

Commission Letter # 255-10
Commission Meeting: 8/16/2010

RE: Proposed Findings of Fact – 2521 Torquay

August 12, 2010

The Honorable Mayor
and
Members of City Commission

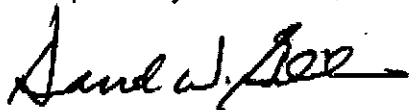
On August 9, 2010, the City Commission conducted a hearing on a request from AFKF, L.L.C. for relief from the City's current moratorium on medical marijuana facilities. At the close of that hearing, the Commission unanimously approved a motion directing our office to prepare proposed findings of fact in support of a denial of the Petitioner's request for relief.

Proposed findings of fact and conclusions of law are attached for your review and approval. If the Commission agrees with the proposed findings and conclusions, the following resolution would be appropriate:

BE IT RESOLVED, that the City Commission hereby approves and adopts the proposed findings of fact and conclusions of law from the August 9, 2010 hearing on the request from AFKF, L.L.C., for relief from the City's April 19, 2010 moratorium on consideration or action on any request for any approval related to a medical marijuana facility.

BE IT FURTHER RESOLVED, that for the reasons stated in those findings of fact and conclusions of law, the request from AFKF, L.L.C., is hereby denied.

Respectfully submitted,



David W. Gillam
City Attorney

cc: Donald E. Johnson, City Manager
Melanie Halas, City Clerk
Timothy E. Thwing, Planning Director

AFKF, L.L.C. / YOUR COMFORT CARE, L.L.C. -- 2521 TORQUAY

Findings of Fact

The subject property is located at the southwest corner of Torquay and Leafdale, which is north of W. Fourteen Mile between Crooks Road and Coolidge Highway.

The property is approximately 1.5 acres, with a 23,000 sq. ft. one-story industrial building with associated off-street parking.

The property is zoned General Industrial.

Light industrial buildings are located directly to the east, south and west. Cummingston Park is located to the north. Multiple family housing (the Briarwood Park condominiums) is located further to the east. Oakland Technical Center (a vocational school) is located northwest of the property.

AFKF has owned the property for approximately 10 years.

A prior tenant vacated the property without notice in 2009.

During the period of time that the property has been vacant, the property has been listed with a real estate broker. There have been two or three showings of the property.

There are other vacant industrial buildings in the area of the property.

On April 19, 2010, the City established a 180-day moratorium on approvals related to medical marihuana facilities.

On or about May 11, 2010, the property went into foreclosure. The six-month redemption period on the foreclosure ends in November, 2010.

On May 26, 2010, Petitioner and David Greene, a prospective tenant, presented the City's Planning Department with a proposal for Mr. Greene to operate a marihuana grow operation that would service up to 10 caregivers under the name of Your Comfort Care, L.L.C..

On June 18, 2010, the City received a request from Petitioner for a hearing for relief from the City's moratorium.

On July 12, 2010, the City Commission granted Petitioner's request and scheduled a hearing for August 9, 2010. Petitioner was present when the Commission set that hearing.

Formal notice of the August 9, 2010 hearing was mailed to Petitioner and Mr. Greene on or about July 29, 2010.

A sample of a license agreement to be used by Your Comfort Care in the operation reflected a fixed minimum monthly license fee of \$1/year for each caregiver.

Residents in the area believe that the proposed use would cause the value of their property to go down.

Conclusions of Law

Petitioner was provided with adequate notice of the August 9, 2010 hearing, and with a full opportunity to be heard.

The City has legal authority to establish a moratorium to allow for the development of a comprehensive plan as to whether or not medical marijuana facilities should be permitted, and if so, in what manner and to what extent the facilities should be regulated.

The moratorium has not denied Petitioner due process. If anything, the hearing on Petitioner's request for relief from the moratorium provided the Petitioner with additional due process.

The moratorium has not resulted in a taking of Petitioner's property rights without due compensation. The moratorium applies equally to all property within the City, and the Petitioner is not being singled out; the moratorium has not affected the value of Petitioner's property, in that the moratorium was established after the property was vacant and will expire before the redemption period on the property ends; and the moratorium does not interfere with any reasonable investment-based expectation that Petitioner has when the property was acquired, in that the limited use of marijuana for medical purposes did not become legal until December of 2008.

If the moratorium has affected the value of Petitioner's property, the diminution of value in and of itself does not amount to a taking.

There is nothing unique about the property that would justify relief from the moratorium.

In the General Industrial Zone, the following uses (among others) are permitted as of right: bottling of beverages; printing; warehouse and distribution centers; commercial laundries; manufacturing, packaging, testing, and repair of previously prepared materials, data processing systems, electronics, food products, and pharmaceutical products; research & design centers; tool & die shops; pet kennels; publishing; custom cabinetry and furniture building; self-service storage; and above-ground storage tanks.

In the General Industrial Zone, the following uses (among others) are permitted as of right (unless designated as a special land use in General Industrial areas): office buildings; medical offices; banks; public buildings; trade schools; libraries and

museums; churches; hospitals; veterinary offices; day-care centers; research laboratories; funeral homes; and ambulance services.

In the General Industrial Zone, the following uses (among others) are permitted as special land uses: storage yards; manufacturing, testing and repair of plastic products, signs, and appliances; machine shops; material recovery facilities; production of paint; salvage yards; battery remanufacturing; sand & gravel distribution or crushing; trucking terminals; restaurants; indoor commercial recreation; large-scale retail; billboards; automotive repair; crematoriums; drive-through banks; recreational vehicle rental and leasing; taxi and limousine services; public utility transmission facilities; and auto storage yards.

The fact that the property is in foreclosure is not due to the City's moratorium. The struggling economy and Petitioner's inability to find a tenant are the causes of the foreclosure.

Any financial hardship the Petitioner is suffering is as a result of not being able to find a tenant, not as a result of the moratorium.

The Petitioner failed to present any evidence regarding the sale and/or lease price of the property, and whether or not the sale and/or lease price is or was reasonable under existing market conditions.

The Michigan Medical Marihuana Act, MCL 333.26421 et seq., does not authorize commercial marihuana grow operations.

Under the Michigan Medical Marihuana Act, a registered primary caregiver can only receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. The proposed grow operation, if permitted, would not have provided Petitioner with sufficient income to avoid foreclosure on the property.

The Petitioner has failed to establish by a preponderance of the evidence presented at the hearing that any of its rights, or any of the rights of Your Comfort Care, L.L.C., have been violated by the moratorium.