

Riley Township Planning Commission

Special Meeting Minutes

Meeting Details

Date: February 22, 2021

Time: 7:00 p.m.

Location: Riley Township via online Zoom – Conference Call

<https://zoom.us/j/97626937885?pwd=U3J1Z3o4UGVJZHFFyb0Z2aDlXU2t1UT09>

Meeting ID: 976 2693 7885, Passcode: 538230, US Toll-Free #: +1 646 876 9923

Open

- Called to order at 7:00 p.m.
- Pledge of Allegiance

Roll Call

Present: Doug Pratt, Dave Rushing, Duane Hagle, Michele Daly-Brown, Jerry Filion, Dawn Behem

Invited Guest Consultant: Gregory T. Stremers, Touma, Watson, Whaling, Coury, Stremers & Thomas, P.C.

Purpose of Special Meeting

To draft zoning ordinance amendment(s): HOME OCCUPATION - MEDICAL MARIHUANA PRIMARY CAREGIVERS AND FACILITIES ORDINANCE - SPECIAL APPROVAL

Questions from the Commissioners

Guest consultant and attorney, Gregory Stremers, prepared draft ordinance and other documents for Riley Township Planning Commission to review for consideration and took questions and comments from the Commissioners in attendance:

Dave Rushing: Questioned enforceability on page 3: Section I, Item e: Stremers stated if refused annual inspection obligation, then could hold a hearing to revoke the permit or get an administrative search warrant on the probable cause of refusing the required inspection. Question on page 5: can ordinance state if card holder or caregiver must reside as a primary homestead residence. Stremers stated it has to be their dwelling they are living at and possible to include it but may be difficult to prove. Question on page 7, Item 19: If enforceable. Stremers stated can be considered as a nuisance for odor and a potential health hazard of it. Question on page 9, Item c (2): Who is qualified to verify what is a good odor plan or not and how is it enforceable. Stremers stated as part of a Site Plan review as a condition to provide an adequate odor plan that can be in place as reasonable restriction of the permit before they're approved. Concerns on page 9, Item e: DTE is already installing 600-amp service in the area without any Township approval. Stremers stated the ordinance language is taken out of the electrical code and the area electrical inspectors are asking for special approval applications for service over 200 amps. Questioned if possible, to keep permits only on paved roads. Stremers did not recommend because it would be deemed too restrictive and regulations state can be grown in an enclosed locked facility. Question on Page 10, Item D: What is expected cost for enforcement litigation. Stremers stated under MMA regulation, a township can have no penalties but doesn't believe

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this has been decided by the courts at this time and is why it was not included in this ordinance and kept with more of a nuisance type action under the Zoning Enabling Act that can be taken up in a Circuit Court that a judge can order attorney cost and fees to be paid back to the Township.

Duane Hagle: Question on Page 3, Item F: How enforceable. Doug Pratt commented that this item is part of the township's current zoning ordinance section under Home Occupations. Stremers stated he cut and pasted from the current zoning ordinance to keep in-line with the entire 1119 Section into two sections I & II of the ordinance amendment, and that it can be enforceable as a nuisance when evidence is created to show it.

Michele Daly-Brown: Questioned not seeing anything in regards to water runoff, pollution going into drains and ground water, could something be put in the ordinance to address that; Cited the Taylor Ord Section 11-3, Item (e) on odor control; and did researched on how to grow, systems and equipment needed for marihuana grow operations. Stremers stated he drafted our ordinance to be as close as possible to the DeRuiter case and came across the Taylor ordinance more recently; The PC should explore odor control to be addressed into the ordinance; and in another township who has a grow operation who hooked up to the drain without permits is causing major problems and agreed that a drain plan should be addressed in our ordinance.

Jerry Filion: Commented he has not seen the proposed ordinance yet but is aware of a grow operation in the area, is concerned with what they are doing with the chemicals they use to enhance the plants that are being dumped into the drainage ditch, and how it could affect or cause harm to our farmed crops in the community. Stremers commented that the Drain Commissioner is also concerned with the fertilizer being used, that they don't know what it is or what the impact could be in the drain systems, it could also get into the sewer systems, can cause algae problems in the drains, or the decomposition in lagoon systems causing them not to work properly.

Dawn Behem: Question to confirm recommendation in keeping proposed ordinance under Home Occupations or as stand-a-lone ordinance. Stremers stated in the DeRuiters case it was put under Home Occupation which the court argued was the best fit under that section with the MMA so it didn't take away from the caregiver or smaller facilities who could grow for up to five patients and not as a commercial operation. In following the DeRuiter case, Stremers confirms and recommends placing of the ordinance under the Home Occupations and not as a stand-alone ordinance. Question on the Taylor ordinance, Page 2, Section 11-3, Item c: Is it possible to limit to only one qualifying patient or caregiver per dwelling, and to limit number of plants not to exceed twelve. Stremers stated it would be difficult to limit due to the MMA regulations permitting caregivers to grow for up to five patients. Asked clarification if possible, to "opt-out" of this Medical Marihuana facilities ordinance in the same manner done for the commercial Marihuana facilities. Stremers stated it cannot be opted out of because it was a vote initiative that would need a 2/3 vote by the state to change.

Doug Pratt: Question on Page 10, Item D(2): Clarify to understand. Stremers stated townships cannot adopt use variants; only a ZBA can grant for non-use variants; and recommends this item remains

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in the ordinance for potential litigation. Questioned how does this affect growers that are already in operation if the ordinance is adopted now. Stremers stated it will be handled case by case that could be challenging if are indeed pre-existing non-conforming use. Doug commented preferred Taylor ordinance requirement of an annual inspection versus and annual permit renewal. Stremers stated it would be the commission's preferred choice. Question if possible, to place a condition on a special use when the property is sold the permit ends. Stremers stated the special use could not end and stays with the land but could be revoked if violated ordinance and revoked.

Dave Rushing asked Duane Hagle to address to the Township board, if Township's attorney is willing to go to court with this new ordinance, and willing to have Mr. Stremers available to represent the Township in court when needed since he is well versed on this ordinance. Duane agreed.

Mr. Stremers agreed to make changes as requested into the draft ordinance, and advised the planning commission to follow the checklist provided, to hold public hearing ,and to send the ordinance to the county's planning commission.

Michele Daly-Brown asked if fees could be made to cover the annual inspections. Stremers agreed, preferred fees to be made by resolution, and put into the ordinance but have to be tied to what actual costs are.

Dawn Behem stated the meeting is being recorded and can be viewed later by anyone who missed out on any portions of the meeting. The Commissioners held discussion on how to proceed, agreed to keep ordinance under Home Occupation, and to schedule a public hearing. Dawn Behem commented requirement to be posted 15 days in advance of hearing date. Agreed to send and requested Duane Hagle to contact Stremers in making additional changes on the draft adding four items on odor prevention, drainage, annual inspection and water tables.

- *Motion made to schedule public hearing on zoning ordinance amendments to Sections: 1119, 403 and 503 at the next regular meeting by Dave Rushing, seconded by Jerry Filion. Discussion: none. Roll Call: DH: Yes, DP: Yes, JF: Yes, MDB: Yes, DR: Yes, DB: Yes, motion approved.*

Questions and Comments from the Public

The Commissioners took questions and comments from the public in attendance and were recognized by the Chairperson:

Suzanne Povinelli stated concerns of a grower on Griffin Road stating issues with drainage, water usage that could be up to 60 gallons a day. Requested ordinance to state must have a home and can't have out buildings without a home. Thanked PC for working on ordinance. Asked how soon it will be in affect, if it could be retroactive, and what is required next. Doug Pratt explained amendment process and the typical timeline. Suzanne asked if moratorium helps to stop the growers who are currently looking so, and if they can't build until something is in place. Doug Pratt explained Riley Township opted out of commercial grow operations that prohibits them

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here; explained the moratorium relates to medical marihuana growers that no one can start a new medical marihuana grow operation while it is in effect, and was put into place at the last Township Board meeting. Duane Hagle explained the moratorium is in place for 6 months to allow time to put the ordinance in place.

Randy Mayer stated lives on Griffin Road at the West end, found online that these medical facilities are required to be licensed by the State. Doug Pratt explained the facility is not required to be licensed but the provider is required to have a card registered by the State. Randy commented meeting was very enlightening, answered questions he has been concerned about, and thanked the Commission for putting the effort forward to dig in for the fight.

Richard Povinelli thanked the Commission for bringing the meeting together that he appreciated. Stated concerns about commercial building in back and the lights are crazy, if considered putting these things in commercial area rather than have them in residential settings.

Leslie Heiser stated lives on Griffin. Asked if draft ordinance includes language that also addresses processors as well as growers, and if allows a person choosing to process marihuana in their home to make any other products. Doug Pratt explained that this is what the Township has already opted out of and from even allowing.

Victor stated lives at 16081 Griffin next door to gigantic commercial grow house. Stated it is not a caregiver facility but a large-scale commercial grow operation in a residential area, paying residential tax rate for a commercial operation, is concerned with load on electrical infrastructure, taxing the water table, urban blight, light pollution, decreased property values, these people do not live in our neighborhood who don't care about our community, are drug lords with drugs that will find their way into our schools and community. Doug Pratt asked what is the basis of calling it a commercial grow operation. Victor replied based on the size of the facility and the equipment using six heating and cooling units on a separate transformer with 600-amp service, have flood lights that light up the entire neighborhood, and he has filed a complaint with the Township and asked how it's going to be enforced. Doug explained the Township has the authority to enforce its own ordinances; the Planning Commission does not do any enforcement and that it is up to the Township's Ordinance Enforcement Officer; The Township does not currently have an OEO at the time and is looking for one; And suggested to contact the Sheriff's department or the State police to look into. Dave Rushing commented Township does not have the authority to enforce a caregiver's card that is given by the State.

Adjournment

- *Motion to adjourn made by Dave Rushing, seconded by Duane Hagle at 8:44 p.m. Roll Call: DP: Yes, DH: Yes, DR: Yes, JF: Yes, MDB: Yes, DB: Yes, motion approved.*

Respectfully submitted by,

Dawn Behem, Recording Secretary

Doug Pratt, Chairperson