

MINUTES

ANN ARBOR CITY PLANNING COMMISSION

REGULAR MEETING

7:00 p.m. – October 5, 2010

Time: Chair Mahler called the meeting to order at 7:00 p.m.

Place: Guy C. Larcom, Jr. Municipal Building, 100 North Fifth Avenue, Second Floor, Council Chamber, Ann Arbor, Michigan.

ROLL CALL

Members Present: Bona, Briggs, Carlberg, Derezinski, Giannola, Mahler, Westphal,

Members Absent: Pratt [arriving late] Woods

Staff Present: Rampson, Thacher, Larcom

INTRODUCTIONS

None

APPROVAL OF AGENDA

Moved by Westphal, Seconded by Giannola, to approve the agenda.

A vote to approve the agenda showed:

YEAS: Bona, Briggs, Carlberg, Derezinski, Giannola, Mahler, Westphal, Woods

NAYS: None

ABSENT: Pratt, Woods

Motion carried.

MINUTES OF PREVIOUS MEETING

Moved by Giannola, Seconded by Derezinski, to approve the Minutes of August 17, 2010.

A vote to approve the meeting minutes showed:

YEAS: Bona, Briggs, Carlberg, Derezinski, Giannola, Mahler, Westphal, Woods

NAYS: None
ABSENT: Pratt, Woods

Motion carried.

REPORTS FROM CITY ADMINISTRATION, CITY COUNCIL,
PLANNING MANAGER, PLANNING COMMISSION
OFFICERS AND COMMITTEES, WRITTEN COMMUNICATIONS AND PETITIONS

a. City Administration

None

b. City Council

Derezinski reported that the City Council had postponed taking action on the Area, Height and Placement ordinance for two weeks in order to allow a Councilmember time to review the matter. He explained that upon his request the City Council had also postponed, for two weeks, taking action on a resolution to approve an amendment to a consent judgment regarding the Glen Ann Place PUD site plan. He noted that the request was for an extension on their site plan due to financial issues.

c. Planning Manager

Rampson gave a brief summary from a workshop in Boston she attended on Climate Adaptation and Resilience. She brought the Commission's attention to items in their packet; the Committee/Work Group Assignment, the memo regarding the South State Street Corridor Survey and the October meeting schedule.

Bona suggested that new Commissioners who are on the Capital Improvement Plan Committee may want to attend various committees in order to give them a better understanding of the CIP.

d. Planning Commission Officers and Committees

Westphal reported that the Downtown Designing Guidelines Task Force will be meeting on October 6, 2010 at 5:15 pm for a mobile tour. He explained that at the Environmental Commission there were two resolutions that were brought before them for discussion. He noted that the Resolution for Partnership passed but the Peak Oil Resolution did not pass.

[7:10 pm; Enter Commissioner Pratt.]

Briggs reported that the Citizens Participation Committee had met today and were working on the framework of their committee on how they can improve the citizen's participation process.

Mahler thanked Bona for the informative lecture that she had arranged with key speaker, Pat Murphy.

Bona explained that the Library taped the lecture and would be making it available. She hoped that the tape could be made available to the public through the Planning and Development Services website as well.

Rampson stated that the department could post the library's link to the lecture into the City's website.

e. Written Communications and Petitions

1. Email from Jon Svoboda Requesting Reconsideration of Arbor Dog Daycare Proposal.
2. Various emails regarding Arbor Dog Daycare Proposal.
3. Various emails regarding Fuller Road Station Proposal.
4. Email regarding Medical Marijuana Ordinance Proposal.

AUDIENCE PARTICIPATION

Margaret Svoboda, 2856 S. Main Street, Ann Arbor, owner of Arbor Dog Daycare, requested the Commission to reconsider the Arbor Dog Daycare proposal.

Jon Svoboda, 2856 S. Main Street, Ann Arbor, owner of Arbor Dog Daycare, requested Commission input on direction regarding reopening their Arbor Dog Daycare proposal.

Heather Bollingham, 6252 Aspen Way, Ann Arbor, spoke in support of Arbor Dog Daycare as a customer of their business.

Linda Coon, 935 Wildwood Lane, Ann Arbor, spoke in support of Arbor Dog Daycare and their request.

PUBLIC HEARINGS SCHEDULED FOR NEXT MEETING

Mahler read the Notice of Public Hearing scheduled for the October 19, 2010 meeting.

1. Briar Cove Apartment Site Plan for Planning Commission Approval, 20 acres, 650 Waymarket Drive. A proposal to add parking spaces throughout the existing apartment community.
2. University Bank (Hoover Mansion) Planned Unit Development (PUD) Supplemental Regulations Revision and PUD Site Plan, 2.10 acres, 2015 Washtenaw Avenue. A request to revise the approved PUD supplemental regulations to increase the total number of employees and parking spaces allowed and a proposal to construct 24 additional parking spaces at the southeast corner of the site for a new total of 58 spaces.

REGULAR BUSINESS

- a. Public Hearing and Action on Amendments to Chapter 55 (Zoning Ordinance) to Add Regulations Concerning Medical Marijuana Dispensaries and Home Occupations – Staff Recommendation: Approval

Thacher presented the staff report and explained the revisions made to the amendment since the Commission had previously reviewed it.

Assistant City Attorney, Kristen Larcom responded to previous inquiries about licensing requirements. She explained that the City Attorney's office is currently looking into what other communities are doing in regards to licensing but that it would be enforced through a separate ordinance, once it was adopted.

Commissioner Briggs asked if public speakers were required to give their address when addressing the Commission.

Rampson responded that it has been past practice for public speakers to give their address so that the Commission can get a clear understanding if the speakers have a stake in the issues being presented and if the speakers are residents of the City.

Public Hearing Opened.

Mark Curtis, 7678 Matthews Road, Spring Arbor, MI spoke in support of medical marijuana as a source of creating revenue for the City. He stressed the importance of the City to plan for the future, and thanked them for doing their research.

Chuck Ream, Packard Road, Ann Arbor, spoke on behalf of Ann Arbor Coalition for Compassionate Care. He thanked the voters of Ann Arbor for supporting the Medical Marijuana proposition. He also thanked the City Council and Planning Commission for their hard work on the proposed zoning amendment to Chapter 55. Ream distributed a handout to the Commission with his concerns regarding the new Section 5:52. He stated that he had concerns with the following sections of the ordinance:
Section 3 c. dealing with parking requirements.
Section 3 d. written permission required from owners.
Section 4 h. requirement that cultivation needed to be indoors when he felt a greenhouse would be adequate.
Section 5 c. State of Michigan had already covered this regulation
Section 7 e. felt this whole section was redundant.

Michael Mead, Ann Arbor, commented on Section 5 Home Occupation. He felt that the State law was intended for caregivers growing plants which was a personal activity and thus not a business activity. Mead also felt that the staff report wasn't based on published scientific literature on the cannabis plant. He stressed the need for confidentiality of caregivers as well as patients and asked if the City could guarantee that related zoning compliance permits would and could be kept confidential. He urged the Commission to remove the section dealing with zoning compliance permits and that they postpone taking action on the items until more thought had been put into the amendment.

Mile McCloud, Ann Arbor, spoke as a representative of approximately 2000 individuals of the Ann Arbor Medical Marijuana Collective and Green Planet Collective. He stated that he had concerns that the PUD and Office zoning districts had been excluded from the ordinance. McCloud felt that requiring written permission from the owner would force owners to incriminate themselves since cultivation of marijuana was illegal under federal law. He also commented that the ordinance would exclude rental properties. He had concerns that the City didn't have the means to restrict public access to records such as zoning compliance permits.

Gersh Avery, 9205 Dexter Chelsea Road, Dexter, spoke regarding confidentiality issues, stressing that medical marijuana caregivers were not protected under the HIPPA laws but rather protected under the State medical marijuana licensing laws that require confidentiality. He noted that government workers who divulge confidential information can go to jail for six months and receive a fine. Avery requested that the City consider these confidentiality laws when drafting an ordinance around medical marijuana so not to become a test case for Michigan with government workers being arrested over confidentiality issues.

Dennis Hayes, spoke on behalf of the Ann Arbor Medical Marijuana Patient's Collective. He thanked the staff for their diligent work on the ordinance as well as for their site visits to various dispensaries in the City. Hayes noted that the Office zoned districts are low intensity uses and should therefore be included in allowable districts. He felt these would be discreet operations, where patients who were seeing their doctors could also conveniently pick up their medication.

Noting no further speakers, Mahler declared the public hearing closed.

Moved by Westphal, Seconded by Carlberg that The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the amendment to Chapter 55 (Zoning), to add a new Section 5:50.1: Regulations Concerning Medical Marijuana.

Bona responded to public comments regarding where medical marijuana dispensaries could be located. She suggested inserting a reference to the language of the Supplemental Regulations of the PUD zoning, noting that she believed the provisions of the PUD stipulated '*where retail is allowed*'. Bona noted that she would be in favor of adding this language but only where retail is allowed.

Rampson asked if that would allow them to interpret the Supplemental regulations differently than what was currently written.

Bona answered that she was associating dispensaries with retail and if retail was allowed in PUD districts then that might also be an appropriate place to allow a dispensary.

Rampson noted that every PUD was different and PUDs set out the standards and beneficial impacts. She suggested that if the Commission felt they wanted to include this language then she would recommend that they amend the Supplemental Regulations to include this specific language.

Thacher commented that in the future if these uses were allowed in PUD districts, then language could be added such as '*in PUDs where it's allowed by the Supplemental Regulations*'.

Westphal asked if in Section 3 (a) of the ordinance it would be easier to add, '*where retail is a permitted use in a PUD*'.

Giannola stated that she had a concern about including C1 zoning district, noting that coworkers had also brought their concerns to her regarding the uncertainty and unknown aspect of C1 districts. She asked for feedback from other Commissioners on this issue.

Carlberg noted that she had gone on the tour of dispensaries and she was impressed by how minimal of an impact these dispensaries in C-1 districts had on the surrounding residential neighborhoods. She stated that there didn't seem to be any odor or noise impact and with minimal traffic impact. Carlberg stated that C1 areas are set up to allow parking at the businesses and C1 areas are spread throughout our commercial districts with very little difference from C2 and C3 districts. She commented that she found the tour very helpful.

Briggs asked Carlberg to clarify why she felt the proposed use wouldn't be a good use for Office Districts.

Carlberg responded that she wasn't sure how to answer the question but felt that since they were allowing this use in so many other districts there were plenty of opportunities for people to create these types of businesses in those other districts without feeling that they needed to allow these uses everywhere and anywhere.

Rampson explained that retail use isn't generally allowed in Office districts unless it is of minimal nature so the most significant reason behind the uses wouldn't necessarily be traffic impact, but rather the commercial/retail usage.

Pratt enquired if the current version of the ordinance before the Commission could be considered fair and legal and if the City Attorney felt it was defensible. He also asked if taking out the distance requirements made the ordinance more of a liability.

Assistant City Attorney Kristen Larcom stated that the City Attorney has reviewed the ordinance and feel comfortable moving it forward. She expressed that the current issues being discussed are more policy related issue.

Pratt asked about Section 5, Home Occupation. He asked for verification if patients growing for themselves wouldn't require permits.

Thacher responded that was correct, they wouldn't require a permit.

Pratt asked if there could be a way around the signature requirement; he asked if the standard tenant lease prohibits criminal activity and if a landlord would have a right to terminate a lease if there was illegal activity going on in his building. He asked if staff had looked into this possible area of concern, since it would seem that there is some discrepancy knowing the activity is considered federally illegal but legal at the State level.

Carlberg explained that when she was on the tour she had the opportunity to talk to a building owner and the building owner had expressed that they had an interest to know what activities were going on in their building. Carlberg stated that she would opt for having the building owner responsible and would feel comfortable removing the signature requirement.

Westphal asked if the original intent for including this language was in order for the building owner [landlord] to be alerted of possible disruptive uses to other tenants in the building.

Thacher responded that the issue was raised but there wasn't much time spent on the discussion.

Derezinski thanked the staff for their hard work and research on the matter. He noted the saying about not letting the *perfect* get in the way of the *good*. Derezinski stated that the Commission should remember that the draft ordinance is only a part of what the City will be doing, since he believed the City Council will follow-up with a licensing ordinance as well.

Derezinski noted that the Planning Commission had a limited function involving this ordinance dealing mostly with zoning and planning, while there remained another dimension at the City Council level that will compliment what the City Planning Commission is doing in picking any lose ends.

Derezinski compared the Regulations Concerning Medical Marijuana ordinance process to the processes involved when the State Legislature legalized Bingo. He acknowledged that the City was working on trying to figure out the dynamics of the issue and while the ordinance might not be perfect he believed they had come a long way towards something that was very good.

Carlberg expressed her concern with the parking standards required at a cultivation location.

Thacher noted that the draft ordinance expressly noted in Section 3 (c) *In C [commercial] districts, buildings used for dispensaries or cultivation facilities shall meet the minimum parking requirements of Chapter 59 for retail uses, with no exceptions for existing nonconforming parking.*

Carlberg stated that she felt the existing language was reasonable.

Westphal asked for clarification on Section 4 (f) regarding M zoning districts and if there was any differentiation intended between what types of retail uses could be included in the M1 and M2 districts.

Thacher responded that the language in Section 4 (f) included all allowable uses and there was no differentiations intended.

Westphal asked if it would be allowable to have a dispensary on an M parcel but it wouldn't be allowed to be called a dispensary because of the minimal floor area requirement.

Thacher answered that the business would still be recognized and called a dispensary but the use for cultivation wouldn't be allowed to occupy more than 10% of the building.

Westphal asked if a cultivation facility would be classified differently than a dispensary, and if there would be additional parking requirements.

Thacher responded that both types of business, cultivation as well as a dispensary would be counted towards the total floor area of the building as outlined in Section 4 (f). She explained that having a dispensary only wouldn't be allowed as that would violate the 10% allowed, but a dispensary together with a cultivation facility would qualify. Thacher noted that the parking requirements for the M districts would apply and there wouldn't be any additional requirements.

Westphal asked if the wording in 4 (d) *express written permission* could be exchanged with the word *acknowledgement*, thereby making it less problematic for the landlord.

Thacher asked how in what form the acknowledgement would come.

Rampson explained that when the City issues a Zoning Compliance Permit they always require the property owner to give their permission to the event before the Planning Dept. will sign off.

Westphal asked what had driven the change from the first proposed draft involving the elimination of the 500 feet spacing.

Carlberg mentioned that at last week's Planning Commission meeting there was a proposal before them that involved having three banks all located in the same intersection. She noted that the Commission didn't have an issue with such close proximity and after visiting several dispensaries it didn't seem that there was any visible impact on the neighbors it was hard to find the rational why we would set spacing limitations for this type of business when we don't do it for any other type of business.

Westphal asked about security concerns. He stated that this type of business is clearly an industry influx currently and as popularity and pricing changes adjust over time he felt having spacing requirements would be one way of stabilizing the issue. Westphal suggested that if it

proved not to be necessary it could be eliminated in the future, but leaving it in the ordinance would allow it to act as a *middle step* for now.

Pratt stated that he didn't think it onerous and given what the zoning map would look like after the ordinance was passed, he would support leaving the spacing requirement in for now with the option of amending it at a later date.

Briggs expressed that she felt the Commission might be trying to solve a problem that didn't exist yet, and by putting in too many restrictions they could be creating unforeseen hurdles, since she didn't foresee any saturation problems. She stated that she would be more comfortable addressing the issue at a later point should it prove to be an issue in our community.

Giannola agreed with Westphal and Pratt in that she felt it would be a good *middle step* since she felt the Commission was dealing with the unknown and it would be easier to amend the ordinance to remove it after the fact than have to add it at a later date.

Mahler stated that he felt it is easier to add something at a later date should it prove to be a problem rather than to *un-ring* a bell in having to take something out of an ordinance. He expressed that he wasn't quite sure of the rationale involved with the spacing or what type of a problem they might be addressing with the spacing requirement.

Mahler agreed with staff comments that the market will sort itself out and spacing will follow accordingly. He couldn't find any rationale between having no spacing requirement versus a 300, 500 or 1000 feet requirement.

Pratt explained his concern with having one or two City blocks that would be dominated by these uses and other businesses maybe feeling leery about filling in vacant spaces in such a block. He noted that it could be undesirable to have these types of businesses dominate an area much like having tattoo parlors dominate an area.

Westphal stated that what made him feel comfortable about having the spacing requirement in the ordinance was a letter from a proponent that suggested having fewer, well regulated dispensaries rather than proliferation.

He questioned staff as to what would happen if the ordinance went into affect without the spacing requirement and there were complaints brought to the City and as a follow-up the City would amend the ordinance to add spacing, what would happen to the existing businesses. Would they be considered grandfathered into the provision or would it simple leave a mess?

Thacher responded it would probably be the latter; a mess.

Rampson responded that if the businesses were established they would be considered non-conforming and would be allowed to operate until they made a change. She noted that monitoring these types of situations can become a challenge, when regulations are added at a later date.

Westphal stated that he felt it might be more difficult to have to add restrictions to businesses after they were established.

Thacher brought the Commission's attention to two letters from the public that were included in their packets.

Briggs commented regarding Section 4 (d) and (h), noting that landlords might not ask their tenants the right questions regarding occupancy while at the same time she didn't want to be creating unnecessary hurdles for new business owners that might cause issues with the federal laws in place.

Briggs asked if a secure greenhouse would be considered indoors.

Thacher responded yes, that a greenhouse is considered an accessory structure.

Westphal stated regarding home occupations, Section 5 (g) [as stricken text on the bottom of page 4, Draft Ordinance October 1, 2010] he would be in favor of restoring the requirement to deliver. He felt it would be better to be slightly more on the conservative side when it comes to the issue of generating traffic.

Westphal expressed his concern with the potential of a possible burden being placed on neighbors of home occupations noting that they might have to put up with additional traffic. He suggested restoring the prohibiting transfer on the parcel and instead therefore requiring delivery.

Carlberg commented about the Zoning Compliance Permit possibly putting the applicants in jeopardy. She asked if the permit needed to state the specific use for which it was granted, or if there could be alternate language that wasn't so specific.

Thacher explained that on the Zoning Compliance Permit the applicant needed to state the intended use in order for City staff to review and approve the proposed use.

Rampson questioned what the conflict might be if these same businesses were advertising on the web and through other means yet their Zoning Compliance Permits could be considered putting these same businesses in jeopardy.

Bona enquired if the applicant had to be the caregiver themselves or if the owner of a business could apply for the permit if the caregiver was someone else.

Thacher noted that the previous Section 4 (b) had been stricken where it stated that a *The operations of a medical marijuana dispensary or cultivation facility must be registered caregivers.*

Assistant City Attorney, Larcom responded that the way the ordinance is written it allows anyone to apply for the Zoning Compliance Permit, because the importance is on the use of that specific location and not on who is actually running the business that becomes relevant.

Rampson agreed.

Giannola asked if the business owner had to follow the State law as a caregiver.

Rampson responded that there is nothing in the State law about the dispensaries. She explained that the Commission was trying to carve out a reasonable land use regulation where the State law hasn't addressed the issue of corporate entities. She explained that the City is trying to strike the balance between accountability from a land use standpoint and other responsibilities provided under State law.

Mahler stated that in regards to Section 4 (d) and Section 7 (e) he had concerns that the Commission was incorporating a whole realm of other tenant/landlord statutes into the zoning ordinance. He also expressed his concerns with the possibility of putting a burden on the tenant

as well as the landlord. He felt that the City wanted responsible landlords and it should be their responsibility to deal with their tenants.

Mahler noted that since Section 7 (e) was written in the affirmative the City was taking on the enforcement of the Michigan Medical Marijuana Act or the responsibilities of the Michigan Department of Community Health which he didn't think was the intention of the proposed ordinance. He questioned if it might be better reworded to read, *Nothing in the ordinance shall be interpreted to be in conflict with the Medical Marijuana Act or the administrative enforcement of the Michigan Department of Community Health.*

Mahler asked the City Attorney to weigh in on the legal issue involving undefined language in the Medical Marijuana Act itself in Section 7 B 2 b. where it specifically states that you cannot possess marijuana or otherwise engage in the medical use of marijuana on the grounds of any preschool, secondary or primary school. Given that the inclusion of one thing would usually mean the exclusion of another, Mahler believed that the statutory intent was the inclusion of the school property but excluded with intent what to do with the area around it.

He noted that the 1000 feet may be the Drug-free Zone Act but this specific exclusion in the Medical Marijuana Act now becomes a part of a legal activity, and he would like to know from the City Attorney as well as the staff what their intent was when they wrote this language. Mahler also asked staff and the City Attorney's office to consider how they might handle future litigation involving someone who might be caught with marijuana 997 feet from a school.

Larcom explained that her understanding was that the 1000 feet in the ordinance was for the allowable distance of a dispensary from a school, and since the State statute doesn't provide for dispensaries she didn't feel it wouldn't be a conflict.

Mahler asked if a dispensary possesses marijuana as defined in the Medical Marijuana Act.

Larcom asked for Mahler's question to be rephrased.

Mahler stated that the way he understood the activities involving dispensaries, in accordance with the definitions of possessing medical marijuana as well as engaging in the medical use of marijuana, the statute would have to be applicable. He was concerned if the inclusion in the City's ordinance of the 1000 feet limitation from any school would be a conflict to what the State intended, since they left out the addition of adding any barrier or buffer around any school.

Larcom responded that she wasn't able to respond to that enquiry at this time.

Westphal noted in Section 4 (g) the work *drive-in* should be defined as *drive-thru*.

Thacher responded that staff had checked the reference against the ordinance of C districts and it does state *drive-in*.

Westphal noted that there seemed to be duplicated letters under Section 5 and Section 6 was missing totally.

He also asked for clarification on Section 5 (h) that visitors to a home occupation may not park on the street but must be provided with parking on the parcel.

Thacher answered that the language was in the current home occupation ordinance.

Rampson explained that the current intent is that any parking generated from a home occupancy business shall be on the site and not on the street.

Moved by Westphal, Seconded by Pratt to amend the Motion to include the restoration of Page 2, Section 3 (d).

A vote on the motion showed:

YEAS: Gianniola, Pratt, Mahler, Westphal (4)
NAYS: Bona, Briggs, Carlberg, Derezinski, (4)
ABSENT: Woods

Motion failed.

Moved by Briggs, Seconded by Pratt to amend the Motion to remove Section 4 (d) or amend the language to remove the wording *written permission* from Section 4 (d).

Friendly amendment made by Carlberg, Seconded by Pratt, to eliminate the words *prior express written* and allow it to say *...without permission of the owner of the property for such use*.

Westphal stated that he would like to know what we would be requiring from a Planning standpoint.

Giannola asked if the permission could simply be verbal and not written.

Rampson stated that we would require them only to sign the Zoning Compliance Permit application, which is our current practice.

Bona stated that she would prefer to simply take the Section since she felt we didn't have any responsibility to manage the relationship between a landlord and a tenant.

Westphal asked if we were to remove the Section would the owner still be required to sign the Zoning Compliance Permit application.

Rampson responded that the department would continue their practice unless they were told not to continue doing so. She noted that it had been a good practice in the past to require the owner and the applicant to sign the application.

Moved by Carlberg, Seconded by Pratt, to withdraw and eliminate her friendly amendment as previously stated.

Westphal stated that he agreed on eliminating the Section, and he hoped that the City could in some way reach out to the landlords with some sort of services to assist them in dealing with this issue.

A vote on the motion showed:

YEAS: Bona, Briggs, Carlberg, Gianniola, Pratt, Mahler, Westphal (7)
NAYS: Derezinski, (1)
ABSENT: Woods

Motion carried.

Moved by Bona, Seconded by Carlberg to amend the Motion to add to Section 3 (a) the language, ...or in PUD districts where retail is permitted in the Supplemental Regulations.

Briggs stated that she was uncomfortable based on her experience with PUDs.

Bona explained that it helped her to understand the rationale if it was an allowable use in C1 districts, which are retail uses next to neighborhoods. In PUDs she noted that they are intentionally mixing space; as well as what they allow in the downtown where there is a mix of retail and residential.

Westphal asked staff if there are R [residential] districts that get rezoned to PUDs or typically commercial districts.

Rampson responded that they are currently all over the zoning map with close to 200 PUDs throughout the City.

A vote on the motion showed:

YEAS: Bona, Carlberg, Derezinski, Giannola, Mahler, Westphal (6)
NAYS: Briggs, Pratt, (2)
ABSENT: Woods

Motion carried.

Moved by Westphal, Seconded by Giannola to amend the Motion to reinstate Section 5 (g) [currently stricken] requiring persons involved in home occupations to deliver products to their customers.

Pratt asked how the City would handle the previously permitted uses when and if this language would be reinstated in the future. He asked if the City would consider them grandfathered in.

Rampson stated that her initial interpretation would be that it wouldn't be considered a vested right in terms of the property but rather a condition based on the activity of the property.

Giannola asked what recourse someone might have if they encountered a problem.

Rampson responded that they would first hope that the complainant could be able to work out their problem with their neighbor but if they didn't feel comfortable doing that they could file a complaint with our dept and we would conduct an investigation. If that investigation gave us reason to believe that they were not in compliance then we would typically send warning letters, offer to meet and explain what the requirements are and ultimately we can ticket activity on a daily basis if the specific violations continue. She explained these violations are considered to be civil infractions with fines going up to \$ 500.00 for a violation of the Zoning Ordinance.

Westphal reiterated that he felt it really placed a burden on the neighbors to document the activities going, along with the generating of traffic and possibly unsafe conditions for those living close to these facilities. He also felt that the limit of having only five customers a day will have to be tested over time.

A vote on the motion showed:

YEAS: Bona, Briggs, Giannola, Pratt, Westphal (5)
NAYS: Carlberg, Mahler, Derezinski (3)
ABSENT: Woods

Motion carried.

Bona enquired if Section 5 (g) had been reinstated did they have to strike Section 5 (h).

Thacher responded that they didn't need to because it contained the standard home occupation language.

Mahler asked if the Commission passed the Motion with the approved amendments would they be defeating the intent of what they originally set out to do, in that they could have PUD's such as the *Near North* project with residents and dispensaries together in the same building.

Westphal stated that since the issue involved home occupation only it would mean that they could have a home occupation upstairs but they would have to deliver the product while they would also be allowed to have a dispensary on the ground floor.

Mahler responded that since it is described as a parcel and not as a unit or a dwelling it would allow such mixed uses.

[Power outage at 9:11 pm]

Moved by Derezinski, Seconded by Giannola that The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council institute a medical marijuana business license to address issues important to the health, safety, and welfare of residents but outside of the scope of the zoning ordinance, such as security, building safety, and other code compliance.

Carlberg asked to whom the licensing would apply.

Larcom responded that since the City hadn't drafted anything yet, she couldn't answer that question, but she believed that the City Council would ultimately decide on the licensing matter.

Westphal asked if this would be an appropriate time to add license capping of dispensaries.

Larcom answered that she believed the present time could be an appropriate time.

A vote on the motion showed:

YEAS: Bona, Briggs, Carlberg, Derezinski, Giannola, Pratt, Westphal (7)
NAYS: Mahler, (1)
ABSENT: Woods

Motion carried.

AUDIENCE PARTICIPATION

Gersh Avery, 9205 Dexter Chelsea Road, Dexter, spoke regarding confidentiality issues. He noted that government workers who divulge confidential information according to the Medical Marijuana Act can go to jail.

Chuck Ream, Packard Road, Ann Arbor, thanked the Commission and staff for all their hard work on the issue noting that he had been involved with this issue for six years. He felt that the Commission had created an historical event that would restore the quality of lives of many.

COMMISSION PROPOSED BUSINESS

Mahler brought up the request previously mentioned by Derezinski from Jon and Margaret Svoboda to reconsider the Arbor Dog Daycare Proposal. He explained that the Commission would need unanimous support to consider a reconsideration, and they would not have to vote on the issue at tonight's meeting, but could table the issue until the next public meeting if they so chose.

Moved by Giannola, Seconded by Carlberg that The Ann Arbor City Planning Commission reconsider the Arbor Dog Daycare Proposal at the next meeting.

Bona stated that she would like to discuss the issue at the next meeting after they have had a chance to view the video made by the Svobodas.

Derezinski thanked the Svododas for coming and applauding the perseverance of the applicants, noting that he would like to hear what they have to say.

A vote on the motion showed:

YEAS: Briggs, Bona, Carlberg, Giannola, Derezinski, Mahler, Pratt, Westphal (8)
NAYS:
ABSENT: Woods (1)

Motion carried unanimously.

Moved by Bona, Seconded by Derezinski that The Ann Arbor City Planning Commission postpone the reconsideration the Arbor Dog Daycare Proposal until the next meeting.

Westphal commented that he would feel more comfortable if the folks who had written notes to the Commission would be re-notified of the upcoming meeting, since reconsiderations are considered quite rare.

Rampson suggested re-notifications be sent to the residents within 300 ft of the proposed location as well as to the neighborhood groups involved and to the ones who had written in regards to this proposal. She stated that it wouldn't be possible to get the notifications sent out with the full 15 day prior notice but they could be mailed out by the end of the week.

Carlberg stated that as being one who was opposed to the business last time, not because it isn't a good business but because of the noise concerns with increasing the dogs by 100 on site and the need for those dogs all needing to use the outside run at times. She explained that she had spent 1 ½ hour at the location today, being parked across the street at the Balmoral Condo parking area, and she could report that she heard continuous barking while she was there.

Carlberg noted that she is accustomed to dogs and their behavior of natural barking, and she doesn't consider herself having sensitive hearing, yet she could hear the barking even when she drove to the back of the property. She stated that the noise issue is of great concern to her, since it isn't simply a matter of background noise and raises above traffic noise.

Carlberg stressed that she had no concern with increasing the number of on-site dogs inside the building, but unless the noise coming from outside can be controlled she found it to be unacceptable. She noticed that there were employees present while the dogs were barking. She didn't believe that the residents living on Main Street were impacted, rather the Balmoral Condo residents.

Carlberg stated that residents are home during the daytime who are retired or need to sleep etc. She didn't believe the Special Exception Use standard was being met with not causing a nuisance to the neighbors. She felt that the noise issue had to be addressed otherwise the Commission would be doing a disservice to the residents neighboring this business. While she didn't have an answer to the outside noise she did say that there was one option available and that would be containing the dogs inside the building.

A vote on the motion showed:

YEAS: Briggs, Bona, Carlberg, Giannola, Derezinski, Mahler, Pratt, Westphal (8)
NAYS:
ABSENT: Woods (1)

Motion carried unanimously.

ADJOURNMENT

Moved by Bona, Seconded by Westphal, to adjourn the meeting at 9:30 p.m.

A vote on the motion showed:

YEAS: Briggs, Bona, Carlberg, Giannola, Derezinski, Mahler, Pratt, Westphal (8)
NAYS:
ABSENT: Woods (1)

Motion carried unanimously.

Wendy L. Rampson, Planning Manager
Planning and Development Services

Diane Giannola, Secretary