

MINUTES  
City of Alpena Planning Commission  
Regular Meeting (Council Chambers and Virtual)  
April 12, 2022  
Alpena, Michigan

**CALL TO ORDER:**

The regular meeting of the Planning Commission was called to order at 6:00 p.m. by Randy Boboltz, Planning Commission Vice-Chairman. Boboltz gave everyone in attendance an overview of how the meeting will proceed. Given the number of people in attendance, Boboltz stated that he would welcome everyone's comments, however, he requested everyone be respectful of one another – no cheering, jeering, or chatter. He requested that all questions be directed to the Chair.

ROLL CALL: PLANNING COMMISSION

PRESENT: Peterson, Boboltz, VanWagoner, Gilmore, Bauer, Kostelic

ABSENT: Sabourin, Wojda

STAFF: Rachel Smolinski (City Manager), Montiel Birmingham (Planning, Development, and Zoning Director), Donald Gilmet (Contractual Staff), Kathleen Sauve (Recording Secretary), Bill Pfeifer (City Attorney)

PLEDGE OF ALLEGIANCE: Pledge of Allegiance was recited.

APPROVAL OF AGENDA: Agenda was approved as printed.

APPROVAL OF MINUTES: Meeting March 8, 2022, minutes were approved as printed.

Boboltz stated that the first item on the agenda was potentially a rehearing of Case # 22-SU-02, which is the Adult Use marijuana facility, which is proposed to be located at 427 West Campbell Street. Boboltz explained that for the Planning Commission to rehear the case, he needed to give an explanation, and he needed action by the commission. He stated that they voted 6-1 at the last meeting to deny the Special Use permit to Venture 245, LLC, more commonly known as Meds Café. He explained that there were two reasons for the denial in the motion that was given by Commissioner Wojda. The first reason was that the proposed use was completely incompatible with the adjacent properties, although, in Wojda's discussion within the meeting, he mentioned being troubled by residences nearby, but that it met all the standards. The second was the impact of traffic on the street system. Boboltz quoted Wojda

from the previous meeting, “weighs against approval in that this is a unique intersection.” He said that investigation of these two issues raises his concern of their validity, and therefore he took it upon himself to request the meeting to reconsider and possibly have another hearing. Previous notice was given via e-mail by Montiel Birmingham on March 24, 2022. Boboltz explained that to rehear this case, according to Robert’s Rules of Order, which the Commission adheres to per the By-Laws, it requires that there must be a motion passed to rescind the March 8<sup>th</sup> decision to deny the Special Use request. Boboltz therefore asked the Commission for a motion to rescind the March 8<sup>th</sup> decision of the Commission that denied the Special Use request of case #22-SU-02. He went on further to explain that if a motion and a second is received to vote in favor of rescinding the March 8<sup>th</sup> decision, if there is a majority vote, the Commission will completely go back through the public hearing and reconsider the entire case. If they should vote the motion to rescind down, then the decision from the March 8<sup>th</sup> meeting will stand. Boboltz then requested a motion be made.

Gilmore ***motioned*** to rescind the March 8<sup>th</sup> decision for the denial of the Special Land Use permit.

Boboltz, although not typical for acting Chair to second a motion, ***seconded*** the motion made by Gilmore.

Bauer requested discussion once the motion was on the table and wanted verification that the record was opened because there was additional traffic information available and because of the absoluteness of that motion of it being incompatible to Boboltz. Boboltz verified yes, and that those reasons would come out in the hearing if in fact they did rescind the motion.

Motion ***passed*** by unanimous vote.

Boboltz explained the rules of procedure for the public hearing and introduced City Attorney Bill Pfeifer, whom Boboltz requested to attend the meeting. He explained that Pfeifer would act as timekeeper and each public comment would be limited to 5 minutes.

**PUBLIC HEARING AND COMMISSION ACTION: Rehearing of Case # 22-SU-02** – Venture 245, LLC has requested a Special Land Use permit for the sale of Adult Use marihuana, at the proposed Meds Café, located at 427 W. Campbell Street.

Birmingham then presented the Approval Standards (see Appendix A) and Findings of Fact (see Appendix B).

FAVOR: Josh Covert, Attorney and CEO of Meds Café, stated he has been working with cities and marihuana businesses for several years, but just recently he has been working solely with Meds Café. He reiterated that at the last meeting, the proposal was denied because of two factors, compatibility with adjacent uses and traffic concerns. He stated that he thought Birmingham did a great job outlining all the criteria, but he wanted to add more to it. He said

that when looking at the Special Land Use traffic criteria, it is consistent with that particular commercial CCD zoning district and other high traffic establishments like retail. He stated that he felt their proposal clearly fits in with the traffic for that particular zone although the intersection is not at a ninety degree turn, but still compatible with other high traffic permitted uses. He said that when comparing their proposed use to a permitted use, he saw no difference as far as traffic goes. As far as the adjacent properties and the effect on those, it is somewhat similar in that the Ordinance has specific criteria to apply and asked how this detrimental impact compares to permitted uses. He said that assuming maybe there is some impact on adjacent properties, but when looking at that in relation to permitted uses, he didn't know if it was anything out of the ordinary because permitted uses in the CCD district include drinking establishments. So, when looking at permitted uses versus their proposed use, you would need to compare the two to see if they would be detrimental. Covert reminded the Commission that the Zoning Ordinance states that, consideration shall be given to the degree of impact the Special Land Use may have on adjacent properties as compared with the expected value to the community. The following six criteria shall be considered: use, activities, processes, materials, equipment, or conditions of operation, and he felt that there was nothing peculiar about their proposal if it met the criteria. He felt that there was nothing exceptional about their proposal when it comes to vehicle circulation and parking area, and they do not have any outdoor storage, activities, or work areas. He said that their hours of operation are set by the marihuana ordinance and the production of traffic, noise, vibration, smoke, fumes, odors, dust, glare, and light are not triggers here. Then he stated that number six, the relative ease by which the impacts above will be mitigated, has limited them to talking about these things when they are talking about the impact on adjacent uses and that is it, and each of these were consistent with other retail establishments and businesses in this district. Covert stated that their facility will be a very controlled environment and people will not even be allowed to smoke cigarettes on the property, so people just come in for a quick transaction and leave; it is a retail business. He said that by allowing these types of businesses, the black market will decrease because they will be offering a good economical good price point product that is not often found on the street; he felt it would be a positive benefit to have a regulated safe product available to consumers, so they don't have to get it in an unregulated street market. He went on to say that he would like to keep all of those things in mind and really limit what they were there to talk about, and that was the criteria for the Special Land Use permit, not about where should marihuana facilities be located in Alpena and does this impact the adjacent properties with those six criteria that he read, and is the traffic impacted in a manner inconsistent with that particular zoning district and this zoning district is clearly meant for this type of use.

Scott Schroeder, one of the original founders of Meds Café, spoke on behalf of their reputation. He said they are currently in four municipalities, have had no violations with the MRA, have an excellent relationship with all of their investigators, and were granted their first Adult Use license back in 2020. He said he believed a lot of public concern has to do with "riff-raff" and what is this going to generate and bring to the community. He said he has had to call the police

only one time in the three and a half years that they have been open only because the customer was mentally disturbed and the police intervened to get the help he needed; yet, he has had to call the police about a dozen times at the restaurant he owns because they serve alcohol. He stated that in the other communities of Rogers City, Lowell, Cedar Springs, and Manistee, they want to give back to the community and grow with it. They have donated to the schools, senior center, Hilltop, and park systems. He informed those in attendance that if they had any questions with compliance or their investigations, the MRA just came out with a recent bulletin that it is now public knowledge, and all investigations are an open book and published online.

Ryan Fitzsimmons, one of the partners for Meds Café, said that he and all of his other business partners are owners of other businesses in other communities in Michigan and even other states, and he understands everyone's concerns in these forums. One thing he said he would like to mention is that talking about cannabis was a huge transition for him with it being such a stigmatized thing, until recently at a City Council meeting in Manistee which lasted five and a half hours but at the end of it, some important things came out of it. He stated that cannabis is very different, depending on your experience and your relationship with it. He informed everyone that his mom had breast cancer, and throughout her treatments, it allowed her to get off some prescription drugs that caused terrible side effects, affected her appetite and ability to sleep. It wasn't until his mom's experience with cancer that it made him realize that there was something more to cannabis than just to escape. He went on to say that in the 41 states that have legalized marijuana, they are seeing that it is doing well in a state licensing scenario, where you can generate tax revenue that goes to a lot of great things, and they look forward to hearing the community's input tonight and making sure they are here to serve the community. He stated that they really do care deeply about the communities in which they operate any of their businesses.

Robert Spragg, one of the partners for Meds Café, addressed the parking and traffic issue. He stated that the site was previously a U-Haul rental and tool store, with a 7-11 across the street, along with a bank and a car dealer, and Ripley Street used to be extremely busy back in the day – all the traffic went that way to Neiman's and the Mall and he felt that the majority of that is going out M-32 now which has reduced the traffic in their area significantly and he did not feel traffic should be an issue. Spragg went on to say that the Zoning map very specifically says where these places can go, the setbacks very specifically detailed, as far as from what and from where, and when they chose their site, they chose it based on those facts. He said they made their improvements based on the wording in the Ordinance, the Zoning, and based on talking to the superiors within the City. They felt that it is well within the district. He stated that it wasn't that they did not expect this meeting, they did expect it, but with their attorneys and partners, they verified prior to even purchasing the property, that this would comply. They respect the community and how they feel about it, but once people see it open, it is not a retail space for a drug dealer; it is a very regulated business and it would be more to deter a drug dealer, than it would be to bring one within the range of that facility. He said the packaged products are

discreet, they are in a paper bag, with no use on site, no smoking on site, people just aren't going to see that. He said that this product is not as addicting as other drugs and their clientele are thirty to seventy years old. People who use it have a purpose for using it. They are not buying it to just get high, they could grow it in their own backyard. Typically, people are using it for a specific use, whether it be an ailment – mentally, physically or what have you – you don't have to be afraid of it. He said real estate wise, there are no statistics to this date in Michigan, whether it affects or how it affects property values. Spragg said, again, they respect the community and they are happy to do what they can to make it better on them [residents], and if there is something they can do with the fence, there are no cameras back there, there is no lighting back there, this is not a grow facility, everything comes in to us packaged, and then we put it in another package, staple it and out the door they go.

Monica Broers, resident of Alpena, as a consumer and a customer, stated that she has visited the Meds Café in Rogers City as well as many other shops from down state to Traverse City. Each establishment was very secure and professional. She has been inside the Neighborhood Provisions and Meds Café in Alpena and her opinion was that Meds Café presents far less of a traffic problem compared with Neighborhood Provisions. She stated that she prefers the two locations being close together, and she compared it to shopping for a vehicle, she would not want to drive across town to compare vehicles, and she would prefer to spend her time wisely. She went on to say that it is located behind the dry cleaners, making it less visible to children. At 62 years old, she has many of her own aches and pains and does not use enough to warrant \$150 for a medical marijuana license – recreational works for her. She explained that medical marijuana is 6% sales tax, as compared to recreational which is 16% sales tax. She also stated that every location she has been in has been very secure, there is a door that you cannot get through until they check your drivers license, only so many people allowed in the back room at a time, everything is behind a counter, everything is counted, the whole process is meticulously done and very professional.

Jon Broers, lifelong Alpena resident, licensed building contractor of 33 years, and member of the Alpena Zoning Board of Appeals. Broers stated that on the ZBA, they follow a set of by-laws and rules, and they have yet to deviate from the written rules that were well thought out, reviewed and debated. He goes on to say that if they were to deviate from those, he feared it would set a precedent that the rules are subject to change based on public comment. He made it clear that being on the ZBA or Planning Commission is a volunteer position, and they do the very best they can, but there is a set of guidelines that are to be followed.

No public comment online.

OPPOSITION: Lloyd McClung, stated he is shocked and disappointed that the Planning Commission would consider a retail marijuana store in a neighborhood. He said he thinks there are other places in Alpena that this facility could be located that is not in a residential neighborhood. He said, speaking for the citizens of Alpena that are homeowners, they do not want it next to them, but this neighborhood is going to get stuck with it. He disagreed that it is

going to affect the neighborhood property values and he would not want to buy a home in that neighborhood now if there is going to be a marijuana dispensary there; when people in that neighborhood go to sell their homes, that is something that will come up. He thought that there are other places to put this that are not in a residential neighborhood. He said everything else that has been talked about is missing the point. It is all about the neighborhood.

Robert Bruning, says the problem with this is everyone keeps talking about the zoning and ordinances and permits, but every other business in town has to do that, including homeowners; the zoning and the way the place is built really has nothing to do with what type of store it is, which is a store that sells predominantly to people that are over 21, and want to buy pot. He went on further to say that he cannot bring his children into a business like this, unlike restaurants, tool shops, etc. There is a school 1,500 feet away. He said they thought they were going to get the business there, so they started work on it, but they put the cart in front of the horse. He also stated that churches and schools with the 1000-foot buffer have set hours and sit unoccupied after those hours, but the surrounding homes do not. He encouraged the Commission to stick with their previous decision, because what they did is on the business owner not the Commission, not the neighborhood, not the City of Alpena.

Brad McRoberts, local resident who grew up on Bedford Street, stated that the whole residential area was built in the twenties, thirties, and forties, and now a lot of the people in the area are making real investments in their homes to fix them up, and are making it a nice neighborhood. He said he has put more money into his house than he paid for it, and he still has more to do; he sees his neighbors doing the same thing and is inspired that they are getting a community. He said it is a quiet area, it does not fit in, it is right in someone's back yard, it is less than 400 feet from his house, and he understands how the other residents would feel. He then addressed the traffic, saying that the traffic picks up on Potter Street and Liberty Street, as people use that as a cut-through route to avoid the light. He made reference that people drive too fast through that area and there are many children.

Steve Dehn, addressed the board and reminded them of the oath they took upon being appointed to the Planning Commission. He said it is an oath to support the Constitution, and the Constitution of the State; prior to the start of this meeting and all meetings, they say the Pledge of Allegiance, an allegiance to the flag and the republic for which it stands. The Republic is the United States of America; it was created by the people for the people. Dehn went on to say he believed the people have spoken on March 8<sup>th</sup>, as well as the Findings of Fact, as well as the Planning Commission's vote of 6-1 against it. He asked if there was a survey to all people within 300 feet of this location, to which Birmingham responded that notices were sent to all property owners, to which no response was required. Boboltz interjected, informing everyone that before the March 8<sup>th</sup> meeting, 38 notices were sent to all property owners within 300 feet of this proposed facility. There were five responses that came in. Boboltz stated that that is no longer the case, as a petition has come in with many signatures. Dehn asked if the vast majority of the people who have spoken have said no. Boboltz informed him that was correct. Dehn

then reiterates that he is here to remind the Commission that the decision before them is quite clear, if they represent the people of this City, the State, it is clear that the people have said no.

Deborah O'Neil, stated that she is in agreement with the previous gentlemen and is disturbed by the fact that the building was purchased and renovations were begun without the permit that was needed. She reminded everyone that there was an article in the newspaper recently about homeowners needing to get permits and if work is done without a permit, the inspector may make them tear down the new work. She asks why, just because they [Venture 245, LLC] has invested so much money, they are being allowed to do this. She says it should have been done properly in the first place.

Andy Jameson, resident of Alcona County, said that although he lives outside of Alpena County, he does a substantial amount of work here, as well as attend church services in Alpena. He said first, he has concerns in that the processes have been somewhat backward in approach. This rehearing (that wasn't legitimate until it was voted on) has been brought up, and it was his understanding that there has to be substantial changes in the Findings of Facts or a written statement by the attorney indicating that the process was erroneous the last time it was done. He stated that that has not escaped his notice and asked for an explanation of why there is a recension and rehearing of that meeting. Second, he read from the public packet on page 46, a report submitted by Matt Leavesley, speaking of the risky business decisions Venture 245, LLC made prior to getting their Special Use permit or input from the public.

Steve Dehn, concurred with previous speaker Jameson.

Michelle Smith, local pastor, recognized that the State of Michigan recommends a 1000-foot buffer zone around schools, places of worship, daycare care centers, etc. while the City has chosen a 250 foot buffer zone. She asked why we would make any exception to place a Marihuana dispensary building near a neighborhood where there are children and families. She went on to say that it would set a precedent and could possibly affect other communities. She appealed to the Commission to uphold the Ordinance that was put in place as our representatives and servants, and not to make a decision that would be detrimental to our community.

AJ MacCarthur, of Lachine, stated he thinks the people in attendance at the meeting in favor of it, are doing it for their pocketbook, and judging by the crowd, there are a lot more no's than yes's. He stated that he has a family of five girls which he and his wife have worked hard to raise and teach them to be the best they can be. He also stated that he grew up with DARE and bringing this sort of thing into the community is just not a good idea. He said marihuana is a money thing and asks those in attendance what is next that people are willing to change their values on for a few dollars.

John Kozlowski, County Commissioner, recalled when the County adopted a resolution against marihuana and stated that he supports everything everyone has said, and he opposes it. He

said he thought it boils down to the money. He said that when looking to offer this business to take place here, the biggest thing to look at is the residents within that community.

Craig Braco, retired physician, addressed the board and pointed out that Alpena's Mission Statement is right on the wall and says that we want Alpena to be a premier choice to live, to work, and to vacation we want protection for our citizens, want our children to grow up in a safe environment, and we want this community to grow and prosper because vacationers come here. He said that communities that are filled with casinos and the like also attract certain vacationers; communities that have churches, recreational activities that stimulate family togetherness and growth encourage that type of vacationer and will benefit all of Alpena in terms of its businesses and ideally increase citizen growth. He recognized that marijuana is a wonderful substance as an antiemetic, and he is in favor of it in terms of proper use. He said that people there were not debating whether it is good or bad, but they were simply saying they do not want it in a residential neighborhood; there is commercial property in all directions outside of the city. Additionally, he stated that it seems to him that a lot of what is going on here is that rules were not followed, money exchanged hands, and now they are wondering what they are going to do with the building if they cannot turn the Committee around for Year vote. He did not understand why responsible people made a responsible decision and what happened between that meeting, decision and why; you get a permit, you do what you are supposed to do to get your business up and going, you open your door, and that is not what happened here.

Brandon Boyer has lived in Alpena for about two and a half years and said he has never had a job that did not require him to pass a drug screen. He stated that there are job opening signs everywhere that still are not filled; how many people does it take to fill those jobs and why can't they work.

Timothy Jameson, owner of a small home maintenance business in Harrisville, said that the parking lot at the small recreational marijuana facility there is always more full than the bar. He felt that the traffic would increase in the area of this proposed facility.

Erika Leavesley, resident of Alpena who lives in that neighborhood, said that she went around her neighborhood after receiving the notice in the mail of the rehearing. Fifty-five people said that they did not want it, and three people would not sign it. She asked the Commission respectfully, to not put it there.

Matt Leavesley, resident of the Bedford neighborhood for over ten years, attended last month's meeting. He stated that before the first meeting on this topic, he noticed a new roof being put on the building and work being done inside which led him to believe that the facility had already been approved to sell marijuana out of that location. He said it did not make sense to him that a business that is connected to the sale of marijuana in other locations, would buy a building like that and make major financial investments in it, if they hadn't already been fully approved to sell marijuana there. He was surprised when a neighbor showed up at his door



with a petition to ask the Planning Commission to deny the Special Use permit for that location. He said that he thought it was ludicrous that anyone would think that was an acceptable location for a business which promotes the sale of a schedule 1 controlled substance. He stated that based on some things one of the co-owners said at the last meeting, he did some research in regard to four other properties he found that this business owned in Michigan and he was shocked to find that this proposal location in Alpena was fifteen times closer to residential properties than any of their other buildings; it was also directly adjacent to more residential properties in this one location than in all four of their other location combined, times two. He received a letter of rehearing on March 24, 2022, and then did a case search for the Circuit Court and that revealed that the CEO of the marihuana business in question, filed an appeal against the City two days earlier on March 22, 2022. He said he had made multiple requests to multiple city officials in order to determine who exactly requested the rehearing, who approved it and what the legal procedural basis for the rehearing was and had not been given an answer to the majority of those questions until the meeting at which he was speaking. He did not believe that the legal basis listed in the Ordinance for a rehearing was met; he thought it could be incredibly debatable and that the City would be opening themselves up to legal liability if they were to overturn their decision, and then the whole basis for the rehearing was faulty. He said he felt the Planning Commission based their denial on the proper standard. He informed the Commission that he was the one who prepared a seventeen-page report that was submitted to them, detailing his findings in hopes that it would encourage all of the Commissioners to stand by their original decision (see pages 42-58 of the public packet). He then encouraged the Planning Commission to not ignore the Ordinances under Section 6.12. He asked them to take in to account everything else in the Marihuana Ordinances, and said that the sale and promotion of marihuana, especially near children, posed very unique risks and dangers and they have to be taken into consideration as they look at those standards. He pointed out that there is a bus stop 175 feet from the building. He finished by saying that in Ordinance 21.467, it is the City's responsibility to evaluate the permit in a manner that protects the public health, safety, and welfare of the residents, that protects the residential neighborhood and that protects the public interests over the interests of the marihuana establishment; it is not their [Planning Commission] responsibility to protect others from the consequences of their bad business decisions, make lawsuits disappear, or protect someone else's political career. He said that the families of whom they are serving are asking to deny the permit again.

Mark Leavesley, lifelong Alpena resident, stated he understood how complicated all of the Commissioner's jobs are, even though cases like this may only come up once in a term or less. He asked the Commission to please remember that their decision would be affecting more than one man or five men that put a bunch of money in a building that they should have had a permit for in the first place. He stated that he found it unnerving that the one no vote from the previous meeting and the Chair were the ones who redid this again; whether it be a wise Council decision or not and encouraged the Commission to hold the citizens of the community

they are representing in higher regard. He said nobody dislikes the business owners or has said that they should not have their recreational marihuana business, but that they do not want it near the children. He made his point known that he does not agree with this and said that this vote and what happens going forward will be a reflection on all of the Commissioners and the whole City of Alpena and its people. He asked if this is just going to be a recreational marihuana facility or is it going to turn into something else that we may not have an Ordinance for or rearrange an Ordinance for.

Mark Collins, resident of Lachine, said he lives, works, and attends church in the Alpena area. He shared what he believed to be logical fallacies stated by the representatives of Meds Café in their presentations as follows: 1. Cancer patients were mentioned - that is medical use, not recreational use and the benefits of medical use are irrelevant for a recreational shop; 2. It has been said that this is not a retail location for a drug dealer, yet it is a retail location for a store that deals drugs and that constitutes a retail drug dealer; 3. Almost everything that has been said has focused on medical benefits of marihuana, and this store has been established for the purpose of distributing recreational use; 4. The location will not be easily visible to children from Ripley Street and that ignores Campbell Street and the buildings nearby that have children living in them. Collins went on further to state that the neighborhood does not want recreational marihuana; that 55 people out of 58 people said that they would not like this store to be in that location and that is a 94.8% majority. He finished by stating that he stands by the people of that neighborhood.

Mark Leavesley returned to the podium to ask if the City Ordinance states that a marihuana facility cannot be located within 250 feet of a daycare center. The board informs him that there is for commercial daycare centers. Leavesley then made a point of why, if not allowed within 250 feet of a commercial daycare center, would they allow one to be placed ten feet from a child's backyard.

Robert Bruning, returned to the podium and said that in the newspaper there was an article that said 95% of the inmates were in jail for narcotics, so he believed that marihuana is a gateway drug. He then said that it doesn't make sense to him to have two marihuana shops in the same neck of the woods.

Joe Collins, pastor of Shoreline Wesleyan church, stated he is very much against this and affirmed the other things other people have said.

Elizabeth Antchoviak, spoke via phone virtually, said that she could not be prouder of the citizens of Alpena who spoke tonight. She said the point is that the homeowners were there first; a person's home should be sacred, and you should have the right to feel safe and not be driven out of your own home.

With no further public comment, the public hearing was closed for deliberation at 7:55 pm.

Gilmet approached the podium and stated in regard to the permit issue, not only did Venture 245, LLC do their construction with a building permit before a Special Use permit, but Currier did the same thing. He said that some people have referred to the Constitution and the law, and he explained that the law is that anyone can get a building permit to remodel a mercantile building. He would not issue a building permit that said the renovations were for a marihuana facility because he would not want to put the City in a chain of liability if they were then not approved for the Special Use permit. He said anybody can remodel any building for an allowable use; if it needs a Special Use permit, they are on their own whether or not they get one, it is still a viable mercantile building. He stated he did not want to speak in favor or against, but as someone who has been with the City for over 22 years, a certified Zoning Administrator, went through the Zoning Enabling Act, worked with four different planners, and helped write the current Zoning Ordinance, a lot of thought went into it. He said a lot of people were speaking from emotion, but when the Zoning Ordinance was written, they had to write the emotions out. This started when the Medical Marihuana laws were first enacted prior to recreational being around, they had meetings at MSU, and it became obvious to him that they were there to do a job through zoning. Zoning is land use and building uses that are allowed from the federal, state, and local governments. He stated that the City immediately put a moratorium on anything to do with Medical Marihuana because they wanted to be able to take a look at how it affected other communities. He said people came in favor of it and against it, but for him personally, he was against it because he wanted to protect children; we are a Constitutional Republic, but our government operates as a Democracy, whether 98% wants something or 51%, that is how it works. He then explained that they went through all that, talked about the separation from residential area, which is not in the Ordinance, and it is not in there on purpose, it wasn't thought to give it 5, 10 or 15 feet, because if anybody were to look at where the few places are that the City does allow marihuana facilities, they are all next to residential – even the two that were previously approved for Medical marihuana. Gilmet said he was in attendance to speak not in favor of or against the proposed facility, but to speak in favor of the Zoning Ordinance, which does not have emotions in it; it has facts. If it meets the criteria, you approve it, if it does not meet the criteria, you do not approve it. No matter which way this goes, there is a Circuit Court that can decide for either party that is aggrieved. Gilmet then dispelled the rumors that they were allowed to do something without a permit, because they were not. They are allowed to buy a building, remodel it any way they want with the proper permits which they had, and that is the way it is.

Bauer said she only saw the Findings of Fact and asked where the recommendation was. Birmingham said that there were just specific recommendations or conditions if approved.

Boboltz told Gilmet that he very much appreciated Gilmet's input about the Zoning Ordinance, and that is the very reason he requested the rehearing because the high levels of emotion involved, and also a lot of speculation of what could happen which is not factual. He referred to the Ordinance section 6.12B, Conformity with Adjacent Uses, and explained that the use shall not be hazardous or disturbing to existing or nearby existing or future uses. In the CCD,

there are a whole bunch of uses that are allowed because they have been deemed, in the judgement of everybody collectively in their wisdom creating these Zoning Ordinances, not disturbing to the surrounding properties; they are all very specific and spelled out in the articles in the Zoning Ordinances, and said it is about land use, what is allowed and what is not allowed. He gave examples of what is allowed in the CCD such as bars, microbreweries, amusement arcades, private clubs, lodges, residential human care facilities, parking lots, multiple family dwellings, auto service stations, financial institutions with drive throughs, outdoor vehicle sales, and religious institutions just to name a small portion of what is allowed within the CCD, and of those named, eight of them require Special Use permits. He stated that he studied the Zoning Ordinance diligently and has not come to the same conclusions that have been so highly applauded. He went on further to say that he felt as if somebody tried to impugn integrity, like he is bowing to pressure, but the only pressure he bowed to is going back and studying these documents and Ordinances, including the marihuana ordinance; as he stated at the last meeting, several years ago, the State of Michigan passed legalizing marihuana and obviously many people do not agree with that. Then ultimately, when the City spent a great deal of time passing an Ordinance, there was very little comment on it and now that we have a law in place that says it is allowed in these zoning districts, he did not feel that he, based on his legal responsibility as a Commissioner, have any legal right to go along with what most of those in attendance were advocating and gave everyone his apologies, saying he was being perfectly truthful and honest. He then welcomed any questions or to deliberate amongst themselves.

Bauer said she wanted to reopen it because she thought they could be clearer about why what they found did not comply. She said that in her studies, she needed to find out why people were opposed to this and she heard from the people, the inherent natures of legally selling a schedule 1 drug. Bauer informed everyone that she has been a registered nurse for over forty years, lived in Oregon when they put these [marihuana shops] in in 2015, and lived there until 2019. She said they have the non-discretionary standards that she thought nobody disagreed with; she believed that their jobs are to look at this application will this business be in harmony with the surrounding area, harmony being another word for compatibility, whether or not it will interfere with the surrounding land uses and will it have no nuisance effects. She said she heard people say how it would change that way they supervise their children, where their children play, it would change their neighborhood, it would change when and what their kids are exposed to in terms of drug use, and they would have to explain to their children what Meds Café means. She verified that there is a bus that sits in front of the building, if there is any traffic, before it can leave. She said she felt it would not be in harmony with the rest of the neighborhood based on what Mr. Leavesley and Mr. Bruning have said about how they will change. She added that the traffic issue could probably be mitigated by adding one more mitigation level and if it came down to that being something that they have to discuss, she thought they could go through what that is. She said one thing that she is very concerned about is anybody can put up a sign that says anything because we have our First Amendment right; Meds Café has not put in their design of any sort of logo, any kind of painted mural or

anything on their walls and they have a few walls that they could do it to. She was concerned that they could not mitigate a condition around subtle disturbing messaging or art around the marihuana leaf, plant, or something that might not even look like marihuana. She shared some images as examples. She went on to say that the City's ordinance could limit any empty wall to fifty percent of that wall. She said she is concerned and that it does speak to it not meeting some of the standards, in addition to the conflict she saw in the City's Master Plan. She referenced the Finding of Fact report section H, and said that economic development, new business, and redeveloping of the Commercial Corridor District are all needed, but real families live in that neighborhood, and they cannot move and maintaining our current housing is important because we have a housing problem in this community. She concluded that she feels it is not compatible and not harmonious because of the reasons she shared, in addition to the conflict of housing, which she believed trumps economic development in this situation.

Van Wagoner stated that he did not see a big issue with traffic, but whether people are in favor of it or opposed to it, it does not really matter because it has already been voted on and it is legal. He recalled when they first started looking at this [marihuana zoning ordinance], they had circles around various schools showing 1000 feet, and he had suggested that the buffer should be larger around churches as well because of their youth groups, the Boys club and the whole intent of that was to keep it away from influencing our youngsters. He questions why there was not a buffer from residential zones. He stated that because of the way the Ordinance was drafted, and they made a provision to try to keep it away from the youngsters, he cannot conscionably support this being right next to a residence, after wanting to keep it away from other places as mentioned earlier.

Kostelic stated that she was not opposed to the rehearing as she was open to listening to new information and that is part of their job on the Planning Commission. She said that her stance at the prior meeting has not changed.

Peterson stated she appreciated everyone's input on both sides of the topic as it is a hot topic across our nation and our community because it is novel. She referenced Section 6.12B in her notes, it states that it shall not change the essential character of the area, shall not be hazardous or disturbing to existing uses, and the consideration of the degree of impact that it has on adjacent properties as compared to the expected value to the community, in addition to the points made earlier about the conflict with the Master Plan.

Gilmore said that the reason he made the motion tonight was to listen to everyone one more time. He stated that he did not explain his vote the last time, but he would like to explain this time. He said that he is dead square with Mr. Broers, that there are ordinances that have to be followed, and Meds Café follows every ordinance that this City requires for this type of business, period, and that is what guides him. Bauer asked Gilmore if he considered the second set of discretionary standards, the concerns raised earlier in the meeting, and how it would affect them. Gilmore stated he is not going to change his vote. Bauer said it sounded to her

that they do not agree on whether or not it is harmonious, or compatible, and they don't agree that there is a conflict with the Master Plan.

Boboltz felt that there was some misunderstanding on the part of some of the new members that have not gone through the trainings. Bauer asked for clarification of his comment in order to be transparent. Boboltz stated that the requirements are spelled out; that there are very specific issues that are to be considered when you are looking at this particular zoning district in terms of what is considered detrimental and unfortunately, a resident may not like it because they live near there, but he is more concerned with following the law. He said, contrary to what some people may think, the Zoning map shows that there are very few places that this type of business can be located, even with a lot of the other types of businesses only having to have a 250-foot radius around them. He went on further to say that if the radiuses were expanded, you would virtually eliminate it altogether. He then acknowledged that a lot of people in attendance would think that would be great, but the point is, the City Council has passed an Ordinance saying it is legal in these districts subject to the restriction on distances from churches etcetera. He stated that from his perspective, if they vote against approval of the Special Use permit, in effect, which would be legislating and that is not their job – that is what the City Council does.

Gilmet said that everyone can assume that they were trying to keep kids away from it, schools, churches, but not residential. He said that that the kids that live there now may not be there tomorrow. He referred to when the two medical marihuana shops were initially approved, there was a dance studio renting a space nearby; so, if someone wants to stop a pot shop, you could just go rent a space and say you are going to run dance classes. So, they did not do that, there was no ownership involved. He went on to say that anybody can grow pot in their backyard and smoke it; is anybody going to walk down the street smoking a joint or paint a pot leaf on the side of the building, it is unknown. Bauer states that it is about mitigation, and if they can not mitigate against those conditions, then she will vote against it. She says that these are the kind of land use issues that are going on outside of Michigan. She agreed that it is a subjective and imprecise discussion but does not think it is black and white at all. Gilmet responded that he agreed it is not black and white, but when making decisions, they must try to make them black and white; they cannot say "what if they paint that." Bauer said they cannot mitigate that when they do not have an ordinance that allows it. Gilmet said you can if you approve it with special conditions. Bauer said that it is her understanding that it is a First Amendment right. Boboltz said our sign ordinance has all sorts of restrictions on number of and size of signs. Bauer said they cannot mitigate the message in their sign.

VanWagoner asked Gilmet to explain again why there was not a provision in the ordinance to keep these businesses away from single family residential. Gilmet responded that there were conversations about that, but first and foremost, was because there would be very few places for them to put them. He said the will of the people who participated in the meetings for the year they were talking about the medical and then recreational marihuana, they wanted it to

happen. He said the Engineering department laid out the areas that got excluded such as downtown, parks, churches, schools, commercial daycare centers because of concentrations of kids and secondly, not just kids in general but those businesses were likely to stay that way right up until they close their doors, and they are gone. Ella White is always going to be a school, a residence is always going to be a residence, sometimes there may be kids in it, sometimes there may not be. Gilmet said that it is what passed in the ordinance, and he felt that earlier, the Chairman was alluding that he did not want to be writing zoning from the Commission. He said we do not write ordinances just because we can; we write ordinances to correct issues that arise, and then as they arise, we change them. If the Commission and the residents feel that they do not want pot shops anywhere near houses, they need to approach Council and be directed to write a new ordinance but that has not happened yet, and until it does, we have to live with the Ordinance that we have. He went on to ask Bauer how a block wall that abuts a backyard would affect children. Bauer read previous testimony from one of the public speakers. Gilmet said that it is the same blank block wall that has been there since the business opened and so how does that change the way someone parents their children. Boboltz said it doesn't. Gilmet said that is the point. Boboltz said it is a blank wall in the back. Bauer said one concern is the signage and that they cannot mitigate it; the second issue is compatibility and how lives change; there are unique risks and dangers that cannot be mitigated satisfactorily. Bauer recalls when Councilman Mitchell asked Adam Poll if he could restrict the area that had been approved, to which Poll said no and gave his rationale for that. She said it goes back the second set of supplemental standards that are discretionary so that by site they can make a decision. She felt that she would not have the same arguments if Meds Café was going into the dry-cleaning building, because there is a transition zone and a buffer between there and the neighborhood.

Boboltz states that he would like to entertain a motion.

Kostelic stated that the more she thought about it, and the more she listened, she would have to agree with Boboltz and Gilmore. She agreed that they have met the standards, which would mean that her vote would flip, so there would be three yes's and three no's.

Boboltz asked Attorney Pfeifer if a motion was made to disapprove the Special Use permit, and then that motion was defeated, would that in effect mean that the Special Use permit had been granted, or would another motion have to be made to issue the permit. Pfeifer said that the previous decision has been rescinded, so at that point, whatever motion is made, has to have some factual findings as to what the motion is, but ultimately someone needs to make a motion and the vote will be what the vote will be. He went on to say that it has to be a majority vote, a 3-3 vote would not pass; it would make more sense to make a motion to pass it, and then have it 3-3, which acts as a denial, but he stated that what he did not want to do to the members of the community or the Commission, is direct them on what they are supposed to do. He stated that the nature of the motion should correspond with the request which is to approve the special land use. He said that one odd thing about the last meeting is that the motion was made

in the negative. That has since been rescinded, so they are back to square one. He said that 99 out of 100 times, the way a motion is made in front of the Planning Commission is to accept the findings and issue the permit. Then each one of them vote their individual belief as to whether the standards were met, and whether they support the issuance of that permit. If the vote is 3-3, that is a denial. Boboltz agreed that it makes the most sense to make the motion in the affirmative.

Gilmore ***motioned*** to grant the Special Land Use permit for Case #22-SU-02, Meds Café, per the Findings of Fact presented by Birmingham.

Kostelic ***seconded*** the motion.

Yeas: Boboltz, Gilmore, Kostelic

Nays: Peterson, VanWagoner, Bauer

Motion ***denied*** by vote of 3-3.

Boboltz motions for five-minute recess at 8:48 pm.

Meeting reconvened at 8:53 pm.

**Case # 22-Z-03:** Brian Peterson, has requested a Conditional Rezoning for the rental property that he owns located at 1102 Ford Avenue from R-2 to R-T to allow for a residential duplex rental dwelling.

Peterson requests to recuse herself from participating in this public hearing due to conflict of interest, as this property is owned by her husband.

Bauer ***motioned*** to recuse Ashley Peterson from this hearing due to conflict of interest.

VanWagoner ***seconded*** the motion.

Motion ***passed*** by unanimous vote.

Montiel Birmingham presented the Findings of Fact report (See Appendix C & D).

Boboltz stated that the rules for the Public Hearing that he stated in the beginning of the meeting are still in place.

FAVOR: Brian Peterson, Property owner, stated that he purchased the property under the pretense that he thought it was already a duplex, and was not familiar with the zoning of it not already being a duplex. He explained that it is a very large house with three bedrooms upstairs and three bedrooms downstairs and separate entrances. He said he is not trying to divide small homes into smaller homes; it has been rented since he moved out of it. He recognized that it is not the most



beautiful house, but since he has owned it since 2018, he has taken efforts to improve the property and make it less of an eyesore in the neighborhood. He stated that he has vested interest in the Northside of Alpena where the home is located to continue to make it a better place to live; making it a duplex is not going to decrease property values, or become a nuisance neighbor, and it will help the housing shortage in Alpena, and aligning the building with what it was essentially intended to be built as. He also said that at one point, the building was a tri-plex, with a rental unit in the basement as well, however, he has no intention of doing that.

Donald Gilmet, Building Official, told the board that the rental inspections were completed because of the fact that they were both occupied. He stated that there were three and a half pages of violations on that property from the previous owner. He was very surprised when they got there to see that there were very few violations and Peterson has done a remarkable job of making it a quality rental. Gilmet said that Peterson told him that he would not rent something to somebody if he would not live in himself. VanWagoner asked Gilmet if it is now code compliant. Gilmet said absolutely.

OPPOSITION: None

With no further public wishing to speak, the public hearing was closed at 9:05 pm.

Bauer stated that she has no problem with it, it has plenty of parking, housing is needed, she appreciates any landlord willing to put their energy into this, and she would definitely approve this as a Conditional Rezone.

Boboltz admitted that he was very mad when he saw the write up and request, letters from angry neighbors, and the fact that they went through this with this house back in 2017 and that it sat like that, for that many years in that situation. He was then happy with what he heard and had no objections to the rezoning.

Birmingham stated that some of the issues brought up in the letters can be addressed in a different way and could also have the same issues if it were a single-family home.

Peterson said he had a couple of those people reach out to him on Facebook and most seemed to stem from the previous owners with the tenants' lighting fireworks, having large bonfire parties and fights, but he assured the board that the people living there now are not like that.

Vanwagoner ***motioned*** to approve the Conditional Rezone for the property located at 1102 Ford Avenue as laid out in the Findings of Fact.

Gilmore ***seconded*** the motion.

Motion ***passed*** by unanimous vote.

### **Outdoor Seating and Dining Service Zoning Text Amendment**

Birmingham reviewed the zoning text change (See Appendix E) for outdoor seating and dining.

Boboltz reminded everyone that if approved with the Planning Commission, it will then go to City Council for the final approval.

FAVOR: None

OPPOSITION: None

With nobody wishing to speak in favor of or in opposition, the public hearing was closed for deliberation at 9:11 pm.

Bauer ***motioned*** to approve the zoning amendment for Articles 3, 4, 5 and 7.

Peterson ***seconded*** the motion.

Motion ***approved*** by unanimous vote.

UNFINISHED BUSINESS: None

NEW BUSINESS: Shannon Smolinski, City of Alpena Harbormaster, presented the 2021-2025 Alpena Marina Master Plan. She said that City staff, in cooperation with the Harbor Advisory Committee, have already made steps to begin implementing the suggestions of the Master Plan. She explained that most of the major funding sources of grant dollars will require the Master Plan to be approved first to apply. The Harbor Advisory Committee voted to approve the Master Plan and recommended it to the Recreation Advisory Board and the Planning Commission for review and recommendation that City Council append the Marina Master Plan to the existing 2021-2025 City of Alpena Recreation Plan.

Bauer ***motioned*** to approve the 2021-2025 Marina Master Plan with the recommendation that City Council approves a resolution to append the 2021-2025 Alpena Marina Master Plan to the 2021-2025 City of Alpena Recreation Plan.

Gilmore ***seconded*** the motion.

Motion ***approved*** by unanimous vote.

COMMUNICATIONS OR REPORTS: None.

CONTINUING EDUCATION: None.

PUBLIC COMMENT: None.

MEMBERS COMMENTS: None.

With no further business to discuss, Vice Chairman Boboltz adjourned the meeting at 9:17 pm.

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Steve Gilmore, Secretary