

PLANNING COMMISSION

January 18, 2018

The City of Portage Planning Commission meeting of January 18, 2018 was called to order by Chairman Stoffer at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Approximately 12 citizens were in attendance.

PLEDGE OF ALLEGIANCE:

Chairman Stoffer led the Commission, staff and citizens in the Pledge of Allegiance.

IN ATTENDANCE:

Vicki Georgeau, Director of Community Development; Michael West, Senior City Planner; Charlie Bear, Assistant City Attorney; and Bryan Beach, Assistant City Attorney.

ROLL CALL:

Mr. West called the roll: Patterson (yes), Shoup (yes), Stoffer (yes), Schimmel (yes), Harrell-Page (yes); Place (yes), and Corradini (yes). A motion was made by Commissioner Patterson, seconded by Commissioner Schimmel, to approve the roll excusing Commissioners Bosch and Joshi. The motion was unanimously approved 7-0.

APPROVAL OF MINUTES:

Chairman Stoffer referred the Commission to the January 4, 2018 regular meeting minutes contained in the agenda packet. A motion was made by Commissioner Schimmel, seconded by Commissioner Harrell-Page, to approve the minutes as submitted. The motion was unanimously approved 7-0.

SITE/FINAL PLANS:

None.

PUBLIC HEARING:

1. Special Land Use Permit Amendment: Jungle Joes (outdoor miniature golf course), 7255 South Sprinkle Road. Mr. West summarized the Department of Community Development staff report dated January 12, 2018 regarding a request from Mr. Jeffrey Rozek to amend a previously approved Special Land Use Permit to allow establishment of an 18-hole outdoor miniature golf course along the north side of the existing Jungle Joes indoor recreational facility located at 7255 South Sprinkle Road. Mr. West summarized the initial discussion which occurred at the December 21, 2016 meeting and referred the Commission to the supplemental letter provided by the applicant and included with the agenda materials. Mr. West discussed the original 2006 approval that allowed establishment of the Jungle Joes indoor recreational facility at the site, along with other similar approvals of indoor recreational facilities within the I-1, light industrial zoning district including SoccerZone, The Courthouse and Kingdom Indoor Center. Mr. West then reviewed Section 42-280.C.10 which allowed the Commission to consider other uses in the I-1 district, along with Section 42-462 which established General Standards or Review for Special Land Uses. Mr. West stated the addition of an outdoor miniature golf course at the subject site with permanent structures and improvements represents a use that has not historically been allowed in the I-1 district, is not consistent with the intent and purpose of the I-1 zone or stated objectives within the Comprehensive Plan, may detract from the appearance and functionality of the Sprinkle Road Industrial Corridor and may set a precedent for similar requests in the future. Mr. West indicated that entertainment centers such as Airway Lanes (Portage Road) and the former Putters (South Westnedge Avenue) and Lazerland (Portage Road) that include outdoor recreational uses such as miniature golf, rope courses, batting cages and go-carts have historically located and are better suited in the B-3, general business zoning district. For these reasons, Mr. West indicated the request was viewed as problematic and was not recommended for approval.

Mr. Jeffrey Rozek (applicant/owner) was present to support the application and to summarize his supplemental letter which also included a letter of support from the owner of adjacent property located immediately to the north and south of his site. Mr. Rozek indicated the proposed outdoor miniature golf course was intended to help diversify his business by offering an outdoor summer-time activity and was similar to other outdoor recreational uses that surround his property. Chairman Stoffer asked for clarification regarding the communication received from Attorney Brown. Mr. West reviewed the communication and the two alternatives presented by Attorney Brown, if the Commission was to formulate a motion to approve the outdoor miniature golf course. Mr. West indicated that Alternative A was complicated and imposed several conditions upon the applicant and was not recommended by staff. Mr. West stated that Alternative B was simpler and reaffirmed the special land use permit ordinance language contained in the Zoning Code.

The public hearing was then re-opened by Chairman Stoffer. No citizens spoke regarding the proposed special land use permit amendment. A motion was then made by Commissioner Place, seconded by Commissioner Harrell-Page, to close the public hearing. The motion was unanimously approved 7-0.

The Commission and staff next discussed various aspects of the request including historical reviews/approvals of indoor recreational uses in the I-1 district, availability of vacant industrial land and the surrounding land use pattern and characteristics. After additional discussion, a motion was made by Chairman Stoffer, seconded by Commissioner Harrell-Page, to approve the Special Land Use Permit Amendment for Jungle Joes (outdoor miniature golf course), 7255 South Sprinkle Road, with a finding that the proposed use was similar to existing recreational uses located immediately to the north, south and east, and would not be detrimental to surrounding properties. The motion also included a condition that the operation of the outdoor miniature golf course, as represented in the drawings and plans submitted by the applicant, is granted on the condition that if the outdoor miniature golf course is abandoned or ceases its operations with no intent for resumption, the Special Land Use may be revoked pursuant to Portage Ordinance Section 42-461(3) & (4). Upon a roll call vote: Patterson (yes), Corradini (yes), Shoup (yes), Place (yes), Stoffer (yes), Harrell-Page (yes) and Schimmel (yes), the motion was unanimously approved 7-0.

2. Special Land Use Permit: Presidential Brewing, 129 West Centre Avenue. Mr. West summarized the Department of Community Development staff report dated January 12, 2018 regarding a request from Mr. Jake Lohse to establish a micro-brewery/brew-pub (Presidential Brewing Company) within an approximate 3,100 square foot tenant space within the south building of the Portage Centre Plaza on property addressed as 129 West Centre Avenue. Mr. West indicated that the Zoning Board of Appeals on January 8th granted the applicant a variance that requires a micro-brewery/brew-pub to include a restaurant having a minimum seating occupancy of 100 persons and providing full lunch and dinner service. Mr. West stated the proposal to establish a micro-brewery/brew-pub at the subject property fulfills the requirements for issuance of a special land use permit and was recommended for approval.

Mr. Jake Lohse (applicant) was present to support the application and explain his plans for a phased approach to grow the micro-brewery/brew-pub operations over the first 1-2 years. The public hearing was then opened by Chairman Stoffer. No citizens spoke regarding the proposed special land use permit. A motion was made by Commissioner Schimmel, seconded by Commissioner Place, to close the public hearing. The motion was unanimously approved 7-0.

After additional discussion, a motion was made by Commissioner Shoup, seconded by Commissioner Corradini, to approve the Special Land Use Permit for Presidential Brewing Company, 129 West Centre Avenue. The motion was unanimously approved 7-0.

3. Ordinance Amendment #17/18-A, Medical Marihuana Facilities. Mr. West introduced Director of Community Development, Vicki Georgeau and Assistant City Attorney, Charlie Bear and also referred the Commission to a January 18, 2018 communication received from Kristin Tencza of Oasis Wellness Centers. Ms. Georgeau summarized the staff report dated January 16, 2018 and the proposed ordinance amendments to Chapter 42 (Zoning Code) and Chapter 14 (Businesses, Medical Marihuana Facilities). Ms. Georgeau reiterated that the amendment to Chapter 14 was not subject to Planning Commission review and recommendation, however, was provided for context as the Planning Commission reviews the Zoning Code

amendment. Ms. Georgeau summarized changes made to Chapter 42 (Zoning Code) since the January 4, 2018 preliminary review by the Commission and the rationale for these changes including the addition of “child care center” to the 1,000 foot setback from medical marihuana facilities (child care centers were originally intended to be included, however, were inadvertently not referenced in previous versions of the ordinance); the addition of a 250 foot setback from the corporate boundary of the city with the exception of the south, east and west sides of the airport; the addition of clarifying language that only one medical marihuana facility is permitted per zoning lot (originally intended to be included, however, not specifically referenced in previous versions of the ordinance); a reduction in the separation standard from 1,500 feet to 1,000 feet between growers and processors (for consistency with provisioning center standard); and a revision to the text that the separation requirements between medical marihuana facilities apply to like facilities (the previous version of the ordinance was determined to be overly restrictive). Ms. Georgeau then reviewed maps of eligible properties and potential locational scenarios based on the ordinance changes citing approximately 66 eligible B-3 zoned properties for provisioning centers (previously 70 properties) with 11 potential “locations”, and 97 eligible I-1/I-2 zoned eligible properties for growers, processors, safety compliance and secure transporters (previously 117 properties) with 15 potential “locations” for growers and processors. Ms. Georgeau then summarized changes to Chapter 14 (Business, Medical Marihuana Facilities) and the rationale for these changes including elimination of the waiver from the separation requirement between facilities for the first year of applications and the addition of a lottery system for applicants that do not meet the separation requirements from another like applicant, and revisions to the application process which includes an initial application window for applicants that have been issued a temporary operating permit. Ms. Georgeau stated the waiver from the separation standard between facilities during the first year was contrary to the original intent of the separation standard, which is to avoid a concentration or cluster of facilities in a particular area of the city. Attorney Bear provided additional explanation regarding changes to the application process and inclusion of a lottery system, if multiple applications are received for a specific area with an overlap of the 1,000 foot separation. In addition, Attorney Bear indicated the lottery system is proposed due to concerns with a merit based evaluation, which may not withstand a legal challenge.

Chairman Stoffer asked if the Zoning Code currently has similar separation requirements for other businesses in the B-3, I-1 and/or I-2 zones. Ms. Georgeau stated the adult regulated uses section of the Zoning Code has similar separation requirements between businesses. Ms. Georgeau restated that medical marihuana facilities are a new type of land use with unknown impacts and it was best to proceed carefully and cautiously. Ms. Georgeau indicated the ordinance could be amended in the future to relax restrictions and requirements, after the city has time to evaluate the real impacts of approved facilities. Chairman Stoffer stated he was very concerned about the 1,000 foot setback from schools and future legislation that may allow for recreational marihuana in Michigan. While acknowledging the medicinal benefits, Chairman Stoffer stated he didn’t want to give the wrong impression to students that widespread marihuana use was acceptable. Chairman Stoffer stated that students are very impressionable and the Portage Public Schools are a great asset to the community. Chairman Stoffer referenced the article provided by Ashley Bergeon of the Kalamazoo County Substance Abuse Task Force at the last meeting and the negative impacts of locating facilities close to schools has had on students in Colorado. Chairman Stoffer believes that the city should move cautiously on the ordinance development and believes a much larger setback (possibly one mile) from the Portage Northern High School/Middle School campus and Portage Central High School/Middle School campus should be considered. Chairman Stoffer asked staff how the inclusion of a one mile setback from these high school/middle school campuses would impact the number of eligible properties. Ms. Georgeau stated that a one mile setback would reduce the number of eligible B-3 zoned properties from 66 to 56 (loss of 10) and the number of eligible I-1/I-2 properties from 97 to 84 (loss of 13). If the one mile setback was proposed from Loy Norrix High School in Kalamazoo, Ms. Georgeau indicated there would be a further reduction in available properties. Attorney Bear provided a brief overview of the State law and the preliminary rules that specifically state that medical marihuana can not be marketed or sold to minors and indicated Portage Public Safety intends to monitor medical marihuana facilities. Ms. Georgeau also indicated that minors are not allowed to enter a medical marihuana facility.

Commissioner Patterson also referenced the article included with the agenda materials and indicated that illegal activities associated medical marihuana, such as reselling the product to minors, was similar to illegal alcohol sales, which is an issue beyond the scope of the ordinance. Commissioner Patterson stated that he believes the 1,000 foot setback from schools is reasonable. Commissioner Patterson then asked about the currently eligible properties located on the west side of Portage Road, north of East Centre Ave, and the impact of the future trail expansion/construction that was planned along the Consumers Energy Company transmission lines. Ms. Georgeau stated that the trail was planned a couple years out in the Capital Improvement Program and if a medical marihuana facility was to locate at one of these properties prior to the trail construction and designation as a “park”, the facilities would be allowed to continue at this location. Commissioner Place stated that she also believes the 1,000 foot setback from schools was a reasonable standard citing the location of an existing party store that sells alcohol and tobacco at the entrance to Portage Central High School. Commissioner Place indicated that the 250-foot buffer from the city jurisdictional boundary appears to be another restriction added to the ordinance which unnecessarily limits the location of facilities. Commissioner Place also asked for additional clarification on the 1,000-foot separation requirement between facilities and whether the addition of language to address potential odors could be added to the ordinance, thereby eliminating the need for the 1,000-foot separation requirement. Ms. Georgeau indicated that there are existing restrictions regarding odor control contained in Chapter 14 of the ordinance amendment. Ms. Georgeau indicated the intent of the 1,000-foot separation requirement was not related only to odor control, but also to address the overall number and concentration of these new land uses. As previously stated, Ms. Georgeau stated that the ordinance provides for numerous eligible properties and several potential “locations” for provisioning centers, growers and processors and that the 1,000 foot separation requirement does not apply to secure transporters and safety compliance facilities.

The public hearing was reconvened by Chairman Stoffer. Three citizens spoke regarding the proposed medical marihuana ordinance amendments: Ken Jonatzke (8318 Portage Road), Josh Cook (7185 Easling Street, Mattawan, Michigan) and Ashley Bergeon (Coordinator for the Kalamazoo County Substance Abuse Task Force, 611 Whitcomb, Kalamazoo, Michigan). Mr. Jonatzke, a resident and business owner at 8318 Portage Road since 1971, discussed the medical marihuana dispensary that illegally moved into the adjacent property approximately two years ago and the changes to the ordinance which have occurred since the last meeting which would no longer allow him to operate from his location. Mr. Jonatzke stated he didn't agree with the changes and asked that considerations be given in the ordinance to “level the playing field” between his location and the Lake Effect facility to the north. Ms. Georgeau clarified that Mr. Jonatzke has been operating a home occupation caregiver facility from his residence and he could continue to operate this business. Ms. Georgeau stated that Mr. Jonatzke did make application under the emergency ordinance adopted by City Council in December, however, his application was denied since it did not satisfy the applicable criteria. Mr. Cook indicated that he believes the buffer and separation standards are too restrictive and asked for reconsideration of these requirements to allow for more business opportunities and available properties. Mr. Cook also discussed the significant financial investment necessary to perform the necessary due diligence and receive approval for a medical marihuana facility and his concerns about the proposed “lottery” system for determination of which business could locate at a particular site. Ms. Bergeon provide a summary of a recent survey conducted in Kalamazoo County that indicated approximately 16% of minors illegally obtain marihuana through medical marihuana dispensaries. Ms. Bergeon stated that marihuana was the 3rd highest abused drug for treatment in Kalamazoo County and indicated that long-term use of marihuana had negative impacts on brain function similar to lead exposure. Ms. Bergeon cautioned the city to consider the potential impacts on local youth and to utilize a “harm/risk” evaluation when considering adoption of a medical marihuana ordinance. No additional citizens spoke regarding the proposed ordinance amendments. A motion was then made by Commissioner Schimmel, seconded by Commissioner Place, to close the public hearing. The motion was unanimously approved 7-0.

Commissioner Shoup stated that he agrees with both sides on this issue and supports a larger setback from schools and a lesser separation distance between medical marihuana facilities. Commissioner Corradini indicated that he concurs with both Chairman Stoffer and Commissioner Shoup regarding a larger setback from schools and a lesser separation standard between facilities. Commissioner Corradini commended city

staff for their hard work and tremendous effort regarding this issue and is confident that City Council will carefully consider the comments of the Commission and do what is right for the community. Ms. Georgeau provided some clarifying comments regarding the proposed ordinance amendment and reiterated that the maps of eligible properties was intended to be informational and that each particular application would need to be closely reviewed for compliance with all the ordinance requirements. Ms. Georgeau indicated that staff was requesting a Planning Commission recommendation at tonight's meeting and that City Council would accept the ordinance for first reading at the January 23rd meeting and set a public hearing to consider adoption of the ordinance at the February 27th meeting. Commissioner Place restated that she believes the 250-foot buffer from the city jurisdictional boundaries should be eliminated and the 1,000-foot separation between facilities should be reduced. Commissioner Place indicated that she believes the 1,000-foot setback from schools, churches, etc. was sufficient. Commissioner Schimmel stated that she believes the ordinance amendment should be forwarded to City Council and they can consider the comments from the Commission in their deliberations

A motion was then made by Commissioner Schimmel, seconded by Commissioner Patterson, to recommend to City Council that Ordinance Amendment #17/18-A, Medical Marijuana Facilities, be approved. Commissioner Harrell-Page asked if other communities are requiring growers and processors to be separated, or whether they were allowed to be located together. Ms. Georgeau stated that the draft emergency rules from the State allow for co-location of facilities, however, there is some uncertainty about the LARA Emergency Rules and the city is awaiting further clarification and finalization of these rules before they would consider co-location. Attorney Bear provided additional comments regarding this issue and stated that his recommendation at this time was to not consider co-location until the State promulgates final rules. Chairman Stoffer again restated his concerns and requested that City Council consider a one-mile setback distance from the two high school/middle school campuses. Chairman Stoffer indicated that he believes the 250-foot buffer standard from the city jurisdiction boundary was a good standard. Upon a roll call vote: Corradini (yes), Place (yes), Harrell-Page (yes), Schimmel (yes), Stoffer (yes), Shoup (yes) and Patterson (yes), the motion was unanimously approved 7-0.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

STATEMENT OF CITIZENS/COMMISSIONERS:

None.

ADJOURNMENT:

Commissioners Corradini and Patterson stated they were not be present at the February 22, 2018 meeting.

There being no further business to come before the Commission, the regularly scheduled meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Michael West, AICP
Senior City Planner