

# Planning Commission

## Regular Meeting Minutes

Thursday, August 7, 2014

7:00 p.m., Council Chambers

*Note: Due to illness, Tom Brussee's rezoning request (38 Northshore Drive) was moved to the September 4, 2014 agenda*



City of South Haven

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

### 2. Roll Call

Present: Frost, Heinig, Miles, Peterson, Stimson, Wall, Webb, Paull

Absent: Smith

Motion by Heinig, second by Frost to excuse Smith.

All in favor. Motion carried.

### 3. Approval of Agenda

Motion by Wall, second by Heinig to approve the agenda as presented.

All in favor. Motion carried.

### 4. Approval of Minutes – July 10, 2014

Motion by Wall, second by Frost to approve the July 10, 2014 regular meeting minutes as written.

All in favor. Motion carried.

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

There were none.

### 6. New Business – Public Hearings

*Proposed amendments to City of South Haven Code of Ordinances, Chapter 30, ENVIRONMENT, Article II, Noise. Proposed amendments include changes to the allowed decibels levels and further limitation for the hours of 1:30 a.m. to 7:00 a.m.*

Paull explained the purpose of tonight's meeting is to obtain information from the public to assist the sub-committee as they determine what changes might be made to the current draft; then hold a public hearing again to obtain information on those changes.

Anderson noted that the Planning Commission was requested by City Council to review and recommend changes to the noise ordinance to complete one of the council's 2014 -2015 adopted goals. Since March 26, 2014 a subcommittee has been working to gather information. As part of that process the committee interviewed the mayor, the police chief, the director of the housing commission and Old Harbor Inn management. The committee attended a demonstration of decibel levels and both the subcommittee and Planning Commission have completed reviews. This public hearing is the beginning of the process of public comment. Anderson noted that she has already received numerous comments via emails, phone calls and correspondence dropped off at the office.

Anderson reviewed a memo from the police chief, Tom Martin which stated that the average decibel reading has been less than fifty-five (55) decibels so far this summer and approximately eight (8) excessive noise calls are received by the police department over a typical weekend period.

Webb asked if Chief Martin tells, of those approximately eight (8) calls, whether the complaints are all different individuals or the same ones multiple times. Anderson said that the memo did not say but she could get that information later.

Motion by Heinig, second by Miles to open the public hearing.

All in favor. Motion carried.

Joanna Rider; 201 Center Street. Owns the Hotel Nichols across the street from York's Landing. Described a recent experience with a guest with more than one complaint about the noise that showed desk staff a decibel reading, taken in his unit on his laptop was eighty (80) decibels. Police response time was slow so the guest went over and unplugged the band's equipment, then came back to the hotel and locked her desk clerk out of the hotel. Rider explained this is the way her weekends are during the summer and complained that there is not good monitoring in the downtown area. Said she heard the readings were taken on Thursdays; noted that most of the bands do not play on those nights. Rider wants more monitoring and for the police to come right away. Rider noted she has to make coffee and cookies and give free nights and refunds to guests who are disturbed by the noise level.

Paull indicated that the decibel meters used by the police are certified; the guest probably does not have a certified decibel meter and noted that enforcement is a matter for the police.

Owen Ramey, 136 East Michigan, Kalamazoo, Michigan. Attorney representing Captain Lou's. Noted that it is apparent that the Hotel Nichol's guest had more issues than noise issues to do what he did and hoped that this is not a Hotel Nichols' normal customer. He requested that the commission focus on the importance of this issue as they address it. "If you pass the ordinance this would constitute a taking of my client's business." Ramey called the ordinance inverse condemnation. Ramey also stated that the ordinance is in conflict with the city's own zoning ordinance; that legal processes typically take five (5) to ten (10) years and would be very expensive to everyone. Ramey also stated that the city is

proposing to have an ordinance that is a curfew on speech; totally illegal and with very great consequences.

Paull asked specifically what Ramey's objection is since the allegations were broad based. Ramey responded that lowering the decibel level to sixty (60) decibels and disallowing talking loud with no differentials between residential and commercial districts is a violation of the city's own zoning. "That is a specific thing you are doing here – these are resort areas, not residential, in this commercial district. To change that and supersede the zoning with the noise ordinance is not legal."

Commissioner Wall requested permission speak, noting that she wants everyone to understand that our city attorneys looked at our ordinances; that the city is not trying to pull the wool over anyone's eyes; that nothing illegal is going to be done; and that the city does not want a lawsuit. Wall further noted, "That's why we have a committee and why our attorneys look at this. Before this comes to council our attorneys will look at this (proposed amendment) and tell us if it's okay or not."

Trent Morgan, 201 Center Street. Does night security and front desk every weekend night at the Hotel Nichols. In reference to "the guy that went a little crazy this weekend" in his defense Morgan pointed out that guest had paid over \$1000 for his extended stay and had two (2) babies, and "those kids were kept up every night." Morgan noted that when the guest approached him he also called the police. "I work with the police a lot at my regular security job at Meijer's and it did take the police a good ten (10) to fifteen (15) minutes to get to the hotel that night." Morgan noted that there are two different groups with the main goal being to keep the tourists coming in – the bars and the hotels – and there is a need to come to a compromise with our target audience. Morgan also noted that with a reading of sixty-five (65) decibels, it depends on where the monitoring is being done. "It might be louder upstairs at Hotel Nichols or on the street a little ways away." Morgan stressed compromise and believes the hotels should be able to tell guests that the music will be turned down at a specific time.

Jim Shek, P.O. Box A, Allegan, Michigan. Attorney represents the principals of Phoenix Street Café; Café Julia; Brix; Tello's and York's Landing. Expressed concern with what he called "the secrecy of this process" as it involves the interest holders. Shek noted that in the Planning Commission's July 10, 2014 minutes commissioners were informed there would be a hearing today "and bar owners will be encouraged to attend." Shek reviewed the Staff Report from August 7, 2014 which noted that copies of the draft ordinance have been sent to "all bar owners in the city." Shek assured that his and Mr. Ramey's clients did not receive copies of the draft ordinance in advance of this public hearing but "discovered this process only a few days ago." Shek stated that he brings that to the commission's attention, to indicate that it was probably an administrative oversight and for that reason alone, it would be appropriate to adjourn this public hearing to another public hearing when we are done." Indicated that his clients are in a commercial business district, a waterfront business district, with specific commercial uses in those districts that produce more noise and should produce more noise than a residential district, but "this proposal indicates equalization without consideration of the inherent nature of differences".

Dorothy Appleyard, 806 Wilson Street. Stated that she comes from a slightly different perspective as one who lives in a quiet neighborhood. Noted that she had thoughts of encouraging the Planning Commission to consider a zoned approach. "The city is only three

point five (3.5) square miles in circumference and it is going to be really hard to control where the sound stays; they are commercial but they can't keep the sound on their property. It travels." Appleyard knows the commercial folks want to earn some money but we want to maintain our quiet neighborhoods, too. "We give up a lot to support tourists and we deserve some consideration. Limit the sound by time as well as decibel level. There has to be some consideration for the residents here, too."

Bernard Sherburn, 532 Dyckman, the Colonial Condominiums. Stated that since January 1<sup>st</sup> he has made investments of over two million dollars (\$2M) in properties and represents two other parties. "We want this entertainment to stay just exactly as it is. It is important for people to come here; for music to be available; we have repeat customers and we look forward to them coming back." Noted the short season of two (2) to three (3) months; requested that the Planning Commission consider what this ordinance is going to do and stated that he and his other partners would like to stay here and maybe spend some more money.

Maureen Stefan, 516 Williams Street #5. Homeowner in the Watertown Building across the street from Lou's, the Idler & York's. Stated that the property owners' average age in her building is about fifty (50) to fifty-five (55) at most at this point. They are owners, not renters, and they come on weekends and enjoy the music. Requested that things be kept the same noting that they hear that music the most and "there isn't one person I know in our place that's against it. It's a tourist town; there is a short time people can make money here and enjoy your city. It hasn't been a nuisance; we knew it was a tourist town when we bought in here. We don't have a problem." Noted that people who do rent are made aware that there could be some noise on the weekend.

Mayor Bob Burr, 162 Dunkley. Has lived in South Haven thirty-five (35) years and when he first moved in there was one (1) liquor establishment, the South Haven Yacht Club. Noted that the current ordinance prohibits sound after 7:00 a.m. from going one hundred (100) feet from the source. "Could this be eliminated after 11:00 at night as one option? Do we need to have a cut off time when all music would cease? Saugatuck, Douglas, Holland and other cities up and down the lakeshore have a time when outdoor noise/music ceases." Burr noted that the problem with a decibel based system with seven (7) bars is that it is virtually impossible for our police force to monitor through the night; "as they leave one establishment the music gets turned up; one was ticketed this season." Burr would like the Planning Commission to look at whether the city should substitute the 100' rule for nighttime operations or go to a time cut-off period.

Ron Wiser, 96 Chicago Avenue. Owns nineteen (19) condos in Old Harbor Village and three (3) in Watertown plus numerous other properties around town. Saluted "the individual from Nichols that went over and turned off that band." Stated there is a lot of money represented here, with a disconnect between the bar owners and a huge residential area surrounding them. Many of those residential places were here before the bars; when the police are called there is poor response. "The police get there and the bands are playing Frank Sinatra." Stated that the guests in the front units at Watertown are constantly complaining; that people in the back do not get the noise. "We refund, we discount and people walk out." Noted these are residential units, sleeping units, for three hundred fifty dollars (\$350) plus (+) per night and the customers deserve respect. Noted there was a comment about lawsuits for passing these laws and noted that a lot of cities up and down have done it and there have been no lawsuits.

Shek requested consideration of the chair. Stated that he represents three (3) separate clients and wants to receive three (3) minutes for each client. Paull responded that the commission may consider that once everyone else has spoken.

Ann Pantalone, 777 North Shore Drive #7. Has been very happy with development of the town over the period of time they have been here. Noted that there is a short summer season and the music/noise is only two (2) nights a week for ten (10) weeks. Stated that they made a choice to come to South Haven, a resort town, and to stay in a location in town, that they were aware of other choices where it would be quiet. Stated that those in her complex are all very happy with the way things have grown and things she can do in town.

Dan Onzman, 732 Green Street. Works at Black River Tavern and they have music every weekend. "We should respect our neighbors and want to do that." Suggests that we work as a team and cooperate; if there is specific problem come to us and work it out together. In regards to the gentleman from Old Harbor Inn and the young lady from Hotel Nichols; Black River Tavern gets people who came in and decided to extend their vacation. They ask for suggestions and we recommend the Hotel Nichols and Old Harbor Inn. "We want to please everybody, but that's not always possible. Let's come together and work out a solution. We don't want to bother their guests; we want them to be happy and to stay longer and come have lunch with us."

Corey Talcott, owner Captain Lou's. Noted he bought Lou's thirteen (13) years ago, knowing he would have bands. "Sixty (60) decibels? I am speaking way over sixty (60) right now. It is so frustrating; I gave my heart and soul to this business. Changing the decibel level is like if you bought a two (2) story house and the city ripped the top story off and told you to get on with business. My customers are working class people who work all day and come out at night and want to have a good time."

Dan O'Donnell, 777 North Shore Drive. Stated he has been here twenty-five (25) years and wants to support the bar owners. Noted the need to work together and have certain expectations. Noted that both citizens and bar owners have rights; and "need to come to a solution." Noted that eighty (80) decibels is the OSHA regulation for not requiring hearing protection and that sixty (60) is very low; if there are five (5) people talking in a room the sound will be way over sixty (60) decibels.

Paull inquired whether anyone else had comments; hearing none Paull asked the commission's pleasure regarding hearing from Attorney Shek. The commission agreed to hear Mr. Shek.

Jim Shek, P.O. Box A, Allegan, Michigan. Questioned why Mr. Wisner would applaud a citizen who would unplug equipment and trespass. He stated he applauds Mr. Wisner for addressing this commission as if he has not spoken on this before. Stated that Wisner has been part of the drafting of this ordinance while Shek's clients have not been considered. Noted that Mr. Wisner purchased his units in Old Harbor Village from Shek's client, York, while York's Landing has been in operation with music; now that Mr. Wisner owns these units he has a different idea of what kind of guests he would like to have. Urged the commission to take into account Wisner's interest in this process.

Paull requested information regarding Mr. Wisser's interest and involvement in the process. Anderson noted that Mr. Wisser and Mr. Marple were interviewed at one meeting of the subcommittee. They were not members.

Wall noted, in regards to our police enforcement, it is no different than going to an Emergency Room (ER). "The guy with the heart attack is going to take precedence over the guy with stitches." Wall stated that the city has a very good police chief, who takes very seriously who he hires and what their procedures are, noting, "I'm sorry if you are inconvenienced by noise, but if it were your parents getting mugged wouldn't you want the police officer to give them precedence over a noise complaint? Our police officers work very hard and pull some very long hours and cover a lot of territory, especially during festival weekends. Please try to be understanding with our police officers, especially when it comes to noise; emergencies will take precedence over noise and they will get to you, it just may take some time."

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

Paull noted that this commission will take the information from this hearing and give it their full attention and effort.

Paull called for a five (5) minutes recess and reiterated that the subcommittee will be meeting in the coming weeks to continue to work on this issue.

After five minutes, Paull again called the meeting to order.

## **7. Unfinished Business**

### **a) Site Plan Review for new Goodwill Store, 340 73 ½ Street – final**

Anderson reviewed the process; this site plan review went to the Zoning Board of Appeals due to variances that were requested. The board of appeals approved both variances. The applicants corrected all other planning commission and staff concerns and staff is satisfied. She then noted that the architect is still working out a couple of issues with the city engineer. Anderson recommended that commissioners approve the site plan contingent on the city engineer signing off on the project before any permits are issued.

Paull noted one of the reasons there was a need for a variance; the request of a larger drop off garage than usual to facilitate the delivery of merchandise to the store. They could have made the garage narrower but it did not make sense for their purposes. Noted that when the Zoning Board of Appeals approved the variance for the front of the property, it was limited to the one part that was not in compliance, the first ten (10) to fifteen (15) feet.

Anderson explained the reasoning behind the granting of the variance.

Paull pointed out that Goodwill is making a substantial investment and contribution to the community with what they are planning.

Motion by Heinig, second by Wall to approve the site plan contingent on no permits being issued until city engineer feels that all issues have been corrected to his satisfaction.

All in favor. Motion carried.

**b) Steve Schlack PUD amendment (Riverwatch Condos)**

Anderson said Schlack came in last month regarding his two phase condominium development; the second phase has not been developed. He proposed to take out 16,000 square feet for a single family residence and the balance for parking structures and open space. The applicant since withdrew the single family request and the parking structure plan. He is now asking to just remove Phase Two from the project to make it available for sale. The previous public hearing on a condo amendment did not include removing entirely Phase Two. Zoning Section 1303-9 defines minor and major amendments. This request is considered a major amendment and she asks that the Planning Commission hold a public hearing in September to address this request.

Steve Schlack, developer of River Watch Condo. Noted that there have been many changes before this board regarding the ordinance and other proposed changes. Asked for the commission to simply clarify. Schlack feels it is his right as a developer to remove this phase without any other permission; has everything in order. The land split application is filled out with the required documentation, the master deed amendment, the legal descriptions, etc. Schlack noted that at the close of the last meeting it was voted to continue the public hearing to the next meeting he was at . . . "so here I am."

Paull asked Schlack's pleasure. Schlack stated he would like to get the commission's input on this; it is an ongoing process that seems to change monthly.

The Commission discussed opening, then closing the carried over public hearing, then decide what to do.

Motion by Wall to open the public hearing from the issue of the July 10, 2014 meeting. Second by Peterson.

All in favor. Motion carried.

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

All in favor. Motion carried.

Paul noted that the previous request to split the property for a single family home and garages for Phase One owners "has been withdrawn and the new issue before us requires that we set a public hearing".

Paull directed Anderson to arrange the public hearing.

Schlack questioned, regarding the ordinance, the current zoning is for fifty (50) residential units, "Does the Planned Unit Development (PUD) override the current zoning? If I remove the second phase, what is the zoning?" Anderson stated the zoning will still be the B-3 zoning that it is in right now.

**c) Proposed B-3 amendment changes**

Anderson noted we have been working on a provision to allow single family homes in the B-3 zone. At the last meeting some proposed amendments from City Council were discussed. The commission had some minor issues with those amendments and decided not to move forward until the matter could be studied further. Since then there was a subcommittee meeting with a conference call with city attorney in which they went over the concerns. The attorney made some minor modifications; after those modifications were made Anderson reviewed them and asked the attorney if he felt another public hearing was required. The attorney said the changes were minor and could be acted on at the next meeting without further public hearings.

Anderson explained that in the B-3 zone, new lots could not be created in order to put a single family home on a lot. After Jan 1, 2014 no lot split could be permitted for the purpose of constructing a single family home. We added that the inability to use the lot for another use in the zoning district could not be a self-created issue. Since there was no time limit that was wide open and could have been a split from thirty or forty years ago. The attorney added that the inability to use the lot could not be the result of a lot split after January 1, 2014. Anything done before that would not be affected by the amendment. Anderson recommends forwarding to City Council with a recommendation to adopt.

Steve Schlack asked why this is being done. Paull said the amendments originally proposed by City Council were too restrictive and the Planning Commission has modified them and placed controlling dates on what was originally drafted.

Schlack stated that feels picked on; does not understand the inclusion of the January 1, 2014 date and asked why it has to be there. "What about accessibility? I know you have attorneys looking at these matters, but you need to look at other neighbor's properties, not just mine."

Paull responded that "frankly we weren't looking at any particular lots but rather to allow B-3 property owners the ability to build a house if they can't use the property for any other permitted B-3 use."

Wall questioned whether part of the problem was that the inability to use a property for something other than a commercial use was that it was not to be self-created. Paull commented, "We wanted to address a planning issue; if City Council wants to turn it into politics go ahead, but not this commission." This started out, according to Paull, as slight amendments to make it possible for lots too small for a B-3 use to be able to have a house built.

Peterson asked, regarding the last meeting which ended going into a subcommittee, didn't it end up being about the economic benefit? Paull said he didn't think that was ever a question. Anderson noted that the biggest concern of the Planning Commission and the subcommittee was the wording about self-created problems; it was felt to be vague and unreasonable as there was no time limitation provided; we worked with the attorney to come up with a date and it was decided to go with January 1, 2014. If a lot was recorded before January 1, 2014 that's fine. Likewise, If the lot was split twenty (20) years ago and now is too small for a B-3 business use that would also not be taken into consideration under this amendment.

Paull noted that the commission is trying to make using the lots easier not harder.

Motion by Frost to approve Resolution 2014–0002, approving and recommending City Council approval of a text amendment to Ordinance Section 901-17. Second by Miles.

All in favor. Motion carried.

#### **8. Commissioner Comments**

Wall: It's Blueberry Fest weekend – everybody go eat blueberry pie.

Paull asked Anderson whether those agendas were mailed out to the bar owners to which Anderson responded, “No, I hand delivered them.”

There were no other comments.

#### **9. Adjourn**

Motion by Heinig, second by Stimson to adjourn at 8:20 p.m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom  
Recording Secretary