

**LAPEER CITY COMMISSION
MINUTES OF A REGULAR MEETING
DECEMBER 16, 2019**

A regular meeting of the Lapeer City Commission was held December 16, 2019 at Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan. The meeting was called to order at 6:30 p.m.

ROLL CALL

Present: Mayor Marquardt.

Commissioners: Atwood, Cattane, Osentoski, Pattison, Stroh.

Absent: None.

City Manager: Dale Kerbyson, present.

City Attorney: Michael Nolan, present.

Mayor Marquardt led the Pledge of Allegiance.

276 2019 12-16 AGENDA APPROVAL.

Moved by Osentoski. Seconded by Stroh.

Approve the Agenda for December 16, 2019 as presented.

Ayes: Atwood, Cattane, Osentoski, Pattison, Stroh.

Nays: None.

MOTION CARRIED.

277 2019 12-16 MINUTES.

Moved by Atwood. Seconded by Cattane.

Approve the minutes of the Regular Meeting held December 2, 2019 as presented.

Ayes: Atwood, Cattane, Osentoski, Pattison, Stroh.

Nays: None.

MOTION CARRIED.

PUBLIC COMMENTS.

Jenny Burkhart, Wilder Road, gave an invocation

Diane Jones, Refuge Treasurer, asked for zoning information for an overnight shelter for women and children, other than LACADA, that does not fall under a battered situation.

Chris Aiello, attorney representing Lapeer Infused, Inc. gave an overview of the events leading to the revocation of the Provisional Marihuana Facility, which is on the agenda as item G-6.

278 2019 12-16 BILL LISTING FOR DECEMBER 16, 2019.

Moved by Pattison. Seconded by Osentoski.

Approve the Bill Listing for December 16, 2019 in the amount of \$1,104,132.77.

Ayes: Atwood, Cattane, Osentoski, Pattison, Stroh.

Nays: None.

MOTION CARRIED.

PUBLIC HEARINGS

None.

ADMINISTRATIVE REPORTS

279 2019 12-16 Codification of City Ordinances.

Moved by Osentoski. Seconded by Atwood.

Adopt the Codification and Revision of the Ordinances of the City of Lapeer, County of Lapeer, State of Michigan.

ON A ROLL CALL VOTE

Ayes: Atwood, Stroh, Osentoski, Cattane, Pattison.

Nays: None.

MOTION CARRIED. CODIFICATION OF CITY ORDINANCES ADOPTED.

280 2019 12-16 Rezoning – B-2 General Business to I-1 Industrial
1356 Imlay City Rd. - Parcel #L21-29-952-040-00.

Moved by Osentoski. Seconded by Pattison.

Adopt the ordinance amendment to Chapter 7 (Zoning Ordinance), Article 7.02, Section 7.02.02 (a)(22) to the General Ordinances of the City of Lapeer.

THE CITY OF LAPEER ORDAINS:

ARTICLE 7.02 MAPPED DISTRICTS

7.02.02 District Boundaries

(a) Zoning District Amendments

- (22) The following property formerly zoned B-2 General Business is hereby rezoned to I-1 Industrial:

Parcel #L21-29-952-040-00 addressed as 1356 Imlay City Road

CITY OF LAPEER KINGSBURY'S PLAT LOT 2 & E 20 FT OF LOT 1 (L=1
P=90 SEC 4, T7N-R10E) 44-12-360-002-00

Discussion was held regarding the possible noise level and not enough parking. Both issues would be addressed during site plan review.

ON A ROLL CALL VOTE

Ayes: Cattane, Atwood, Pattison, Osentoski, Stroh.

Nays: None.

MOTION CARRIED. AMENDMENTS TO CHAPTER 7 ADOPTED.

281 2019 12-16 Rezoning – R-2 Single Family Residential to B-2 General Business 891 Baldwin Rd. - Parcels #L20-98-704-040-00 & #L20-98-704-050-00.

Moved by Cattane. Seconded by Pattison.

Adopt the ordinance amendment to Chapter 7 (Zoning Ordinance), Article 7.02, Section 7.02.02 (a)(23) to the General Ordinances of the City of Lapeer.

THE CITY OF LAPEER ORDAINS:

ARTICLE 7.02 MAPPED DISTRICTS

7.02.02 District Boundaries

(a) Zoning District Amendments

- (23) The following properties formerly zoned R-2 Single Family Residential is hereby rezoned to B-2 General Business:

Parcel #L20-98-704-040-00 addressed as 891 Baldwin Road

CITY OF LAPEER T7N, R10E, SEC 8 BEG NW COR OF LOT 2 OF WITSTOCK
MANOR, TH S70°E ALG N LN OF LOT 2 OF WITTSTOCK
MANOR 160.2 FT; TH N14°30'E PAR C/L OF M-24 75 FT; TH N70°W 145.4 FT;
TH S25°45'W 75 FT ALG E LN BALDWIN RD TO POB 12-31-2017 COMBINE
WITH L21-60-201-040-00 INTO L20-98-704-050-00

And

Parcel #L20-98-704-050-00 addressed as 891 Baldwin Road

CITY OF LAPEER T7N, R10E, SEC 8 BEG NW COR OF LOT 2 OF WITSTOCK
MANOR, TH S70°E ALG N LN OF LOT 2 OF WITTSTOCK MANOR 160.2 FT;
TH N14°30'E PAR C/L OF M-24 75 FT; TH N70°W 145.4 FT; TH S25°45'W 75
FT ALG E LN BALDWIN RD TO POB ALSO INCLUDING THE N 17 FT OF LOT
2, WHITTSTOCK MANOR L2 PG 38 12-31-2017 COMBINED FROM L20-98-
704-040-00 & L21-60-201-040-00

ON A ROLL CALL VOTE

Ayes: Cattane, Atwood, Stroh, Osentoski, Pattison.

Nays: None.

MOTION CARRIED. AMENDMENTS TO CHAPTER 7 ADOPTED.

282 2019 12-16 DDA Executive Director Employment Agreement.

Moved by Osentoski. Seconded by Stroh.

Approve Employment Agreement between the City of Lapeer Downtown Development Authority and James Alt for the period of November 1, 2019 through October 31, 2020.

Commissioner Pattison commented that the agreement is not dated and this needs to be corrected.

Ayes: Atwood, Cattane, Osentoski, Pattison, Stroh.

Nays: None.

MOTION CARRIED.

283 2019 12-16 Ordinance Amendment: Chapter 67 (Youth Council)

Commissioner Atwood introduced the proposed amendments to Chapter 67 (Youth Council Ordinance) of the General Ordinances of the City of Lapeer.

Discussion held on age qualification for membership.

Revocation of Lapeer Infused Provisional License – Appeal Hearing.

City Attorney Nolan informed the Commission this is an appeal hearing; which gives Lapeer Infused, Inc., the right to address the Commission and prove by a preponderance of evidence that the decision to revoke the license by the Clerk was incorrect.

Aaron Geyer, Attorney for Lapeer Infused, Inc. stated that they were granted a provisional license, which means they must comply with certain standards. Those standards are spelled out in the City's Ordinance. It states we need to move diligently to receive full licensure from the State. The license was granted in 2018, contemporaneous with the application with the City, an application was filed with the Bureau of Marihuana Relation (BMR), which resulted in successfully obtaining the pre-qualification status; this is the first step. Second step is full licensure; which would consist of finishing construction, contacting BMR to schedule an inspection which should coincide with obtaining a certificate of occupancy.

Mr. Geyer stated there were delays with Caitlyn in Planning. In approximately July 2019 a demolition permit was granted and the interior of the building was demoed. He stated that Caitlyn indicated that the submitted plans had an elevation issue, which was corrected and Lapeer Infused, Inc. was scheduled for the Planning Commission meeting December 10, 2019. He also stated that the architect stated it would be four (4) months from that meeting until they would be ready to roll.

He continued, stating that one extension had been applied for which, took the license to November 2019, however, his law office, miscalendared the date. Yet because of the miscalendar, do they deserve the death penalty; as that is the worst possible sanction that can be imposed upon them. Was that omission, filing the extension late, a violation of the standard of approval of Section 68-05(a)? He submits it is not; as he has already explained the standards; which they are moving diligently towards final licensure.

Mr. Geyer indicated the Clerk and the Planner did not properly communicate. When he contacted Ms. Sanchez, she was unaware that Caitlyn had given the go-ahead for plan approval. Perhaps if the two had been communicating, she may not have given the death penalty. If you look to the ordinance, the word used is "may"; 68-05 (b); a marihuana facility license may be revoked based on the following; not shall, may; there is some discretion there. Imagine the worst case scenario, she doesn't have to revoke the license; yet for being 7-10 days late in filing an extension, we got the death penalty.

The first question is, was there a violation? Does it rise to the level of the revocation of the license? Mr. Geyer said it does not. Courts are faced with circumstances all the time that result in late or missed deadlines. We get to the question of what should be the appropriate sanction for missing a deadline. The court system uses several factors that they look at; was the violation willful or accidental, is there a history of noncompliance; was notice given; what prejudice would arise; what attempts were made, and would a lesser penalty be more beneficial.

Mr. Geyer stated this violation was accidental; there is no reason or advantage of why they would not want to file for the extension. It's a simple two page form. Is there a history of refusing or noncompliance? No, not one thing; not a digression or report. What prejudice would result in the delay? He stated more prejudice would result by allowing the revocation to stand. Lapeer Infused, Inc. was selected because they had the 4th highest score. If you allow the revocation to stand, the City would get a less qualified applicant. We've already done the work, prequalification has already been obtained. If the Commission lets the revocation stand, the City Planner will have to start all over again. When the error was discovered, it was immediately addressed and the extension was prepared and filled with the Clerk. Lastly, would a lesser sanction better serve in the interest of justice? Anything is better than the death penalty.

Lapeer Infused is asking the Commission to consider, by a preponderance of evidence, that Ms. Sanchez made a mistake by revoking the license. The penalty for not submitting a two page form is much too high; the Clerk stated the email she sent might have gone to the spam box and he wanted to know why she didn't call them instead. It's much easier to pick up the phone.

284 2019 12-16 Appeal Hearing - Lapeer Infused Provisional License.

Motion by Pattison. Seconded by Cattane.

To set aside the decision of the City Clerk and reinstate the Provisional Marihuana Facility License for Lapeer Infused, Inc. as Chapter 68, An Ordinance to Authorize and Regulate the Establishment of Medical Marihuana Facilities fails to address late renewal application and/or penalties for late renewal application and accept the extension application dated November 26, 2019.

Commissioner Atwood asked if there would be any legal repercussion if the Commission reinstated the license.

City Attorney Nolan stated the two applications below Lapeer Infused, Inc. are already in suit with the City, therefore, any additional legal ramifications are doubtful.

Commissioner Osentoski asked Mr. Nolan if the notice was necessary. Mr. Nolan stated it is not the City's responsibility to tell them when to file their application extension. He further stated that he slightly disagrees with Commissioner Pattison's motion, as there is a penalty stated in the Ordinance. The issue is not whether or not there is a violation of the ordinance, which clearly there is; yet, the issue before you is whether or not what they have done is in substantial compliance with the ordinance, and based upon that, is it excusable. They did not meet the deadline, they admit as much, and it is not the Clerk's job to notify them to be on time. However, if you agree with Mr. Geyer, our ordinance section 68-05 (b) says "may" which allows for discretion. That doesn't mean the Clerk did anything wrong, yet, it may mean that based upon the circumstances you may feel they have met the burden of proof and you can exercise your discretion.

Commissioner Pattison asked what the procedure would be to clarify the ordinance. Mr. Nolan stated that the ordinance can always be amended, and he said it may need some clarification. Yet, today, the Commission has the discretion to determine if the applicant has met the burden of proof and have they substantially complied and is it an excusable neglect, which was remedied as soon as they found out about it.

Commissioner Cattane stated that by their own admission, Lapeer Infused, Inc. was late in submitting their extension application and asked at what point in time it was discovered that they had missed the deadline. Mr. Geyer indicated the day they received the notification of the revocation, the extension was sent to the Clerk.

Commissioner Stroh asked if there had been any precedence that had already been established by other municipalities. Mr. Nolan stated he could not find anything out there. Commissioner Stroh stated that in trying to compare or look at something similar, the Michigan Liquor Control Commission is the closest to this. In speaking to that division this afternoon, it was learned that they send out multiple notifications, prior to the application deadlines. He believes that we should take a look at our process moving forward. He thinks that the Clerk did nothing wrong with her decision on how things are set up. However, we need to be sure that the Commission is doing its due diligence for these businesses that are investing in the community. We vetted the

company; however, it is not our responsibility to hold their hands. However, we need to figure out how we can communicate and better assist. This is a clear example of how we can do better.

Commissioner Cattane asked if staff can comment on the statements made. City Manager Kerbyson stated that staff would most likely have comments to make to clarify some of the information that Lapeer Infused, Inc. shared.

Caitlyn Habben, Rowe Consultant stated that one of the first components is going through approval, and currently the plans are not approved, they are in the administrative site review process which does not necessarily require them to go to the Planning Commission. However, if they continue to submit plans with a metal roof, then they will need Planning Commission approval. There have been several discussions relating to the metal roof. If they remove the metal roof, they do not need to go the Planning Commission. City Manager Kerbyson asked if they were scheduled for the December 10, 2019 Planning Commission meeting. Ms. Habben stated the meeting date is December 12, 2019 and no, she was not aware of putting them on the agenda. It is her understand that the plans were going to be revised to remove the metal component and then the plans do not need to be approved by the Planning Commission, and she understood that was taking place. She also stated that they have been through three plan reviews. Between the first and second set of plans, the façade was changed and she did not catch that. When a third set of plans was submitted, this is where she noticed the changes and notified the business immediately that she could not approve with that change. However, only digital plans have been submitted, and until paper copies are received, the plans are not considered officially submitted.

City Manager Kerbyson stated that since the Commission asked for staff comment, he asked Building Official Darryl Oliver if building plans had been submitted to the Building Department. Mr. Oliver stated that no plans had been received as of yet. Mr. Kerbyson then asked City Clerk Sanchez why she sent notification to the email she used. Ms. Sanchez stated it was sent to the email address found on the original application.

Commissioner Stroh stated communication appeared to be taking place between the department and the new business and asked if the business was aware that no plans had been submitted to the Building Department. Mr. Aiello stated that the architect has been working with Caitlyn and he had the plans in his hand, he thought they were all set for December 10, 2019. Commissioner Stroh also stated that there appears to be a miscommunication.

City Manager Kerbyson stated that he disagreed with the Commissioner, because the miscommunication came up when the revocation was issued and that is when things got interesting. Staff did what they were supposed to do and Caitlyn has been upfront and direct and with a lot of good communication back and forth. This process has worked fine with the four other dispensaries. City Manager Kerbyson is defending staff and the process that staff has followed.

Commissioner Pattison, maker of the motion, concurred by Commissioner Cattane, moved to withdraw the motion 285 2019 12-16.

285 2019 12-16 Appeal Hearing - Lapeer Infused Provisional License.

Motion by Pattison. Seconded by Cattane.

Set aside the decision of the City Clerk and reinstate the Provisional Marihuana Facility License for Lapeer Infused, Inc. as Chapter 68, an Ordinance to Authorize and Regulate the Establishment of Medical Marihuana Facilities is unclear in its language regarding late extension and/or renewal applications and/or penalties for late renewal applications and accept the extension application dated November 26, 2019.

Commissioner Pattison stated city staff handled this the way he would have hoped it was handled and did an excellent job. He feels it is the ordinance that has put the Commission in the position it is in.

Commissioner Atwood stated his decision will be based on his opinion of Chapter 68 as a whole and has respectfully stated his reasons for being against this ordinance in the past.

ON A ROLL CALL VOTE

Ayes: Pattison, Cattane, Stroh.

Nays: Osentoski, Atwood.

MOTION CARRIED.

Downtown Development Authority – Lapeer Main Street - Update.

James Alt, DDA Executive Director gave a presentation of the status of the Downtown Development Authority and Main Street Program.

CITY MANAGER’S REPORT

Commissioner Pattison approached Chiefs Frisch and Kluge about safety tips for the holidays with distribution of said tips. These tips will be posted on the City website per City Manager Kerbyson.

CITY ATTORNEY’S REPORT

None.

UNFINISHED BUSINESS:

286 2019 12-16 Appointment to Downtown Development Authority.

Appointed by Mayor Marquardt. Moved by Atwood. Seconded by Cattane.

Appoint Elizabeth Moffitt to the Downtown Development Authority for a term to expire 01-01-2021.

Ayes: Atwood, Cattane, Osentoski, Pattison, Stroh.

Nays: None.

MOTION CARRIED.

287 2019 12-16 Appointment to Youth Council.

Appointed by Mayor Marquardt. Moved by Atwood. Seconded by Stroh.

Appoint Morgan Castle, Devin Falkenhagen, Emily Hall, Samuel Howard, Jeremy Thibeault, Sophia Pietrykowski to the Youth Council, term to expire 11-01-20.

Ayes: Atwood, Cattane, Osentoski, Pattison, Stroh.

Nays: None.

MOTION CARRIED.

DEPARTMENTAL COMMUNICATIONS

Monthly Departmental Reports and the Monthly Financial Report for November 2019 received into record.

PUBLIC COMMENTS

None.

City Manager Kerbyson stated the Building Department will be holding a contractor luncheon in January 2020. Mayor Marquardt would like the Building Department to reach out to more contractors for this event.

Chief Frisch, Chief Kluge and Building Official Oliver were judges of the Ugly Sweater Contest. Commissioner Pattison was awarded the trophy for the ugly sweater contest.

MAYOR/COMMISSIONER COMMENTS

Commissioner Atwood: Appreciates the Commission bringing back the ugly sweater contest; congratulated to Commissioner Pattison; Merry Christmas to all.

Commissioner Cattane: Merry Christmas; enjoy the Holiday; wife is spoiled.

Commissioner Stroh: Merry Christmas and Happy New Year; it was an amazing meeting and enjoyed the discussion; find a piece of art and embrace it.

Commissioner Osentoski: Merry Christmas; thanked Jim Alt for giving the presentation; Caitlyn and the Clerk did nothing wrong in this process and thank you for the work they have done.

Commissioner Pattison: Thanked the Police and Fire Chief for the information; hope it can be an annual tradition; have a safe and Merry Christmas; answer the census and help the City out.

City Manager Kerbyson: Happy Holidays.

Mayor Marquardt: Merry Christmas; thanked Tracey for the treats; thankful that the Commission was able to discuss the process of the revocation of the license; city staff worked hard and very proud of the employees; when possible, we want to work with the businesses as they have invested in our community and we want to move forward. Dale and Debbie attended a DTE Luncheon; Dale did a pod cast talking about our solar energy.

288 2019 12-16 ADJOURNMENT

Moved by Pattison.

Adjourn the regular meeting.

MOTION CARRIED.

The regular meeting adjourned at 8:13 p.m.

Mayor Debbie Marquardt

Romona Sanchez, City Clerk

Tracey S. Russell, Deputy City Clerk