

**MINUTES
MARSHALL CITY PLANNING COMMISSION
FRIDAY, AUGUST 2, 2021**

In a special session, Friday, August 2, 2021 at 5:00 p.m. at City Hall, Training Room, 323 West Michigan Avenue, Marshall, Michigan the Marshall Planning Commission was called to order by Chair Banfield.

ROLL CALL

Members Present: Chair Banfield (In Person), Commissioners Burke Smith (In Person), McNiff (In Person), Reed (Marshall), Zuck (Marshall) and C. Zuzga (Marshall) and Council Liaison Wolfersberger (In Person)

Members Absent: Commissioner Davis and Hall

Staff Present: Trisha Nelson, City Clerk & Planner
Eric Zuzga, Director of Special Projects

AGENDA

MOTION by Burke Smith, supported by Zuck, to accept the agenda for the Friday, August 2, 2021 as submitted. On a roll call vote; ayes- Banfield, Burke Smith, McNiff, Reed, Zuck, C Zuzga; nays- none; **MOTION CARRIED.**

PUBLIC COMMENTS ON AGENDA ITEMS

None

PUBLIC HEARINGS

Chair Banfield opened the Public Hearing on Zoning Ordinance Amendment to change Marihuana Facilities from a Principal Permitted Use to a Special Land Use.

Chair Banfield asked Attorney Revore to speak on the change. Revore stated that this Zoning Ordinance Amendment is going to be presented as a package to City Council with a change to the General Law Ordinance. He stated the new zoning ordinance changes marijuana facilities from a permitted use to a special land use, which includes a site plan review. He further stated that section 9 address site distances, which for facilities larger than 100,000 square feet on a 12 acre or larger parcel, will be reduced to zero distances required, while smaller operations will still be required to maintain the 2,640-foot distance that is currently in the ordinance. He stated that the General Law Ordinance is subject to the zoning ordinance with the major changes being the Special Land Use, site distances and odor control which is covered in section 3.

McNiff questioned why this was being done. Revore stated that the City had been approached by several companies that find Marshall to be desirable given the resources that are available to them here, including some global distributors. McNiff questioned if the City really wanted to put all our eggs in the cannabis basket or if it should be more diversified. Revore stated that he didn't believe that it was, as this is targeting large developments over 100,000 sq ft which would be for large investors. He further stated that many of the lots that this would target would be repurposing old vacant buildings, which would increase the value of the buildings, therefore increasing the taxable value and allow for growth of the City's infrastructure. McNiff stated that she was thinking of the recent Craft Brewery bubble bust. Revore stated that he doesn't

feel it is the same, as those were all small businesses with little capital needed for startup, whereas these are all large-scale projects with multimillion dollar investments needed to refurbish the buildings and start the business.

Chair Banfield closed the public hearing.

NEW BUSINESS

MOTION by C Zuzga, supported by McNiff to recommend Zoning Ordinance Amendment to change Marihuana Facilities from a Principal Permitted Use to a Special Land Use.

Burke Smith stated that she believed the intent of the original ordinance was to limit the number of operations that were running in the city and that we are just making more available while we still haven't solved the odor issue from the original facilities. E Zuzga stated that this will only increase the number of possible facilities by around 10 and that one of the grow facilities in town just went live with new filters on the previous Thursday. Scott McDonald, Director of Public Safety, was down there earlier today and that on one side of the building he could detect a slight citrus smell, but nothing on the other sides of the building, which was an improvement from the past and he was hopeful this will solve their issues. He further stated that some of the companies looking at coming in are stating that they don't have an issue with odor due to the processes they use. He stated that this is a very targeted ordinance and that he believes that many of the properties will remain out of the cannabis industry. He further stated that it would allow for some buildings that have been vacant for years to be brought back online, which will bring in more taxes and electrical customers back. Revore stated that buildings of this size in this industry generally bring in around 75 jobs and the renovations will increase the tax base. He further stated that having is as a Special Land Use will allow for problems to be figured out before the building is even worked on. He stated that there are multiple different growing models out there, one of which is where a room is essentially built inside of an existing room, which allows for additional odor containment. He further stated that the grow that E Zuzga previously mentioned is essentially a box with no additional layers of protection between the room and the outside world. He stated that Director McDonald is happy with many of the steps that this company has taken to eliminate the odor from their grow operation, but that it is an on-going process.

Banfield stated that the Planning Commission sees the Special Land Use application and then it is sent to council, so it will allow for an additional set of eyes on future projects that was not there in the past. He further stated that he believes that odor goes into the health and welfare of the people in the city and it should be taken into consideration. Burke Smith questioned on it is determined what is reasonable and offensive as far as odor. Revore stated that it will be determined by the reasonable person standard. He further stated that McDonald has been doing research with a nasal ranger and that there have been discussions with experts in the field. McNiff stated that she believes that it goes back to the old noise ordinances that have now been replaced with decibel levels to state what is allowed opposed to stating a reasonable standard. She further stated that she worries the City will run into issues and potential law suits with the way it is written. Revore stated that as of the current moment, there is not a way to measure odor in the same way there is to measure noise. Banfield stated that leaving it more general leaves is more room for argument. Revore stated that the current ordinance is written to allow no odor, but there is no way to defend that. He stated that there are times in Marshall that you can smell fertilizer from farms in the townships, or cereal coming from Battle Creek, that some may find offensive. He further stated that the City is looking into a nasal ranger, but he believes this will be an ever evolving process with the odor as the industry progresses. He stated that for future grows, if they have an odor issue, you can state that they are in violation of their Special Land Use and pull their Special Land Use to end the operation and the odor, thereby adding an additional layer of protection for the city and allowing them to mitigate the nuisance faster than they are currently able to.

Banfield questioned if a person is complaining about odor and they take it to council, how would that work. Revore stated that they would have to meet a reasonable person's standard of what is offensive, so if a single person, who may be sensitive to odor takes it to council, they would need the support of others to show it is unreasonable. Banfield questioned what would happen if a township resident has a complaint. Revore stated that they can bring a private complaint to the cannabis company. Banfield stated that any of the farms on the surrounding edge of the city could easily become animal farms and then you are dealing with a whole other set of smells. Revore stated that he believes that the cannabis industry will eventually fall under the right to farm act and the protections that come with it. Nelson stated that each company faces renewal with the state each year and the state does ask if the company is in compliance with the City Ordinances.

C Zuzga questioned if there are 100 complaints from different people being called in to different places, which would show a larger issue, what is the process for tracking and documenting those complaints within the City as related to odor. E Zuzga stated that Director McDonald had created a complaint form which is to be filled out and returned to him to be kept on file and for follow up with the businesses. Revore stated that there are multiple different programs that allow for someone to simply put in the address and it will allow for all complaints to be documented along with the follow up action that was taken. C Zuzga stated that it is important to make sure that all the complaints against a building all go into the same place so that they can be tracked for follow up, and licensing among other things. She further stated that she believes that there are several complaints that are made and many of them go by without much action.

C Zuzga stated that with the addition of the Special Land Use application to the marijuana facilities, that each application will need to include the odor mitigation plan as according to the application, that is one of the things they need to approve. Nelson stated that the intention is to have staff review that, so that individual companies are able to maintain their trade secrets. C Zuzga stated that she doesn't know how a Special Land Use application can be approved without having the information on an odor plan, as that is one of the things that need to be reviewed. Revore stated that some of the businesses that are looking at coming in to Marshall are specialized in odor mitigation and he doesn't believe they would be willing to go on public record at the planning commission and give away their process. He further stated that some information is subject to FOIA, but if we put it in a Planning Commission packet, the information is out there and readily available.

McNiff stated that she felt like the commission was being pushed into a corner and that she wasn't entirely comfortable with moving forward when it seems discussions have already been happening. E Zuzga stated that companies are constantly coming to the City with new business prospects and this is no different. McNiff stated that she didn't want to be pushed into an ordinance when there doesn't seem to be full transparency. E Zuzga stated that the City is looking at what would need to be done to allow more marijuana businesses to come to town. McNiff stated that she is opposed to marijuana, but wants to make sure the best decision is made for the entire city. E Zuzga stated that this would allow for more businesses to allow for diversification within the industry.

Banfield stated that the commission is in charge of making recommendations on the rules and this would be an additional rule to what is already there. He further stated that there are a lot of unreasonable or offensive smells that come from a number of industries and he doesn't know far the odor can be pushed in the Special Land Use as what is unreasonable or offensive is different for each person.

C Zuzga stated that it says the planning commission shall approve the Special Land Use give that all criteria have been met and that one of the criteria listed is for odor. She worries that if we have nothing from the company or the city stating that it has been approved, that there is the potential for a lawsuit from the Planning Commission not doing their due diligence on the application review. She further stated that if staff would be willing to put in the Staff Report that the odor mitigation plan had been reviewed and approved,

that would satisfy that requirement in her eyes, as long as it was signed by the staff member who completed the review of the plan or who will be monitoring it. E Zuzga stated that businesses will be asked if they are willing to come to Planning Commission with their plan, otherwise it will be in the Staff Report.

McNiff questioned if the language of the odor ordinance would be able to hold up in court. She stated that it is worded similarly to the noise ordinance in Grand Rapids that was overturned. Revore stated that there is no scientific way to measure it yet. McNiff stated that she doesn't know how to word it without being vague and overly broad, but suggested looking at other noise and odor ordinances for wording.

Wolfersberger stated that while the cannabis industry is new, other manufacturing has been around for years, such as the coal industry, and as time moved on there were new and better ways to regulate the industry. Revore stated that at this time there is no metric that can be put in place, and he feels that the current ordinance of no odor is not defensible in court, opposed to unreasonable, which is. Banfield stated that with time ordinances need to change and be fluid and that the city is trying to make sure buildings aren't sitting vacant by allowing a lesser site distance on larger properties. He further stated that it is no different than having 3 coal burning plants right next to each other when they first existed.

C Zuzga questioned what was needed to revoke a Special Land Use if that needed to occur. Revore stated that in general terms, they would be served a complaint and then a hearing would follow to allow them to discuss the complaint. He further stated that he would suggest holding both the landowner and the tenant responsible for violations of the Special Land Use and that it is possible to write in to the contract that when the current owner sells the property, the Special Land Use is terminated. E Zuzga stated that it would need to be rescinded by City Council. C Zuzga questioned if it would come back before the Planning Commission. Banfield stated that the ordinance reads that way.

McNiff stated that the vague and overly broad language is still worrisome, as how do you know if you are violating something if you can't tell what is offensive. Revore stated that he believes the current options for wording on odor are either no odor or no unreasonable odor. McNiff agreed that unreasonable is better, but doesn't believe it is the best. Banfield stated that he believes everyone could agree that is there was a metric that could be used for odor, we would use that opposed to the vague wording. C Zuzga states that having the Special Land Use allows for the Planning Commission to make sure that odor mitigation is at the forefront of the business design opposed to being an after thought once production has started. E Zuzga stated that odor plans have always been addressed by staff at the beginning. C Zuzga stated that it needs to be presented to the Planning commission so that they have the tools to prove it has been reviewed and give it more subjectivity.

Wolfersberger questioned how this would apply to existing facilities. Revore stated that they would become a lawful nonconforming use. Banfield stated that unless their site plan changes, then it would come back to Planning Commission.

MOTION by C Zuzga, supported by McNiff to recommend Zoning Ordinance Amendment to change Marihuana Facilities from a Principal Permitted Use to a Special Land Use. On a roll call vote; ayes- Banfield, Burke Smith, McNiff, Reed, Zuck, C Zuzga; nays- none; **MOTION CARRIED.**

OLD BUSINESS

None

PUBLIC COMMENTS NOT ON AGENDA

None

REPORTS

Nelson stated that the next meeting on August 11 would be to approve minutes and to receive a Special Land Use application. It was decided the meeting could be held by Zoom.

ADJOURN

Planning Commission adjourned at 6:27 p.m.

Submitted by,

Michelle Eubank