

Memo

FROM THE DESK OF THE ZONING ADMINISTRATOR

To: Planning Commissioners

Date: 2/10/2011

Re: Feb 16 Meeting Notes

This month's focus will be on the Medical Marihuana Act (MMA). At last evenings Board of Trustees meeting, a resolution of Moratorium was adopted giving us 6 months "breathing room" to look at local regulations. I have two presenters for this meeting of fact finding.

First, we will hear from Andria M. Ditschman of Lansing's Hubbard Law Firm, presenting the topic Legal Foundations for Medical Marihuana Regulation. Then we will hear from Robert Wyman. Robert is proprietor of a Union Township business called Sunshine Supply, providing equipment for indoor horticulture. He will share his experience on topics such as typical processes to grow marihuana as allowed by the MMA, safety, mold, typical energy consumption, etc, and answer any questions you may have.

Under Other Business, Zion Lutheran Church is intending to begin their Phase II construction on River Road. They are requesting a waiver of the sidewalk requirements.

CHARTER TOWNSHIP OF UNION
Planning Commission
Regular Meeting Agenda

Date: February 16, 2011

Time: 7:00 p.m.

Place: Union Township Hall

Pledge of Allegiance

Roll Call

Minutes of January 19, 2011 regular meeting

Correspondence

Approval of Agenda

Public Comment: restricted to three (3) minutes regarding issues not on this agenda

NEW BUSINESS

- 1.) **TXT 1505 – Discussion of current zoning issues relating to medical marihuana and appointment of a committee to draft a test amendment**
 - **Legal Overview by Hubbard Law Firm**
 - **Indoor Cultivation, Equipment and Practices**
 - **Form Committee**

Other Business

- 1.) **Zion Lutheran Church – Sidewalk Waiver Request for Phase II Construction**

Extended Public Comment

Adjournment

CHARTER TOWNSHIP OF UNION
Planning Commission
Regular Meeting

A regular meeting of the Charter Township of Union Planning Commission was held on January 19, 2011

Meeting was called to order at 7:00 p.m.

Roll Call

Dinse, Hauck, Henley, Hertzler, Mielke, Spencer-Noggle, Squattrito and Wagner were present.

Others Present

Woody Woodruff

Absent

Fuller

Approval of Minutes

December 15 – regular meeting

Hertzler moved **Wagner** supported to approve the December 15, 2010 regular meeting minutes as presented. **Ayes: all. Motion carried.**

Correspondence

No correspondence was submitted

Approval of Agenda

Dinse moved **Spencer-Noggle** supported to approve the agenda as presented. **Ayes: all. Motion carried.**

Public Comment

No comments were offered.

NEW BUSINESS

- 1.) **HOM 1501 - Mary Conroy, 456 S Crawford Rd., Home Occupation Permit for a Single Chair Beauty Salon** (the home address numbers are transposed in the letter she received). Hauck moved Wagner supported to approve HOM 1501. Ayes: all. Motion carried.
- 2.) **Progress Draft- Sidewalk and Pathway Priority Plan**

Other Business:

1. Master Plan Update – the master plan is still in the comment phase
2. Dr. Mohan’s project has come back for phase II and sidewalk discussion
3. January 19 is the last meeting for commissioner Spencer-Noggle and Hertzler. Hertzler will continue to serve as a part of the sidewalk and pathway committee.

Extended Public Comment

No comments were offered

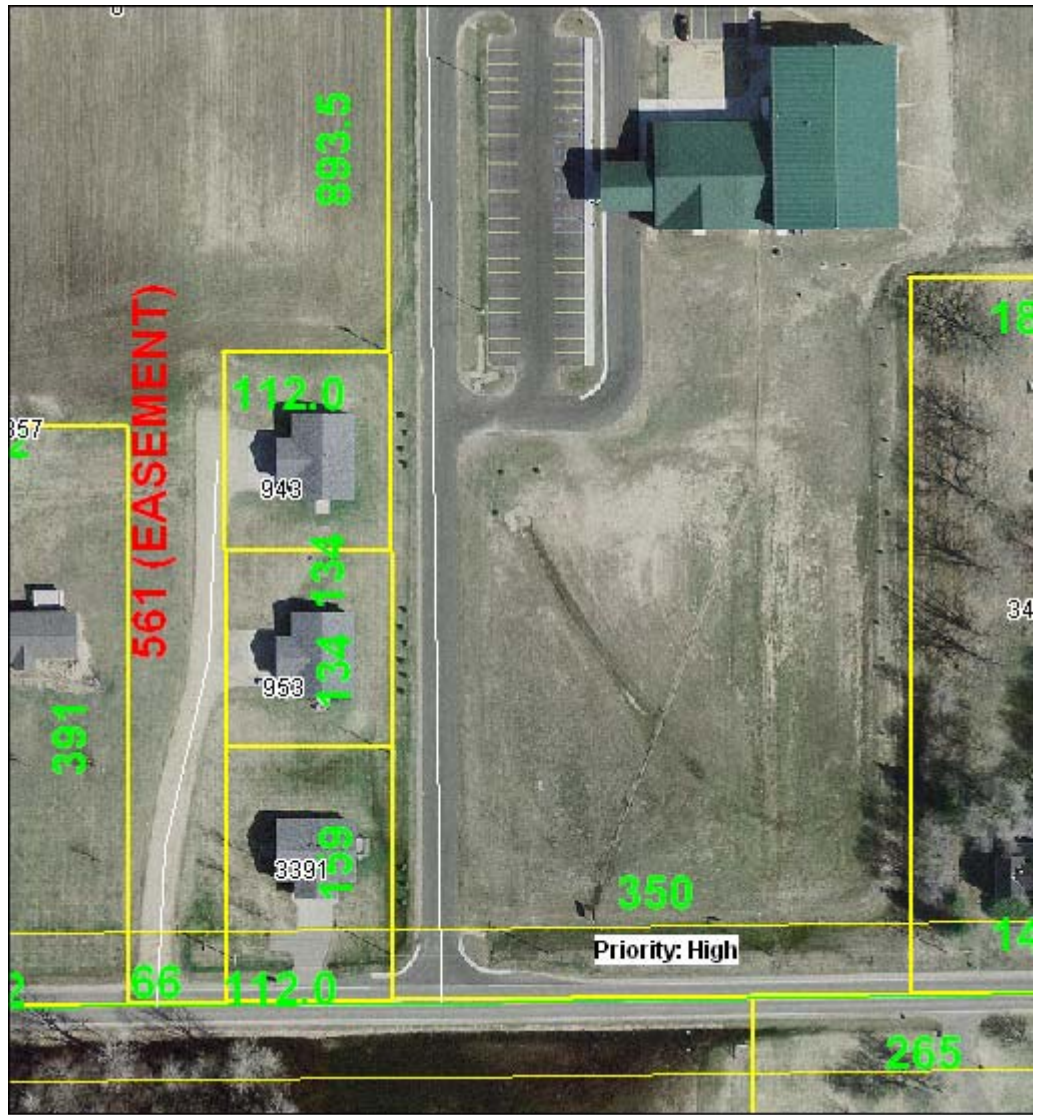
Adjournment

The Chair adjourned the meeting at 7:40 p.m.

APPROVED BY:

Mary Henley, Alternate Secretary

(Recorded by Mary Henley)



**RESOLUTION OF MORITORIUM
MEDICAL MARIHUANA**

WHEREAS, The electors of the State of Michigan have enacted Initiated Law 1 of 2008, "The Medical Marihuana Act." (The Act) by a clear majority

AND WHEREAS, The Act is recognized to have ambiguous language in certain matters

AND WHEREAS, The Charter Township of Union (Township) wishes to enact local zoning and business regulations for the safe conduct of business and protection of its citizens under The Act

AND WHEREAS, The Township recognizes the legitimate use of Medical Marihuana under the Act by individual patients and caregivers appropriately authorized by the Michigan Department of Health

AND WHEREAS, The Township has no intention to interfere, restrict or otherwise limit or deprive patients of medication obtained by any means authorized in The Act by this resolution or subsequent ordinances

AND WHEREAS, The Township asserts the right to control the use of land and business in its jurisdiction as to Time Place and Manner as authorized by the statues of the State of Michigan

THEREFORE BE IT RESOLVED, that the Charter Township of Union declares a moratorium on licensing or approving activities such as compassion clubs, apothecaries, dispensaries, growing co-ops and other similar uses beyond the patient caregiver relation or the patient's right to grow or obtain medical marihuana. This moratorium shall last for a period not to exceed six months from the date of adoption of this resolution, or the effective date of any Ordinance(s) dealing with matters pertaining to The Act, whichever occurs first.

The following aye votes were recorded:

The following nay votes were recorded:

STATE of MICHIGAN)
) ss
COUNTY of ISABELLA)

I, Peter Gallinat, Clerk of the Charter Township of Union, Michigan, do hereby certify that the above is a true and correct copy of the Resolution relative to the Act adopted at a regular meeting held February 9, 2011.

Peter Gallinat, Clerk

Dated: _____

**MICHIGAN MEDICAL MARIHUANA ACT
LEGAL SERVICES PROPOSAL**

**SUBMITTED TO THE
CHARTER TOWNSHIP OF UNION**

Prepared By:



THE
HUBBARD
LAW FIRM, P.C.

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Contacts:

**Andria M. Ditschman, Attorney at Law
Michael G. Woodworth, Attorney at Law
(517) 886-7176**

February 4, 2011



THE
HUBBARD
LAW FIRM, P.C.

“The Hubbard Law Firm is taking the lead in working with communities to develop sound policies to address Medical Marihuana.”

Terri Murphy, Michigan Municipal League.

INTRODUCTION

In response to a request from the Charter Township of Union’s Zoning Administrator, Woody Woodruff, regarding an interest in legal advice and services to assist Township staff and officials in addressing the new uses associated with Michigan’s Medical Marihuana Act, The Hubbard Law Firm, P.C. is pleased to submit this Proposal. The Proposal includes the following sections:

Background

Michigan Medical Marihuana Act Experience

Legal Guidance and Facilitation to the Charter Township of Union

Scope of Work

Billing Rates

Attorney Resumes

BACKGROUND

The Hubbard Law Firm, P.C. (“The Hubbard Law Firm” or “Firm”) has been providing legal counsel for eighty-four years. The mission of The Hubbard Law Firm is to provide the highest quality legal services at the best value for our clients. We are experienced, responsive and innovative.

Today, The Hubbard Law Firm enjoys a unique combination of talents and resources which includes nine attorneys, two paralegals, and a dedicated staff of assistants and support personnel. We utilize a team approach to meet your needs. We believe this approach advances the interests of the client and assures ready access to the Firm’s resources. As a result, although it may deal more directly with one or two attorneys, in reality, our Firm’s entire staff is available to meet the Township’s needs.

Our attorneys have extensive experience in providing legal advice regarding land use regulations and zoning, ordinance preparation and enforcement, public improvement projects and financing, tax tribunal issues, special assessments, the Freedom of Information Act, the Open Meetings Act, labor and employer relations, contract, license and easement preparation, condemnation and intergovernmental agreements. Our attorneys are well-versed in all aspects of municipal law and serve as general counsel to many municipal entities. Moreover, because we are one of the few law firms that have been involved with the Michigan Medical Marihuana Act (“MMMA”) from its inception, and are the experts in this field, we regularly work on a project basis with local units of government, including townships, to address legal issues surrounding the MMMA.

MICHIGAN MEDICAL MARIHUANA ACT EXPERIENCE

Approximately two-thirds of those casting ballots in the November 2008, Michigan general election approved the use of marihuana for medical purposes. At its most basic level the MMMA provides defenses to criminal prosecutions for the growing, distribution, use and possession of marihuana by lawfully registered patients and their caregivers. Soon after Michigan's citizen-initiated Medical Marihuana Act was passed, The Hubbard Law Firm recognized that appointed and elected public officials were wrestling with the ramifications of the MMMA. Due to its broad application, lack of clarity, use of statutory language reaching far beyond the realm of criminal prosecutions, and difficulties encountered in its implementation, the MMMA presents significant challenges to Michigan communities. These challenges impact virtually every aspect of local government including land use planning, ordinance development and employment policies. In response to the MMMA and the new land uses that are arising from it, The Hubbard Law Firm has shared its expertise with the Michigan Townships Association and the Michigan Municipal League. Our Firm has also conducted seminars throughout Michigan to provide attendees with an understanding of the mechanics of the MMMA. The Hubbard Law Firm's MMMA seminars have proven to be a valuable forum for discussion of the concerns and issues shared by municipalities throughout the State. These free seminars were attended by over 200 municipal representatives, including township supervisors and board members, mayors, council members, state officials, planners, supervisors, police officers, drug task force members, county health workers and prosecutors. Union Township's Zoning Administrator attended our 2010 MMMA seminar in Mt. Pleasant.

The Hubbard Law Firm has provided MMMA guidance to over a hundred municipalities by way of our seminars, speaking engagements, and articles which are listed below. In addition,

we have been retained by many of them to: train councils, township boards, and planning commissions on the MMMA; review existing zoning and non-zoning ordinances in relation to new MMMA uses; provide options to municipalities in response to the MMMA; write zoning ordinances to regulate new MMMA uses; write MMMA licensing ordinances; provide legal direction to municipal planners; and facilitate MMMA public hearings and citizen meetings.

***Legal Guidance and Facilitation to Municipalities
(Seminars/Training/Zoning and Non-Zoning Ordinances)***

Arbela Township
Bethany Township
Charter Township of Meridian
City of Ionia
Delta Charter Township
City of Clare
City of Gladwin
City of Laingsburg
City of Williamston
Pine River Township
Sidney Township

Presentations

The Developing Common Law of Medical Marijuana, Michigan Municipal Risk Managers Association Conference, Michael G. Woodworth, Presenter, 11/4/10
MMMA Roundtable Discussion, Michigan Association of Township Supervisors, Andria Ditschman, Presenter, 11/3/10
Medical Marijuana Act and Your Community, Michigan Municipal League 112th Annual Convention, Andria M. Ditschman, Presenter, 9/21/10
Medical Marijuana Symposium, Michigan Municipal League, Michigan Township Association and Michigan Association of Counties, Michael G. Woodworth, Presenter, 7/21/10
Michigan Municipal League Medical Marijuana Workshops, Michael G. Woodworth, Presenter, 4/13/10, 2/10/11
Hosted town-hall meetings in Lansing, Mt. Pleasant and Frankenmuth attended by over 200 local officials

Publications

Backing into Federalism, Authored by Michael G. Woodworth and Eric W. Misterovich, *The Review*, Official Michigan Municipal League Magazine, September/October 2010

Medical Marihuana: Challenges of a New Age, Co-Authored by Andria M. Ditschman, *The Review*, Official Michigan Municipal League Magazine, May/June 2010

News Media

Medical Marijuana Permit Applications Swamp System, Battle Creek Enquirer, 9/22/10

Medical Marihuana Act and Your Community, Michigan Municipal League 112th Annual Convention seminar, televised by The UpNorth Media Center, presenting, Andria M. Ditschman beginning 9/22/10

Commissioners Hash Over Medical Marijuana Zoning, Clare County Review, 8/13/10

Williamston Postpones Marihuana Discussion, Lansing State Journal, 6/29/10

East Lansing Weighs Pot Dispensary Rules, Lansing State Journal, 6/12/10

Municipalities Struggling with Vagueness of Marihuana Law, WKAR, 5/4/10

Leaders Discuss how to Deal with Medical Marihuana, WLNS, TV 6, 4/13/10

Meeting to Clear the Air on Medical Marihuana, WWMT, Newschannel 3, 4/13/10

Local Leaders Learn about Michigan's Medical Marihuana Law, WZZM, ABC 13, 4/13/10

Still Hazy on Pot Law: Medical Marihuana Presents Challenges, Lansing State Journal, 4/5/10

LEGAL GUIDANCE AND FACILITATION TO THE CHARTER TOWNSHIP OF UNION

DEALING WITH A NEW USE

The Hubbard Law Firm has invested extensive time analyzing and applying the provisions of Michigan's Medical Marihuana Act. We are prepared to assist the Charter Township of Union with our substantive knowledge of the MMMA and real world experience gained by working with patients, caregivers, growing facilities, dispensaries, and compassion clubs. We have a comprehensive understanding of the options available to the Township, and have experience working through the process of addressing the MMMA, from educating, presenting alternatives, preparing ordinances and enacting regulations. We have drafted multiple ordinances to regulate uses associated with medical marihuana and believe this experience can be both substantively and financially beneficial to the Township.

Like most units of local government, officials, representatives, employees and residents of Union Township have different levels of understanding the MMMA. Education regarding the Act, and the various other statutes and court decisions that affect it, is essential to formulating sound, defensible policies regarding medical marihuana. As part of our service to the Township, The Hubbard Law Firm will provide requested information and keep the Township apprised of changes and developments pertinent to the MMMA - including updates regarding litigation, legislation, municipal activity, State rules and the stance of the Federal government.

We know from our experience that our fundamental roles will be to identify alternative courses of action available to the Township, evaluate the legal ramifications of each choice, present those alternatives in a readily understandable manner, and make sound recommendations regarding which choices best serve your interests. One of our goals is to continually improve the tools necessary for Union Township to make informed decisions. One such tool is our MMMA

Authorized Activities Chart that we often use in our seminars to convey the basic rights afforded by the Act. A copy of this Chart is attached to this Proposal.

As legal counsel, we expect to be involved in educating the public regarding the MMMA, the Township's options, and the rationale for its choices. In other MMMA situations, we have been called upon to coordinate our municipal clients' presentation of issues and project plans to the public, which has included potential developers of commercial MMMA uses. The Hubbard Law Firm recognizes that these aspects of our legal counsel are crucial to a successful project.

It is also imperative that your legal counsel have experience in writing land use regulations as well as ordinances in response to the Michigan Medical Marihuana Act. The Hubbard Law Firm has worked with the Michigan Zoning Enabling Act and will provide the Township with advice regarding proper procedure as well as establishing a sound record in anticipation of potential challenges. We have written various types of ordinances to regulate new MMMA uses including zoning and licensing ordinances. These include ordinances that regulate through special use permitting, conditional land uses, home occupation permitting, and accessory uses, in both residential and non-residential zoning districts.

Andria M. Ditschman will work directly with the Township. Ms. Ditschman has extensive MMMA experience and has worked with all of our municipal MMMA clients. She is a Partner and the Vice President of The Hubbard Law Firm. It is the intent of The Hubbard Law Firm that Ms. Ditschman will attend all necessary meetings with key staff, the Planning Commission, public workshops, and the Township Board. Ms. Ditschman regularly represents municipal clients in meetings and public hearing forums regarding the MMMA. She is aware of her role as counselor at such meetings and is committed to being fully prepared with the ability to handle difficult legal questions "on the spot".

Ms. Ditschman will be supported by Michael G. Woodworth, The Hubbard Law Firm's President, and associate attorneys as required. Like Ms. Ditschman, Mr. Woodworth has extensive experience and knowledge of the MMMA.

Ms. Ditschman's and Mr. Woodworth's professional resumes appear on pages 13 through 17 of this proposal.

SCOPE OF WORK

We understand that the Township is interested in exploring regulation of the medical use of marihuana through a licensing program focusing upon the locations at which that use is to occur. In this regard, it is important to note that “medical use” of marihuana is broadly defined by statute. It includes the acquisition, possession, cultivation, manufacture, use, delivery, transfer, and transportation of medical marihuana. Such a licensing approach will necessarily entail an application process, initial and subsequent site inspections to insure ordinance compliance, provisions for the protection of public health, safety and welfare and the imposition of appropriate fees.

The Hubbard Law Firm will be pleased to assist the Township in exploring and implementing such an approach to regulation and, upon request, will also present other alternatives for consideration. Throughout the process our Firm will recognize that its function is to provide legal advice and recommendations enabling the Township to make informed decisions as to how to proceed and, once those decisions are made by the Township, to assist in their efficient and effective implementation.

The Hubbard Law Firm looks forward to serving the Charter Township of Union in this important undertaking.

BILLING RATES

The Hubbard Law Firm will provide the Township with all requested legal services at the blended hourly rates outlined below:

All Services Provided by Licensed Attorneys: \$150.00/hour

Paralegal/Legal Research Services: \$80.00/hour

Travel time to the Charter Township of Union will be charged at one half the attorney hourly rate and mileage will be charged at the reimbursement rate established by the IRS for federal tax purposes, which is currently \$0.51 per mile.

The Firm does not charge clients for clerical services. However, an amount equal to 3% of the Township's total bill for legal services rendered during each billing cycle will be added to cover all long distance telephone charges, facsimile transmissions, and routine copying costs.

The Hubbard Law Firm will bill Union Township at mid-month and payment for services rendered will be due on the 15th of the month immediately following the invoice sent reflecting those services.

ABSENSE OF CONFLICT

From time to time on an as-requested basis, The Hubbard Law Firm represents the Isabella County Drain Commissioner. To the best of the Firm's knowledge and information, this occasional representation has not involved any claims brought by, or against, the Charter Township of Union. The Hubbard Law Firm has conducted an internal records check to determine whether its retention by the Charter Township of Union would present any conflict of interest with respect to the Township, its officers and trustees, or any other Firm client. No such conflict of interest was found.

ATTORNEY RESUMES

Please see the attached resumes for the key municipal attorneys of The Hubbard Law Firm, Andria Ditschman, and Michael Woodworth, who will work with the Township.

If after reviewing this Proposal, you desire any additional information regarding The Hubbard Law Firm and its MMMA experience or if we can answer any questions you have with respect to the services we provide, we would be pleased to meet with you and supply any information necessary to assist the Township in making its decision. Please do not hesitate to contact us at (517) 886-7139 or (517) 886-7119. We look forward to hearing from you. In the meantime, please visit www.hubbardlaw.com for updated information regarding the Michigan Medical Marihuana Act or our municipal blog at www.michiganmunicipallawblog.com.





ANDRIA M. DITSCHMAN, J.D.

Ms. Ditschman is a Shareholder and the Firm’s Vice President and specializes in Municipal, Drain and Domestic law. She is currently general counsel to a number of municipalities. Ms. Ditschman has extensive experience in representing public entities and provides legal advice and litigation services regarding all municipal issues. Ms. Ditschman is one of the few legal specialists in the State on the Michigan Medical Marihuana Act. She has written ordinances, charters, intergovernmental agreements, resolutions and contracts and has been involved in all of the aspects involved in development, including zoning, infrastructure, wetland and permitting issues. She handles labor issues and has represented her clients with grievances and arbitration. She regularly attends and speaks at public meetings and hearings, and provides seminars for her clients on various public sector issues, including ethics, the Open Meetings Act, Freedom of Information Act, financing of public infrastructure, and zoning. Ms. Ditschman provides counsel and litigation services in all municipal matters in the Michigan and federal courts. Ms. Ditschman also has a domestic practice where she handles all issues regarding families, including adoptions, divorces, child support issues and paternities.

Qualifications and Experience:

Municipal/Drain

- Annexation and Detachment
- Codification
- Condemnation/Property Acquisition
- Contract, License and Easement Preparation
- Election Law, Ballot Language, Millage Issues
- Environmental Regulation
- Freedom of Information Act (“FOIA”) and Open Meetings Act (“OMA”) Compliance
- Intergovernmental Agreements/Mutual Aid/Cooperative Response
- Labor and Employment Relations/Grievances/Arbitration
- Lake Improvements
- Land Divisions
- Land Use Planning and Zoning
- Michigan Tax Tribunal
- Municipal Litigation Open Space Preservation/Conservation
- Ordinance Preparation and Enforcement

Public Hearings
Public Improvement Financing
Religious Land Use and Institutionalized Persons Act (“RLUIPA”)
Sanitary Sewer Projects
Special Assessments
Water and Sewer Systems
Zoning Appeals

Specialized Credentials and Qualifications

Presented MMMA Roundtable Discussion, Michigan Medical Marihuana Act, Michigan Association of Township Supervisors, 11/3/10
Presented Medical Marihuana Act and Your Community, Michigan Municipal League 112th Annual Convention, 9/21/10
Hosted town-hall meetings in Lansing, Mt. Pleasant and Frankenmuth attended by over 200 local officials
Counsel to Charter Township of Meridian, Bethany Township, Pine River Township, Sidney Township, and City of Laingsburg
Authored Medical Marihuana: Challenges of a New Age, *The Review*, Official Michigan Municipal League Magazine, May/June 2010
City of Laingsburg Pre-Approved Counsel
Presented Training Workshops to Zoning Board of Appeals, 2004-2009
Presented Training Workshops to Township Planning Commission, 2004-2009
Presented Ethics In Service for Charter Township of Meridian Board of Trustees, 2008-2009
Institute of Continuing Legal Education and Family Law Section of the State Bar of Michigan Family Law Certification Program Graduate, 2008

Admitted: State Bar of Michigan (1992)
U.S. District Court, Western District of Michigan (2003)
U.S. District Court, Eastern District of Michigan (2003)

Education: Western Michigan University (Emphasis on Land Use Planning and Government Affairs -- B.S. (1987)
Wayne State University Law School -- J.D. (1992)



MICHAEL G. WOODWORTH, J.D.

Mr. Woodworth is one of the original shareholders of The Hubbard Law Firm, P.C. He serves as the Firm's President and as a member of its Executive Committee. Mr. Woodworth is one of the few legal specialists in the State on the Michigan Medical Marihuana Act. He is a skilled advocate with extensive trial and appellate court experience. In addition, he has served as a commercial arbitrator for the American Arbitration Association and has provided case facilitation and evaluation services in a variety of complex civil cases. Mr. Woodworth has won verdicts on behalf of claimants well in excess of one million dollars. He has also successfully defended municipal and non-municipal clients against multi-million dollar lawsuits and regulatory actions. A former public school teacher, Pre-Hearing Attorney for the Michigan Court of Appeals and Chief Appellate Attorney for the Ingham County Prosecuting Attorneys office, Mr. Woodworth has frequently appeared as a lecturer, trainer and consultant with respect to numerous law and law related topics.

Qualifications and Experience

Trial Courts

Sole or lead trial counsel for plaintiffs and defendants in state and federal cases involving:

- Employment Relations
- Federal Regulations
- Products & Premises Liability
- Eminent Domain
- Environmental Law/Drain Law
- Dramshop
- Professional (non-medical) malpractice
- Debtor/Creditor & lender Liability
- Family Law
- Land Use Regulation
- Contracts & Corporations
- Securities/Stock Fraud
- Stray Voltage/Electrical Distribution
- Wrongful Death/Personal Injury

Appellate Courts

Member of the Michigan Supreme Court Historical Society and Advocates Guild with numerous appearances as lead counsel of record in the Michigan Court of Appeals and Supreme Court.

Alternate Dispute Resolution

Commercial Arbitrator for the American Arbitration Association
Service on State Court Case Evaluation Panels
Service as Facilitative Mediator
Participant as counsel for litigants in all forms of alternative dispute resolution

Other

1. Provider of legal counsel and advice to governmental entities and private individuals regarding various topics including:
 - Employer/Employee relationships
 - Contractual rights and obligations
 - Environmental and land use regulations
 - Michigan Drain Code
 - Condemnation/Eminent Domain
 - Insurance coverages and exclusions
2. Extensive experience in case and claim valuation, preparation and presentation, legal research, motion and brief writing, settlement negotiations and finalizations.

Past and Present Clients

Past and present clients include governmental agencies, elected officials and public employees, agricultural lenders, real estate and commercial development corporations.

Results

Multiple verdicts and settlements obtained on behalf of plaintiffs exceeding 30 million dollars; Defense verdicts and dismissals for clients facing multi-million dollar claims; Obtaining non-monetary client objectives in equitable/injunctive and non-litigation settings.

Lecturer/Trainer

Topics addressed include:

- Michigan Medical Marihuana Act
- Eminent Domain
- Governmental Law
- Minimizing Risks of Loss
- Wetland Protection/Environmental Law
- Zoning and Land Use Regulation
- Trial Practice
- Jury selection

Opening and Closing Statements
Discovery and Deposition Preparation
Financial Institution Regulation

Admitted: Michigan Bar (1976)
U.S. Supreme Court (1981)
U.S. District Court, Eastern District of Michigan (1976)
U.S. District Court, Western District of Michigan (1989)

Education: Central Michigan University – B.S., magna cum laude (1970)
Wayne State University – J.D., cum laude (1976)

MMMA Authorized Activities:

Registered Patients and Caregivers

Patient without a Primary Caregiver	Patients with a Primary Caregiver	Primary Caregiver	Primary Caregiver/ Patient Plus 5 Patients
Acquire	Acquire	Acquire	Acquire
Possess 2.5 ounces and 12 plants	Possess 2.5 ounces	12 Plants per <u>Connected</u> Patient	Possess 15 ounces and 72 plants
Cultivate		Cultivate	Cultivate
Manufacture		Manufacture	Manufacture
Use	Use		Use
Deliver	Deliver	Deliver	Deliver
Transfer	Transfer	Transfer	Transfer
Paraphernalia	Paraphernalia	Paraphernalia	Paraphernalia

Medical Marihuana's Commercial Uses; Backing into Federalism



Monday, 04 October 2010 12:23

This article, authored by Hubbard attorneys [Michael G. Woodworth](#) and [Eric W. Misterovich](#), was originally published in September/October edition of [The Review](#), a publication from the [Michigan Municipal League](#).

Federalism is the distribution of governmental power between a central authority and its constituent units. The term "federalism" most commonly arises in discussions addressing relations between sovereign states on the one hand and a centralized national government on the other. But federalism is taking on a new application in Michigan.

The Michigan Medical Marihuana Act (MMMA), widely criticized as confusing, contradictory, and vague, contains no state-wide regulatory measures, offers local governments zero enforcement or zoning guidance, and fails to address the legality of related commercial activities. As a result, constituent units of state government-villages, townships, and cities-are now called upon to balance a state law that provides the sick with an avenue of relief independent of conventional pharmaceuticals while simultaneously increasing the presence of a potentially illicit drug in their communities.

The treatment of marijuana related businesses varies considerably at the local level. Some Michigan communities have passed ordinances prohibiting "all uses inconsistent with federal law," eliminating such businesses by implication. Others rely on the Act's silence to declare businesses illegal, while some welcome entrepreneurial interests and zone specifically for marijuana businesses.

The Emergence of Cannibusiness

Despite conflicting opinions on the legality of marihuana businesses, commercial entities are forming. The terms "compassion clubs," "dispensaries," and "social clubs" are often used to describe varying types of these entities. However, labels alone are irrelevant. The appropriate inquiry is whether the individuals involved are legally authorized to engage in the specific activities at issue.

Nurseries

Cultivation of marijuana is redefining the traditional concept of a nursery. Often permitted by right in zoning ordinances, a nursery may now encompass a collaborative grow operation between marijuana caregivers. Pursuant to the MMMA, marijuana must be grown in an "enclosed locked facility." Such a facility is defined as "a closet, room, or other enclosed area equipped with locks or other security devices" that permits access only by a caregiver or patient. Some entrepreneurs are relying upon this definition to subdivide warehouses into smaller, individual grow rooms.

A central grow facility may help municipalities alleviate concerns relating to multiple marijuana cultivations in residential areas. Of course, these facilities present their own public safety and land

use issues. And, the larger they become the more they risk federal government intervention. Despite these concerns, commercial grow operations are being pursued, with or without governmental sanction, even in rural municipalities.

Patient-to-Patient Transfers

Patients may cultivate their own marijuana or designate a caregiver to cultivate on their behalf. A patient's caregiver designation changes two important legal rights. First, the designating patient may no longer cultivate marijuana-he or she has assigned that right. Second, the assigned caregiver receives protections for assisting a patient to whom that caregiver is connected through the state's registration process.

The designation of a caregiver does not remove all of the designating patient's rights. Patients, with or without a caregiver, may acquire, transfer and deliver marijuana. These rights have given rise to businesses featuring patient-to-patient transfers. Patient-to-patient transfers, with individuals on each side of the transaction permitted to acquire, transfer and deliver marijuana, absent any other nexus between them, has sparked heated debates.

Many contend these transactions are illegal because the Act does not expressly permit patient-to-patient sales or because they run afoul of the Act's intent. Others argue this type of transaction is not only permitted, but necessary to provide patients continued availability of their medicine. They point out that, if a patient can only acquire marijuana from an assigned caregiver, that patient will be forced to forego medicine while waiting for the caregiver's plants to mature.

Edibles

As an alternative to inhaling harmful smoke, many patients choose to ingest marijuana-infused products. Accordingly, businesses are forming to sell food products produced with marijuana oils and butters.

The MMMA places no regulations on ingestible marijuana businesses, leaving local governments to sort out the issues. In response, municipalities may consider requiring such operations to have commercial kitchens, undergo sanitary safety and health inspections, or impose labeling requirements that call for the disclosure of the product's ingredients, the amount of marijuana used, and the level of its potency.

Local Government's Responsibility

Local governments, challenged to maintain public services in the face of record deficits, may be frustrated by the need to also address marijuana policy. But municipalities can't depend upon clarification from Lansing. This is true, in part, because Michigan's Constitution requires a super-majority vote to amend citizen-initiated laws. Without another vote of the people, a $\frac{3}{4}$ vote of each house of the Michigan Legislature is required for an amendment to the MMMA.

As a result, the constituent units of Michigan's central government are being asked to fill in the MMMA's gaps. Villages, cities, and townships have responded by creating a patchwork of local regulations, the inconsistency of which may undermine the effectiveness of any individual ordinance.

Communication between municipalities is recommended to resolve medical marijuana issues and foster a regional approach to reduce patchwork regulation, maximize medical marijuana's benefit and limit its adverse effects. Local officials should collaboratively voice their concerns and cooperate to determine the most prudent methods to resolve the identified risks.

The lack of experience regulating marihuana makes forming effective answers difficult, but not impossible. With education, communication, and proper guidance, municipalities can enact practical and effective ordinances.

Like it or not, Michigan must now clarify how to regulate medical marijuana. Our governmental structure allows local solutions to serve as a prototype for statewide answers. Municipal officials, with input from their citizens, will ultimately step up and solve the issues presented on a local level. In this fashion, our federalist system will rely on its smallest constituent unit: local government.

Are You Ready for Medical Marijuana?

How a community responds to Michigan's Medical Marijuana Act in the next few months is key.

By Andria M. Ditschman
and Matthew R. Newburg

Michigan's Medical Marijuana Act has been around for nearly two years, but communities continue to have many questions about it. Simply put, communities have three options: Do nothing, prohibit it, or regulate it.

Background

On November 4, 2008, a citizen-initiated law, the Michigan Medical Marijuana Act (yes, they spelled it with an "h") was passed by 63 percent of Michigan voters. To qualify as a lawful medical marijuana user under the Act, an individual who suffers from a debilitating medical condition must obtain a doctor's written certification. Once registered, the individual is authorized to use marijuana under state law. The permitted user can also grow his or her own marijuana or obtain marijuana grown and dispensed by a designated primary caregiver. A primary caregiver means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marijuana and who has never been convicted of a felony involving illegal drugs. MCL 333.26423(3)(g).

By submitting that certification, an application, and a \$100 fee to the Department of Community Health (DCH), the applicant can obtain a Registry Identification Card. The DCH is responsible for the administration and enforcement of the Act and since April 6, 2009, the department has received 16,776 applications, issued a total of 12,193 registration cards, and is currently receiving an average of 81 applications daily. The Act presents a variety of issues for local governments including those pertaining to the Freedom of Information Act (FOIA)/privacy, zoning, and employment.

FOIA/Privacy

A municipality may not rely upon the application for, or possession of, a card to support the search of a person or their property. Although the Depart-

ment maintains a confidential list of registered persons, that list is exempt from disclosure under FOIA. Confirming the card's validity also creates confusion. The DCH rules require that "law enforcement personnel" can check the authenticity of a card through the LEIN (Law Enforcement Information Network) system. Regardless, any employee "of a local unit of government" who discloses confidential information is guilty of a misdemeanor.

Merely maintaining a list of information may not violate the Act, as it punishes the "disclosure" of confidential information, not its "compilation." However, considering the Act's intent and the limitations on the use of confidential information, maintaining such records may present risks without providing any benefit. When determining how a municipality should handle a FOIA request or the maintenance of confidential information, education is imperative. A municipality must educate itself to effectively address the Act's implications.

Zoning

The Act grants qualifying patients and caregivers the right to grow and "sell" marijuana. The law has created a group of individuals who are growing marijuana in their homes and other private areas. But the Act does not address commercial growing operations. Notwithstanding the Act's silence, today's economy is likely to attract entrepreneurial interests. In fact, at least one medical marijuana dispensary already operates in Michigan.

A municipality's governing body should consider how it will address growing operations close to schools, and whether it will permit or prohibit a medical marijuana "business" in a commercial district. The Act is silent as to a local government's role, leaving communities with three options: to do nothing, prohibit it, or regulate it.

Do Nothing

Choosing to ignore the Act may prevent litigation from patient advocacy groups, but it can lead to unintended consequences; such as inconsistencies between a municipality's policies and ordinances, and state and federal law.



The Hubbard Law Firm gives away brownies and information about the Medical Marijuana Act at the League's Capital Conference on April 14. Photo by Matt Bach.

Further, ignoring the Act can result in unintended uses authorized by existing zoning ordinances.

Prohibit It

The possession and manufacture of marijuana remains a violation of federal law. Requiring businesses to comply with federal law provides a potential vehicle to restrict these types of businesses. Although this option may regulate commercial activities, it does not address the non-commercial aspects of medical marijuana.

Regulate It

Communities enact zoning ordinances to regulate businesses for the health,

safety, and welfare of citizens. Zoning regulations could be used to confine medical marijuana businesses (similar to other businesses) to commercial districts, rather than neighborhoods or school zones. Such an approach would draw business activity to downtown zones while preserving residential districts.

The power to regulate, however, may be limited by state preemption. Your municipality must decide the best way to address local zoning issues and draft ordinances to protect and advance its goals. Prudent regulation is an objective that should be explored with legal counsel.

Employment


The Act also raises issues pertaining to the Americans with Disabilities Act (ADA) and the Persons with Disabilities Civil Rights Act (PDCRA), Michigan's counterpart to the ADA. The ADA and the PDCRA require accommodations for disabled individuals unless accommodations would occasion undue hardships. However, the Act states an employer is not required to accom-

modate the ingestion of marijuana in the workplace nor accommodate any employee working under the influence of marijuana. The law also states that a registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marijuana. Any such compensation shall not constitute the sale of controlled substances. Unfortunately, the Act does not define "under the influence." How is a municipality to reconcile the ADA, PDCRA, and the requirements in the Act? How does an employer determine whether an employee is "under the influence," and respond, while not violating the Act's patient protection provisions?

Merely adopting a policy defining "under the influence" may not be sufficient. Any attempt to determine whether an employee is under the influence of marijuana should entail whether the employee's ordinary judgment, common sense, mental state or physical coordination is affected and to what degree. The implementation of policies aimed at reducing the risk

of loss from claims by employees, residents, and third parties may be necessary.

Conclusion

The Act's silence regarding the role of local government leaves municipalities with a myriad of challenges and options. Each municipality must decide the most appropriate way to address the Act and its effect on the health, safety, and welfare of its citizens. How a municipality responds over the next few months will impact every aspect of its operations. 

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