

Planning Commission

Special Meeting Minutes Thursday, April 28, 2016 7:00 p.m., Council Chambers



City of South Haven

1. Call to Order by Heinig at 7:00 p.m.

2. Roll Call

Present: Bill Fries, Clark Gruber, Steve Miles, Brian Peterson, Dave Paull, Judy Stimson,
Terri Webb, Larry Heinig
Absent: None

3. Approval of Agenda

Motion by Paull, second by Gruber to approve the April 28, 2016 Planning Commission Special Agenda as presented.

All in favor. Motion carried.

4. Interested Citizens in the Audience Will be Heard

Heinig outlined the focus of the meeting which is responding to the proposed rental ordinance questions posed to the commission by City Council. Requested that those speaking keep their comments to those issues, those being: consider our recommendation to them for lowering age of occupant to 24 months; lowering the occupancy maximum for new rentals in the R-1 districts from 16 to 12 and consider adding an additional restriction in the R-1 districts of 3500 square feet per house if intended for short term rentals. There were another two (2) issues that did not require planning commission comment. "The commission's purpose tonight is much focused".

Heinig opened the meeting to public comment requesting that people be brief and focus on the issues he just outlined.

Stephen Earls, 4th Avenue, South Haven. Had a question on item C about whether a building that has never been rented before can be rented, and if it is over 3500 square feet that it can't be rented at all.

Anderson stated that these questions should be taken to City Council at their meeting on May 2nd or the public hearing on May 16th.

Earls asked if the commission is voting on this.

Anderson said no, they are not voting, and Heinig commented that the commission is just responding to City Council comments.

Earls commented that he believes 3500 square feet is too small because there are houses out there now that are not being rented now and may perhaps be sold in the future and if they cannot be rented that may affect their real estate value.

Margaret Erle, 37 North Shore Drive had questions regarding the local representative. Stated she has asked a couple people on city council, an attorney, and planning commission people about this particular clause that has been suggested. Explained that she cannot approach her neighbor and ask him or her to be her local representative if she cannot tell them exactly what is expected of them in that position, what the requirements and legal ramifications are and so forth. Is there going to be something in print?

Heinig stated that they were not going to consider any additions to the ordinance at this point.

Anderson stated those questions should be brought to city council.

John Lohrstdorfer, 712 Maple Street. Stated when changes are being made to the Zoning Ordinance, it is supposed to be based on a plan and for the last six months there hasn't really been discussion about the plan. I know there is one coming up in the fall. If you are going to have a dwelling with 16 in it, it should be in its own zone, but we really shouldn't spoil the single family zone. That's why you adopt a zoning ordinance. Almost all municipalities he knows do not mix large rentals in single family zones. He supports people being able to rent single family to single family but it is these large rentals he is talking about.

Heinig said we do not intend to discuss anything but what the City Council asked us to discuss.

Lorsdorfer said he does not know where 16, 14 and 12 came from, if you are going to come up with a number it should be based on facts. I do know that if you have a dwelling that has over ten occupants and you have sleeping units and they share bathroom and kitchen facilities, that puts it in section 420 the building code which has all kinds of building code and fire code regulations different from single family.

Heinig stated, once again, the commission is not talking about building codes or fire codes tonight. The city council did not ask us to look at that and we will not be discussing it. Suggested that if Lohrstdorfer has concerns beyond what the commission is talking about tonight and he should take his concerns to the city council meeting.

Lorsdorfer said this is a concern because that's why ten is a better number because it can be supported for occupancy for the single family. The other numbers are arbitrary and could be challenged because they are. That's why a lot of the citizens have been urging 10, because there is a distinction; it is more in keeping with a single family district. Stated the commission should, because he thinks the city council did not give the commission a specific number.

Heinig stated, "City Council, to correct you, did give us some numbers to consider."

Lorsdorfer stated he did not know the commission was confined to the numbers city council gave them but the commission should have a basis for what number they decide because by doing this you are changing the character of the single family district.

Jim Martin, Monroe Park. Asked if the commission can address grandfathering.

Heinig stated the commission has specific questions to answer, we will be sending those responses to City Council, who will be holding a public hearing on the entire proposed ordinance.

Martin stated he dittoes the concerns of the gentleman in the white shirt.

Sally Newton, lives in South Haven Township, manages Shore Vacation Rentals. Stated we have ourselves in a situation here. Stated she is confused, because the commission has not been given legal verbiage from City Council or from the attorney. Noted the commission is kind of going on some bullet points, which, if you are in this industry and you care about the economics of this. Said bullet points do not really do the job; that she is not sure why, as a planning commission they have not been given the legalese to respond to this evening. Newton commented that on Point A we need clarification on what existing means; Point B, if regarding the occupancy of 12, if you pay attention, as a city council, to the financial information from people who do this business have provided you with, that might not be a good idea. Point C, in the original Planning Commission version there was an end date to the "no new short term rentals". Newton thinks the original date was 2019. Not seeing any end date Newton asked if this is just forever. Newton told the commission these are things that need to be paid attention to. Newton then stated she heard a rumor today which she hopes is untrue, that City Council is in the process of writing a new version, a new ordinance, and the fact that is happening behind closed doors without awareness of some City Council members is atrocious in a small town where we should all be part of the solution.

Heinig stated that is not an issue for here, tonight.

Newton responded that if she goes to City Council on Monday night and is faced with a new ordinance to take her highlighter to, she is going to be really disappointed.

5. New Business – Review and Respond to City Council Comments regarding Short Term Rentals

Anderson noted the Zoning Ordinance requires that once Planning Commission submits an ordinance or an amendment to City Council, the city council needs to review it. If they are going to make any changes they have to send it back to Planning Commission with those sections highlighted that they want to be reconsidered. We will reconsider, send it back to the city council and it will not come back to the Planning Commission again. The city council will then adopt whatever ordinance that they choose. There were a couple of things; the things in here are changes from what the Planning Commission proposed; that is what we are looking at. The first one, A, is taking the Planning Commission's recommendation, assuming the 2 per bedroom, 2 per floor formula or 16, whichever is less, and asking to drop the exception for children from 6 years to 24 months, making this

cap applicable to existing short term rentals in the R-1 districts. "That's the first point they wanted you to consider, going from 6 years to 24 months, in the occupancy requirement."

Gruber said this is for existing rentals, those who had short term rental history in 2015.

Anderson stated that this would drop the age requirement down for all occupants. Occupancy is defined and it would be for anyone over the age of 24 months or 6 years or whatever it is.

Gruber said he thought A was for 16 occupants for existing short term rentals and B is a maximum of 12 for new short term rentals.

Anderson noted it is for existing, yes, it says existing.

Heinig said A is for dropping the age, from 6 years to 24 months to which Anderson agreed, "That's what it is; it's just the age in A."

"In existing short term rentals," Gruber added to which Heinig agreed. Gruber pointed out that the Planning Commission can recommend no to that, that's an option.

Frost said this Planning Commission has never discussed . . . "A, to me, appears to be what is referred to as a grandfather clause and this Planning Commission has never discussed that, this Planning Commission did not submit that or anything like that, to City Council. If we are going to be talking about a "grandfathering" provision I am going to ask, Mr. Chairman, that you allow me to recuse myself from this discussion. I have several large rentals and any grandfathering provision that would allow me to maintain up to sixteen occupants could potentially have a direct financial benefit and I feel that I cannot participate in this discussion."

Heinig said he did not see where A is referring to grandfathering at all; it's talking about changing the age from 6 years to 24 months. Gruber noted it states, "existing short term rentals." Frost explained that the cap of 16 would be applicable to existing short term rentals of which he has several. "But then, if you look at B, it's a cap of twelve for new short term rentals." Frost pointed out that he is aware that there has been quite a bit of talk about conflicts of interest, etc. and added, "I did not have a conflict of interest up until this point, and again, Planning Commission did not send anything up to City Council with respect to a grandfathering clause, but that's what this is. And if we are going to talk about grandfathering, I'm going to ask you to let me recuse myself from this discussion."

Heinig asked for the wish of the commission.

Gruber said he thinks it is Frost's personal choice. Gruber referenced a document from the Michigan Planning Association with suggested rules of conducting meetings and conflict of interest. Gruber noted he talked to individuals at their organization and explained to them what was going on and they said this body, the Planning Commission, is doing nothing but making a recommendation to City Council; there is no conflict of interest. "And in fact when you are helping to develop an ordinance, you can't have a conflict of interest. She said the first four points, is first of all, you have to be the applicant; the fifth point is it has to be the proposal of the applicant. And there is no proposal. It's nothing but a recommendation to city council." Gruber explained that his contact also said your planning commission should be made up of a lot of different individuals from the

community. "And we do; and she said you may have real estate agents, which we do, and she said you may have somebody who owns a rental; and we do. We do and that's good practice. In fact she wanted to say that our legal counsel and our staff interpret it the same way that organization does. So the document that was used to say there's a conflict of interest actually shows there is not a conflict of interest. If John wants to step down, though, that is his personal choice."

Frost noted that when the Planning Commission voted on the number of 16, he was putting a cap on his properties, and as much as it has been out there that would have financially benefited him, it would have financially hurt him because many of his properties would have had more than 16 occupants. "I was lowering the number I could have in my rentals. I am uncomfortable recommending something to City Council that would benefit me. And I understand what you are saying about this not being an ordinance we are passing, but I would not feel comfortable recommending to City Council something that could potentially have a direct benefit to me."

Heinig questioned, "Items A and B?" to which Frost responded, "Correct." Heinig stated he values Frost's input and that is why he hesitated to agree to recusal.

Paull asked that until the commission actually acts on these proposed amendments, Frost please stay part of the process. Frost noted that the commission is not taking any action tonight, other than discussing it. Paull responded that until the commission actually comes to deciding whether or not to send something to City Council, other than that, stay in the discussion. "Because we need you."

Peterson noted that the commission can move on exactly what we recommended before to which other commissioners agreed with. Heinig left it up to Frost, that if he wants to recuse himself, he may.

Frost stated he does not think he can participate in the discussion.

Webb, on item A, "I do not mind discussing the age, but like John, I really think this is two separate bullet points, because I don't know what the definition of existing is, and if I don't know what the definition of existing is, it's hard for me to say if I agree or disagree, but if we are only talking about the age I feel like I can participate."

Stimson had a question for Anderson. "I thought we defined existing as what people were renting in 2015. Anderson noted that was not in the Zoning Ordinance, it was in the regulatory ordinance. Anderson explained there was some discussion but there is no clear definition of existing and she has mentioned to City Council that they should have something in there.

Heinig called for comments on age. When none were forthcoming, Heinig noted that his recollection, from when the commission discussed it earlier, we looked at ages 16 down to 24 months and we, as a group, concluded that anyone under 6 was probably not going to be contributing to the perceived problems with renters, in fact there might be some benefit there, earlier bedtime for the entire family with an earlier bedtime for all. We did talk about 24 months in that discussion also.

Stimson agreed that is the way the commission talked about it. Heinig asked about voting or whether the group is giving Anderson enough discussion to respond. Anderson said consensus is fine.

Stimson said we can say stick with 6 years, what we presented, or we can say 24 months is fine and asked Heinig asked if city council will be looking for an explanation. Anderson said they don't need an explanation; they just need a response to "How would you feel about dropping this age limit from 6 years to 24 months?" Yes or no.

Fries is troubled about what the benefit is of going from 6 years to 24 months explaining that a family around the corner who rents their house out to help with taxes asked him about renting to a single family. Because of the bedroom size, 2 per bedroom, 2 per floor, they won't be able to rent to the family they have always rented to because the children are now over 2 years of age and Fries feels that turning a family away from renting in South Haven he thinks is not moving in the right direction.

Gruber stated that 24 months was more like looking at someone in a crib as opposed to someone in a bed, and they would probably bring a port-a-crib. Looking at it that way, it was just another way to separate those considered children and those that are not and came up with a different number, that once they hit the area where they are doing a lot of running around making them more as part of the occupant cap. "But if we want to give back to City Council that we feel occupancy of 16 and an age of 6 is more appropriate in the existing R-1s, then we can certainly do that. But that was the reasons for that, just like B, looking at the differences between now and the future. Because we are probably looking at a slowing of the rental industry. Seems like we had a great 2015 but we are going to look at the numbers in 2016, and we may look at down the road, and see a difference." Fries asked, "A slowing how?" Gruber explained it as looking at communities up and down the lake shore, take Grand Haven, for example, decided only to allow short term rentals in certain districts; at some point we have to look at what percentage of housing stock will be allowed to be rentals.

Fries stated that is not much to do with the 6 year "I guess again I'm troubled at treating a 24 month old person the same as an adult." Gruber corrected, "24 months is okay, it's 25 months."

Heinig is not hearing much in favor of 24 months. Anderson said consensus for A is 6 years. Commissioners indicated they are for 6 years remaining the cut-off point for occupancy. Gruber added, "For A." Stimson requested that Gruber, when presenting this to council, tell them the commission's logic and Gruber agreed.

Anderson, regarding B, said this provides that new short-term rentals, new rentals, have the same formula with a hard maximum of 12 occupants over 24 months in age. We'll probably be switching that to 6 years, as well. And looking at 12 as opposed to 16 that Planning Commission had in their ordinance. The City Council is suggesting going down to 12 for new rentals.

Webb says she feels we really are discussing a concept without seeing the language as an attorney changes it. "I'm not comfortable changing what we had already proposed because I don't know what "new" is." Gruber said new would be, as we had in the other portion, people who rented in 2015 already. People who have an establishment of renting, that's considered new. If your building or rehabbing a home, that's considered

new. Gruber said, "Like myself, I've never rented my house before. If I were to do this, I would be a new short term rental. The guy two doors down from me has been renting for several years; he would be considered an existing short term rental." Webb is concerned more about the people in between, people who are currently building, people who have their permit, are currently booked out this year to families, who would probably come back to the same house next year. "I appreciate your definition of "new" but I'd have to see it in draft form, as the attorney puts it, before I could vote on it."

Gruber said she could certainly present that in the feedback to council. Webb stated that is her feedback.

Paull said he wants to present one more quirk. "The home next to me is going to be torn down due to water damage from a broken pipe and replaced with a new home of 2 stories. In the past it has been rented, but it will be a new structure, a new home, and very different, and a new owner. Is that one going to be allowed to continue to rent at 16, or is it now, because it's different, changed, physically different, new construction, not going to be allowed to be rented? We are going to get into some confusing, weird, really weird stuff." Paull said his suggestion is to leave it alone.

Paull said the city is already determining it will be diff according to Anderson.

Anderson said she agrees with Paull, but the way that was written they would be limited to 12. Paull commented that the city has already determined that house will be limited.

Gruber asked if we need more input on B or if the Planning Commission has reached a consensus. After discussion Gruber said he'd like to see the 12 and 24 stay.

Heinig said his recollection from when we discussed this is that we had trouble because we do not have historical data; some thought we shouldn't give a maximum and our attorney said we should not go in that direction and we should provide a maximum. And he felt we should give a high number which would give us a chance to gather the data and we could adjust the number at that point, up or down, as the data indicates. With that, Heinig recommended staying with 16. Consensus is to keep the number at 16 except for Gruber.

Anderson said the last one we have to discuss, because the other two have no change suggested by City Council, provides no new short term rentals exceeding 3500 square feet in the R-1 zones; it would still allow those houses over 3500 square feet in those zones but they would not be able to be used as rentals. Anderson noted this is new; added to the zoning ordinance.

Stimson asked if this is a "new built" or a house that already exists. Anderson said either/or – then noted that she is being distracted by conversations behind her. Heinig reminded that talking needs to cease so the commission can continue their deliberations. Appleyard asked that people use their microphones.

Anderson said this would be for new construction; new construction under 3500 square feet, it could be a rental. But there's more. If you have an existing home that is under 3500 square feet and has never been rented before, it also can be a rental. That also would be a new rental even though it's not new construction. They would still fall under the 12 (occupancy cap).

Webb felt that the commission had this entire discussion already. Webb asked Gruber what he can tell the commission about what he told the City Council and why they are wanting to put this back in. Gruber said there are no existing rentals exceeding 3500 square feet in interior space, in R-1 zones, isn't that both existing and new structures. Gruber said, "Just new structures? Let's look at C again. Let's say I have never rented my house before and it's 4,000 square feet and never rented before. And I want to be a new short term rental. Can I rent?" Anderson responded, "No." Gruber said then existing buildings and new buildings, any building 3500 square feet and bigger, can't have a new short term rental. "New short term rentals – saying I've never done it in the past. That's kind of putting a stake in the ground. I think Council is looking at again, the feedback is, we've got large homes, capacities that are larger than what we need and we want to push the larger capacity homes with occupancies greater than 16 into the RM1, B3 and R-2 districts. And right now we probably have a large enough stock of those size properties in the city limits now. And right now city council has been getting a lot of feedback from a lot of individuals; that's kind of where our feelings were."

Gruber added that what was put together and sent to us from Planning Commission was awesome; we liked that. I think we need to look at that for the existing short term rentals, and curb the growth of the new short term rentals.

Stimson thinking about, let's say she hadn't built her house yet, and she wanted it to be 4000 square feet for when she retires here. But she wants to rent it in the interim to help with finances, and then this 3500 square foot provision is now a restriction on what her house would be when she wanted to live in it, not just because it was going to be a rental. Gruber responded that if she was going to rent it, yes, that would be a restriction.

Frost said the whole thing doesn't make sense because the cap takes care of this. Stimson and Paull agreed. Frost said if you want to build a 4000 square foot house, a 5000 square foot house, the argument is too many people. "We're going to have 16, 12, whatever it ends up being, but who cares if it's over 3500 square feet? You can't put 20 people in there; you're going to have a cap, right?" Gruber says, "Correct, so for a new home that would be . . ." Frost interjected asked what the point would be of limiting the square footage. we want to curb the growth of new short term rental. Gruber states that is good input to provide city council.

Paull asked if the cap would be twelve. Gruber said, "Well, it depends, if you are in the RM-1." Paull asked where he is coming up with that number. Gruber said it all depends, in B . . . Paull interjected, "I thought it was 16." Anderson said that is for existing; they can show that they rented in 2015 but for a new house, a house that is remodeled or a house that is existing, their cap is 12. Stimson said but that was city council. Paull reiterated, That's city councils recommendation. Stimson added, "And we just said we wanted to leave it at 16. Anderson, "Exactly, and I have that here, yes." Frost said, whatever the number is, my point is that the cap takes care of it. Gruber, "It's got a hard cap, either way." Frost said, "So size doesn't matter."

Webb stated it makes more sense, if it's 12, 14, 16, whatever that number is, you're rather have 16 people in a 5000 square foot house." Frost noted that should be put on SHINEs website. Gruber said that's excellent feedback to provide to City Council for C, that the Planning Commission's feeling is that the hard cap would take care of the issue and furthermore, we'd rather see the maximum in a 3500 square foot home than in a 2000 square foot home.

Stimson said we've had feedback from people who have said they rent the house now but are going to live in it long term later and if we are restricting limiting the number of people they can rent it to, why are we restricting the size of the house?

Peterson said this is almost word for word rehashing of the subcommittee meetings we had two or three weeks ago. Stimson said that is why the Planning Commission didn't put a number in there. Fries asked if Gruber can tell where the 3500 came from? Gruber said he thinks it was from the moratorium. Fries said he means as far as the cap, how do you feel about what John has expressed? Gruber, "I like what John has expressed. This is the feedback we wanted to get and discuss, which is that the maximum cap would take care of that. I personally like the 12; it would take care of the 3500 square foot home that was being rented until someone decided that was going to be their long term home. Because I've heard from a lot of individuals who are doing that on a short term basis, or for a certain amount of time before they are able to make that their long term residence. Fries asked, "So are you saying the cap should be looked at and not the size of the house? Also, we're including the basement in these." Gruber said if there are ingress and egress windows you could legally put bedrooms down there. Fries pointed out that is all taken out through permits through the city, so if somebody doesn't put in egress windows it shouldn't be counted. Gruber said he likes the idea of a cap and Fries asked, "On the size of the house or the people?" to which Gruber responded, "People. They were looking at the large homes becoming a party home but if you can only put twelve people in a 3500 square foot home, you've got to do your two times two and get there. Also as applications do come in, any bedrooms in attics or basements have to have required egress windows. Basements would require a site review to make sure it has ingress and egress. And a legal bedroom."

Stimson said, "To wrap this up, we want to say that we don't think C is necessary or even appropriate for the way this population moves, as far as buying something for the future, using it for a short term rental, then using it for a permanent residence, the cap on the number of people should take care of the concerns that have been brought to us." Gruber said while that is true, it doesn't preclude someone building a 3500 square foot home and using it exclusively for a short term rental and not plan on it being a home that they're going to use.

Heinig asked if we want to include the 3500 square feet or do we want to say no on C, that the cap takes care of it. After discussion, Anderson said fine, if you think the cap on occupancy takes care of it, that's what we will say. Heinig noted that previous discussion also included limitations, like houses only 35' high, only 2 stories, additional parking requirements will limit the size of house and the basic lot coverage requirement.

Anderson said D and E are unchanged so we will prepare your comments and consensus tonight and will be given to the city manager tomorrow for addition to the agenda.

Paull asked for a review.

Anderson said for

A. Existing short term rentals, we are going to make a point of saying we don't know what existing is, we are making an assumption, that Planning Commission's consensus was that 6 years is fine.

B. Short term rentals in R-1 district would have the same formula with a hard maximum of 12 occupants. The Planning Commission agreed that we need a definition of new, but assuming we know what it means, want the maximum to stay at 16 for over occupants over 24 months.

C. Which provides there are no new short term rentals exceeding 3500 square feet in interior space, the Planning Commission agrees that the hard cap takes care of this issue and square footage restriction is not necessary.

Gruber wanted to make sure on B that it is noted that there was a holdout; Gruber didn't agree.

Webb asked, "On B, did you say that we did not agree with 24 months? Wouldn't we keep A and B consistent? After discussion, Anderson corrected her notes to indicate that both A and B keep the occupant age at 6 months as the Planning Commission presented it.

Heinig said our response will be read at the City Council meeting on May 2. Anderson noted that they will introduce the ordinance they will be bringing to the public hearing and on the 16th of May they will be holding a public hearing and making a decision on what the ordinance will say when adopted.

6. Commissioner Comments

Gruber: Stressed that for the most part City Council took nearly everything the Planning Commission sent them and made some slight adjustments. Noted that council wanted the input; we got great input on your thoughts and why. Noted that all of its good but the 3500 square foot part is good.

Paull: Noted that we need to keep moving and finish this.

There were no other commissioner comments.

Anderson: "As most know, we've been having conversations with the state Fire Marshall's office and the Site Plan Review Division and trying to get something from them on how the city is interpreting this. I'm happy to say we heard back and they agree with the city's interpretation: a single family house is a single family house, not a boarding house, not a dorm, not a motel, not a hotel and they will be getting that to us in written form.

7. Adjourn

Motion by Paull, second by Stimson to adjourn at 7:52 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary