

MINUTES
Planning Commission
August 22, 2016

The Wyoming Planning Commission met in special session on August 22, 2016 in the Council Chambers at the City Building. The meeting was called to order at 7:00 p.m. by Mr. Jon B. Boss, Chairman. Attendance was as follows:

MEMBERS:

Jon B. Boss, Chairman
Phyllis Bossin
Dan Johnson
Jenny McCauley
Mary Beth McGrew

OTHERS:

Terry Vanderman, Community Development Director
Megan Statt Blake, Assistant Community Development Director

Approval of March 7, 2016 Meeting Minutes

The approval of the minutes was deferred to the next meeting.

Committee Reports

None were received.

Citizen Participation

No comments were received.

Business:

2017 Master Plan Update

This item was deferred to the next meeting.

Possible Changes to Chapters 1103, 1167, 1171, and 1189 of the Zoning Code to Prohibit the Use of Property for the Cultivation, Processing, or Retail Sale of Medical Marijuana within the City of Wyoming:

Mr. Vanderman explained that the City Solicitor had previously presented the background of House Bill 523 (H.B. 523) to members of the Committee of the Whole outlining the legislation that H.B. 523 would allow the State to issue approvals for growing, processing, and distributing products containing marijuana for medical purposes once the law goes into effect on September 8, 2016. The Committee of the Whole referred the matter to the Planning Commission and is requesting that a recommendation to change the Zoning Code prohibiting these activities be recommended to City Council at its next meeting.

Mr. Boss asked that the agenda background information be read into the record as the Planning Commission is being asked tonight to consider legislation that was prepared by the City Solicitor at the direction of the members of City Council that is aimed at proactively prohibiting properties within the community from being used to grow, process, or sell medical marijuana or products made from it. Members may recall that Ohio passed H.B. 523 allowing marijuana to be cultivated and distributed in Ohio for medicinal purposes. The Bill provided a means for communities to prohibit these activities from occurring by allowing them to specifically prohibit them in their Zoning Codes. At the June 27, 2016 Committee of the Whole meeting, Council members asked the Solicitor to prepare the legislation for its ultimate consideration. As this is an amendment to the Zoning Code, it must be reviewed by the Planning Commission.

Mr. Vanderman highlighted a document prepared by the City Solicitor that summarizes the proposed changes to each of the residential zoning districts as well as the commercial and office zoning districts. The draft/proposed Ordinance has been subsequently revised by the City Solicitor to include a provision that controls "sales of any sort" which should also preclude internet sales.

Mr. Boss indicated that the revised Ordinance would prohibit medical professionals within the community from filling prescriptions for medical marijuana prescribed to their patients. The law's language allows a physician to write a prescription however it cannot be dispensed within the community.

Ms. Bossin questioned whether the members of City Council believe that there are legitimate medical reasons for these products.

Mr. Vanderman explained that regardless of what one's personal opinion is regarding the issue, City Council believes that growing, processing, and distributing marijuana within the Wyoming community is not appropriate. Medical marijuana is prohibited to be consumed by smoking under state law however it can be consumed by way of cookies, candies, and oils as an example. City Council believes that if a resident can achieve health benefits from consuming medical marijuana, that they should not be prohibiting from doing so, so long as they have a proper prescription. However, Council is not in favor of having dispensaries, growing fields and the like within the City limits.

Ms. Bossin commented that she believes that the actions in the proposed legislation should be separated and not combined meaning that the cultivation should be separated from the processing which should be separated from retail sales, etc. She stated that she has had clients whose children's lives have been saved or dramatically improved by their use of medical marijuana. She expressed concerns with how the City can put legislation on internet sales and how it intends to control internet sales. Mr. Vanderman explained that it

would likely be possible for an individual to purchase medical marijuana over the internet however the purchaser would not visit the property to pay for or pick up the product and a resident will not be permitted to sell (dispense) it from their home as that would violate the provision prohibiting the sale of a product from the property.

Mr. Vanderman explained that the proposed language is not inconsistent with past practices as the City has a home based business Ordinance that basically allows residents to perform professional services from their homes however it prohibits the sale of the physical product from their homes.

Ms. Bossin proposed a scenario that a resident could own a cultivation field in a rural county and distribute the product legally however they live in Wyoming and are selling the product via their home computer but the product was not physically located in Wyoming. She questioned how Wyoming would be able to control this action. Mr. Vanderman explained that this Ordinance, among other things, is attempting to control the product by restricting the growing of marijuana on properties in the community as well as the act of processing and selling the products once the growing cycle is completed. He further explained that communities have until September 8 to take action before the law goes into effect and that communities cannot prohibit or regulate medical marijuana if they do not adopt legislation before that date. Wyoming Council has chosen to take action and adopt this legislation to meet this deadline. Mr. Vanderman indicated that, as he understands it, the City can then go back and amend the language if desired. However if no action is taken by the deadline then no action will be able to be taken. Mr. Boss added that this is why City Council expressed a desire to act now.

Mr. Boss explained that the City needs to be as restrictive as it can for now and in the future, if warranted, the Wyoming legislation can potentially be revised to be more liberal. Mr. Vanderman added that the State will license and regulate the dispensaries and growing locations and what Council is suggesting is that it does not believe those types of activities are appropriate for our community.

Ms. McGrew commented that she is inclined to agree with Ms. Bossin in that the proposed legislation seems excessively restrictive. This is not likely a community that would want a cultivation area but she expressed concerns about physicians' offices in prescribing the drug. Mr. Boss commented that a physician can write the prescription but the user will have to go out of the community to have the prescription filled at a licensed dispensary. Ms. McCauley concurred that the prescription could not be filled within the community. Ms. McGrew expressed concern that while the proposed legislation is not trying to keep people from using the drug lawfully; however the proposed language does appear to do just that. Ms. Bossin stated that she believes that the legislation appears to condemn adults and children for using this drug to help them control such things as severe seizures, among other ailments.

Mr. Boss stated that the City is under a short timeframe to enact its legislation. Ms. McCauley commented that the City's attorney has investigated the proposal thoroughly and has expressed concern of the importance of enacting legislation within the window of time.

Ms. McCauley questioned if the word 'dispensed' should be taken out of the Ordinance. Ms. Bossin commented that cultivation is different from processing and retail sale and the new language added that restricts internet sales. Ms. Bossin reiterated the scenario of a middle man owning land in a rural county where the marijuana is being grown and cultivated, and processed who may be different from the individual who sells it on a website who happens to live in Wyoming. The resident would then be guilty of violating the Ordinance if it is put into law. Mr. Vanderman explained that Council initially looked at retail sales and felt that it was not appropriate to have marijuana products present on residential properties as a home based business where a person could enter a home, buy the product, and take it home. As for internet sales where a resident at home on their computer conducts a sale over the internet and where the cash is not exchanged at this home and the order is dispensed from another location outside of our community, then the point of sale would not be the Wyoming residence as no one is physically coming to the door to exchange the cash for the product.

Ms. Bossin stated that she does not understand how the City can enact all of its proposed restrictions and then go back and make the legislation less restrictive in the future. Ms. McCauley speculated that the City could be in violation of the law if it prohibits cultivation, processing, or sales without adopting its own legislation prior to the effective date of the law. Mr. Boss commented that in order to take action over and above the language in HB 523 that City Council must take action before September 8, 2016. Mr. Johnson stated that he generally is in agreement with passing the proposed legislation because the City has so many parks, schools, and churches in close proximity to each other there is likely no place in the community where cultivation, processing, or sales could occur in terms of the zoning code. He understands there to be a required minimum distance that companies must maintain from these types of facilities and it's unlikely that one would be able to maintain the required distances in Wyoming. Mr. Johnson commented that the legislation is so restrictive and will likely turn someone away from locating it within the Wyoming community.

Mr. Vanderman commented that although Ms. Bossin's initial concerns are not without merit, City Council is taking the position through the adoption of this legislation, that it is not restricting the use of the drug by legal means within a home, but rather that it is not appropriate to grow, process, or dispense the product. Due to the tight deadline, the Committee of the Whole will be taking action this evening immediately following the Planning Commission meeting. Mr. Boss stated that Planning Commission's concerns can

be included in the verbal report that he will present. Ms. Bossin stated that she still has concerns regarding the language referring to internet sales that she is not comfortable with the legislation, and about the need to take such quick action on the matter.

Mr. Vanderman indicated that the legislation provides a mechanism allowing communities to pass a moratorium to further study the matter but that Council's preference is to pass the proposed legislation. Ms. Bossin questioned if a six month moratorium comes without penalties. Mr. Vanderman stated that that is his understanding. He reiterated that the City Solicitor is acting on the direction of the Committee of the Whole and drafted the language prohibiting these activities. Mr. Boss commented that it appears that the Planning Commission's preference is to ask the City Solicitor to determine if a six month moratorium could be enacted for the Planning Commission to further discuss the issue and possibly revise the Ordinance and return to City Council. If not, the proposed Ordinance, as written and with the Planning Commission's comments this evening, will be reflected back to Council this evening so they can act on the proposed Ordinance before the deadline.

Mr. Johnson stated that he would prefer to make a recommendation for City Council to approve the proposed legislation and have them pass it rather than having to repeat this agenda item at the next or future meetings. Ms. Bossin commented that she would be interested in knowing how the community feels. Mr. Boss commented that a complete and thorough article was recently printed on the front page of the Tri-County Press. Ms. McCauley reiterated that the intent is not to prevent someone from lawfully using the drug if they have a legally issued prescription; but rather the intent is to keep it from being grown in the community and sold out of a retail storefront in the community. Mr. Johnson commented that the City also prohibits tattoo parlors in the community but we do not prohibit residents from obtaining a tattoo from a parlor outside of the community.

Mr. Johnson moved to recommend that City Council adopt the proposed legislation changing Chapters 1103, 1167, 1171, and 1189 of the Zoning Code to prohibit the use of property for the cultivation, processing, or retail sale of medical marijuana within the City of Wyoming as well as the revisions to Section 1189.03 with regard to sales of any kind. Ms. McCauley seconded the motion. Ms. Bossin commented that she is uncomfortable with being told that the Planning Commission has to conduct action by a certain date with no one being able to cite where in the document it indicates action must be taken by September 8, 2016. Ms. Bossin would prefer that the Planning Commission be allowed a six month moratorium in order for the Solicitor to provide additional clarification on the proposed legislation. Mr. Boss stated that this can be covered in the report from the Planning Commission. By roll call vote, 3-2 with Ms. Bossin and Ms. McGrew voting no, the motion carried.

Miscellaneous-Next Meeting

Mr. Vanderman noted that the next meeting will be September 12, 2016.

Adjourn

Ms. McCauley moved to adjourn the meeting. Ms. Bossin seconded the motion. All voted yes, the motion carried. The meeting adjourned at 6:10 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

Jon B. Boss, Chairman