

The regular meeting of the Clare City Commission was called to order at 6:00 p.m. in the Commission Chambers by Mayor Pat Humphrey who led the Pledge of Allegiance. Present were: Commissioners Bill Horwood, Pat Humphrey, John Koch, Tom Koch, and Jean McConnell. Absent: None. Also present were Ken Hibl, City Manager; Steve Kingsbury, Treasurer and Finance Director; Jaynie Hoerauf, City Attorney; Edie Hunter, City Assessor; Dwayne Miedzianowski, Police Chief; Amanda Green, Parks & Recreation Director; John Holland, WWT Superintendent; and Diane Schmidt, City Clerk.

2. CONSENT AGENDA:

Moved by Commissioner Jean McConnell second by Commissioner John Koch to approve the items listed with an asterisk (\*) (Agenda, Minutes, Communications, Department Reports, and Accounts Payable list), that are considered to be routine by the City Commission. First Reading of Ordinance 2011-004 was removed from the consent agenda at the request of Mayor Humphrey. Ayes: All. Nays: None. Absent: None. *Motion Carried.*

3. \*APPROVAL OF MINUTES:

Consent Agenda Approval.

4. \*APPROVAL OF AGENDA:

Consent Agenda Approval.

5. PUBLIC COMMENT: John Holland, Waste & Waste Water Superintendent, acting on behalf of the Michigan Rural Water Association announced that Steven Kingsbury was selected as Treasurer of the Year by the Michigan Rural Water Association. Todd Sutton requested clarification of meeting procedures when an item is removed from the consent agenda.

6. OLD BUSINESS/UNFINISHED BUSINESS: None.

7. NEW BUSINESS:

A. PROPOSED REVISION OF CHAPTER 52 (ZONING) OF THE ORDINANCE CODES OF THE CITY OF CLARE - ORDINANCE 2011-004 (MEDICAL MARIHUANA)

(1) PUBLIC HEARING

(2) FIRST READING

Michigan voters legalized the use of medical marihuana in the state in 2008. Implementation rules regarding the use of medical marihuana were issued by the State of Michigan in April 2009.

The Clare City Planning Commission voted unanimously at its scheduled May 12<sup>th</sup> meeting to ask the City Commission to issue a formal moratorium to allow additional study and consideration of the matter.

The City Commission approved a 90-day moratorium on June 07, 2010; that moratorium expired on September 08, 2010. The City Commission has issued two additional moratoriums (the most recent expiring on February 28<sup>th</sup>) to provide sufficient time for the Planning Commission to complete its work and to provide time for consideration of the proposed ordinance amendment(s).

The Planning Commission held a public hearing and initiated discussions pertaining to land use recommendations related to the Michigan Medical Marihuana Act at a special meeting on August 11, 2010. Due to the immense amount of information presented and discussed at that meeting, the Commission elected to set aside further discussion regarding the topic at a subsequent meeting. They did so at a September 15<sup>th</sup> special meeting and consequently made a request for the City Attorney to develop a land use amendment to the City's Zoning Ordinance as it applied to Medical Marijuana for their review.

The Planning Commission, with the assistance of the City Attorney and City Staff, drafted a proposed Ordinance; held a public hearing regarding the proposed Ordinance; unanimously recommended that the Ordinance be adopted; and forwarded the proposal to the City Commission for consideration.

The City Commission, after holding a public hearing, considered the proposed Ordinance at its scheduled meeting of November 15<sup>th</sup> and subsequently remanded the Ordinance to the Planning Commission with recommendations for changes.

The Planning Commission considered and discussed the subject at its scheduled December 2010 meeting and subsequently provided the City Attorney guidance to make revisions to the proposed ordinance amendment. The Planning Commission again considered the subject at its scheduled January 2011 meeting; reviewed and approved the revisions discussed at the December meeting; and directed the City Clerk to schedule another public hearing for its scheduled February 2011 meeting. Subsequent to that meeting and hearing, the Planning Commission approved (*Resolution 2011-001PC*) the proposed, revised amendment.

All changes, additions, or deletions of the City's Ordinance Codes require the approval of the Clare City Commission. Prior to adoption of any change, addition, or deletion, the City Commission is required to hold a public hearing and consider the proposed change at two separately scheduled public meetings.

We have noticed the City's intent to formally consider the proposed changes to our zoning codes recommended by our Planning Commission.

The City Commission is now asked to hold another required public hearing to solicit comments regarding the proposed changes and to allow a first reading of the proposed ordinance changes to facilitate the process of adopting the ordinance amendment.

Motion by Commissioner John Koch second by Commissioner Bill Horwood to open the public hearing pertaining to the proposed ordinance amendment. Ayes: All. Nays: None. Absent: None. *Motion Carried.*

Public Comment: Jamie Kleinhardt, Grant Township, provided an explanation of the difference between a dispensary and a compassion club, offering that a compassion group or club is a network of caregivers who assist patients, whereas a dispensary simply dispenses medical marijuana to patients. Mr. Kleinhardt stated that the Clare County Compassion Club has provided assistance to the community by garnering donations for Family Independence Agency's Personal Needs Drive, collecting money for individuals who cannot afford doctor's fees so that they may receive certification, and recently made a contribution to the Pere Marquette District Library. In Mr. Kleinhardt's opinion, the proposed ordinance goes against the State's Medical Marijuana Act because of proposed requirements within residential and commercial districts. Mr. Kleinhardt suggested the commission work with the compassion club on developing zoning requirements. Mr. Kleinhardt does not agree with the distance requirements for commercial (medical marijuana) growing operations. Mr. Kleinhardt speculated that the proposed ordinance would push patients and caregivers out of the area;

Todd Sutton, City of Clare, stated that 10 percent of a dwelling is not enough area to grow medical marijuana and suggested the City open a medical marijuana clinic. Mr. Sutton also stated that he is interested in opening a marijuana church. Mr. Sutton agreed with Mr. Kleinhardt's position in that the proposed ordinance would push people out of the area;

David Jigger, City of Clare, stated that it is difficult for him to obtain medication (medical marijuana) because of his medical condition, which precludes him from obtaining a driver's license; the closest dispensary is located in Mt. Pleasant. Mr. Jigger states that compassion clubs work through caregivers alone; one singular group takes all the caregivers medical marijuana, puts it up for sale by the caregivers selling price and the caregivers pay a "lot rent", which pays for a small section of the table where their product is sold. Mr. Jigger contended that people from surrounding townships, cities, and villages would come to Clare (to obtain medical marijuana), which would be financially beneficial to the City and local businesses.

Russell Veenstra, Lake George, stated that the Medical Marijuana Act already provides limits on the number of plants allowed and regulations limiting space in

residential districts will have adverse effects. Mr. Veenstra does not believe that medical marihuana consumption will increase crime rates stating that many people who have medical marihuana certification cards have waited years to be able to get the card so they want to follow the rules. Mr. Veenstra announced to the City Commission that Clare County Compassion Club members are not just about smoking marihuana, they have provided education and assistance to patients in need;

Don Stanley, Grant Township, stated that he is thrilled to be able to work within the law and is not in favor of distance requirements in residential neighborhoods.

Motion by Commissioner Jean McConnell second by Commissioner Bill Horwood to close the public hearing pertaining to the proposed ordinance amendment. Ayes: All. Nays: None. Absent: None. *Motion Carried.*

Tom Koch called for the Commission kill the proposed ordinance. He does not wish to put the City in a position where it would have to go to court over the matter.

Attorney Hoerauf offered that she does not view the draft ordinance as being productive of litigation. There is a spectrum of local response in reaction to medical marihuana, from municipalities who follow federal law banning it completely because it is not a lawful land use under federal law; those who take no action and the vast majority of cities who fall in between, who make their zoning laws recognized and say that it is an approved use and treat it like other businesses or other businesses of a particular use. Contrary to what some people think, the ordinance does not regulate an individual's right to use or right to grow or grow medical marihuana within a specific number of feet from another residence. If a patient resides in a residential district, the patient's right to grow marihuana is intact as long as the square foot limitations are not exceeded and it is in accordance with the Act. The Planning Commission felt that once growing exceeds a certain area, such as conversion of a large storage barn or entire home into a growing facility, it is no longer a residential use and would change the character of the neighborhood. The Planning Commission weighed preservation of the nature of the neighborhood against other uses or carrying them to a higher level.

Commissioner Tom Koch stated that the rules in the Michigan Medical Marihuana Act are clear and provide enough regulation. In his opinion, the City does not need to add regulation. Mr. Koch contends that it is not necessary to define a residence within the ordinance and states that the section discussing the difficulty police will have to be particularly odious. Mr. Koch speculated that the growing and distribution of marihuana is not a significant issue for this community.

When queried by Commissioner John Koch, Attorney Hoerauf stated that the current home occupation statute would not cover growing facilities, however, the proposed ordinance does not treat caregivers and patient's medical marihuana growing as a business provided it does not exceed the square foot limitations set forth in the ordinance. If exceeds those limitations, then it would be required to go a zone outside of residential.

Commissioner Tom Koch argued that as long as it (medical marihuana) is under lock and key, there is no issue. Mr. Koch does not believe that there is a problem with medical marihuana dispensaries in the City offering that other businesses in the city have experienced crime but the city still allows them to operate. Mr. Koch stated that the Planning Commission ran with this (ordinance) unguided and he is opposed to enacting any ordinance.

Commissioner John Koch stated that if pharmacies can operate within one thousand feet of schools, growing facilities and dispensaries should be able to as well.

Commissioner Tom Koch expressed extreme irritation with the Planning Commission's decision to disallow caregiver's reimbursement for their product declaring that the limitations are ridiculous.

Motion by Commissioner Jean McConnell second by Commissioner Bill Horwood to conduct a public hearing and allow a first reading of the proposed ordinance amendment. Roll call vote: Yeas: Commissioners Bill Horwood, Pat Humphrey and Jean McConnell. Nays: John Koch and Tom Koch. Absent: None. *Motion Carried.*

City Manager Ken Hibl announced to the audience that there will be a second reading of the Medical Marijuana Ordinance on March 7<sup>th</sup>, 2011.

**B. RENEWAL OF RECREATION FACILITIES USE AGREEMENT – CLARE PUBLIC SCHOOLS & CITY OF CLARE**

The City of Clare and Clare Public Schools (CPS) entered into a formal agreement in 1993 (*Resolution 1993-6*) related to cooperative use of its respective recreation facilities and programs. This agreement was also the basis for the appointment of a CPS designee to serve as a member of the City of Clare Parks & Recreation Advisory Board (PRAB).

The formal agreement expired in 1994. Even without an existing, current agreement, CPS and the City continue to enjoy a superb relationship and have far-exceeded the expectations and intentions of the original agreement in respect to cooperation. However, our PRAB has recommended that the City and CPS formally renew the agreement; C/M Ken Hibl concurs with the recommendation of the Board – particularly since this is the authoritative document regarding the appointment of the CPS designee to our PRAB. Consequently, the City Manager discussed the subject with Mr. Greg McMillan, the CPS Superintendent; he also agrees with the recommendation to renew the agreement.

Motion by Commissioner Jean McConnell second by Commissioner Bill Horwood to renew the proposed Agreement by adoption of Resolution 2011-025. Roll call vote: Yeas: Commissioners Bill Horwood, Pat Humphrey, John Koch, Tom Koch and Jean McConnell. Nays: None. Absent: None. *Motion Carried.*

Parks and Recreation Director Amanda Green stated that the current location of soccer fields at the Clare Municipal Airport, does not meet the program's needs because they are unable to construct regulation fields at that location. Three parcels have been considered and the PRAB is seeking a grant from the DNR Trust Fund for land acquisition. The deadline for grant submission is April 1, 2011.

**C. REVIEW OF SPECIAL ASSESSMENT ROLL – PROPOSED WEST DUNLOP STREET IMPROVEMENT PROJECT**

By adoption of its Resolution 2010-117, 2010-121, and 2011-006, the City Commission directed the completion of a Manager's Report outlining a proposed public improvement project for a portion of West Dunlop Street; initiated the special assessment process for the proposed project; and declared the necessity of the proposed project.

The next step the special assessment process is to review the City Clerk's Warrant and the proposed Special Assessment Roll; accept the Roll and order it to be filed in the Office of the City Clerk; fix a time and place that the City Commission shall formally review the Roll and direct the City Clerk to publish notice of the time and place to provide an opportunity for interested parties to be heard regarding the Roll.

The City Commission is asked to take the actions necessary to complete the Special Assessment process outlined above.

Motion by Commissioner John Koch second by Commissioner Jean McConnell to accept the Special Assessment Roll; order it to be filed in the Office of the City Clerk; fix a time and place that the City Commission shall formally review the Roll and direct the City Clerk to publish notice of the time and place to provide an opportunity for interested parties to be heard regarding the Roll by adoption of

Resolution 2011-026. Roll call vote: Yeas: Commissioners Bill Horwood, Pat Humphrey, John Koch, Tom Koch and Jean McConnell. Nays: None. Absent: None. *Motion Carried.*

**D. EXTENSION OF MEDICAL MARIHUANA MORATORIUM**

Michigan voters legalized the use of medical marihuana in the state in 2008. Implementation rules regarding the use of medical marihuana were issued by the State of Michigan in April 2009. To date we have taken no action regarding the issuance of permits or licensing of medical marihuana-related activities or facilities in the City – primarily because we haven't had a need to (no one has approached us to date requesting the issuance of a use permit) and because the Michigan law is still evolving.

The Clare City Planning Commission voted unanimously at its scheduled May 12<sup>th</sup> meeting to ask the City Commission to issue a formal moratorium to allow additional study and consideration of the matter.

The City Commission approved a 90-day moratorium by adoption of Resolution 2010-056 on June 07, 2010. The moratorium expired on September 08, 2010.

The Planning Commission held a public hearing and initiated discussions pertaining to land use recommendations related to the Michigan Medical Marihuana Act at a special meeting on August 11, 2010. Due to the immense amount of information presented and discussed at that meeting, the Commission elected to set aside further discussion regarding the topic at a subsequent meeting. They did so at a September 15<sup>th</sup> special meeting and consequently made a request for the City Attorney to develop an Ordinance for their review. The City Planning Commission concurrently voted unanimously to ask the City Commission to extend the moratorium for an additional 90 days to allow time for the development, review, and adoption of an Ordinance. The City Commission approved the extension (*Resolution 2010-104*) through December 20th.

The Planning Commission, with the assistance of the City Attorney and City Staff, drafted a proposed Ordinance; held a public hearing regarding the proposed Ordinance; unanimously recommended that the Ordinance be adopted; and forwarded the proposal to the City Commission for consideration.

The City Commission, after holding a public hearing, considered the proposed Ordinance at its scheduled meeting of November 15<sup>th</sup> and subsequently remanded the Ordinance to the Planning Commission with recommendations for changes. On December 6, 2010, the City Commission again extended (*Resolution 2010-134*) the moratorium until February 28, 2011 to accommodate the time needed to consider the proposed ordinance amendment.

The Planning Commission considered and discussed the subject at its scheduled December 2010 meeting and subsequently provided the City Attorney guidance to make revisions to the proposed ordinance amendment. The Planning Commission again considered the subject at its scheduled January 2011 meeting and directed the City Clerk to schedule another public hearing for its scheduled February 2011 meeting. Subsequent to that meeting and hearing, the Planning Commission approved the proposed amendment with incorporated changes.

The matter is now scheduled for a public hearing and proposed first reading by the City Commission at its scheduled February 21<sup>st</sup> meeting. However, even if the City Commission approved a First Reading without any changes to the proposed amendment, the matter will not be scheduled for a second reading and possible adoption until the scheduled meeting of March 7<sup>th</sup>, which is seven days beyond the current expiration date of the moratorium. Ordinances do not go into effect until fifteen days after adoption; therefore, the City Commission is asked to again extend the current moratorium until March 23<sup>rd</sup> to encompass the “wait” time for the ordinance to go into effect (based on the supposition that the currently proposed amendment is adopted – if it is not, we will ask the Commission for yet another moratorium extension).

Motion by Commissioner Jean McConnell second by Commissioner Bill Horwood to adopt Ordinance 2011-003 by approval of Resolution 2011-024. Roll call vote: Yeas: Commissioners Bill Horwood, Pat Humphrey, John Koch, Tom Koch and Jean McConnell. Nays: None. Absent: None. *Motion Carried.*

8. TREASURER'S REPORT

Treasurer's Report Received.

Addendum to the City Treasurer's Report:

County Website Information Publication. Commissioners Tom Koch, John Koch and Pat Humphrey authorized publication of personal information on the County's website, while Bill Horwood and Jean McConnell preferred not to have personal information publicized on the County's website.

9. \*DEPARTMENT REPORTS

Consent Agenda Approval.

10. CITY MANAGER'S REPORT

Planning Commission Meeting. The Planning Commission is scheduled to meet next Wednesday, March 2<sup>nd</sup> to consider a site plan application of Rodnick Chiropractic to build a new chiropractic center on the site of their former building, which was destroyed by fire. This meeting will take the place of their regularly scheduled monthly meeting, which is routinely held on the second Wednesday of the month.

Main Street Branding Project. We are continuing the process of branding. The Promotions Committee of the Clare Main Street Program augmented by other selected community volunteers are meeting weekly via webinar with the branding consultant, whose office is in New Jersey. A community-wide meeting will be held on March 2<sup>nd</sup> (time, date, and location to be announced next week) to provide an overview of the process and solicit input from community members.

Update on Pending Tax Tribunal Cases. As the Commission is aware, a number of our local companies have filed appeals to the Michigan Tax Tribunal, to include Alro Steel, Brookwood Apartments, Wendy's, McDonald's, MidMichigan Medical Center-Clare, Glenn's Market, Witbeck's Market, and Briarwood Apartments. Of the pending cases listed, we have already appeared before the Tax Tribunal for the Briarwood case; we are awaiting decision of the Tax Tribunal. Our City Attorney, Assessor, Treasurer, and I have reviewed the appeals of Alro Steel, Brookwood Apartments, Glen's Market, and MidMichigan Medical Center; we are presently comfortable with our current assessments on those properties and asked our City Attorney to solicit the services of a certified appraiser to ensure that our assessments are in fact valid and can be defended at the Tax Tribunal if required. Wendy's and McDonald's Restaurants have withdrawn their appeals subsequent to discussion with our Assessor. Our Assessor is engaged in a dialogue with the representative of Witbeck's to determine whether we can find a negotiated settlement of their appeal.

Endorsement of Next Michigan Development Corporation. Following the lead of the Cities of Clare and Harrison and the Village of Farwell, the Clare County Board of Commissioners unanimously supported the submittal of a Next Michigan Development Corporation Notice of Intent (NOI) to Lansing at its meeting of February 16<sup>th</sup>. The Middle Michigan Development Corporation (MMDC) will now submit the NOI proposal to the Michigan Economic Development Corporation for consideration. The deadline for the submittal is March 31<sup>st</sup>, so we will likely have to be patient for the next couple months while we wait to be informed whether we will be invited to submit a full application.

Failure of High Service Pump. The high service pump at our Water Treatment Plant that was repaired by Peerless-Midwest has again started leaking. The pump has been removed by Peerless and is being repaired under warranty.

New Mt. Pleasant Transportation Service Center (TSC) Director. Mr. Terry Palmer, former Director of the Mt. Pleasant Transportation Service Center, retired on December 31, 2010. MDOT selected Mr. Jack Hofweber, a Clare native and current

Clare resident, as the new TSC Director replacing Terry; the appointment is effective February 21<sup>st</sup>. Jack will be responsible for all MDOT operations within five counties: Clare, Isabella, Gladwin, Midland, and Gratiot Counties.

Addendums to the City Managers Report:

Governor Snyder's Proposed Revenue Sharing Elimination. Governor Snyder is proposing to eliminate statutory revenue sharing in the fiscal year 2012 state budget. Money to municipalities would decrease significantly, and they would have to compete for their chunks of that sum. The incentive-based program will be based on municipalities that meet specific standards and adopt best practices. We don't yet know what the governor's standards for best practices will be based on or whether the city will receive credit for actions already taken but that information is expected to be released in March. We want to schedule a special meeting once we know what the incentives are to receive guidance from the commission to determine where our efforts should be concentrated.

Equipment Challenges. Three City trucks broke down this morning but the mechanic has the equipment operational again so that we can continue to clear snow from streets and sidewalks.

11. \*COMMUNICATIONS:

Letter of Opinion Regarding MSHDA Grant. The City transmitted the documents related to our Rental Rehab Grant to MSHDA .

Notice of Non-Selection. The City received notice from the Michigan Strategic Fund advising us that our way-finding grant application was denied due to its failure to meet the minimum grant amount of \$100K (our submittal was for \$26K).

MDOT Correspondence. The City received correspondence from the state regarding our entitlement program for the Clare Municipal Airport. We will need to budget our local match requirement (\$1,425) in our 2011/2012 budget to receive the \$55K in grant funds.

12. \*APPROVAL OF BILLS:

Consent Agenda Approved.

EXTENDED PUBLIC COMMENT: Bill Cain, of Battle Creek, CEO of the Michigan Medical Marijuana Association, stated that he shares the concerns of the City Commission, offering that the Association does not support large commercial growing facilities, viewing them as a problem. He is concerned because other states allow large centralized grow facilities that are exporting marijuana to other areas. Mr. Cain also spoke in opposition of medical marijuana dispensaries; his position being that medical marijuana distribution should be left in the hands of caregivers who can provide personal service and cater to the needs of patients. Mr. Cain stated that the cost for medical marijuana is far more expensive to purchase from a dispensary than it is to obtain medical marijuana from an individual caregiver because caregivers are only allowed to recover their expenses and often they provide medical marijuana for free. Mr. Cain's concern with dispensaries is that they will push poor people out of the market.

Mr. Cain stated that you can easily grow 60-70 plants in a bedroom; it does not take a large area to grow a large quantity of marijuana and only 2-3000 watts of electricity to produce the crop. If an individual grows over 99 plants, the DEA will go after that individual.

Mr. Cain is not in favor of enacting a local ordinance for a problem that is not here yet because the City would be exposing itself to litigation. He states that State law supersedes local ordinances and if an ordinance is passed that is in conflict with the Medical Marijuana Act there will be cause for the City to be sued.

Commissioner Tom Koch questioned Mr. Cain's position on dispensaries. Mr. Cain responded that dispensaries are not the purpose of the law; the word dispensary does not appear within the Medical Marijuana Act and the definition of a caregiver is a person. Caregiver is defined within the definition of the law.

Bill Horwood stated that the City Commission is not against medical marihuana and asked Mr. Cain if he had read the City's proposed ordinance. To which Mr. Cain replied he had not.

Shawn Cain of Battle Creek surmised that limiting caregivers beyond state law will affect how many SSI and charity patients caregivers can provide medical marihuana for because the SSI and charity patients will not be able to afford the medicine.

Commissioner McConnell maintained that the Commission is trying to meet the needs of patients and offered that it appeared that the audience was wrapping the issue up as a humanitarian issue in an attempt to make the commission feel guilty by identifying numerous patients and the beneficial effects of medical marihuana; Commissioner McConnell reported that none of the commissioners will oppose this philosophically, but there are still districts within the community that are governed by ordinances and where zoning laws are enforced, with which its citizens must abide.

Mr. Cain expressed that it is not a matter of one person's liberty infringing on another person's liberty but rather a matter of fear.

Commissioner Tom Koch again stated that the City has existing zoning laws and it is not necessary to enact the proposed ordinance.

Bill Horwood discussed crime rate increases which were published in the "White Paper". Mr. Cain stated that much of what is published in the "White Papers" are rhetoric.

Shawn Cain stated that the Michigan Medical Marihuana Act is far more a humanitarian issue than a legal issue.

Mr. Cain reiterated that if the City passes the ordinance it will be subjected to a lawsuit, stressing that many of the City's concerns will be addressed in the court system as a result of other municipality suits that are currently on the docket.

13. COMMISSION DISCUSSION TOPICS: None.

14. ADJOURNMENT:

Motion by Commissioner Bill Horwood second by Commissioner John Koch to adjourn. Ayes: All. Nays: None. Absent: None. *Motion Carried.*

Meeting adjourned at 7:52 p.m.

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Pat Humphrey, Mayor

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Diane Schmidt, City Clerk