

**Village of Bellaire**  
**PLANNING COMMISSION**

**William Drollinger, Chairman**

**Commissioners: Clarence Bennett, Butch Dewey, Ken Fedraw, Robert Shumaker**

**MEETING MINUTES**

May 3, 2011

- 1. Call to Order: Chairman Bill Drollinger called the meeting to order at 5:00 p.m.**
- 2. Roll Call Attendance**
  - Present:** Chairman Drollinger, Butch Dewey, Clarence Bennett, Ken Fedraw, Robert Shumaker
  - Absent:** None absent
  - Staff Present:** Janet Koch, Zoning Administrator
  - Also Present:** Colette Stanish, Corey LeCureux, Bryan Graham, Village Attorney
- 3. Approval of Agenda:** The agenda was approved as written.
  - Motion by Shumaker, seconded by Fedraw, to approve the agenda as written.**
  - Motion carried by voice vote.**
- 4. Approval of the December 7, 2010 Meeting Minutes:** The minutes were approved as written.
  - Motion by Dewey, seconded by Bennett, to approve the minutes as written.**
  - Motion carried by voice vote.**
- 5. Establishment of Conflict of Interest:** None presented.
- 6. Public Comment on Agenda Items:** Corey LeCureux of the First Baptist Church of Bellaire was give permission to speak on an issue not on the agenda. Mr. LeCureux said his church has vacant property off the end of Elmwood Drive. The church would like to have a community garden on the property and Mr. LeCureux asked what would be the best way to get permission for such a project.

Koch said Mr. LeCureux and Brad Kik had been into the office recently and she'd told them a Special Use Permit might be possible. Bryan Graham, the village's attorney, said that since, in this case, a community garden would be the principal use of the parcel, and since a community garden is not listed in allowed uses, it couldn't be allowed even as a SUP. The zoning ordinance would need amending to allow a community garden and the Planning Commission would have to decide if they'd prefer community gardens as a Use by Right of by Special Use Permit. He added that regulations could be added to a community garden ordinance that address nuisance factors.

Chairman Drollinger asked Koch to look into other ordinances that deal with community gardens. Koch said Brad Kik had forwarded her some information and that she'd look into

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the issue further. Koch asked Graham if the Religious Land Use and Institutionalized Persons Act (RLUIPA) has any bearing on the situation. Graham said the RLUIPA applies if a proposed use is a function of the church's ministry, if it's part of their religious exercise, but he hadn't heard anything from Mr. LeCureux that would force application of the RLUIPA.

**7. Zoning Administrator Report:** A written report was presented.

**8. Old Business:** None presented.

**9. New Business**

**a) Medical Marijuana Ordinance**

Bryan Graham presented the Planning Commission with two documents, Options of Zoning Regulations Concerning Medical Marijuana and an Opinion and Order dated March 24, 2011 from the Alpena County Circuit Court.

Graham first gave an overview of the Michigan Medical Marihuana Act. He said there are two classes of individuals that the MMMA addresses. The first is qualifying patients. These individuals have a debilitating medical condition and have a patient-doctor relationship in which the doctor writes a certificate that allows the patient to register for medical marijuana use with Michigan's Dept. of Community Health.

This certificate allows the patient to grow 12 marijuana plants and to possess 2.5 ounces of usable marijuana. The marijuana must be kept in an enclosed and locked facility.

As not all qualifying patients may not wish to or may not be able to grow marijuana plants, the second class of individuals the MMMA addresses is primary caregivers. Primary caregivers assist qualifying patients and are allowed to provide usable marijuana to 5 qualifying patients. Primary caregivers must be registered with the state and must name the 5 qualifying patients under their care.

If a qualifying patient chooses to use a primary caregiver, the patient is not allowed to grow their own product. Patients must notify the state of their primary caregiver's name. A primary caregiver can also be a qualifying patient. This results in a maximum of 72 plants.

Graham said he doesn't think the MMMA was written to create a business industry. He said that the MMMA doesn't legalize marijuana, even as a medical use. Instead, it says if an individual falls within the parameters of the statute, he or she won't be criminally prosecuted. It is, he said, an unusual situation.

What the statute does not address, Graham said, is land use. What the Planning Commission has to focus on is land use. Many of the problems with the MMMA will be the responsibility of law enforcement.

Graham then started to list the options the village has. One option is not to allow marijuana inside the village limits. Some Michigan municipalities have done this, citing that marijuana is against Federal law. These municipalities are now in court, having had suit brought against them by the medical marijuana industry. This, Graham said, will be a lengthy and costly legal battle, and that the village doesn't really have the resources to take on that kind of fight.

If the village chooses to allow marijuana, it needs to be regulated. Graham said that the voters of Michigan have determined that medical marijuana is a legitimate land use. If the village doesn't allow medical marijuana, that's the definition of exclusionary zoning.

Graham said the regulation options are listed in the outline he provided. Once the Planning Commission decides what sort of policy they'd like to craft, Graham will write an ordinance based on those decisions.

The first decision to make is whether the Planning Commission would like to see a concentrated approach or a dispersed approach regarding primary caregivers. The concentrated approach limits primary caregivers to a named district, thereby prohibiting caregivers in other zoning districts. The major con is the negative secondary effects which can include burglaries.

The best way to consider a dispersed approach, Graham said, is to consider it a home occupation. A pro of this approach that primary caregivers would be hard to locate by the average citizen. The con is that medical marijuana would be in more areas of the village.

Graham said that once the Planning Commission decides what kind of approach to take, there are other decisions to be made. Should qualifying patients be allowed to pick up product from their caregivers, or should the caregiver be required to deliver the product?

Another regulating decision to make is spacing requirements. How many caregivers should be allowed per parcel? One or more than one? Is reducing visibility a major concern? Does the Planning Commission want to allow consumption at a caregiver's site? If allowed, regulations must be in place to deal with secondary smoke.

Graham then said the Planning Commission needs to decide whether to allow caregivers as a Use by Right or through a Special Use Permit. The biggest problem with a SUP is that during the SUP application process, a public notice is required by law, and the MMMA prohibits unauthorized release of the identity of a primary caregiver. Such release would be a misdemeanor. Graham says this means the SUP process can't be used to regulate primary caregivers.

Graham advises some minor regulations regarding qualifying patients, such as keeping product in an enclosed and locked facility per the statutes, and that grow lights are not visible from outdoors.

It's not appropriate, Graham said, to require qualifying patients to obtain a zoning permit.

The medical marijuana industry, Graham said, is taking the viewpoint that the MMMA allows patient-to-patient transfers. The Alpena County Circuit Court, in the State of Michigan vs. Jack McDonald and Edward J. Benoit, dba The Health Center, disagrees with that opinion.

Graham said an amended zoning ordinance could be ready for a public hearing within a month.

Drollinger asked if caregivers could be required to get a Doing Business As permit. Graham said, no, that is not required by the statute.

Spacing requirements could limit medical marijuana facilities to within 1000 feet of a school, playground, and another facility. Other numbers could be selected as appropriate for the village. He advised the Planning Commission not to craft an ordinance that, due to spacing limitations, prohibits any medical marijuana being grown inside the village limits as this would be considered exclusionary zoning and thus against the law.

Graham said to keep in mind how the voters of Bellaire voted on the act. Koch said the village numbers weren't available, but Forest Home voted 57% for and 43% against, Kearney Township 56% for and 44% against.

Drollinger asked the Planning Commission members to go through Bryan's outline individually and note what options each member preferred. A meeting date of Monday, May 9, 2011 to work through the options was agreed upon.

**b) Regular Meeting Dates**

Koch presented a resolution of a regular meeting schedule.

**Motion by Dewey, second by Shumaker, to adopt the Resolution #1 of the Village of Bellaire Planning Commission. Motion carried by unanimous roll call vote.**

**c) Bylaws**

Koch asked the Planning Commission if any members had a copy of the current bylaws. If no one can provide a copy, new bylaws will have to be drawn up by July 1, 2011 to comply with the Michigan Planning Enabling Act of 2008.

**10. Correspondence / Reports:**

Koch said the Parks and Recreation Plan needs to be revisited and reapproved by the end of the year. A current Parks and Recreation Plan is necessary to obtain DNR grants and other grants.

**11. Member/Public Comment:**

Shumaker said that the Planning Commission should begin considering regulation of outside wood burning furnaces. Koch said safety issues should already be covered by construction codes. Drollinger added that the nuisance ordinance might already address the problem of fumes.

Shumaker and Drollinger said that these furnaces heat water so they burn all year and they burn many more materials other than wood. Drollinger asked Koch to look into other local ordinances regarding the issue.

**12. Adjournment: Meeting adjourned at 6:00 p.m.**

Minutes compiled by Janet Koch, Zoning Administrator

Approved: \_\_\_\_\_  
William Drollinger, Chair

Date: \_\_\_\_\_