

## HOLLAND CHARTER TOWNSHIP PLANNING COMMISSION

Regular Meeting  
January 8, 2019

Present: Vice-Chairman/Secretary Jack Vander Meulen, Members Ken Bosma, Dennis Gebben, Randy Kortering, Ed Zylstra, and Norm Nykamp. Also, present were Community Development Director John Said, Assistant Community Development Director Corey Broersma and Recording Secretary Sheri Thomassen.

Absent: Chairman Marion Hoeve

Motion to approve the minutes from the regular meeting of December 4, 2018, was made by Mr. Bosma, supported by Mr. Zylstra. All in favor. Motion carried.

Vice-Chairman Vander Meulen explained the Public Hearing process to the audience.

Vice-Chairman Vander Meulen opened the Public Hearing for consideration of a Comprehensive Plan Amendment consisting of a change to the Future Land Use Map submitted by Mark Tomasik on behalf of KAL Properties LLC for land addressed as 12671 and 12685 James Street, described more specifically as Parcel Numbers 70-16-16-300-016 and -012 respectively.

Mark Tomasik was present to speak to this request and summarized the proposed amendment. Reed's Tire property lines are flanked by C-2 to the east and R-1 to the west. The stream, woods and lowlands make a natural division between commercial and residential zones, and the proposed plan amendment would allow future development of the subject parcels, due to their depth and location.

Vice-Chairman Vander Meulen shared a brief history of the proposed amendment. Plan Amendment Considerations and Staff Comments were reviewed.

Audience comments - none.

Motion to close the public hearing made by Mr. Bosma, supported by Mr. Nykamp. All in favor. Motion carried.

Motion to recommend approval of the Amendment to the Master Plan to the Board of Trustees, as presented to the public on January 8, 2019, based upon the Planning Commission's findings of the applicable factors for review of Plan Amendment requests, made by Mr. Nykamp, supported by Mr. Zylstra. All in favor. Motion carried.

Vice-Chairman Vander Meulen opened the Public Hearing for consideration of a proposed text amendment to the Prohibition of Recreational Marijuana Ordinance, with an addition of Section 8.18 to Article 8.

The proposed text (shown below) is generally described as an amendment to Article 8 – General Provisions, with addition of a new section (Section 8.18) - to prohibit recreational marihuana businesses from operating in any location in the Township.

### Section 8.18 Recreational Marihuana Establishments

Marihuana establishments, as authorized by and defined in the Michigan Regulation and Taxation of Marihuana Act (the “Act”), are prohibited in all Zoning Districts, and shall not be permitted as home occupations under Section 9.13 of this Ordinance.

No use that constitutes or purports to be a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter or any other type of marihuana related business authorized by the Act, that was engaged in prior to the enactment of this Ordinance or prior to the addition of this Section to the Ordinance, shall be deemed to have been a legally established use under the provisions of this Ordinance; that use shall not be entitled to claim legal nonconforming status.

Violations of this Section are subject to the violations and penalties pursuant to Article 18 of this Ordinance and may be abated as nuisances.

The Township is pursuing this text amendment in response to the State referendum approval allowing for recreational marihuana in Michigan, based on information provided by the Township Attorney. The proposed text amendment, along with an amendment to the Township’s Municipal Code of Ordinances already approved by the Township Board, provide the necessary legal steps for the Township to opt out of this new State law.

Motion to close the public hearing made by Mr. Vander Meulen, supported by Mr. Nykamp. All in favor. Motion carried.

Motion to recommend approval of the Text Amendment to the Zoning Ordinance to the Board of Trustees, based upon the Planning Commission’s findings of the applicable factors for review of Zoning Ordinance Text Amendment made by Mr. Zylstra, supported by Mr. Nykamp. All in favor. Motion carried.

### Public Comment

Mark Kaindl (621 Lawn Ave.), owner of a short-term rental (STR) property on Lake Macatawa, purchased a part-time vacation home 14 years ago and would like to continue STR practice. Mr. Kaindl added that the language and advice in the Staff Report was misleading, and the permitting process is confusing. He met with Staff in August or September and realized they didn’t have an avenue for STRs. Staff suggested a proposed amendment would be needed, so Mr. Kaindl hired attorney familiar with the process and got a group of property owners together to lower the cost of processing an amendment. Mr. Kaindl indicated that their attorney told him that it’s

unusual that the Township would not write the proposed language with the help of the Township attorney. He added that there has been a lack of public comment opportunity in regard to his property and other STRs. In his opinion, the process that the Township is following on their own without traditional legal advice leaves them at a disadvantage. He asked for the opportunity for additional public comments and disagrees with comments from Staff in their report. He asked that there be an opportunity for rebuttal of Staff's comments, at the very least.

Ben VanderWoude, BVW Properties, asked that staff consider continuing the STR conversation further and agrees with everything Mr. Kaindl said. Mr. VanderWoude added that realistically most of these STR properties have been operating for a number of years, and that STRs are not a new concept, but are now being enforced. He asked that the Township not speculate based on what other communities are saying.

Diane Hayes indicated that neighbors love her STR and find it interesting, and enjoy meeting many people from many other places. She added that she keeps everything in perfect condition and could go back to long-term rental, but that would be a negative thing for the neighborhood. Ms. Hayes has had no complaints with her STR.

Steve Wasiura (603 Howard Ave.) said that the past couple months dealing with the STR issue have been very difficult, hard on him and his family, and that he will have to sell his house if they can't continue as an STR. He asked how it's better for his house to sit empty when he's away for 5 months of the year. Mr. Wasiura has had no complaints and is hoping for a common-sense solution to protect all property owners.

Tracy Barnett (113 S. Division), in reference to STRs, added that when reading through the Staff Report there are concerns that need to be addressed and that it seemed very negative, like all renters are hooligans. They are not, they are us. Bad behavior is a human problem, not an STR problem. STRs are families and people like us. Please consider this.

Dave Barnett (113 S. Division) added that if people are looking for a place to rent and it's not where they want it, they'll rent in the next town over and suggested that STRs are an economic benefit.

#### Other Business

12659 Riley St. - Restaurant with Drive-thru (tabled 12/4/18). No further information is available at this time; the application remains tabled.

Proposed amendments to the text generally described as amendments to allow short-term rental of residential dwellings in Residential Districts (tabled 12/4/18).

Mr. Vander Meulen commented that we've heard a number of people on both sides of this issue, and that we've heard tonight that it's been a wonderful thing for many, however some neighbors disagree (heard at Public Hearing on 12/4/18) and feel that

there needs to be more control. The Planning Commission asked Staff to do some investigation following last month's meeting. In response, Staff reached out to as many potential resources as they could. Survey results were reviewed and are shown below:

Inquiries sent via email to an informal West Michigan Zoning Administrators group, the Ottawa County municipal group, and to the Michigan Townships Association. This provided an opportunity for communities in this region – and statewide – to respond. Responses were received from individuals responsible for 27 local communities (townships, cities, and villages).

21 of the communities (78%) do not allow STRs; 6 of the communities (22%) allow them.

For locations where STRs are allowed, the following additional info. is provided:

Program duration has been anywhere from 10 years (since 2008) to less than a year (2018 approval of STRs).

Two communities require rental inspections and certification, similar to rental property inspections.

Three communities have an annual registration requirement specifically for STRs.

Four communities limit their location to residential districts.

Two communities require STRs to obtain special uses, while the other four allow them as a permitted use.

Registration fees range widely, but generally do not cover administrative time.

One community has a minimum 500-foot separation between STRs.

Parking requirements vary; dwelling capacity, lot size, or flat amounts are all used.

All six communities where STRs are permitted have received complaints concerning STR guests; these are typically for noise and parking.

Two of the six communities confirmed that they have a mechanism to revoke licenses.

Of the 6 respondents that allow them, there are a variety of ways they deal with STRs.

Staff has spent much time on this and suggests a transient-type residential use (STR) is a commercial use, not a residential use. Our Zoning Ordinance defines residential areas as having a non-transient character. STRs by definition are considered a commercial use.

Questions and comments from the Commissioners followed:

In reference to the non-transient character, residential vs. commercial, Mr. Gebben commented that we have a very strong pillar of land use planning and valuable residential districts, adding that ideally, we want homeowners, but we have renters sprinkled throughout. The long-term renter is making those homes a commercial enterprise. So, is long-term okay and STR isn't? Staff clarified that its understanding of the code is that a long-term renter's intent is it's their primary residence, where they work, go to school, register to vote, etc. STRs have interval occupancy, their character

(length of time and purpose) is a different orientation in that they are a destination for a week or long weekend.

Mr. Kortering asked what constitutes a long-term rental and what infrastructure is in place to monitor/assist in LTR today. Staff clarified that it typically requires a one-year lease. Staff clarified that the Township has certification and monitoring infrastructure in place, along with inspection schedules, and that any fees are typically paid by the property owner to cover some of the administration costs to manage rental in the Township.

Staff mentioned a residential vs. commercial court case in 2016, where the Michigan Court of Appeals ruled that STRs did constitute commercial use of property (based on a 1999 case).

Mr. Gebben asked about someone that builds a vacation house on a lake and lives in it temporarily, using it for a vacation (transient) home as long as he owns it, what is that considered? Staff replied that if the owner rents it out for a period it becomes a commercial property. Mr. Gebben referenced a new STR permit program in South Haven, and read an email from a realtor regarding support of STRs. He feels we can learn something from them. Mr. Vander Meulen added that so many people are doing STRs there that they need to do permit program. Mr. Gebben added that the City of South Haven's website includes an invitation to register as STR owner and thinks that we look a little bit more into what others are doing. He wonders what prompted South Haven to do this in the first place? Is it out of control?

Staff read through the list of townships that allow STRs and those that don't and added that it isn't a sure thing that one more township will make a difference in Staff's findings. Staff inquired as to what and how much additional information we are looking for, and how might that provide something different than the survey results?

Mr. Bosma asked what impact has Staff noticed as far as complaints and other issues? Staff responded that the actual number of complaints has not been counted. Mr. Kortering asked if the Township is an avenue of complaint. Staff replied that the Township is not structured to react to noise complaints and that behavioral/human issues are dealt with by the sheriff's department. Mr. Bosma added that with the type of complaints that can occur and the way we operate right now, he sees us moving toward special uses and other requirements listed in the Staff Report (below). He'd like property owners to maintain their investment in the community and wonders if this is a real issue. Where are those on the other side? There was one person who spoke in opposition at last month's Public Hearing. There was some agreement that there may be an awareness issue even with required noticing.

Mr. Kortering asked if a hotel is considered a transient business? Is there a tax burden? Staff responded that hotels collect fees and pay taxes to the Township, including a per room fee for tourism. The Township doesn't receive tax dollars as the

local municipality for STRs. Fees could be assessed but can be difficult to collect. There are enforcement challenges any time there are fees imposed.

Mr. Nykamp indicated that behavioral issues started the STR discussion in South Haven. Owners added rooms, blocked lakefront views, and appeared to be revenue-driven. He sees a huge difference between renting an entire home in a residential zone and renting a room as a Bed and Breakfast. As a homeowner there is a reasonable expectation that you won't have different neighbors every weekend which is not always pleasant. He feels we need to protect the lion's share of the residents.

Mr. Zylstra commented that there are 8 individuals present in favor of STRs and that the job of the Planning Commission is to protect those people, as well, that aren't here. He added that when looking for a house, you also look at the neighborhood itself, and if a buyer knew the home next door was an STR, they would back out; the property is not as sellable. Mr. VanderMeulen replied that he doesn't know that's true and added that a House Bill limiting Townships control of STRs died before the full debate. He continued, that poor reviews mean less rentals and that property owners want to keep property up for the best reviews resulting in more rentals.

Mr. Kortering asked that we think about people with a negative view. A house (STR) may have gotten great reviews but not from the neighbor's view. He added that no matter how we proceed, we need to be clearer.

Staff mentioned an accessory building on a property that has been turned into an STR. Staff looked at some of the reviews online, and it got great reviews. However, the Township is pursuing enforcement due to many code violations, which adds another layer to the discussion. Mr. Kortering added that we need to make sure STR properties are safe and up to code (plumbing, heating and electrical) like other rentals in the Township.

Vice-Chairman VanderMeulen suggested a straw poll be taken. He is open to STRs with limits on number, inspection requirements, taxes, fees, and how we deal with complaints about noise and parking, should they become issues.

Mr. Kortering suggested that reality is that it'll be happening and wants to protect those not doing it. He added that it's not fair that STRs aren't paying taxes, and that there needs to be a permitting process to better manage and control STRs.

Mr. Bosma agrees that inspections need to be done and is not ready to approve text amendment language tonight, acknowledging the process of working through it as a group and community.

Staff will check in with the Township attorney on how to proceed.

Mr. Nykamp is worried about the 99% not doing STRs and feels we have an obligation to protect the majority and is opposed to the whole idea.

Mr. Zylstra agrees and is not in support of STRs.

Mr. Gebben is in favor of taking an extended look at it, and feels it has some legitimacy given trends and today's society. It may be a multi-phase endeavor. He would deny the amendment as presented with stipulation that we may craft an amendment ourselves, then collect info needed to put ordinance together to meet the needs of Township. He continued with reference to the City of South Haven and its restrictions on STRs - they have things in there that would limit the party environment with fines and punishment. All those things need to be considered. He added that STR administration can't be paid for just with taxes, that there has to be fee revenue produced to cover costs. In summary he added that maybe it won't work, maybe it will, and there's hopefully a way to do this where everybody wins.

Staff responded that there can be an evolution to this particular request, to keep it open if the Planning Commission agrees to develop language. Does it have enough structure as is? Staff thinks not, and that it doesn't satisfy the concerns of the Planning Commission and community.

Staff added that with special meetings similar to those held for the recent zoning ordinance re-write there would be opportunity for those concerned to provide public comment for Staff and Commissioners and that the public may also contact Staff during office hours with their thoughts and concerns. Mr. Kortering reiterated that we protect the 99% with controls put in place, and that it needs to be self-funded.

Motion to recommend denial of the Text Amendment to the Zoning Ordinance to the Board of Trustees based upon the Planning Commission's findings of the applicable factors for review of Zoning Ordinance Text Amendment requests made by Mr. Kortering, supported by Mr. Gebben. All in favor. Motion carried.

Staff suggested we treat this request similar to the zoning ordinance re-write, hold work sessions open to the public for input. Mr. Vander Meulen agreed that discussion be continued and that all bullet-points in Staff's report be addressed.

Motion to recommend Staff provide a written summary to the Board of Trustees to determine whether or not the Planning Commission and Staff should move ahead with drafting a short-term rental ordinance and accompanying regulations. All in favor. Motion carried.

Staff agreed to speak with the Township Manager and Supervisor. Mr. Wasiura, applicant, will be the contact person and will work with Planning Commission and Staff to amend the application.

12830 Quincy St. - Conceptual review of potential gas station/convenience store (SW corner Quincy and US-31).

Mike Baker, Nederveld, with Don Ziemke, Great Lakes Convenience were present to introduce the concept of the parcel, currently zoned Industrial. Proposed use is a service station which requires C-2 zoning. Mr. Baker suggested that the location is right, and the thought is to have a gas island for auto fueling and another for diesel fueling for trucks, a use that lends to the industrial uses in the area with additional access to Donnelly Drive. There would be food service there as well to support people and traffic in the industrial park. Brenner's Oil sees the need for diesel fueling in this area. Mr. Baker would like to do a straight re-zone and needs direction on how to get there.

Staff added that there are a lot of steps that need to be taken before a rezoning. Staff asked if the Commissioners are receptive to change land use designation and zoning. How might this affect the surrounding industrial? Since corner lots are typically considered commercial and there is no room for creep, the Planning Commission is willing to entertain it.

Staff suggested to Mr. Baker that the first step is for him to submit a letter requesting an amendment to the future land use plan and map.

3254 100th - Flagstick PUD Amendment Determination for accessory building to exceed 16' max height

Accessory building is taller than PUD allows (21'-10"). Existing neighbor's building has roof height of 22'-6", approved in prior PUD amendment. Staff is comfortable with it but is looking for direction to continue as minor (administrative) amendment.

Marianne Hunderman, a neighbor with an existing oversized (approved) accessory building, gave some history of the request and explained recent approvals with the building height suddenly becoming an issue recently. Mrs. Hunderman added that they (and their neighbors) are not setting a precedent.

Mr. Zylstra would recommend a minor PUD amendment.

What are the ramifications if treated as a minor amendment? Not setting a precedent since the amendment would be for this specific PUD, in Staff's opinion. Staff referred to Section 16.9.B. Other Minor Changes - is it consistent with existing PUD? Yes. These are the only two lots in the PUD allowed to have an oversized accessory building.

Mr. Gebben suggested writing it up as a minor change if it's aesthetically pleasing and would like to see it back before the Planning Commission for final approval.

How many neighbors complained previously? Mrs. Hunderman replied that no one has complained.

Commissioners agreed to have Staff proceed with a minor PUD amendment.

The next meeting is planned for February 5, 2019 at 7:00 p.m.

The meeting adjourned at 9:04 pm.

Respectfully submitted,

Sheri Thomassen  
Recording Secretary