

Planning Commission

Regular Meeting Minutes Thursday, June 5, 2014 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: Miles, Peterson, Smith, Stimson, Wall, Webb, Heinig
Absent: Frost, Paull

Motion by Wall, second by Smith excuse Paull and Frost.

All in favor. Motion carried.

3. Approval of Agenda

Heinig, as Chair, noted that Mr. Tom Brussee has withdrawn his request for a special use permit at 38 North Shore Drive. There have also been additions to the agenda: the election of officers and a review of progress by the sub-committee on the draft noise ordinance.

Motion by Smith, second by Miles to approve the June 6, 2014 regular meeting agenda without the 38 North Shore Drive request and with the addition of the election of officers and a review of progress by the sub-committee on the draft noise ordinance.

All in favor. Motion carried.

4. Approval of Minutes – May 1, 2014

Motion by Wall, second by Peterson to approve the May 1, 2014 regular meeting minutes as written.

All in favor. Motion carried.

Election of officers.

Heinig opened the election of officers.

Nomination by Wall for Dave Paull as Chair. Second by Smith.

Motion by Wall, second by Smith to close the nominations for Chair.

All in favor. Motion carried.

Heinig called the vote for Dave Paull as chairman.

All in favor. Motion carried.

Nomination for Co-chair was opened.

Motion by Wall to nominate Larry Heinig for Co-chair. Second by Miles.

Motion by Wall, second by Smith to close the nominations.

Heinig called the vote.

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

- a. Steve Schlack is seeking preliminary approval to amend Phase 2 of Riverwatch Condominium development to eliminate the proposed 25 unit residential building and add a fourteen-unit (14) parking garage and additional green space for the existing units. The development is located at 815 E. Wells Street.**

Anderson noted that amending the condominium development plan has to go through the same process as approving a Planned Unit Development (PUD); there will need to be an introduction; then a preliminary review and a public hearing at the next meeting. The final approval will rest with the city council.

Anderson explained that since there were several things missing from the application, this request will be treated as a preliminary review. Missing from this application include: legal descriptions; access drives; utility hookups, proposed landscaping and ground cover.

Anderson noted that we will open the public hearing for the special use, and then continue the public hearing for the next meeting. Anderson suggested that the commission first consider the amendment, which fits the category of the preliminary hearing. The public hearing on the special use permit for the lot split will follow.

Heinig asked if the applicant or a representative of the applicant were present.

Steve Schlack, 815 East Wells, Riverwatch Condominiums. Noted that the outlined goal for him tonight is to see if we have a consensus whether this is something the Planning Commission would approve, before he gets into the more costly aspects, and to answer any questions the board may have.

Smith asked for clarity on exactly where the proposed garages and single family home would be going; he found the drawings in the packet were hard to understand. Schlack noted he has a better preliminary site plan, which he passed to the Planning Commission. Schlack noted that while it was slow going, the Riverwatch Phase One is now sold out; his main goal with this request is to provide more storage for residents. The changes to the Phase Two portion will accommodate that need.

Heinig asked the commission if they want to do the public hearing on the proposed lot split before voting on this portion of the application. Heinig then asked Anderson her view. Anderson noted that if you approve this you are de facto approving the lot split. Anderson feels it is important at this point to move on to part B of the request and then come back to part A.

Smith asked if this request is atypical. Anderson said no, there are usually things that are missing from a preliminary review.

Heinig suggested, upon no further comment, proceeding to Item B.

- b. Steve Schlack is also seeking a special use permit to split off a portion of the Phase 2 parcel for the development of a single family home. The development is located at 815 East Wells Street.

Anderson stated that Schlack is proposing to remove approximately sixteen thousand (16,000') square feet from the condominium plan and use that portion to develop a single family home outside of the condominium development. That request is for a special use permit to construct the single family home in the B-3 zone. Anderson explained that the commission needs to have a public hearing on the request.

Motion by Wall, second by Smith to open the public hearing.

All in favor. Motion carried.

Heinig asked if there are people who would like to speak.

Mark Gale, Riverwatch Condominiums. Gale stated that he previously owned a unit in the South Haven Marina Townhomes. There was also a vacant lot and eventually put up the garages; it was the best thing he ever did. This request seems similar to that and this is an asset; the previous site was an overgrown vacant lot used for overflow parking. This would be an asset to the city of South Haven.

Anderson noted if the Planning Commission feels they are going to go ahead with the split her suggestion would be to not take official action tonight; carry it over. You may have discussion, ask the applicant questions but do not close the hearing; move to continue it until the matter of the overall amendment is decided.

Motion by Wall, second by Peterson to continue the public hearing until the next time the matter is before them.

All in favor. Motion carried.

Heinig called for comments and questions from commissioners.

Smith asked whether if this portion of the condominium plan is split off, it be out of the condominium. Anderson responded that is correct; the proposed amendment is two-fold: 1.) replace the approved Phase 2 condominium units with garage/storage space and open space, and 2.) remove another portion entirely for the home.

Wall asked if these changes affect the PUD. Anderson said it is actually a condominium project and a major amendment still has to go through the PUD process. That process requires that a public hearing be held, after which City Council has the final say.

Schlack stated that just like with the amendment request, he is looking for feedback and to get a feeling for which way the board is heading. Schlack understands that a single-family home can be kind of contentious and bring public attention. Schlack pointed out that the only way to gain access to the Phase 2 portion of the property is over a residential parking lot. Since the property is zoned B-3 he cannot put a business there. Therefore Schlack is asking for the special use permit for the single family home.

Heinig noted that he wanted to comment on the standards; under Standard H, it states that “the special land use shall conform with all standards in this ordinance and other applicable city ordinances” and references Zoning Ordinance Section 901-17 which states, “in addition to the standards found in Section 1502 of this ordinance, the applicant shall demonstrate that the conversion is of substantial benefit to the City of South Haven and the waterfront business community.” Heinig does not believe that the application demonstrates substantial benefit to the city or the waterfront community.

Wall commented, noting that she is not being argumentative, that the property cannot be used for business because the access is over a residential parking lot. Anderson pointed out that there was a case in the last year where an applicant wanted to do something similar, the applicant went before the Zoning Board of Appeals (ZBA) which denied the request, said the ordinance was clear. The applicant went to court and the court upheld the zoning board’s decision. Anderson

added that she mentioned this to Mr. Schlack and that she did not see the board of appeals approving a similar request, especially in light of the court decision.

Wall asked if he could do anything with it if he cannot have a business, other than just a vacant lot. Wall asked Heinig's thoughts on this. Heinig replied that he already has a permitted use approved for the property in the way of a condominium project.

Rob Keorkunian, 815 Wells, Riverwatch Condos: Trying to understand Heinig's comment of there being no benefit. "What would be of no benefit? There are less taxes being paid than if there were garages and a single family home. Stated that resident do not want the Phase 2 area to be used for commercial use; he understands that the regulations will not permit that. "Since that portion of property is land-locked, I can't understand Heinig's comment."

Heinig explained that that portion of the property is not isolated or totally unusable; it is part of the condominium development at this time. Smith noted that verbiage to explain this is right in the ordinance. Smith added that there is a lot of land and property down there on the waterfront that the city and the commission do not want to see turn into an area of just single family homes.

Wall said the B-3, Waterfront Business zone, was set up with the idea to keep it available for businesses that serve the marina/boating community and for green spaces so the public can enjoy the waterfront. Wall noted this is a community; it is not just about one residence.

After further back and forth between the board and Keorkunian, Anderson interjected with a reminder that the current discussion was occurring outside of a public hearing. If it is to continue, the commission should reopen the public hearing since it was only continued, not closed.

Heinig noted that Keorkunian can talk to the commissioners or Anderson after the meeting.

Wall said the Planning Commission needs more information.

After a question from Smith, who asked if the commission is considering the garages, too, Anderson responded that we are looking at all of it; removing property, the development of the single family home, and building the garages. Anderson pointed out that the commission can withhold preliminary approval; giving preliminary approval allows the applicant to know he can move forward. If the commissioners are not comfortable, Anderson suggests tabling the request.

Motion by Miles to wait to make a decision until the next meeting, until all the information is available and the public hearing is held on the condominium amendment. Second by Wall.

All in favor. Motion carried.

7. Other Business – Review of Draft Noise Ordinance

Webb noted the sub-committee is in the process of making changes to their draft. Heinig explained that some of the changes that came to the sub-committee's attention include the 11:00 p.m. shut off of music, and another segment where they would reduce the decibels. Anderson said from 1:30 a.m. to 7:00 a.m. the committee is advising requiring ambient noise only. Not yelling, not screaming, not loud music. Ambient noise is generally at about forty-five (45) to fifty (50) decibels, according to Anderson, who noted that the city code did not have that decibel level requirement before, but was allowing noise overnight at the seventy (70) to seventy-five (75) decibel range.

The ordinance has been very complicated and difficult to enforce. Anderson noted that the sub-committee is trying to make this ordinance a whole lot easier to understand and enforce.

Heinig commented that Police Chief Martin and the Deputy Chief have been extremely cooperative and helpful to the committee, regarding things we could do to make things easier. He also told the commission about the sound testing done at Listiak Auditorium to help the committee understand and hear the difference in different decibel levels of a variety of sounds. Chief Martin sent a representative to that meeting who was very helpful. Heinig said the head of the housing commission, the mayor and people at Old Harbor Village have been equally helpful. Heinig expressed the need to make the ordinance very solid, fair and easy for everyone to understand including police, bar owners and residents.

Webb noted that the committee was operating under the assumption of the police enforcing ninety (90) and seventy-five (75) decibels, which is what our original draft was based on; then it was realized that commercial abutting up to residential after 11:00 at night should be enforced at sixty (60) decibels. We are trying to go with 60 decibels at 11:00 at night and then down to ambient after 1:30 a.m.

Wall commented that as a council member she gets quite a few calls on the noise ordinance. Wall wanted to point out, "When you bought where you are living, did you not notice there was a bar next door?"

Anderson informed that the committee researched lakeshore and resort community noise ordinances. Allowing only ambient noise after the bar closes was fairly common. "That is good; at that point the city should be quieting down. It's a gradual progression of noise."

Heinig noted that the whole commission will see the draft at the next meeting.

Wall had a question about the penalties to which Anderson responded we are looking at making those stiffer. Discussion ensued around fines going exponentially higher for repeat offenses. Wall suggested we need to make sure that the bar owners understand that we are serious because this has been a problem for years; \$50 - \$100 is nothing to bar owners who can make that in less than an hour. Wall strongly suggested that the fine keeps doubling until the bar owners understand the rules and know this is how it goes. "If we hit them hard enough with fines they will learn and they will play nice," Wall commented. Wall will be bringing this strong suggestion to council because every year

the city goes through this and she strongly suggests the bar owners be hit with financial incentives.

Anderson commented on the B-3 amendment; city council has been reviewing the amendment the planning commission made and is thinking some of it may not be clear enough. Council has asked for clarification to be added. Anderson worked with the city attorney to develop clearer provisions. Anderson noted that the Ordinance specifically states that one family detached dwellings a.) Must show substantial benefit; b.) No other permitted use could be developed on the lot; c.) Applicant's inability to use the lot for another permitted use is not a self-created situation and, d.) Special use permits shall not be granted for any lot split after January 2014. This would eliminate creating new lots in that zone. Additionally, any site plan must satisfy the special use standards of the ordinance. The new parts are that the need for a special use permit cannot be self-created and lots cannot be split solely to build a single family home. This is not in the ordinance now but is in the proposed amendments.

Motion by Wall to schedule a public hearing on the B-3 amendment. Second by Smith.

All in favor. Motion carried.

8. Commissioner Comments

Wall: Thanks for letting me rant; I feel much better and my husband will be happy! Don't forget this weekend is Cruising for Kylie. Lots of classic cars and benefits cystic fibrosis; it's a wonderful car show and Kylie is a local girl who has cystic fibrosis.

Heinig: Thanks for your patience as I chaired the meeting tonight.

There were no other comments.

9. Adjourn

Motion by Wall, second by Smith to adjourn at 7:48 p. m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary