

Planning Commission

Regular Meeting Minutes Thursday, June 2, 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, John Frost, Brian Peterson, Judy Stimson, Terri Webb, Larry Heinig
Absent: Clark Gruber, Steve Miles, Dave Paull

Motion by Peterson to excuse Gruber, Miles and Paull, second by Stimson.

All in favor. Motion carried.

3. Approval of Agenda

Motion by Stimson, second by Fries to approve the June 2, 2016 Regular Meeting Agenda as written.

All in favor. Motion carried.

4. Approval of Minutes – May 5, 2016 Regular Meeting and April 28, 2016 Special Meeting

Motion by Stimson, second by Peterson to approve the May 5, 2016 Regular Meeting and April 28, 2016 Special Meeting minutes as written.

All in favor. Motion carried.

5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

None at this time.

6. New Business – Public Hearings

The Planning Commission will hold public hearings on the following zoning and city code of ordinances amendments:

a) *Nuisance Gathering Ordinance*

Anderson explained that this is something that the city attorney drafted while we were working on the rental ordinance but it was decided to wait until we were done with that. This ordinance doesn't really have anything to do with rental properties in particular, but defines and explains who is responsible, and the types of violations that fall under nuisance gatherings. Anderson noted this is not an amendment to the noise ordinance but specifically to add a new section on nuisance gatherings to the City Code of Ordinances. Anderson also pointed out that any changes may be made before sending to City Council.

Motion by Stimson, second by Fries to open the public hearing.

All in favor. Motion carried.

There were no comments.

Motion by Stimson, second by Peterson to close the public hearing.

All in favor. Motion carried.

Stimson pointed out that a lot of the information in this proposed ordinance section is already in existing laws for other things; wondered if maybe this is more procedural, but questioned why we would list them here again.

Anderson responded that the city attorney thought the city should have something, to provide an umbrella under which all of these violations will fall.

Frost asked who would be charged to which Anderson responded by reading from the draft text, "The owner, occupant or tenant of a premises that is the site of a nuisance gathering".

Webb asked if the owner has to be present to be charged to which Anderson responded, "No, it could be everybody there and the owner whether present or not."

Frost spoke without using his mike and addressed Gerald Webb, a member of the audience who was seated near the back of Council Chambers, asking, "Can you hear me?" When Webb said he could hear Frost, Frost pointed out that Webb is probably 50 feet away and can hear him without a microphone. Frost concluded, "That is not acceptable; 50 feet is too close; the 'owner' needs to be taken out of there. Outside Riverwatch, you can hear people on boats 200 feet away; they are technically in violation of this ordinance."

After discussion there was consensus to delete reference to the owner in Section (C) (2).

Stimson asked if people can be in a house and create a nuisance to which Anderson responded, "Yes, in a closed up house, if someone could hear you from 50 feet outside, yes."

Webb asked, "What if you have your window open? I just think that this is too far-reaching; there is a lot in this ordinance that we already have ordinances to cover."

Frost doesn't understand how a property owner, a long term rental property owner, can be held responsible. "If my tenant decides to light up and smoke weed in the front yard, then I'm responsible. That's just unfair." Anderson pointed out to the commission that this can always be moved to City Council with a recommendation to not adopt.

Stimson asked if we can amend it to exclude the owner, noting that it should be the people creating the problem who are given the penalty.

Frost said this could be accomplished by deleting section (C) (2) or by striking owner in that section. Frost noted the owner would then be covered under (C) (3).

Stimson made a motion to strike owner from section (C) (2).

Heinig wondered if it says 'shall' or doesn't it; should we change it to 'may'. Frost said that would leave it open for more interpretation.

Fries asked if the nuisance gathering happens in a public park whether the city would be responsible and stated he agrees with John about striking the owner from that section.

John asked if you are out there having a bonfire or party and you miss the trash can when you try to throw out a wrapper, before the event is over and cleanup has taken place, will you be charged for littering. Heinig stated that the enforcing officer would have to use their judgement.

After discussion there was consensus to strike C2. Heinig asked Anderson if, in her conversation with the attorney, she saw this being a problem. Anderson did not and explained that the minutes with your discussion and a cover letter she will prepare will go with it to city council.

Stimson noted that these things should be handled in some way but she could go down the road where we send this back in total and have it redone so it doesn't have anything in here that is covered by another law already. Fries added, "So it's not repetitive." Stimson asked if we frequently have things in two places in the ordinance. Anderson explained that the intent is not to itemize offenses but have an umbrella over all these nuisance items.

Webb asked how many is considered a 'gathering.' "Has 'gathering' been defined? Have the police expressed a need for something like this?" Stimson asked what dictates a gathering. Peterson said, "More than one."

Anderson let the commission know they could also not act on this; have a subcommittee work on it; have the police there to address questions. If the commission does not feel, even after that, you don't have to send a positive recommendation. Stimson thinks we should ask the lawyer about the intent. Maybe they could have the attorney on speaker phone for a bit.

After a question, Anderson stated that consensus is all that is needed; there is no motion needed. There was unanimous consensus to send the draft back to the subcommittee for further consideration.

b) Noise Ordinance

Anderson noted that the city attorney recommends that the city adopt an amendment to the Noise Ordinance that designates individuals responsible for Noise Ordinance violations. Although this is proposed as an amendment to the City Code of Ordinances, City Council has asked that the Planning Commission review the content, hold a public hearing and make a recommendation to City Council regarding the adoption of the amendment. This is just a paragraph and says, "Any person who creates, assists in creating, or permits the continuance of any noise prohibited in this article is in violation of this article. Further, any person who owns or occupies a premises on which a prohibited noise is produced is in violation of this article. All noises prohibited in this article are hereby declared to be public nuisances."

Anderson pointed out that the commission is running into the same thing where the person owning the location is liable whether they are there or not.

Motion by Stimson, second by Peterson to open the public hearing.

All in favor. Motion carried.

There were no comments.

Motion by Stimson, second by Fries to close the public hearing.

All in favor. Motion carried.

Frost reiterated, "It is the same issue." Stimson stated, in the situation of a rental, if there was noise going on, if it's a systemic problem, she would rather have the person who owns the property be responsible.

Webb would like to see us, since we are back to the same problems with the noise ordinance; the police have to know where the property line is so enforcement issues still exist. "I don't know that there is consistency with enforcing it. I would like to know how the police feel about this, whether they feel this is necessary."

Stimson asked who is responsible in the noise ordinance to which Anderson responded that this proposed amendment is added to identify the person responsible.

Frost pointed out that the owner would be taking responsibility for someone else's action. Frost asked whether on the last day of school, when the children are leaving, we are going to hold the school responsible for the noise. He suggested the people making the noise be cited.

Stimson asked if that is already in the ordinance why we are adding this. Frost commented that it appears they want to make the owner responsible for the noise. Frost asked if this came from the city attorney to which Anderson responded, "Yes".

Heinig talked about electronically made noise and Stimson asked, "Like they left the music going and they're not there?"

Frost stated that the police need to be involved in working on this.

Motion by Frost to refer this back for more study. Heinig asked whether this could be done by consensus. After discussion, there was consensus to take this to committee for more study.

c) Nonconforming Lots, Uses and Structures

Anderson explained that Article XIX, Section 1901 in the zoning ordinance addresses nonconforming lots, uses and structures. This section has long been very confusing and difficult to interpret given that it does not clearly delineate between nonconforming uses, structures and lots. While working with the city attorney drafting the short term rental ordinances, it was again noticed by staff and the attorney that the nonconformity article was confusing and contradictory. As a result, the attached text was drafted in hopes of helping to clarify an already confusing aspect of zoning.

Anderson noted that this amendment changes, not the entire article, just the first section, which clearly states what is a nonconforming use, nonconforming structure or nonconforming lot. The way the ordinance is written, it bounces from one type of nonconformity to another without differentiating between them. Anderson noted, "We need this; at some point the Planning Commission should look at everything that goes on beyond this, the rest of the article. This is just a start to define the different nonconformities.

Motion by Stimson, second by Peterson to open the public hearing.

All in favor. Motion carried.

Motion by Stimson, second by Frost to close the public hearing.

All in favor. Motion carried.

Motion by Stimson to send this to City Council with the recommendation to make these changes to make the ordinance clearer. Second by Peterson.

Webb asked if (2) (C) is lawful. "Can you say something is a discontinued use after twelve months?" Frost commented that discontinuing a use would have to be defined. Frost used an example of short term rental, stating if you are trying to rent a property short term and aren't successful that is still using it. But if you rent it for two years to a family, that is discontinuing it.

Heinig asked if Frost has some wording that would help this. Frost said it would be helpful to flesh out what constitutes a 'discontinuance'; make is a defined term.

Stimson asked if there is any place else that defines a discontinuance of a nonconforming use. Anderson said there has to be an *intent* to abandon a use. Frost believes Anderson is correct. Stimson said, "So you'd have to change from the nonconforming use and be able to document that."

Frost said discontinuance is not a defined term. "Are we pulling that from case law?" Anderson said if there are questions, the city attorney should be asked as they drafted the text.

Stimson withdrew her motion.

After discussion, there was consensus to study this more.

7. Other Business – None

Anderson: We are buried in rental registrations; Marsha is putting in a lot of overtime. When you submit your application for your registration, you need to come into city hall and pick up the certificates. That is what you need to post in your window, not the application.

Heinig asked if those not picked up will be mailed out to which Anderson responded that after the dust settles, Marsha and she will start calling and emailing applicants about picking them up.

Heinig asked about a July meeting. Anderson said we don't have any applications, but we might if we are working on these amendments in the meantime.

Heinig asked if we have a committee meeting scheduled for next week. There was discussion about finding time to have a meeting with Anderson remarking that the rental registration is taking up a lot of time.

Anderson said people have been very nice and we are finding that many people are not using the maximum occupancy the city has established; they have already established a smaller number that they are using; they do not want more than that in their house. We are seeing a lot of short term rentals in neighborhoods we didn't think we'd see them in and not seeing a lot where we thought there would be a lot. It's been very interesting.

We had someone come in and set up how to do reporting from our building department software and once things settle down we can start to see what we really have out there. We will also have the capability of mapping the results of the registration.

8. Commissioner Comments

Fries: I have witnessed the work Marsha and Linda have been doing in the office and want to say thanks.

Heinig: Thanked those present in the audience.

9. Adjourn

Motion by Stimson, second by Frost to adjourn at 7:38 p.m.

All in favor. Motion carried.

June 6, 2016
Planning Commission
Regular Meeting Minutes

RESPECTFULLY SUBMITTED,
Marsha Ransom
Recording Secretary