

RAY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
TUESDAY, MAY 9, 2017 AT 7:30 P.M.
Page 1 of 16

APPROVED

Location: Ray Township Hall
64255 Wolcott. Ray, MI 48096

Present: Tom Hancock, Chairman
Tom Penzien, Vice-Chairman
Justin Lease, Secretary
Members: Cynthia Banach
Randy Forro
John Zoccola

Absent: Doug Stier- Excused

Also Present: Lisa Hall, Planning and Zoning Administrator, Jack Dailey and Jerry Schmeiser, Township Planners.

1. CALL TO ORDER – PLEDGE OF ALLEGIANCE AND ROLL CALL.
Chairman Hancock called the meeting to order at 7:30 p.m. The Pledge of Allegiance was recited. Stier was excused absence. All other members were present.
2. APPROVAL OF AGENDA-
Chairman Hancock added agenda item 5.) Medical Marijuana Discussion
MOTION by Zoccola supported by Banach to approve the agenda as presented/amended.
MOTION carried.
3. APPROVAL OF MINUTES - April 11, 2017
MOTION by Penzien supported by Banach to approve the minutes from April 11, 2017 as presented.
MOTION carried.
4. NEW BUSINESS
Public Hearing Regarding Amendments to Ray Township Zoning Ordinance #36

A. Proposed Amendment to Section 1600 I-1
Chairman Hancock stated the public hearing is regarding the setbacks in the Industrial zone.

MOTION by Zoccola supported by Forro to open the public hearing at 7:33 p.m.
MOTION carried.

Mr. Dailey, Planner presented his findings to the Planning Commission, dated May 4, 2017, as follows:

The planners and the Building Official had a series of meetings with the owners of parcels zoned Industrial (I-1) regarding the development of parcels on Brian Drive. As a result of those meetings and specifically the restrictive nature of the setbacks; the supervisor directed the planning consultants to review the matter and report whether amendments were reasonable to give appropriate relief to all developers of industrial property. It was the considered opinion of the undersigned that amendments should be considered formally by the Planning Commission.

The Table below outlines the difference between the Existing Requirements for both Minimum Front Yard Setbacks and Minimum Parking Setbacks.

SECTION 1600 - I-1 Industrial District

Minimum Front Yard Setback	Existing Requirement	PROPOSED AMENDMENT
Regional	152 ft.	No Change
Major	125 ft.	No Change
Major	110 ft.	No Change
Collector	93 ft.	No Change
Local/Private	80 ft.	60 ft.

Minimum Parking Setback	Existing Requirement	PROPOSED AMENDMENT
Front Yard	See above Table	See Above Table
Side Yard; Non-Residential	15 ft.	0 ft.; P.C. approval
Side Yard; Residential	30 ft.	40 ft.; plus, Sec 1811
Rear Yard; Non-Residential	30 ft.	0 ft.; P.C. approval
Rear Yard; Residential	50 ft.	40 ft.; plus, Sec 1811

The previous page lists the Required Setbacks for the I-1 District in two separate Tables; the top table lists the Minimum Front Yard Setbacks with the Existing Requirements in the middle column and the Proposed Amendments in the column on the right-side of the Table. The Table lists the Minimum Front Yard Setback for each of five (5) classifications of roads that a parcel may have frontage. The measurements are made from the centerline of each road type.

With respect to the Front Yard Setbacks the only road classification that is under consideration as part of this hearing is the Local/Private Street classification. The existing requirement is that the Minimum Front Yard Setback for a building or parking on any parcel with frontage on a local or private street in the I-1 District is 80 feet; which is broken down as:

- 30 feet for the road right-of-way and
- 50 feet from the front property line

The Proposed Amendment would reduce the Front Yard Setback on Local/Private Streets in I-1 Districts to 60 feet; which would be broken down as:

- 30 feet for the road right-of-way and
- 30 feet from the front property line

It is the opinion of the undersigned that a Front Yard Setback of 60 ft. or 30 ft. from the property line is more than sufficient for industrial lots on local streets in industrial areas. The 30 ft. setback from the property line provides more than sufficient site clearance for the traffic on a local street.

With respect to the **Minimum Parking Setback** there are significant changes proposed for both the Side and Rear Yards. The middle column lists the Existing Requirement for the Front, Side and Rear Yard for both Non-Residential and Residential land uses. The right column notes the PROPOSED AMENDMENT.

The Side and Rear Yard setbacks abutting Non-Residential land uses would be reduced to zero (0) ft. from 15 ft. for the Side Yard and 30 ft. for the Rear Yard. For Side Yards abutting Residential Land Uses the setback would be increased from 30 ft. to 40 ft. and for Rear Yards abutting Residential Land Uses the setback would be reduced from 50 ft. to 40 ft. For both Side and Rear Yard setbacks abutting Residential Land Uses there would also be the requirement for a greenbelt to be developed in the 40 ft. setback.

It is the opinion of the undersigned that the reduction of setbacks for parking to zero lot line between two industrial sites better serves the interests of the property owner and the Township than the requirement for two 15 ft. landscape strips separating two industrial parcels on the side yards and two 30 ft. landscape strips on the rear yards. The Planning Commission must review and approve a site plan for all industrial development. The Planning Commission as part of site plan review would determine with the developer what the most appropriate type of separation should be between the adjoining parcels. If a developer chooses to park to the property line the Planning Commission would require a raised curb to maintain a separation of vehicles between the adjoining sites. If a landowner however chooses to have a separation of his parking from the adjoining site there would be freedom to establish a setback separation of their choosing approved by the Planning Commission.

The rationale for the recommendation to increase the Side Yard abutting Residential use from 30 ft. to 40 ft. is to allow the extra ten (10) ft. for the development of an appropriate greenbelt to separate the parking and activity areas surrounding an industrial building from an adjoining residential area whether it's on the side or the rear. It is our opinion that both the side and the rear yard of a residential use deserve equal protection in the manner of physical separation and opportunity for landscape screening. Therefore, it is recommended that the setbacks for both the Side and the Rear Yards of industrial properties should be 40 ft.

Public Comments: None.

**MOTION by Banach supported by Zoccola to close the public hearing at 7:39 p.m.
 MOTION carried.**

Discussion was held on the setback amendments.

MOTION by Banach supported by Lease to recommend approval to the Township Board for the Amendment to the Zoning Ordinance, Section 1600 I-1 Industrial, regarding Yard Dimensions, as recommended by the Planners, as follows:

Minimum Front Yard Setback	Existing Requirement	PROPOSED AMENDMENT
Regional	152 ft.	No Change
Major	125 ft.	No Change
Major	110 ft.	No Change
Collector	93 ft.	No Change
Local/Private	80 ft.	60 ft.

Minimum Parking Setback	Existing Requirement	PROPOSED AMENDMENT
Front Yard	See above Table	See Above Table
Side Yard; Non-Residential	15 ft.	0 ft.; P.C. approval
Side Yard; Residential	30 ft.	40 ft.; plus, Sec 1811
Rear Yard; Non-Residential	30 ft.	0 ft.; P.C. approval
Rear Yard; Residential	50 ft.	40 ft.; plus, Sec 1811

**FOR THIS MOTION: Yes: Banach, Lease, Forro, Penzien, Zoccola, Hancock.
 No: None.
 Absent: Stier.**

MOTION carried.

B. Proposed Amendment to repeal Section 211 and replace with proposed language
Chairman Hancock stated the public hearing is regarding Section 211 of the Zoning Ordinance #36.

**MOTION by Penzien supported by Zoccola to open the public hearing at 7:43 p.m.
MOTION carried.**

Mr. Dailey, Planner stated Section 211 does not address the new law that will go into effect in December 2017. He further reviewed the proposed amendment language as follows:

SECTION 211 MEDICAL MARIJUANA USES

The following zoning ordinance provisions apply to the use, distribution, sale, and cultivation of marijuana, as otherwise approved and allowed pursuant to state law:

I. *Intent and purpose.* The section as proposed is intended to permit those persons in need of medical marijuana for medicinal purposes as allowed under the state act to be afforded a reasonable opportunity to be treated and for those persons who are permitted to furnish medical marijuana, to furnish it within the limitations of the act in order to protect public health, safety, and welfare.

The section is intended to afford law enforcement an opportunity to distinguish between an unlawful enterprise and an enterprise operating, consistent with the state law regulating medical marijuana by providing defined areas for cultivation of medical marijuana and defined areas where use and transfer of marijuana are permitted.

This section is also intended to protect and preserve the value of residential, commercial and industrial districts.

This section is intended to limit the cultivation of marijuana in residential districts only to *Registered qualifying patients* in order to protect and preserve peace, order, property and safety of persons as a result of reliable information that the growth of marijuana in residential districts is associated with an increase in break-ins, home invasions, and other criminal activity perpetrated upon persons growing more than twelve marijuana plants in residential settings.

This section regulating marijuana in residential areas is further intended to avoid injury to property and bodily injury resulting from issues associated with the growth of marijuana, including problems with insufficient or improper electrical supply, problems with ventilation leading to mold, or other health hazards and other hazards which are associated with the cultivation of marijuana in residential settings.

This section is intended to preserve, protect and further the public health, safety and welfare of the residents of Ray Township and the public at large.

This section is intended to assure that marihuana will be cultivated in such a manner that persons and property will be protected to the maximum extent possible from abuse brought about from attempting to cultivate marihuana in an unsuitable growing environment.

This section is intended to assist public safety agencies by prohibiting dispensaries or other such places in the Township where marihuana would be smoked, ingested, shared, exchanged or sold between patients, caregivers and other parties not covered by the ACT.

This section affords an opportunity for limited economic development in those areas suitable for cultivation with floor space available for such use given the restrictions of the Act.

II. *Definitions.* [The following words, terms and phrases, when used in this subsection, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

1. *Act* refers to the Michigan Medical Marijuana Act, MCL 333.26421 et seq. currently, or as amended.
2. *Registered primary care giver* refers to a person meeting the definition of caregiver under state law and who has been issued and possesses a registry identification card and possesses the documentation that constitutes a valid registry under the Act.

3. *Marijuana, Marijuana* (or *Marihuana*) means that term as defined in Section 7106 of the Public Health Code, 1978 PA 368, MCL 333.7106.
4. *Medical use* means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transportation of marijuana, or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition, or symptoms associated with the debilitating medical condition, as further defined under the Act.
5. *Registered qualifying patient* refers to a person meeting the definition under state law and has been issued and possesses a registry identification card which is valid under the Act, as amended.
6. *Enclosed locked facility* means a closet, room, or other comparable stationary and fully enclosed area equipped with secure locks or other functioning security devices that permit access only by a registered primary care giver, or registered qualifying patient. Marijuana plants grown outdoors, are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level, or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that it is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient, or a person designated through the department registration process, as the primary giver, for the registered qualifying patient, or patients for whom the marijuana plants are grown; and equipped with functioning locks or other security devices that restrict access only to the registered qualifying patient, or the registered primary caregiver, who owns, leases, or rents the property on which the structure is located. Enclosed, locked facility includes a motor vehicle if both of the following conditions are met:
 - A. The vehicle is being used temporarily to transport living marijuana plants from one location to another with the intent to permanently retain those plants at the second location.
 - B. An individual is not inside the vehicle unless he or she is either the registered qualifying patient to whom the living marijuana plants belong, or the individual designated through the Department of Registration process as the primary caregiver for the registered qualifying patient.
7. *Parcel* shall mean a separate legally described area of real property with its own separate tax ID number issued through the Ray Township Assessing Department.
8. *Transfer* means to convey, sell, give, deliver, or allow the possession by another person or entity.
9. The terms "Medical Marihuana Dispensary, Compassion Center, Cooperative, or Smokehouse"; "Medical Marihuana Growing Facility; and Medical Marihuana Growing Unit," are not found in the Act but definitions for those terms are necessary based on how it is recommended that Ray Township should administer and implement the proposed ordinance.
10. The terms Medical Marihuana Dispensary, Compassion Center, Cooperative, or Smokehouse or similar operations as noted are not found in the Act. Dispensary is the more universal term but others such as compassion center, cooperative, provisioning center or smokehouse are used to be synonymous with or generic terms for dispensary. They all serve the general purpose where medical marihuana may be possessed, consumed, smoked, ingested, shared, or sold by caregivers and patients. ~~These types of operations are often the center of controversy in the regulation of medical marihuana dependent upon how dispensaries are regulated. The choices available relating to dispensaries generally involve either prohibition or limiting them to certain districts with special regulations.~~
11. *[Other provisions and terms.]* The other provisions and terms of the Michigan Medical Marijuana Act for purposes of deferential context are incorporated by reference as though more fully restated.
- III. *Medical marijuana for registered qualifying patients.* Registered qualifying patients, or visiting qualified patients may use, possess and store medical marijuana as provided in the Michigan Medical Marijuana Act, MCL 333.26421 et seq., as amended and as further provided herein.
 1. *Registered qualifying patient without a registered primary care giver:*

- A. A registered qualifying patient may use possess and store marijuana in their principal residence within Ray Township for personal use only, compliant with applicable law.
- B. Medical Marijuana may be grown by *Registered qualifying patient without a registered primary care giver* in the R-1 District subject to the following:
 - a. The allowance to grow marijuana shall be limited only to one registered patient identified as a resident within the dwelling of the subject parcel of land only for the use of that patient.
 - b. The marijuana grown shall be limited to 12 plants in accordance with Michigan Medical Marijuana Act, MCL 333.26421 et seq.
 - c. The marijuana shall only be grown within an enclosed locked facility located in one accessory building on the parcel as provided in paragraphs d-f below.
 - d. The accessory building where marijuana is to be grown may be attached to the primary structure only if that accessory building shares one common wall with an attached garage. The enclosed area for marijuana shall not share any common wall with the residence except for the attached garage.
 - e. The grow area and any other area used for processing or storing the marijuana or any chemicals, pesticides or fertilizers shall be structurally closed off and separated from any other use within the accessory building. The grow area shall be limited to 125 square feet with minimum inside ceiling height of 10’
 - f. The accessory structure shall be located a minimum of 35 feet from any property line.
 - g. The patient shall file for an obtain a Certificate of Zoning Compliance
 - h. The patient shall obtain permits for the following building and fire code requirements; electrical wiring, lighting, ventilation, mechanical equipment and or watering devices that support the production of marijuana.
- C. Medical Marijuana may be grown by *Registered Qualifying Patient without a Registered Primary care giver* in the Industrial Districts subject to the following:
 - a. A patient without a caregiver rather than growing at a residence may choose to grow up to 12 plants in either the Industrial I-R District; Section 1500 or the I-1 District; Section 1600 of this Ordinance in an enclosed locked facility.
 - b. The registered patient is responsible for utilizing at a parcel an enclosed locked facility, compliant with state law for cultivating, growing, manufacturing, processing and storing marijuana for medical use only.
 - c. The enclosed locked facility utilized by the registered patient, shall provide separation by fully enclosed walls, or fences, for plants so it is accessible only to registered patient.
 - d. The processing and storing of medical marijuana is permitted only by registered qualifying patients.
 - e. The patient shall file for a Certificate of Zoning Compliance and obtain permits for the following building and fire code requirements; electrical wiring, lighting, ventilation, mechanical equipment and or watering devices that support the production of marijuana.
 - f. If the patient chooses to grow medical marijuana in one of the Industrial Districts as referenced above that patient shall not be permitted to grow medical marijuana at his/her residence.
- D. *Registered Qualifying Patient with a Registered Primary Care Giver:*
 - a. If a registered qualifying patient has a registered primary care giver, such patient is prohibited from growing marijuana anywhere within Ray Township.
 - b. Each registered qualifying patient may possess up to 2.5 ounces of marijuana as provided for in the Act.
 - c. Each registered qualified patient shall receive any necessary treatment, using marijuana and provided by the caregiver only at the primary residence of the individual registered qualifying patient in Ray Township.
- IV. *Medical marijuana for a registered primary caregiver.* Any registered primary caregiver may acquire, possess, cultivate, manufacture, transfer, or transport medical marijuana compliant with the Michigan Medical Marijuana Act, MCL 333.26421 et seq. as amended and further subject to the following:

1. A registered primary caregiver may only grow, cultivate, manufacture, process and store marijuana in a parcel in the industrial I-R; Section 1500 and the I-1 District; Section 1600 in an enclosed locked facility.
 2. A registered primary caregiver may only transfer medical marijuana in Ray Township, to a registered qualified patient who is in his or her care, in Ray Township, at the principal residence of the patient if situated within Ray Township. ~~Transfer of medical marijuana outside Ray Township, shall otherwise be fully compliant with all other applicable law, including the Michigan Medical Marijuana Act, MCL 333.26421 et seq., as amended and any other applicable law.~~
 3. The registered primary caregiver is responsible for utilizing at a parcel an enclosed locked facility, compliant with state law for cultivating, growing, manufacturing, processing and storing marijuana for medical use only. The enclosed locked facility utilized by the primary registered caregiver, shall provide separation by fully enclosed walls, or fences, for plants that are grown on behalf of each registered qualifying patient, on whose behalf the registered primary caregiver is furnishing marijuana for medical use, so it is accessible only to the primary caregiver. The processing and storing of medical marijuana is permitted only by registered primary caregivers. ~~and registered qualifying patients.~~
 4. The registered primary caregiver may grow up to a maximum of twelve (12) plants for each of five registered qualifying patients and twelve (12) plants for himself if the caregiver is also a registered qualifying patient. No more than seventy-two (72) plants shall be permitted to be grown in an enclosed locked facility by any individual primary caregiver.
 5. The registered primary caregiver is responsible for providing the security necessary to assure that the growing marijuana and usable product are accessible for use only by the primary registered caregiver for transfer to, only to registered qualifying patients who are registered to the registered primary caregiver and must fully comply with the provisions of the Michigan Medical Marijuana Act, MCL 333.26421 et seq., as amended.
- V. Parcels situated with enclosed locked facilities.
- The cultivation, growth, manufacturing of marijuana and processing by other than a registered qualifying patient are permitted only in either the industrial I-R District; Section 1500 or I-1 District; Section 1600. Marijuana may be transported to and from such facility, but shall not be transferred by a registered primary caregiver to a registered qualifying patient, or another registered primary caregiver at such facility. The following specific provisions additionally apply:
1. Each parcel upon which enclosed locked facilities with marijuana for medical use are present, must be a minimum of 300 feet from any parcel upon which any school, or school facility is situated.
 2. Transfers are prohibited. Only cultivation, growth, processing, storing and transporting to and from is permitted.
 3. Each enclosed locked facility for marijuana for medical use, must contain a minimum of 200 square feet and shall not exceed 2,500 square feet.
 4. Each enclosed locked facility must be separate from any other enclosed locked facility and maintained, enclosed and locked.
 5. Marijuana plants grown outdoors in an enclosed, locked facility shall submit a site plan for review and approval by the Building Official.
 6. Each individual enclosed locked facility; including any outdoor areas, shall receive a Certificate of Zoning Compliance before the presence of marijuana is allowed. The documents submitted for the Certificate of Zoning Compliance shall include a floor plan for the enclosed locked facility that defines the areas designated for the grow area, work area, and storage area or office if any.
 7. Registered primary caregivers and registered qualifying patients, as well as any other persons, are prohibited from consumption, transfer, or use of medical marijuana for medical use at the parcel of land situated with enclosed locked facilities.
- VI. Cultivation of medical marijuana as defined under the Michigan Medical Marijuana Act, MCL 333.26421 et seq. as amended, is prohibited except as provided herein.

- VII. The consumption, transfer, or use of marijuana, in public, or a place opened to the public is prohibited.
- VIII. Prohibition of Medical Marijuana Dispensary, Compassion Centers or other similar operations for the consumption or distribution of medicinal marijuana in all Zoning Districts in Ray Township
Medical Marijuana Dispensary, Compassion Centers or other similar operation for the consumption or distribution of medicinal marijuana. It shall be unlawful for any person or entity to own, manage, conduct, or operate a medical marijuana dispensary, compassion center or other similar operation, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any medical marijuana dispensary, compassion center, growth facility, growth cooperative or other similar operation in Ray Township.

Mr. Dailey presented his findings regarding the proposed amendment to the Zoning Ordinance for Section 211, regarding Medical Marijuana, as follows:

The purpose of the proposed amendment is to provide reasonable means of regulation through zoning for how medical marihuana may be grown and dispensed in Ray Township for eligible persons based on The Medical Marihuana Act. Michigan voters in 2008 approved at the ballot box, "Proposal 1" permitting the use and cultivation of medical marihuana. Proposal 1 became the Michigan Medical Marihuana Act, MCL 333.26421 *et seq.* (the "Act"). The Act was drafted by a medical marihuana activism group, thus there is not available the usual reports of legislative history. Based on the language written in the Act, it should be reasonable to assume the purposes of the Act to include:

- 1) Creating a registration process for patients and caregivers; and
- 2) Creating a procedure for patients to obtain treatment for various medical conditions.

In 2016 the Michigan Legislature passed into law three separate public acts that were signed by the Governor of Michigan which creates expanded opportunities to grow and regulate medical marijuana. That legislation does not go into effect until December of 2017 and does not materially affect the proposed amendments presented at this time.

The zoning ordinance amendment as proposed would repeal the existing Section 211 of the Zoning Ordinance that regulates Medical Marijuana. The existing language would allow medical marijuana to be grown in Residential Zoning Districts by Registered Primary Caregivers only in a residence as a Home Occupation. Section 211 is silent with respect to any regulation relating to the "Qualifying patient". To date there have been no applications received by any property owners in the Township to grow as a Registered Primary Caregiver. To date in effect the regulation of medical marijuana in Ray Township has been left to the Michigan State Police. This report will focus on a proposed amendment to the zoning ordinance that would replace existing regulation.

Summary of key features from the Act.

The Act makes provision for two distinct groups of individuals; qualifying patients and caregivers.

A "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition, including cancer, glaucoma, HIV/AIDS, hepatitis C, Crohn's Disease, Alzheimer's , diseases that cause severe pain or nausea, and other conditions identified by the Act or approved by the Department of Community Health. As a qualifying patient with an ID from the Michigan Department of Community Health a patient can possess up to 2.5 ounces of marihuana. Further, if the patient has not specified a "caregiver," then the patient may keep up to 12 marihuana plants in an enclosed, locked facility.

The Act does not specify where the plants may be grown. There were 218,556 patients registered in Michigan with 19,455 patients registered in Macomb County in 2016.

"Primary caregiver" means a person with an ID card from the Michigan Department of Community Health. The "caregiver" can possess up to 2.5 ounces of marihuana for each qualifying patient and keep up to 12 plants for up to five patients. The patient during the registration process must designate the caregiver selected to assist. The caregivers can receive compensation for the services. The number of registered caregivers in Michigan in 2016 was 38,108 with 3,304 in Macomb County.

Requirements

In order for a patient to obtain an ID card, a "written certification" must receive from a physician identifying the patient's debilitating medical condition and stating that the patient will receive therapeutic or palliative benefit from the use of medical marihuana. With respect to the caregivers; the Michigan Department of Community Health shall issue a registry identification card to the primary caregiver, if any who is named in a qualifying patient's approved application; provided that each qualifying patient can have no more than one primary caregiver, and a primary caregiver may assist no more than five qualifying patients with their medical use of marihuana.

All applications and IDs for caregivers and patients are maintained and kept confidential by the Michigan Department of Community Health and further, not subject to FOIA.

Limitations on use of marihuana imposed by the Act

Patients and caregivers even with an ID card are not permitted to possess or use marihuana on a school bus or on the grounds of any preschool, primary or secondary school. In addition marihuana cannot be used while operating any motor vehicle, motorboat or aircraft.

Some remaining questions or issues

The Federal Government considers marihuana to be a Schedule 1 drug and illegal under federal law. There is certain to be considerable legislation relating to the administration of the Act throughout the State including Federal law trumping conflicting state law (Supremacy Clause in Constitution). It must be noted that the policy of the U.S. Department of Justice had been "Hands Off"; with no intent to devote federal resources to people strictly complying with existing state laws regarding medical marihuana use (*Ogden Memo*). The Justice Department reserved the right as part of 'Ogden' to investigate if there exists reasonable basis to believe complying with state law is a pretext to grow or distribute marihuana for unauthorized purposes. To date the undersigned are not aware of any official position of the Department of Justice under the new Trump Administration.

Dispensaries are not addressed by the current Michigan Act unlike for example the California law. However, on June 28, 2011 the Michigan Attorney General issued an Opinion stating that the Act..."prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver." This Opinion was supported by the Michigan Supreme Court in 2013 in the case of State of Michigan v McQueen; which ruled that dispensary type operations were illegal operations that did not have to be permitted in any Michigan municipality.

The new Acts going into effect in December recognize dispensaries and will regulate them as “Provisioning Centers” under separate licensing regulation. Ray Township and all other municipalities in Michigan will have an opportunity under the new Acts to decide if they will agree to accept a license to permit a Provisioning Center within the community after December of 2017.

Summary of Proposed Amendment

The Intent and Purpose Section sets forth nine general statements relating to the rationale for the proposed amendment.

Definitions:

There are proposed to be added a list of new definitions of terms used to support the amendment. The terms defined are not currently in the Zoning Ordinance as written and apply specifically to the regulation of medical marihuana. There are terms referenced directly from the Act and others that relate to how Ray Township intends to interpret and administer the regulations pertaining to the growth, distribution, and use of medical marihuana in Ray Township. The terms... “Act,” “caregiver,” “debilitating medical condition,” “medical marihuana, patient,” and “registry identification card” are terms found in the Michigan Medical Marihuana Act, MCL 333.26421 et. seq.

The terms “Medical Marihuana Dispensary, Compassion Center, Cooperative, or Smokehouse”; “Medical Marihuana Growing Facility; and Medical Marihuana Growing Unit,” are not found in the Act but definitions for those terms are necessary based on how it is recommended that Ray Township should administer and implement the proposed ordinance.

General Provisions; Section 211

III. *Medical marijuana for registered qualifying patients*

The proposed amendment creates sub-sections relating to the growth of medical marijuana by registered patients in two distinct categories; patients without a caregiver and patients with a caregiver.

Patients without a Caregiver:

- Patients without a caregiver may either grow on their own parcel or grow in a building on a parcel in one of the two industrial zoning districts. In either case the patient is limited to a total of twelve (12) plants.
- If a patient chooses to grow at the residential parcel that parcel must be zoned R-1 and the growing shall be limited to an accessory building that does not share a common wall with the residential structure and further be setback a minimum of 35 feet off a property line. The area within the accessory used for growing, work area, storing equipment or material relating to the growing shall be limited to 125 sq. feet. In addition a Certificate of Zoning Compliance must be filed and permits must be obtained for electrical, building, plumbing, and ventilation.
- If a patient chooses to grow in an industrial district the twelve (12) plants may be grown and stored within an industrial building.
- The patient is further prohibited from selling, exchanging, or giving medical marihuana to any person at the residence or where the marihuana is grown.

Patients with a Caregiver:

- Are not permitted to grow medical marijuana in the Township
 - Are permitted to possess up to 2.5 oz. of marijuana
 - Are expected to receive delivery of their marijuana from their caregiver at the residence of the patient.
- Qualifying Patients with a registered caregiver are also prohibited from sharing, selling, exchanging, or giving medical marijuana to any person at their primary residence. The patients are also expected to receive their treatment from the caregiver at the residence of the patient or at a location licensed for this purpose. Given that the patient has a debilitating disease, it seems reasonable that any patient should not be expected to travel to receive treatment, thus running the risk of being in violation of both State and Federal law for abusing marijuana.

IV. **Medical Marijuana for Qualifying Caregiver**

The caregiver in the ordinance as proposed is permitted to grow and cultivate medical marijuana only in one of the two industrial zoning districts; I-R (Industrial/Residential) or I-1 (Industrial).

The regulations relating to the caregiver parallel the conditions for patients that choose not to utilize the services of caregiver except for the number of plants allowed to be grown. The caregiver may keep up to 72 plants if that caregiver is also a patient; otherwise a maximum of 60 plants could be grown. In addition and in summary this subsection provides for the following:

- Caregiver may assist only patients under his/her care
- Caregiver may not assist patients at the cultivation facility
- Caregiver must apply for a Certificate of Zoning Compliance and obtain the necessary permits from the Township.

V. **Parcels situated with enclosed locked facilities.**

Medical Marijuana Cultivation Requirements

Subsection V. within Section 211 as proposed relates to the cultivation requirements. Any cultivation shall be limited to either the I-1 or I-R Zoning Districts and subject to meeting a list of seven specific conditions as summarized below:

- The cultivation facility must be a minimum of 300 feet from any school facility.
- The minimum size is 200 sq. ft.; the maximum size is 2,500 sq. ft.
- Each unit must be physically separated from another unit or another use within a building
- Caregiver must apply for Certificate of Zoning Compliance and receive necessary permits.
- If grow areas are to be outdoors there must be a site plan submitted and approved by the Township Building official
- Patients and caregivers are prohibited from dispensing or transferring medicine at the cultivation facility

VI. **Cultivation of medical marijuana as defined under the Michigan Medical Marijuana Act, MCL 333.26421 et seq. as amended, is prohibited except as provided herein**

VII. **The consumption, transfer, or use of marijuana, in public, or a place opened to the public is prohibited.**

VIII. Prohibition of Medical Marijuana Dispensary
Relating to Dispensaries

The regulating paragraph VIII; Prohibition of Medical Marijuana Dispensary etc.; specifies that *dispensaries or similar operations are to be prohibited in the Township*. It is the opinion of the undersigned that the prohibition of dispensaries is critical to the philosophy, intent, and spirit of the entire ordinance. As noted above the Act is silent on the status of dispensaries and how they may be regulated in Michigan. Given that dispensaries are referenced in other state enabling legislation relating to medical marijuana it can reasonably be assumed that the term dispensary was omitted from the Michigan law with full awareness that other legitimate options exist to allow those in need to receive necessary treatment.

It must be noted that PA 281 of 2016 establishes provisioning center license for a commercial entity that purchases or transfers marijuana from only a grower or processor and sells or provides marijuana to only registered patients or primary caregivers. Therefore, the above language may need to be amended when the Township Board decides whether to opt in or opt out of licensing process for provisioning centers later in this calendar year.

Recommendation of the Township Attorney

The Law Offices of Seibert and Dloski, the Township Attorneys had been requested to review the initial draft of the proposed ordinance. In the response, Christine Anderson prepared their opinion concerning the enforceability of the provisions as recommended. Ms. Anderson wrote on behalf of the firm that in the firm's opinion certain elements of the proposed ordinance either be deleted or amended. Those areas of concern are noted below:

- The growing of marijuana for individual patients should not be limited only to the R- 1 District
- The proposal to require the patient to grow the marijuana in an accessory structure rather than their principal residence would be in violation of the Act.
- The proposed requirement regarding the accessory building sharing a common wall with an attached garage and not sharing any common wall with the residence should be deleted.
- The requirement for the applicant to file for a certificate of zoning compliance is questionable
- The requirement that caregivers must grow in the industrial district only is supported.
- Reference to any transfer of medical marijuana outside of Ray Township should be deleted. **This was deleted in the final draft.**
- Recommended that the requirement of 'Site Plan Approval' if marijuana plants are proposed to be grown outdoors by the caregiver should be eliminated. **This was deleted in the final draft. The final proposal requires that the Building Official review and approve a site plan for the outdoor growing area.**
- The recommendation regarding the prohibition of dispensaries is supported.

Comments from the Planners regarding the Opinion of the Township Attorney

With all due respect to the opinion of the Township Attorneys we must recommend that their worthy professional advice on this narrow matter be disregarded. Given that the entirety of their concerns relate to growing in the residential zoning district, we recommend that the Planning Commission consider the following:

- To date while there have been no restrictions to a patient growing in a residential district there is no evidence that medical marijuana is being grown within existing residential structures. It is reported that there are occurrences of grow areas in out buildings, greenhouses and barns but not dwellings.

- It is our opinion that growing marijuana in a residential structure for twelve plants can be potentially injurious to the occupants of the residence and a hazard to the occupants and adjoining properties.
- It is our opinion that the Township must openly address the issue of growing marijuana in a residential structure as being contrary to public health
- It is our opinion that the public interest is better served if residential property owners come to the Township and receive advice and assistance from the Township staff to grow their medicine properly in an accessory structure which will better serve the long term interests of both the individual resident and the Township. A Certificate of Zoning Compliance protects the interest of both the resident and Township and is not in any way a burden on an individual patient. A Certificate of Zoning Compliance is required for anyone else that wishes to build an accessory building in an R-1 District.
- The Township Building Department can readily separate all files relating to the growing of medical marijuana from other department files to preserve privacy and keep them free from FOIA.

Recommendation to Planning Commission:

It is recommended that the amendment to Section 211 be amended as revised and to be noted below for the following reasons:

The rationale for the regulations to allow individual qualified patients to grow in their residence in an R-1 District yet prohibit the growing of medical marihuana in any residential structure is discussed below:

1. Building Codes and Safety- The growing of medical marihuana in Michigan because of the language built into the Michigan Act and the climate requires special treatment. The Act requires that the plants be kept in an enclosed, locked facility. The plants therefore may not be grown or set even for short periods of time outdoors, in window-boxes, on patios, or any other type of setting outside of a building. While a residence may appear to meet the criteria of an enclosed locked facility, every residence does not come equipped with the wiring, plumbing and ventilation and spatial needs for growing such a specialized plant. Unlike tomatoes or various types of flowers that may be started inside and eventually moved to mature either outside or to an enclosed patio marihuana cannot be grown in such a fashion here in Michigan without special arrangements for lighting, heat, and ventilation.
2. Fire safety in a residence is compromised when electrical circuits are overloaded through the use of lighting such as High Intensity Discharge (HID) or High Pressure Sodium (HPS), or Metal Halide (MH) typically used to grow marihuana indoors. This type of lighting is powerful and uses quite a bit of energy and produce a lot of heat.
3. The Act makes no provision for the Township to make inspections to determine if the use of such lighting in a residence is safe and meets the State Fire Code. It is more reasonable to keep all the plants in one location where the owner is assured that the service hookups are in place to accommodate the demands for service. If plants are grown in an existing house the temptation remains to move plants to a location where the circuits are already overloaded which would not occur when all plants are required to be grown and cultivated in a separate accessory building.
4. The ownership interests of the property owner are protected. As proposed the ordinance requires that the patient must either own the property or obtain the approval of the owner in order to construct the required accessory building. The owner should be aware that marihuana is being grown on the property. If an accessory building is constructed on the property the owner will be assured such structure is built in accordance with township ordinances.
5. The accessory building would be not be a detriment to the local neighborhood since the structure would be constructed to code and of quality given the outside veneer matching the primary structure with a pitch roof and asphalt shingles. Further, when the building is no longer needed for the cultivation of marihuana it can readily be adapted to any other use as an accessory building and remain a viable asset.

6. The Macomb County Sheriff's office and Michigan State Police will be aware of the location of any patient's structure for the growing of medical marihuana since the building department would have record of any structure being constructed to cultivate medical marihuana. Therefore, the concern that police would not be aware of lawful locations would not be a problem.

The rationale for the regulations as proposed to allow for Medical Marihuana Cultivation for Registered Caregivers and Patients who either decide not to grow at their residence or are prohibited from growing at their residence to be located in an R-1, IR, or I-1 District subject to the receipt of a Certificate of Zoning Compliance in accordance with the Township Zoning Ordinance is discussed below:

It is recommended as part of the proposed amendment that the cultivation of marihuana should be considered as a 'Permitted Use' subject to a limited set of conditions rather than being required to obtain 'Special Land Use' Permit. As a result there would be no requirement for a Special Land Use Review by the Planning Commission. The recommended review process would require that a Certificate of Zoning Compliance must be obtained in order to cultivate marihuana in the Township. In order to obtain a license an applicant must meet specific standards and receive approval from the Township Building Official. Therefore, an additional layer of hearings and reviews which would add an unnecessary step to the review process is avoided.

The amount of space for each growing unit is also specified in the recommended ordinance. The range that must be provided for each growing unit is known and not subject to arbitrary review. The space requirements are considered reasonable for the number of plants permitted by the ACT to be grown on site.

With respect to the opinion submitted by the Township Attorney, the amendment as revised while retaining the language relating to the growing of medical marijuana in Residential Districts has removed the language referencing any transfer of medical marijuana outside of Ray Township. In addition language that would require 'Site Plan Approval' if marijuana plants are proposed to be grown outdoors by the caregiver has been eliminated. There are no extra administrative procedures that either a patient or caregiver need comply that are not required of any other resident that intends to improve their property.

Therefore, we would request a motion to:

1. Repeal the existing language of Section 211 of the Zoning Ordinance and
2. Replace with the attached Revised Amendment to Section 211 of the Zoning Ordinance.

Mr. Dailey reviewed the issues of the proposed amendment the Township Attorney does not support. He explained the Township Attorney supports the language for a caregiver in the I-1 and I-R zones. Further stated the existing ordinance has been in place since 2011 and no caregiver has ever applied to the Planning Commission for approval in the principal residence.

Public Comments:

Vic Zagorski, 67545 Hartway, questioned the proposed zoning ordinance allowing medical marijuana closer to school than the Michigan state law. He stated making wine and a cigar room has controlled humidity as in growing medical marijuana. Further asked if existing property could be rezoned for caregivers in existence.

MOTION by Zoccola supported by Banach to close the public hearing at 7:58 p.m.

MOTION carried.

Mr. Dailey stated there is not intent to reduce the distance for the growing of medical marijuana as depicted in the law. Further stated he would review the distance requirement.

Zoccola questioned how the ordinance would be enforced without a police department.

Hancock stated he likes ninety percent of the proposed amendment. His concern is the Township Attorney does not support the entire proposed amendment.

Forro stated the Township Attorney doesn't support the entire amendment and questioned then how can the Planning Commission.

Mr. Dailey stated no caregivers have ever applied to the Planning Commission for approval.

Banach stated she does not feel comfortable recommending approval of the zoning ordinance amendment if the Township Attorney does not support the language.

Commission discussed revising the proposed amendment to the satisfaction of the Township Attorney.

Mr. Dailey stated he has prepared the language and would not write an ordinance to harm the residents of Ray Township by allowing medical marijuana to be grown in a residence. Further stated the Township Attorney would have to draft the language for medical marijuana ordinance.

MOTION by Banach supported by Forro to Table Zoning Ordinance #36, Section 211, for the Township Attorney to update the proposed language regarding Medical Marijuana for the June 13, 2017 meeting.

FOR THIS MOTION: Yes: Banach, Forro, Lease, Penzien, Zoccola, Hancock.

No: None.

Absent: Stier.

MOTION carried.

5. OLD BUSINESS

a. Medical Marijuana Discussion – *Added to the Agenda.*

Chairman Hancock stated at the last meeting he presented a power point presentation. He reviewed the five types of licenses: 1) grower, 2) processor 3) provisioning center 4) secure transport 5) safety compliance.

Zoccola stated there are communities that have vacant industrial buildings with water and sewer.

Chairman Hancock stated the Township will have to decide to opt-in or opt-out and if the Township does nothing it would be opting-out. Further stated at the last meeting there was public input from the community.

Lease stated he does not feel a dispensary would be compatible with the community.

Mr. Dailey stated the State is still writing the procedures for the new law.

6. REPORT OF THE TOWNSHIP BOARD REPRESENTATIVE – Absent.

7. REPORT OF THE ZONING BOARD OF APPEALS REPRESENTATIVE – None.

8. CORRESPONDENCE

4-13-2017 Email received from Doug Stier, regarding an estimate for the tax base for an industrial building, as follows: 20,000 square foot building, 15 feet high, complete HVAC system, \$1,679,600.00 True Cash Value (TCV), \$839,800.00 SEV/Taxable Value. The estimate for a 20,000 square foot industrial building, would generate \$631.00 township operating, \$250.00 library, \$1250.00 fire operating, \$833.00 fire equipment, \$350.00 administration fee.

5-8-2017 Email received from Laura Genovich, Attorneys Office of Foster, Swift regarding enclosed locked facility under the Michigan Medical Marihuana Act.

**MOTION by Banach supported by Lease to receive and file the correspondence.
MOTION carried.**

9. Planning Consultants; Monthly Report. – Commission received the Planners monthly report dated May 9, 2017.

**MOTION by Penzien supported by Zoccola to receive and file the Planning Consultants report.
MOTION carried.**

10. Public Comments:
Jack Medley, 20400 30 Mile Road, questioned why water and sewer would be needed for a medical marijuana industrial building. Further stated his farm well produces 31+ gallons per minute.

Victor Zagorski, 67545 Hartway stated he bought his property because he thought it was zoned agricultural.

Joseph Jarzyna, 57710 Romeo Plank, stated in Macomb County there is no specific agricultural zoning. He stated he met with Candace Miller Office and she would like to try to eliminate waste water treatment plants in northern Macomb County. Shelby Township has stated they would sell the sewer capacity to Four Star, LLC.

11. Adjournment.

**MOTION by Zoccola supported by Banach to adjourn the meeting at 9:09 p.m.
MOTION carried.**

Tom Hancock, Chairman

Justin Lease, Secretary

Date

Respectfully submitted,
Lori R. Lascoe, Recording Secretary
Township Clerk