

**ROSS TOWNSHIP  
PLANNING COMMISSION  
MINUTES  
May 21, 2018**

CALL TO ORDER/PLEDGE

Chairperson Lauderdale called the regularly scheduled meeting of the Ross Township Planning Commission to order at 7:00 p.m. at the Ross Township Hall.

ROLL CALL

Present: Jim Lauderdale, Chairperson  
Russell Fry  
Greg Pierce  
Jeff Price  
Sherri Snyder  
Jesse Zamora

Absent: Victor Ezbenko

Also present: Kelly Largent, AGS – Township Zoning Administrator  
Bert Gale, AGS – Township Zoning Administrator  
Rebecca Harvey – Township Planning Consultant  
Robert Thall – Township Attorney

APPROVAL OF AGENDA

The agenda was reviewed and approved as presented.

APPROVAL OF PRIOR MEETING MINUTES

The Commission proceeded with consideration of the **April 23, 2018** regular Planning Commission meeting minutes. Fry moved to approve the minutes as presented. Price seconded the motion. The motion carried unanimously.

NEW BUSINESS

1. Public Hearing – SLU/SPR for Medical Marihuana Facility (46<sup>th</sup> Street Land Holdings, LLC)

The next matter to come before the Commission was consideration of the request by 46<sup>th</sup> Street Land Holdings, LLC for special land use permit/site plan review for the proposed construction of a medical marihuana facility consisting of both indoor grower and processor operations. The subject property is located at 6861 North 46<sup>th</sup> Street and adjoining acreage (Parcels 3904-26-230-015 and 3904-26-230-020) and is within the R-R District.

Chairperson Lauderdale gave an overview of the public hearing process, noting that the process is detailed in the meeting agenda.

Snyder moved to open the public hearing. Price seconded the motion. The motion carried unanimously.

Chairperson Lauderdale noted that the Planning Commission will be guided in its review of the application by Section 19.3 – Criteria for Decision (Special Land Uses); Article 20, Item 36 – Commercial Medical Marihuana Facilities; and, Section 21.6 – Criteria for Site Plan Approval.

Attorney Thall reiterated that the Planning Commission is required to follow the standards and criteria set forth in the Zoning Ordinance in review of the application. No further preliminary comments were provided by Township advisors.

Referencing the public hearing process, Chairperson Lauderdale requested applicant presentation of the plans, specifications and other data in support of the proposed medical marihuana facility.

Jeff Swenarton, attorney for the applicant and Tim Woodhams of Civica Engineering, project engineer were present on behalf of the application. Referencing the application material and site plan, the May 21, 2018 Planning/Zoning Report, and the May 21, 2018 Memo from Tim Woodhams prepared in response to the staff report, Swenarton provided an introduction to the request, noting the following:

- The subject property consists of 54 acres and is located within the R-R District.
- The proposed grower and processor operations are special land uses within the R-R District.
- The proposal includes indoor operations only; no outdoor grow areas are proposed.
- The owners of the property do not have licensure from the State to operate a medical marihuana facility; the intent is to lease the approved facility to a tenant who will be required to hold the required State licenses.
- No licenses have been granted by the State to date; State standards require operators to be well-capitalized and operations to be sophisticated.

- The presentation of the proposal will demonstrate both compliance with the applicable Zoning Ordinance standards/criteria and that the operation will create less of an impact on the surrounding area than many allowed uses in the R-R District.

Woodhams then presented the site plans for the proposed facility and provided the following overview:

#### Sheet C-1 – Boundary/Existing Conditions

- A survey certificate has been added to confirm the boundaries reflected.
- The northern portion of the 54-acre site is wooded; the remainder of the site is currently farmed in corn.

#### Sheet C-2 – Landscaping Plan

- The proposed facility will be centrally located on the site to retain the existing trees, including the cluster of trees located in the southern portion of the property near Augusta Drive.
- A landscape buffer is proposed to extend along Augusta Drive and 46<sup>th</sup> Street.

#### Sheet C-3 – Site Grading & Drainage Plan

- An underground drainage system and detention basin are proposed to retain storm water runoff on site.
- The system has been designed in consideration of the natural storm water runoff patterns.
- Tile fields are proposed for human waste disposal and wash down water; there will be no processing-related waste disposal on the site.

#### Sheet C-4 – Site Layout Plan

- The facility is proposed to consist of the following:
  - 50,800 sq ft greenhouse w/ 12,000 sq ft greenhouse support area
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  - 12,000 sq ft steel building – indoor grow w/ processing
  - 12,000 sq ft steel building – processing (bakery/confectionary)
  - 9600 sq ft steel building – processing (extraction)
  - 8000 sq ft steel building – processing (pharma)
  - No outdoor grow area proposed
- Total lot coverage by buildings = 7% (3.8 acres)
- Total lot coverage by buildings + parking/drives = 11% (5.9 acres)
- Open space/landscape buffers = 89% (48 acres)

- 100 ft to 250 ft setbacks have been applied to the facility.
- Proposed parking meets all applicable requirements.

#### Unnumbered Sheet – Lighting Layout/Footcandle Plan

- Proposed outdoor lighting meets all applicable standards.
- A 0 footcandle measurement has been established inside the proposed landscape buffer, 50 ft inside the property line.

#### Sheet C-5 – Soil Erosion Control Plan

- The plan will be submitted to the Kalamazoo County Drain Commissioner for a Soil Erosion and Sedimentation Permit.

#### Sheets C-6 through C-8 – Detail Sheets

- Demonstrates dumpster enclosure details consistent with Ordinance standards.
- Five (5) dumpsters will be located within the secured areas and locked per the State's Emergency Rules.

Woodhams stated that the site plans and application material have been revised per the review of AGS to meet all content requirements and have been accepted as complete.

Swenarton and Woodhams then referenced the standards applicable to a medical marihuana facility set forth in Article 20, Item 36 and provided the following assessment of compliance:

- A. The owners will not be the licensed operators; the intent is to lease to tenants who will be subject to the State licensure requirements.
- B. The proposed facility is not within 500 feet of a school or public park/playground.
- C. The dumpsters meet locational and enclosure requirements. The dumpsters will further be subject to LARA Rules.
- D.

#### Lighting

- The outdoor lighting proposal has been demonstrated to meet the fixture requirements of Section 18.3 and to exceed the light level standard of .05 footcandles at the perimeter of the property with the proposed 0 footcandle light level inside the 50 ft landscape buffer.

- Operations within the fully enclosed steel buildings will have no indoor light leakage.
- The greenhouses will be equipped with light deprivation curtains that will be automatically drawn when interior lights are on during the night or on overcast days.
- Security lighting will be provided as additional lighting during any law enforcement responses.

#### Noise

- The proposed facility will not include any mechanical or industrial noise-intensive elements.
- The only exterior equipment expected to generate noise will be the back-up generators.
- The generators are proposed only to maintain building temperatures during power outages, not to provide lighting.
- The generators will be exercised weekly for approximately 1 hour.
- Per the specifications for the generator, a noise level of 85 decibels would be measured at 85 ft (equivalent of a snow blower). A noise level of 65 decibels would be measured at 200 ft (equivalent of a dishwasher).
- This noise associated with the proposed facility would be the same as would be generated by any residential generator in the area.

#### Odor

- The proposal does not include any outdoor grow element.
- The potential odor sources would be the 3 indoor grow areas and the extraction facilities; the other processing facilities are not expected to generate any noticeable odor.
- The indoor grow areas will use FOGCO System equipment installed at all exterior building air exchange vents that will act as a 'subtractive odor control' before the air leaves the vent.
- Inline carbon filtration can be added into the air exchange systems if it is determined that additional odor control is needed.

#### Storage/Use of Products

- The storage and use of products in the proposed operation is subject to LARA Rules.
- The nutrients used in the grow operations are EPA approved products and are typical of those found on grocery store produce.
- Most of the products used are organic and are not harmful.
- Nonetheless, the storage of all products are subject to LARA (Rule 35) which requires 'locked storage areas'.

## Water Consumption

- The Withdrawal Assessment Report provided is a simple MDEQ tool available for use by the public to assess an aquifer's capacity to provide water without special MDEQ permitting.
- This Report indicates that approximately 46-47 million gallons are available.
- Actual water usage is best calculated as a ratio of water usage per pound of flower produced. Industry data estimates a water usage range of 100 to 200 gallons per pound of flower.
- Based on the size of the proposed facilities, number of plants, number of harvest cycles per year, and use of a closed loop system, the water usage is estimated to be approximately 7,200,000 gallons per year.
- Water usage in connection with processing and human use would be minimal.
- In contrast, 35 acres of corn requires irrigation use per growing season of 11,400,000 gallons.
- In contrast, the Stony Creek Neighborhood (to the east) and houses along Augusta Drive (approximately 100 homes) requires 13,000,000 gallons per year. (300 gallons/house/day w/ additional gallons used to water lawns).

## Energy Consumption

- Consumers Energy has indicated that adequate energy can be provided to all users in the area without interruption.
- Per Consumers Energy, the system is designed to supply energy with a 99.9% reliability.
- System upgrades will be required at the developers cost.

## Waste Disposal

- Tile fields are proposed for human waste disposal and production wastewater.
- Production wastewater will consist of facility cleaning and wash water.
- These waste streams are consistent with a residential home and are expected to be classified by the State as a Domestic Equivalent Use.
- As such, they will be subject to review/approval by Kalamazoo County Environmental Health.
- Wastewater from the grow operations is recycled irrigation water. It is required to be tested by MDEQ for a determination of a disposal method, which will likely be through land application.
- Until a land application permit is secured, the wastewater will be held in cisterns and hauled to the Kalamazoo Wastewater Treatment Plant.

## Traffic

- Access to the site has been limited to Augusta Drive. Limitations can be placed on transporters to prohibit travel on 46<sup>th</sup> Street to further minimize traffic impacts.

- Augusta Drive is a County primary road with an average daily traffic count of 2490 vehicles and an estimated design capacity of 10,000 vehicles per day.
- The estimated trip generation for the facility is approximately 250 trips per day, including deliveries. (per ITE Traffic Manual)
- In contrast, the ITE Traffic Manual estimates that a residential neighborhood generates 9.44 trips/day per residence. If the subject property were developed for residential use with 40 residences, the estimated trip generation for the site would be 377 trips per day.
- In contrast, the Stony Creek Neighborhood (to the east) generates approximately 1000 trips per day.

#### Security

- Security measures include an 8 ft tall perimeter fence with barbed wire; secure production areas with access limited to authorized users; monitored building security systems; monitored exterior motion sensors; and, video surveillance with night vision.
- Further, a confidential security plan is required by the State.
- Security will be subject to compliance with LARA (Rule 27).

#### Impact on Neighboring Property

- The proposed setbacks exceed setback requirements:

Augusta Drive – 50 ft required; 150 ft proposed  
 46<sup>th</sup> Street – 50 ft required; 250 ft proposed  
 Side – 20 ft required; 100 ft proposed

- Proposed buffers along Augusta Drive and 46<sup>th</sup> Street exceed applicable screening standards set forth in Section 18.6.
- Proposed operational limitations include:

: transport of products is subject to LARA Rules  
 : deliveries/loading & unloading can only occur within fenced areas  
 : deliveries are proposed to occur only during 1<sup>st</sup> shift hours  
 : per LARA Rules, all cannabis-related product must be rendered unusable prior to disposal; this generally involves mixing it with food or hay before placement in locked dumpsters kept within the fenced areas  
 : delivery and transport routes can be prescribed by operators

Chairperson Lauderdale inquired if there were questions by Commission members at this time. In response to questions posed, Swenarton and Woodhams noted the following:

: The exterior generators would be used to provide security lighting and to maintain building temperatures during a power outage; they would not be used for lighting associated with the grow operation.

: The proposed security lighting will be sharp cut-off pursuant to Section 18.3.  
: The footcandle layout (0 footcandles at the 50 ft setback line) is with all outdoor lighting on, including the security lighting.

: Noise associated with the building venting systems would be typical of any fan; decibel levels can be obtained if requested.

: The odor subtraction system will be used in the grow and extraction operations; it is not needed in the processing operation. It can be added to the bakery operation if a 'bakery' smell is determined to be negative.

: If the FOGCO System is determined to not be enough to eliminate odor, carbon filters can be added. It is not anticipated to be necessary.

: A FOGCO maintenance plan is in place to address concerns regarding a potential failure of the system.

: The system can be designed so that the vents remain closed until the FOGCO System turns on.

: The grow operation is not 'hydroponic'; different mediums are used, including soil and coconut fiber.

: The water consumption data provided was for soil growth and drip irrigation.

: The frequency of the wastewater haul will depend on the quality of the discharge; typically 3-4 times per year.

: Capital upgrades, including a new substation off the existing high power line, are anticipated and will likely cost 1-2 million dollars.

: The trip generation data was obtained from the ITE Traffic Manual (Institute of Traffic Engineers), which is a national publication.

: Site access will be controlled during shift changes by locking the gate after each vehicle enters/exits. The driveway is designed to accommodate the stacking of 5 vehicles. Once the employee is inside the fence, each area/building has a separate security system.

: The vegetative buffer is not intended to be a security measure but to provide visual screening; the security fence with barbed wire is located approximately 150 - 250 ft inside the boundaries of the site and will not be visible from the abutting streets.

Snyder commented that the proposed buffer is strong but is not entirely fitting with the area. She stated that there should be a diversity of tree species used to sustain the buffer and the species should be more representative of the trees in the area.

Hearing no further questions from the Planning Commission, Swenarton continued with the following assessment of compliance with Section 19.3 – Special Land Use Criteria:



1. The proposed facility is an agricultural use, similar to the existing use of the property as farmland. The proposed agricultural use is compatible with the agricultural and rural land uses allowed within the R-R District.
2. The proposed facility has been designed to occupy only 6 acres while preserving 48 acres (89%) of the site as open space and farmland. The proposed facility is compatible with the natural environment of the area.
3. The findings presented relative to traffic, water, wastewater and utilities demonstrate that the proposed facility will not adversely affect the capacities of public services and facilities. Further, the fees generated by the facility will support additional law enforcement if needed.
4. The site plan and application material presented demonstrate that the proposed facility will comply with all applicable Zoning Ordinance requirements.
5. The findings presented demonstrate compliance with the impact-based standards of Article 20, Item 36 applicable to medical marihuana facilities and the applicable Zoning Ordinance requirements relative to setbacks and screening. The proposed facility will not be detrimental or injurious to the use of adjacent properties or the general neighborhood.
6. The findings presented demonstrate that the facility and site have been designed in excess of applicable Zoning Ordinance requirements and industry guidelines and that any potential negative impact will be satisfactorily mitigated. It has been further demonstrated that the proposed facility will be less impactful on the general neighborhood than both existing uses in the area and uses allowed within the R-R District.
7. The findings presented demonstrate that the proposed facility can be developed on the site in compliance with all applicable requirements and with successful mitigation of any potential negative impact. The proposed facility is in accordance with the character and adaptability of the land.
8. The facility proposal has met the applicable special land use standards and will be further subject to State licensure.
9. The site plan, application material, and findings presented demonstrate compliance with all applicable Zoning Ordinance requirements, including the Special Land Use Criteria set forth in Section 19.3, the Site Plan Content Requirements set forth in Section 21.4, and the Site Plan Review Criteria set forth in Section 21.6.

No further questions were posed by the Planning Commission at this time.

Chairperson Lauderdale referenced written correspondence received by the Township relative to the application. He noted that the correspondence will not be read at the meeting but will be included as part of the record.

Chairperson Lauderdale stated that public comment on the application will now be received. He advised that each member of the audience wishing to comment will be limited to 2 minutes and reminded that a name/address is requested for the record. Chairperson Lauderdale noted that all comments are to be directed to the Planning Commission and not the applicant or other members of the audience. He stated that the public comment portion of the public hearing is for receipt of comment and is not a question/answer period.

Lynn Harmon stated that the proposal is inconsistent with the Special Land Use Criteria and the Master Plan. She noted that the proposed use is not congruent with agricultural/rural lands and belongs in an industrially-zoned area.

Jennie Doan stated that she is not opposed to medical marihuana but that she just does not support an industrial activity in the R-R District. She noted that information obtained from Realtor.com suggests that all properties within ½ mile of the proposed facility will experience a decrease of 8.5% in value. She further noted that nearby nesting wood ducks and school bus stops will be negatively impacted.

Wanda Harmon expressed concern with the potential for the migration of nearby arsenic contamination once the facility begins to operate and the impact this will have on the public health. She requested that an environmental impact study be required given that the site contamination was never properly mitigated.

Michael Moore advised that Colorado has experienced power outages associated with marihuana grow facilities. He warned that Michigan has no information or data on what the impact will be and that the provision of uninterrupted power cannot be guaranteed.

Elizabeth Walters noted that conflicting statements were provided by the applicant regarding wastewater disposal. She questioned if the disposal was subject to MDEQ review/approval and the role of the groundwater discharge plan. She stated that the proposed facility will be detrimental and injurious to adjacent properties and does not meet Section 19.3.

John Bowden expressed concern that the applicant failed to concretely define water use or water discharge for the proposed facility and so does not warrant approval. He further stated that a medical marihuana facility is akin to a strip club that requires industrial zoning and, as such, is not a lawful special land use within the R-R District.

Lisa Stevenson argued that the applicant originally noted proposed water usage of 46,166,576 gallons and now has reduced that to 7,200,000 gallons. She further contested the position that the proposed facility would use only 36% of total farm water use when it was clearly not an average agricultural operation. She stated that the proposed facility

was characteristic of an industrial operation and that Ross Township was not equipped to respond to the impacts it would have on the roads and law enforcement.

Gary Kane stated that the noted decibel level for the generator of 85 is high enough to cause hearing loss. He also questioned why the Township would take the applicant's word on water use and should instead request an independent assessment of the data. Concern was further noted regarding the wastewater impacts of 85 employees and the lack of clarity on the facility operator.

Dimitri Harmon expressed concern regarding the potential for fire and the risk for explosion given the products to be used at the facility. He stated that this type of facility should not be located near residences.

Jerry Harmon stated that many issues remain to be resolved before the Planning Commission can approve the proposed facility. He noted that the Township needs proper insurance in place in the event the facility is abandoned or there is catastrophic loss. The cost of reclamation of the site should not be the burden of the Township residents. He added that many elements of the site plan are not compatible with the rural character of the area, such as the security fencing, which violates Section 19.3.

Michelle Labedis advised that she home schools at her residence and so the proposed facility does not comply with the 500 ft separation requirement. She referenced an EPA map noting that the subject area has a high vulnerability to groundwater contamination. She further noted that the products proposed for use at the facility can over stimulate and create dead zones in the Kalamazoo River. She stated that the proposed facility fails to meet MDEQ nonpoint source discharge plan requirements and is not compatible with the area.

Dennis Harmon commented on the potential impacts of the proposed facility on his 4-H animals and vegetables. He noted that the plant will kill animals if eaten and will harm the honey produced by bees. He stated that the proposed facility will look like a jail and that the odor from the operations will prevent outdoor activities.

Elizabeth Lake opined that the proposed facility will create a severe draw down of the groundwater and impact nearby residential wells and require them to be deepened. She stated that a use should not be allowed to impact reasonable access or use of groundwater. She noted that a medical marihuana facility is not appropriate for a residential area and should be directed to agricultural and/or industrial areas where they can be served by public utilities. She stated the facility does not meet Section 19.3.

Nancy Micklatcher stated that she is not against medical marihuana facilities but that an industrial complex is incompatible with rural land use. She advised that studies should be done regarding potential impacts of the facility rather than just relying on the applicant's information. The facility is not a 'farm' and will pose a safety risk. She stated that compliance does not mean it is appropriate.

Laura Williams stated that the proposed facility is incompatible with the surrounding area. She cited health impacts (symptoms reported), safety impacts (increased presence of criminal element, product storage), and welfare (property values). She noted that the proposed facility violates Federal law so is inconsistent with the Master Plan.

Scott Steiner stated that the ordinance is contrary to the legislative intent to limit these facilities to agricultural and industrial districts. He further referenced the Michigan Zoning Enabling Act and the special land use criteria.

Mike Zolka opined that medical marihuana facilities should have a 500 ft setback requirement similar to a landfill or other nuisance land uses. He also reported that his research indicates that property values in the area have gone down in the Township since the adoption of the Ordinance, while values have gone up elsewhere in the County. He stated that the Township should request a study to consider the economic impact of the facility on area properties.

Steve McKetty expressed concern with the adoption of Ordinance 205, noting that it violates Federal law. He stated that the proposed facility is contrary to the natural aesthetics of the area. He questioned if the Township considered the position of neighboring communities when it adopted the Ordinance and suggested that more transparency was needed. He questioned the lot coverage figures provided, noting that his calculations showed a total lot coverage of 25% if all impervious surfaces were included. He opined that allowing industrial activities in rural areas will destroy the potential for economic growth in Ross Township.

Michael Beeks stated that Ordinance 205 will likely be repealed and requested the Township consider a moratorium on any facility approvals.

Don Lavender questioned the motivation behind allowing medical marihuana facilities in the Township.

A speaker questioned the number of generators proposed. She referenced an article regarding impacts experienced in California.

A speaker noted that odor is subjective and that odor elimination should be required. He noted that the proposed facility will impact property values.

Kay questioned who on the Planning Commission lives near a medical marihuana facility. She stated that she has heard there are 14 facilities proposed in Ross Township.

Linda Moray questioned why this was happening in Ross Township and what is behind it.

Linda stated that these facilities will not draw people to the Township.

Jamie questioned the potential impact on property values, existing wells, personal health, and air quality. She questioned who will pay when she is forced into foreclosure due to the impacts of the facility.

Dawn Seeboor stated that nobody in Ross Township knew about the adoption of Ordinance 205.

No further public comment was offered on the matter.

Swenarton provided the following summary comments:

- The proposed facility is a legitimate special land use.
- The proposal complies with all applicable requirements.
- The proposal strives to mitigate all potential impacts.
- Many issues raised are already addressed by the State (LARA).
- The Planning Commission is not charged with determining the merit of Ordinance 205 but only the determination of compliance with the standards.

Woodhams offered the following responses to the technical questions raised:

- The arsenic found on the Hillcrest site was a by-product of the agricultural operations on the property. The arsenic was bound to the upper soil level and so the MDEQ required removal of that soil layer. The MDEQ has cleared the site for residential use.
- The land application of wastewater is considered groundwater discharge and must receive MDEQ permit/approval.
- The subject property is currently being farmed and fertilized and is currently draining. The proposed facility will reduce the amount of land area being used and will be less impactful as it relates to groundwater discharge and storm water runoff.
- The proposed generators are not designed or proposed to power the facility and so cannot be compared to the facilities out west.
- The FOGCO System doesn't change the odor, it causes an inability to smell it as a means of eliminating the odor.
- The water usage data and decibel measurements are available on line and can easily be confirmed.

Chairperson Lauderdale inquired if there were follow up questions by Commission members at this time. No follow up questions were posed.

Fry then moved to close the public hearing. Pierce seconded the motion. The motion carried unanimously.

Planning Commission members agreed that given the amount of information presented, the receipt of some additional material that had not yet been studied, and the lateness of the hour, deliberation on the application should be postponed.

Price then moved to postpone consideration of the Special Land Use/Site Plan Review application to the June 25, 2018 regular Planning Commission meeting. Snyder seconded the motion. The motion carried unanimously.

## UNFINISHED BUSINESS

### 1. Discussion – Resort/Recreation Overlay District

Due to the lateness of the hour, continued discussion on the revised draft text was postponed to a future agenda.

### 2. Master Plan Update

Due to the lateness of the hour, discussion of the Committee's recommended minor update of the Master Plan was postponed to a future agenda.

### 3. Watershed Protection Strategies

The matter continues to be 'on hold' at this time.

### 4. Sign Ordinance

The draft sign ordinance remains 'on hold'.

## PUBLIC COMMENT ON NON-AGENDA ITEMS

No public comment on non-agenda items was offered.

## REPORT FROM TOWNSHIP BOARD

No Township Board report was offered.

REPORT FROM ZONING BOARD OF APPEALS

No Zoning Board of Appeals report was offered.

MEMBERS, CONSULTANTS, ADVISORS

No member or staff comments were offered.

ADJOURN

There being no further business to come before the Commission, the meeting was adjourned at 10:05 p.m.

Respectfully Submitted,  
Rebecca Harvey, AICP, PCP  
Township Planning Consultant