

# Harbor Commission

## Regular Meeting Minutes

Tuesday, January 19, 2016, 5:30 p.m.  
Council Chambers, South Haven City Hall



City of South Haven

Please note that the meeting will be held in South Haven City Hall, Council Chambers.

### 1. Call to Order

Present: Greg Sullivan, Cathy Pyle, Steve Schlack, Tim Stegeman, Mary Stephens  
Absent: Tim Reineck

### 2. Approval of Agenda

Motion by Stegeman, second by Schlack to approve the January 19, 2106 regular meeting agenda as presented.

All in favor. Motion carried.

### 3. Approval of Minutes: November 17, 2015 Regular Meeting

Motion by Stegeman, second by Sullivan to approve the November 17, 2016 regular meeting minutes as written.

All in favor. Motion carried.

### 4. Interested Citizens in the Audience Will Be Heard on Items Not on the Agenda

There were none.

### 5. Selection of Chairperson

Motion by Sullivan to nominate Stephens for the position of chair. Second by Pyle.

Acceptance by Stephens contingent on the vote.

All in favor. Motion carried.

Motion by Pyle, second by Schlack for Stegeman for vice-chair.

All in favor Motion carried.

## **6. Financial Report**

Acting Harbormaster Kate Hosier reviewed the Financial Report.

Stephens questioned this year's seasonal dock revenue in December since the last five Decembers have some revenue from seasonal dock revenue.

Hosier said we may have received seasonal deposits in November and none in December. Hosier said there are several docks open at Black River Park. Hosier will look into the December number for seasonal dock revenue.

## **7. 2016 Meeting Dates Resolution**

Hosier found no holidays in conflict with the usual third Tuesday of the month and asked if commissioners were aware of any conflicts with their schedules.

Motion by Stegeman, second by Schlack to adopt Resolution #2016-01, a resolution setting the 2016 meeting dates for the Harbor Commission.

All in favor. Motion carried.

## **8. Kal-Haven Marina**

Hosier explained she has added an attorney's review and a map which the GIS Tech drew up showing the harbor lines since the original agenda packet was compiled, noting that the developer, David Nixon, does have a Department of Environmental Quality (DEQ) permit which factors in.

Stegeman suggested reviewing the site plan submittal requirements.

Item 1A. Stephens asked for the width of the river. Schlack said on the width of the river is included on the dock plans provided. Schlack questioned whether we need to vote on the items as to whether they were provided. Stegeman explained that consensus of the commissioners would suffice.

Commissioners agreed that the width of river was provided as was 1B. A cross-section of the river bottom.

1C. Harbor lines. Hosier explained that the GIS tech noted that there will be distortions, the docks shown over the harbor lines are within an acceptable margin of error. Sullivan asked if it is reasonable to assume the two red lines are ninety feet apart, noting he was looking at the last slip on each end. Hosier repeated that the GIS Tech did say that the docks are within the margin of error.

Stephens wondered if we should ask for an updated image because the Harbor Commission is tasked with verifying the harbor lines. Schlack reminded that we are determining whether the harbor lines are provided in this application or not. Stephens

said the submittal requirement is the location of the Harbor lines and the image provided makes it impossible to verify the location of the harbor lines.

Hosier said the margin of error comes in with two maps overlaid, and the grainy 1989 map might not be able to be made any clearer. Stegeman said what is shown is within reason; that if docks are built beyond the harbor lines they would have to be demolished. Schlack said there was a survey and questioned whether the survey actually shows that there is ninety feet between docks on the other side of the river and the docks that are being proposed. Hosier wondered if when the DEQ did the permit they did harbor lines. Zoning Administrator Linda Anderson said on page twenty-six (26) the DEQ does show the harbor lines and the width of the river between the docks. Schlack said the purpose of the ninety feet is to have ninety feet of navigable waterway between the docks to which Hosier responded that is correct.

Hosier suggested the commission review the enlarged version of the site plan; Anderson also brought up the site plans which the applicant brought with him both of which indicated the harbor lines and the ninety feet. The commission agreed that the harbor lines were provided.

1D. Stegeman said the project property lines are indicated on the survey; the commissioners agreed.

1E. Length, width, location and type of construction of existing docks, piers, slips and seawalls is provided as is 1F per consensus of the commissioners.

1F. Length, width, location and type of construction of the proposed development and 1G. Current development of the site on the opposing sides of the Black River. Stegeman believes that both are provided and all were in agreement.

2A. Schlack noted that the soundings varied about three (3) to four (4) feet. The commissioners agreed the soundings are provided.

2B. Dredge spoils. Sullivan asked if any dredging is proposed to be done. Nixon stated there is no dredging proposed or riprap to be placed on the site. Nixon explained, "There are oak tag elders and we have three (3) of the largest in the State of Michigan; they only grow in clay, they are rare, the birds migrating in the south, warblers and finches, congregate in them. That's why we moved the head dock away from the shore so we could leave all the trees where they are, provide shade and habitat and leave the shoreline intact; it's been like that for a thousand years or so. Some of the docks look excessively long, because we moved the head dock back."

Sullivan questioned Nixon saying there would not be any riprap. Nixon said that was removed from the application, on the extreme western end of the property, when it was decided it would not be needed. That was removed from the DEQ application per Nixon and the DEQ said there will not be any fill, according to Hosier. Nixon noted that if the commission approved the site plan, they could make that a contingency of the approval.

The commission agreed that the application and site plan are complete, except for the dredging and riprap, with the applicant stating no dredging or riprap will occur.

Findings:

#1. Stephens noted that the proposed project does not extend beyond the city harbor lines. Schlack commented on the plans, that the plans are complete but they are kind of confusing to me, with the access and he has some questions on the plan.

#2. The commission does not believe there was any impediment to safe navigation.

#3. Adverse affect. Schlack said that's tough with the previous talk of the easement and parking. "It could have some effect on other properties but doesn't know if it would be an adverse effect." On the drawings Schlack sees where there is a parking area on the north side (a parking circle) and an easement access to that. The history of that property with the Zoning Board of Appeals, and the process it has been through, makes it hard to know how someone could be prevented from using that street. Stegemen asked if it is a private drive; Hosier believes it is. Stegeman said there is something in the legal part from our city attorney about the easement.

Attorney Nicholas Curcio reviewed the history of the subject property, which has an extended history starting in 2012 with the ZBA when the developer applied for a zoning interpretation. There is no commercial access allowed to any property in the B-3 zone over a private road. The ZBA determined that any use that would require vehicular traffic on that private road. Then Nixon came back and requested a variance, without any specific commercial use. That had some bearing on the ZBA's decision because they couldn't tell without knowing the use. That decision was taken to circuit court and the court upheld the decision of the ZBA. There can be no commercial traffic, even construction vehicles for the purpose of constructing a commercial site, across a private road. That comes into play when we look at parking for the site; the parking plan and memo details some parking over the Kal-Haven Trail.

The Zoning Administrator has reviewed the Zoning Ordinance and determined that the parking proposed does not comply with the Zoning Ordinance. The first issue is the zoning allowing the property owner to provide parking less than three hundred (300) feet away. A separate requirement states that when there are multiple uses, each use has their own separate parking requirement; you cannot double-count unless the two uses have different business hours. Our understanding is that there will be overlapping business hours with campgrounds being a twenty-four (24/7) use. Practical issues of going over the Kal-Haven Trail include not being able to take vehicles and boats across the Kal-Haven Trail. It would be difficult to police the use of the private road by boaters accessing the marina.

Sullivan said this went to the ZBA first and asked if Curcio is saying that the ZBA had some issues with the parking arrangement. Curcio said all the ZBA decided is that the developer cannot have commercial access to the site across the private road. Stephens said the new arrangement for the parking did not come before the ZBA. Sullivan asked whether the current request would have to go before zoning before it comes to the Harbor Commission. Curcio explained that there is no requirement for this application to go before the ZBA.

Anderson said we are not allowing any commercial vehicles to use that; all construction will be done from the water. From the campground there is no vehicle access to the docks, the turnaround you see is actually for emergency vehicles only. There can be no

parking there; no access to the river there. All access has to come from the campground or the water.

Stegeman feels that is kind of an unimproved road and Schlack said he tried to drive down there but it wasn't plowed all the way so he was unable to get very near to the subject property.

Stephens asked about the adverse effect to the property owners stating that it seems like there are some concerns there. If we consider the Kal-Haven Trail adjacent property and we consider misuse of the Kal Haven Trail, Stephens does not know how we can address the double-counting of parking spaces. Schlack said he doesn't see a problem with walking across the trail with a kayak or canoe. Many people use our boat ramp to launch their boat and have someone else bring their vehicle and trailer back. Schlack said he can see if he had a boat and trailer he might use the Black River Road rather than walking all the way to the campground. He has a problem with that.

Pyle asked about all the tents that are down around the river and how they will have access. "Will slips be offered to them?" to which Nixon said no. Pyle asked how the tents access the area and Nixon responded that there is a driveway off Blue Star Highway. Schlack asked if parking could be added there but Nixon said he is not sure as they have to leave some open space. Nixon said on the concern about someone using Black River Street, to pick someone up or turn around, "That wouldn't be allowed, that would be against the ordinance, and the neighbors would start complaining. We have tried to be sure the neighbors aren't disturbed. The DNR permit allows for the deposition of more crushed concrete." Schlack commented on the construction being done from the river. Nixon said he asked the DNR specifically and the fire and police department; he knew this would come up. They agreed it would be adequate; we do plan to improve that circle but not let anyone else use it.

Anderson responded to Schlack's question that site plan review would be done by fire and other departments. Anderson explained you need to just include those concerns in your motion.

Stegeman commented that regarding adverse effect on neighbor's access to their property, he does not see any problem with the improvements being proposed. Schlack said he would say there is no adverse effect. Stegeman said with the information given you would have to say no.

#4. Adverse effect on the adjacent property owner's ability to develop their property. The commission was in agreement that the proposed project would not have an adverse effect.

Comments.

Schlack: Questioned the extra space between slips fourteen (14) and fifteen (15). Nixon said that was his idea for the ducks that use the property for nesting; he wanted to leave an open area for the ducks to go back and forth. "We could have put another slip there but we wanted the ducks to use that area where the stream comes out. Nixon said there are two tile pilings on either side."

Schlack asked about dinghies in that area and more parking needed to which Nixon responded, "Heavens, no. If the city is not going to allow double-use parking the plan does not meet the parking requirements."

Stegeman asked about the docks being referred to as dinghy docks on the plans; he is curious why forty (40) foot long docks are referred to as dinghy docks. Nixon is not aware of any plan to call them dinghy docks but clarified that the docks are really only thirty (30) or thirty-two (32) feet from the shoreline. "It's to get past that grove of tag elders we want to leave along the river."

Stegeman: Addressed Harbor Commission concerns of the harbor lines. Noted that what is proposed is adequate for safe navigation. Emergency vehicle accidents in case of fire would be his second concern. The third one, from what I've seen, and this is something Zoning and Planning will have to consider; there is not enough parking for what all is being proposed.

Pyle's main concern was the parking, noting her concern was sort of addressed with the tent parking, that they go down that driveway, but how much parking is allowed for the tent parking? Do they park next to their tents? Nixon responded that yes, they park by their tents. Pyle further questioned, "Will guests have somewhere to park?" Nixon said there are twenty-two (22) parking spaces along the fence, none of those are required as extra parking. Nixon said he has been told by Parks Depart and Natural Resources that we have unlimited use of the Kal-Haven Trail parking lot; our customers can use it, I don't have anything in writing, but it's quicker to park in that parking lot and walk in. Without the Harbor Commission approval we will not get to that stage.

Sullivan has a question about the parking. Obviously to have multiple use for the parking, it would only be RV tenants that would be able to utilize the parking for twenty (20) of the slips. Right now most of our customers have boats, according to Nixon, and they keep them off-site or launch them at the launch ramp every day. Sullivan asked if these are mostly seasonal to which Nixon responded that the campground is restricted to twenty-one (21) days at this point. Sullivan's concern is there isn't any way to adequately police that the RV owner is going to be the same. Nixon said he thinks the city is pretty good at policing the ordinance; that we do not let our customers violate the ordinance. Nixon stated, "We don't trust you not to do what you say you are going to do and we don't have the ability to enforce that." Nixon said that of the twenty-two (22) parking spaces along the fence, two (2) or three (3) are set aside for employees. Nixon added that the Kal-Haven Trail visitors' parking is open to our customers for parking also. Sullivan said that is not part of this application.

Nixon said if it goes to Planning Commission we might be able to work out something for additional parking, but for right now we plan on only the RV sites using this. Sullivan commented that there is not any way to verify whether the boats are RV owners or seasonal slip renters. Schlack said he feels that if the city Zoning Administrator says that it is not permitted to have multiple use parking, the application is not complete, it doesn't show enough parking.

Pyle questions the Kal-Haven parking use, noting that the trail is busy and you cannot count that as available.

Schlack said his other concern is people parking down there by the tents, maybe with the open space requirement, you cannot provide enough parking.

Nixon asked if the Harbor Commission does not approve the site plan, where do we go next. Anderson said the Harbor Commission neither approves nor denies the site plan, they make recommendations and comments; and then the Planning Commission holds their own review. If there is a way you can address the parking issues, you can do that before you go to the Planning Commission. Nixon said this is the first I've heard of the multiple use parking problem. Anderson noted multiple use parking is allowed with a special use permit.

Stegeman said the parking is not what the Harbor Commission gets into, that would be the next group. "We do the boat parking not the car parking."

Stephens said the potential misuse of Black River Road and Kal-Haven Trail are her concerns.

Stephens asked if commissioners want to recommend the site plan. Stegeman said we can recommend the site plan with caveats; parking issues and other things that were mentioned.

Discussion ensued regarding the Harbor Commission review and what they need to send to the Planning Commission. Anderson said there is no recommendation to approve or deny. Hosier said you could make a motion to recommend this site plan and your comments to the Planning Commission.

Motion by Stegeman to forward the site plan to the Planning Commission with the comments. Second by Schlack.

All in favor. Motion carried.

Stegeman asked about the short-term rental ordinance, noting we have a lot of condos along the river that have slips with them. The condos are turning into short-term rentals and then the owners rent the slip seasonally separately. How many parking spaces are needed at those condos? Anderson said two (2) parking spaces for the condos and one and one-half (1.5) for the slips.

## **9. 2016 Marina Rates Resolution**

Hosier reminded that the Harbor Commission has already approved the marina rates and sent them on to City Council. There were some discrepancies between the state reservation system (CAMIS) and two separate reservation fees depending on how you reserve your dock. Those fees are eight (\$8) dollars or ten (\$10) dollars, and then there are also docks in city system with a five (\$5) dollar reservation fee. People move from marina to marina throughout the season. Now we have to adjust for auditing purposes. There is a whole can of worms that brings up for your books. We are asking the Harbor Commission to approve an eight (\$8) dollar reservation fee for the ease of the boater and for staff who have to explain that and for bookkeeping. We are trying to streamline the process and make it easier for the books, staff and the boaters.

Schlack asked if City Council has already approved the rates to which Hosier responded, "Yes, this is the only change."

Motion by Stegemen to recommend to council Harbor Commission Resolution #2, noting that the number will change when it becomes a City Council resolution. Pyle asked if this needs to go to DNR to get approved to which Hosier responded that the rates are not changing. Schlack seconded the motion.

All in favor. Motion carried.

#### **10. Member and Staff Comments**

Stegeman: Thanked Anderson and Curcio.

Schlack: Thanked Stephens for accepting the position of chair and looks forward to working with the Harbor Commission.

Stephens: Asked if the Harbor Commission is supposed to have seven positions to which Hosier responded, yes and that she has alerted the mayor and he is actively looking for someone to fill that space.

Hosier thanked the commission for the review noting it was very in depth.

#### **11. Adjourn**

Motion by Stegeman, second by Pyle to adjourn at 6:48 p.m.

All in favor. Motion carried.

Respectfully submitted,

Marsha Ransom  
Recording Secretary