning. There was a clear cut leader in the scoring and a little checking was being done before making an offer. That person should be on board in three to four weeks.

Mr. Schroeder asked how many applicants there were. Mr. Anzek advised that there were 23, and eight met all the minimum qualifications. They interviewed seven.

The Commissioners talked about the July meeting. Several would not be available. Mr. Anzek said that there might be a Special Meeting in July because there was only one item on the agenda so far. He noted that the August meeting was cancelled because of the Primaries, so they could hold a meeting the third week in July if most were available.

NEXT MEETING DATE

Chairperson Boswell reminded the Commissioners that the next Regular Meeting was scheduled for July 5, 2011; however, it was discussed that a Special Meeting might be called due to the holiday week.

ADJOURNMENT

Hearing no further business to come before the Commission, and upon motion by Kaltsounis, Chairperson Boswell adjourned the Regular Meeting at 8:02 p.m., Michigan time.

William F. Boswell, Chairperson
Rochester Hills Planning Commission

Maureen Gentry, Recording Secretary