

AGENDA
CITY OF STURGEON BAY
CITY PLAN COMMISSION
Wednesday, January 15, 2020
6:00 p.m.
City Council Chambers
421 Michigan Street, Sturgeon Bay, WI

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from December 18, 2019.
4. Planned Unit Development for (PUD) for Jeff Jahnke (Cherryland Properties) to develop a mixed-use building, located at 145 S. Neenah Avenue.

Presentation:

Public Hearing:

Consideration of: *(Note: In accordance with Section 20.24(5)(c)1.b of the zoning code, a recommendation to Council regarding this item will not be made at this meeting, except by unanimous consent of the members present.)*

5. Consideration of: Tourist Rooming House regulations.
6. Comprehensive Plan Update.
7. Public comment on non-agenda Plan Commission related items.
8. Adjourn.

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR.

Notice is hereby given that a majority of the Common Council may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of the Common Council does attend, this may constitute a meeting of the Common Council and is noticed as such, although the Common Council will not take any formal action at this meeting.

1/10/2020
2:15 p.m.
CN

Plan Commission Members

Mayor David Ward
Ald. Kirsten Reeths
Ald. David Hayes
Mark Holey
Jeff Norland
Dennis Statz
Debbie Kiedrowski

CITY PLAN COMMISSION
Wednesday, December 18, 2019

A meeting of the City Plan Commission was called to order at 6:00 p.m. by Chairperson David Ward in the Council Chambers, City Hall, 421 Michigan Street.

Roll Call: Members David Hayes, Debbie Kiedrowski, Jeff Norland, David Ward, Dennis Statz, Mark Holey, and Kirsten Reeths were present. Also present were Alderperson Gary Nault, City Administrator Josh Van Lieshout, Community Development Director Marty Olejniczak, Planner/Zoning Administrator Chris Sullivan-Robinson, Community Development Secretary Cheryl Nault, and several members of the public.

Adoption of agenda: Moved by Ms. Reeths, seconded by Mr. Hayes to adopt the following agenda:

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from October 16, 2019.
4. Consideration of: Tourist Rooming House regulations.
5. Consideration of: Recommendation from the Bicycle & Pedestrian Advisory Board regarding Memorial Drive path.
6. Comprehensive Plan Update.
7. Update regarding recent multifamily housing projects.
8. Public comment on non-agenda Plan Commission related items.
9. Adjourn.

Approval of minutes from October 16, 2019: Moved by Mr. Norland, seconded by Mr. Hayes to approve the minutes from October 16, 2019. All ayes. Carried.

Consideration of: Tourist Rooming House regulations: Mr. Olejniczak stated that the City started allowing tourist rooming houses approximately 4 years ago. There are currently 49 licensed tourist rooming houses located in the City. State laws have recently made it harder for municipalities to regulate this use. The City can't restrict a property owner from renting their home for periods of 7 days or longer. The City can place restrictions on the 1-6 day rental periods. The City can also restrict the overall use to not exceed 180 days out of a year.

Mr. Sullivan-Robinson stated that the City code allows a short-term rental with a City license. The property owner must provide a copy of the license from the State Dept. of Health Services and the Door County Tourism Zone, as well as being approved by the City Clerk, Police Dept., Community Development Department, Fire Dept., and Building Inspection. The City charges a \$100 fee for the review process.

Mr. Statz has proposed some changes earlier this year based on a group discussion held with various lodging industry representatives. If the proposed ordinance is passed, it would pertain specifically to new permits. It is up to the Commission if there is a problem and if so, how the problem should be regulated.

Mr. Norland recalled going through this similar issue with grandfathered signage. He wondered how it would be insured that the 7-day minimum would be complied with if the City decides to prohibit 1-6 day rentals. Mr. Sullivan-Robinson responded that the Door County Tourism Zone would have to help determine if the minimum and maximums are being met.

Mayor Ward wondered if the number of licenses could be capped. Mr. Olejniczak responded that weekly rentals cannot be capped, but he thought that daily licensed rentals could be. He also said that the City Attorney would need to confirm that.

Ms. Reeths did not feel there should be a limit of 7 days, but possibly a 2-day minimum. The City wants to attract people. We live in a tourist community.

Mr. Van Lieshout stated that he is a member of the Door County Tourism Zone Commission. They collect the lodging tax. Baileys Harbor and Egg Harbor are struggling with the same issues, such as volume, conversions, wastewater impact, etc. The tourist rooming houses make up roughly 25% of rooms available in Door County.

Mr. Holey wondered what was wrong with the current ordinance. Mr. Olejniczak responded that staff is not pushing for changes. There were some concerns brought up by lodging facilities.

Mr. Norland brought up a concern if there were, for example, 10 people staying at the tourist rooming house with only 3 bedrooms.

Mr. Hayes added that the problem lies in home rentals. He would like to see a comparison of home rentals vs. room rentals.

Ms. Kiedrowski asked if there was any enforcement action for those who disrupt the neighborhood. Partiers can destroy a home.

Mayor Ward asked staff to acquire the City's stats – homes vs. rooms and the hotel capacity of Sturgeon Bay, along with other data.

Mr. Sullivan-Robinson saw a decline in new permits this past year. Of the 49 permits issued, there were 7 new permits. Five applicants chose not to renew.

Mayor Ward would like to devote the next meeting to "Do we have a problem?". Lay out the regulatory options available, such as grandfathering in; investigate capping the number of permits; and discuss parking issues with number of vehicles.

Mr. Norland asked if it was state law that an owner be on site. Mr. Olejniczak responded no, but it could be required for rental periods of 6 days or less.

Ms. Reeths was worried about people buying homes and turning them into rentals.

This item will be brought back to the next meeting.

Consideration of: Recommendation from the Bicycle & Pedestrian Advisory Board regarding Memorial Drive path: Mr. Olejniczak stated that from time to time there has been talk of creating a waterfront pedestrian loop between the Bayview Bridge and downtown bridges. There is a series of easements along Memorial Drive that is granted to the City. A former alderperson had put this on a previous agenda to consider establishing a path along Memorial Drive within the easements. It was referred to the Bicycle & Pedestrian Advisory Board who then sent a recommendation to Plan Commission.

Mr. Sullivan-Robinson stated that the Board had a series of meetings. Creating a continuous path and connecting it is not easy due to existing power poles, fires hydrants, terraces, etc. being in

the way of a path. He also reported that there was considerable opposition and negative feedback from the landowners, who were also concerned that street parking would be taken away.

The recommendation from the Bicycle & Pedestrian Advisory Board was to extend the existing sidewalk on the North side of Memorial Drive.

John Wiese, 1222 Memorial Drive, said he was in favor of improving the sidewalk. He is okay with a bike lane provided on-street parking is retained.

Mayor Ward stated that the recommendation from Bike & Ped would be to extend the sidewalk to 15th Avenue, which would be approximately 1,000 feet. The Commission could adopt the recommendation, table the issue, or come up with their own solution as far as pedestrian facilities.

After further discussion, it was moved by Mr. Hayes, seconded by Mr. Statz to adopt the recommendation from the Bicycle & Pedestrian Advisory Board to extend the sidewalk on Memorial Drive to 15th Avenue.

Ms. Reeths questioned whether damage has been done to the street or sidewalk with all the flooding issues on Memorial Drive.

Mr. Holey thought that maybe sidewalks would have to be considered for the bridge route to get from bridge to bridge.

Mr. Van Lieshout added that for a 180' wide lot, it would cost the homeowner approximately \$4000.00 if the sidewalk installation is assessed.

A vote was taken on the motion. All ayes. Carried.

Comprehensive Plan Update: Mr. Olejniczak updated the Commission on the progress of the Comprehensive Plan. Vandewalle & Associates had submitted a memo discussing the Community Visioning Workshop, held at Sturgeon Bay High School, which included over 30 participants identifying key values, goals and priorities for the City. Previous to the workshop, small group stakeholder interviews had been held. A survey asking for community input is now available on the City's website until the end of December, as well as hard copies can be found at City Hall, the Library, and the Door County Community Center.


Update regarding recent multifamily housing projects: Mr. Sullivan-Robinson stated that over the past two years the Plan Commission has approved the construction of 168 housing units, not including the 40 approved for the proposed West Side School development. SC Swiderski is completely built out with 90% occupancy. Harbor Ridge's 14-unit townhouses have 100% occupancy. Tall Pines Estates have a 75% build-out complete, with 94% occupancy. Maritime Height's townhouses are 29% complete with 90% occupancy. The owner of Tall Pines Estates remarked that more one-bedroom apartments are being requested.

Mr. Sullivan-Robinson has had general conversations with tenants. There is a mix of occupants within all the developments of elderly, transitional families, young workforce, Coast Guard, and police officers. Many believe that more three-bedroom apartments are needed.

Public comment on non-agenda Plan Commission related items: John Hermanson, 948 Memorial Drive, stated that he was impressed and excited about the Green Tier Program.

Adjourn: Moved by Mr. Holey, seconded by Mr. Norland to adjourn. All ayes. Carried. Meeting adjourned at 7:23 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Cheryl Nault".

Cheryl Nault
Community Development Secretary

**Executive Report
Planned Unit Development - 145 S Neenah Ave**

Summary: Jeff Jahnke is petitioning the City to rezone his property to Planned Unit Development (PUD). The subject property is located at 145 S Neenah Avenue; parcel # 281-46-65011901, and is zoned R-2 (Single-Family Residential Higher Density). If approved, the property would be redeveloped into a two-story building containing one office space and two 3-bedroom apartments with attached garages.

PUD Required: The rezoning is necessary because the current zoning classification does not allow mixed-use developments. In addition, this project needs deviation from the zoning ordinance for setbacks, and for the residential space exceeding 50 percent of the overall usable floor area of the building. PUD's are special zoning districts in which the allowed use(s) and district requirements are unique to, and based upon, the specific development proposal. PUD's allow for flexibility of standard development requirements, but also require a greater degree of scrutiny by the City prior to approval.

Existing Site Conditions: This property is 4,750 square feet. Based on the current code, it is a substandard sized lot, but is grandfathered and is therefore buildable. The property is relatively flat with a declining elevation to the northeast. It contains a two-story single-family dwelling with a detached accessory building accessible from the alley. These buildings are in poor condition based on past inspections. Along the east property line are high voltage American Transmission Company electric lines from which a building setback is required.

The subject property is bordered by R-2 on two sides and C-2 Central Business District zoning on two sides. The property to the north contains Culligan Plumbing. To the east are Sawyer Park and Roen Salvage Company. To the south and west are two-family residential dwellings.

Comprehensive Plan: The Future Land-Use plan and map for Sturgeon Bay has the subject property designated for a transition commercial type use. Transitional Commercial is defined as the area intended to provide lower density and neighborhood commercial uses proximate to a residential area. It also can provide transitions between commercial and residential uses or provide areas where a mixing of commercial and residential uses is deemed appropriate.

The Housing Chapter describes goals, objectives and policies with regard to future growth and development decision-making as follows:

- Provide a range of housing choices that meet the needs of persons in all income levels and age groups and persons with special needs.
- Maintain or rehabilitate the existing housing stock.
- Promote the redevelopment of lands with existing infrastructure and public services and the maintenance and rehabilitation of existing residential, commercial, and industrial structures.

- Develop mixed-use projects along major corridors and downtown to provide housing choices.
- Protect the residential feeling of existing neighborhoods.
- Encourage new and infill development that is complementary to the scale and character of the surrounding residential uses including conversions from single-family to two-family along commercial corridors.

The Economic Development Chapter describes goals, objectives and policies with regard to the future growth and development decision-making as follows:

- Continue to improve and develop downtown Sturgeon Bay as the City's mixed-use and multipurpose center.
- Encourage high quality, mixed-use development along major commercial corridors as designated on the future land-use map.
- Identify areas where housing can be integrated into commercial districts and corridors.

Door County Housing Study: The 2019 Housing Study demonstrated a deficit and future need for renter-occupied housing units. This development will have a positive effect on those the issue identified within that study.

Site Plan and Design Considerations: The following is a summary of the major site and design issues:

Proposed Uses: The project consists of two 3-bedroom apartments with an intended use of long-term/short-term rentals and one office unit.

Building Design: The exterior of the building will be sided with a yellow tented lap siding with white trim boards. The roofs have a combination of dimensional shingles and prefinished metal roof panels. The architecture of this building illustrates more of a commercial box-like shape with residential elements. The building conforms to the general design standards of the code. The project will need to be reviewed by the Aesthetic Design and Site Plan Review Board.

Building Layout: The building is two stories with a partial basement. All units have a common entrance off of Neenah Ave. The second floor will contain one 3-bedroom residential unit and the first floor will consist of one 3-bedroom residential unit and one office space. Both first floor units have additional accommodations in the basement. There is one 2-car and one 1-car attached garage units accessible from the alley.

The project meets area and dimensional requirements of the zoning code, except that the building will encroach into all normal setbacks. Based upon the Mixed Commercial – Residential District (C-5) buildings are required to be 20 feet from the right-of-way line, 8 feet from the side yards line, 25 from the rear lot lines. Staff is supportive of this deviation since the proposed project is less impactful than the existing buildings.

Within the proposed district, residential uses in conjunction with a commercial use are not allowed to exceed 50 percent of the combined floor area of all principal buildings within the lot. Since the residential space exceeds 50 percent of the total floor area a deviation is necessary. Staff is also supportive of this deviation because this remains a low impact development. In addition, since both 2-family dwellings and office uses are allowed in the mixed-use district, it makes sense to allow the two uses together. If the City is comfortable with the proposed plan then deviations can be made as part of the PUD ordinance.

Driveway Access: The development will continue to be accessed off of the alley between Pine Street and Oak Street. The existing driveway will be replaced with a new asphalt pad leading to the garages and one outside parking space.

Parking: A total of four parking spaces are being proposed which meets the requirements of the zoning chapter. However, the garage doors and the lack of driveway space could make turning challenging.

Traffic: A traffic impact analysis is not required for this development. The City Engineer has reviewed this plan and has no issues.

Pedestrian Access: The property is connected to existing City sidewalks. The developer will extend an ADA compliant ramp from the building to the sidewalk system.

Utilities: The development will be served by existing municipal utilities on the site. Sturgeon Bay Utilities has reviewed the plan and have no issues.

Stormwater Management: the total proposed impervious surface is 3,053 square feet, which is a slight increase over current conditions. This amount does not exceed the maximum allowance, but will require an approximate 1,100 square foot rain garden to be located along the south property line. The City Engineer has reviewed preliminary plans and has given the initial approval with additional review needed at the time permits are issued.

Landscape Design: The site plan illustrates the planting of Lilac Wedgewood, Spirea, Arborvitae, and Weigela. These will be planting in various garden beds surrounding the building. The remaining green space will be planted with native grasses. The property owner will need to confirm with ATC the ability to plant shrubs/trees near those ATC lines.

Signage: No signage is proposed at this time.

Lighting: No lighting is proposed at this time.

PUD Review Criteria: In general, the zoning ordinance directs the Plan Commission and Council to consider whether the proposed development is consistent with the spirit and intent of the zoning code, has been prepared with competent professional

guidance, and produces benefits to the City compared with conventional developments. In addition, there are nine specific review criteria listed in the PUD section of the code. The development appears to comply with all specific regulations of the zoning code (except as noted above). Staff is satisfied that the project meets the basic criteria for Planned Unit Developments.


PUD Process: This is the combined preliminary/final review process at Plan Commission. A public hearing will occur at this meeting (January 15, 2020). This is the time where testimony is heard for the proposed project and the Plan Commission members will take that into consideration. The standard process has the decision making occur at a separate meeting. However, the Plan Commission members can decide unanimously at the same meeting as the public hearing. Regardless, a recommendation is made to Council for their consideration. If they decide to move forward with the development two readings will occur at separate meetings.

Options: The Plan Commission can recommend one of the following:

1. Approval of the PUD as presented. The recommendation would be reviewed by the Common Council at the next possible meeting.
2. Approval of the PUD with changes. The recommendation would be reviewed by the Common Council at the next possible meeting.
3. Denial of the PUD with changes. The recommendation would be reviewed by the Common Council at the next possible meeting.

Recommendation: Staff recommends approval of the PUD plans as proposed with the following conditions:

1. The underlying zoning district shall be C-5 (Mixed Commercial and Residential).
2. Final approval of the stormwater management plan by the City Engineer.
3. Final approval of the Aesthetic Design and Site Plan Review Board.

Prepared by: 
Christopher Sullivan-Robinson
Planner / Zoning Administrator

1-10-20
Date

Reviewed by: 
Marty Olejniczak
Community Development Director

1-10-2020
Date

Reviewed by: 
Chad Shefchik
City Engineer

1-10-20
Date

CITY OF STURGEON BAY PLANNED UNIT DEVELOPMENT APPLICATION

Date Received: 12.22.19
 Fee Paid \$ 425.00
 Received By: Cheryl N.

Application For: Conceptual ☐ Preliminary ☐ Final ☐ Combined Preliminary/Final ☒
 Note: There are different requirements for each of the above processes. A separate application is required for each.

NAME OF PROPOSED PLANNED UNIT DEVELOPMENT: 145 S. Neenah Ave.

	APPLICANT/AGENT	LEGAL PROPERTY OWNER
Name	<u>Jeffrey A. Jahnke</u>	<u>Cherryland Properties, LLC</u>
Company	<u>Cherryland Properties, LLC</u>	
Street Address	<u>P.O. Box 428</u>	
	<u>Winneconne, WI 54986</u>	
City/State/Zip		
Daytime Telephone No.	<u>920-379-2353</u>	
Fax No.		

STREET ADDRESS(es) OF SUBJECT PROPERTY: 145 Neenah S. Ave
 Location if not assigned a common address: _____

TAX PARCEL NUMBER(s): 28) 4665011901

AREA OF SUBJECT PROPERTY AND NO. OF LOTS: 11 Acres 1 Lot

CURRENT ZONING CLASSIFICATION: Residential R-2

CURRENT USE AND IMPROVEMENTS: Currently property is single rental

COMPREHENSIVE PLAN DESIGNATION OF SUBJECT PROPERTY: Mixed Use/Transitional Commercial

WOULD APPROVAL OF THE PROPOSED PLANNED UNIT DEVELOPMENT CONFORM WITH THE COMPREHENSIVE PLAN? Yes ☒ No ☐ Explain: Comprehensive plan has transitional commercial for this location. A mixed use of residential and commercial I believe is what is needed.

PLEASE IDENTIFY SPECIFIC PROPOSED LAND USES. USES MUST IDENTIFY AND CORRESPOND TO A PARTICULAR LOT, LOCATION, BUILDING, ETC. New Building will have 2 - 3 Bedroom apartments, and a office/Commercial space on the first floor

CURRENT USE AND ZONING OF ADJACENT SURROUNDING PROPERTIES:

North: Central Business - Commercial

South: Two Family

East: Open Space / Recreational

West: Two Family

COMPREHENSIVE PLAN DESIGNATION OF ADJACENT SURROUNDING LAND USES:

North: Central Business

South: Transitional Commercial / mixed use

East: Open Space Recreational

West: Transitional Commercial / mixed use

IS ANY VARIANCE FROM COMPREHENSIVE PLAN, SUBDIVISION ORDINANCE, OR ZONING ORDINANCE BEING REQUESTED? If yes, describe:

yes, Need rear set Back variance to allow parking for apartments. Residential space will be more than 50% of building. This is a proposal to meet the future plan development of Sturgeon Bay.

HAVE THERE BEEN ANY VARIANCES, CONDITIONAL USE PERMITS, ETC. GRANTED PREVIOUSLY FOR THIS PROPERTY? _____ IF YES, EXPLAIN: Not that I am aware

Attach an 11" X 17" detailed site plan (if site plan is larger than 8-1/2" x 11", also include 20 copies folded to 8-1/2" X 11"), full legal description (preferably on disk), location map with site boundaries marked, proof of ownership, and Agreement for Reimbursement of expenses. Site or plot plan shall include dimensions of property, structures, building elevations, proposed site improvements, signature of person who drew plan, etc.

Jeffrey A. Sahl
Property Owner (Print Name)

Jeff A. Sahl
Signature

12/20/2019
Date

Applicant/Agent (Print Name)

Signature

Date

I, _____, have attended a review meeting with at least one member of staff and understand that I am responsible for sign placement and following all stages listed on the check list in regard to the applicant.

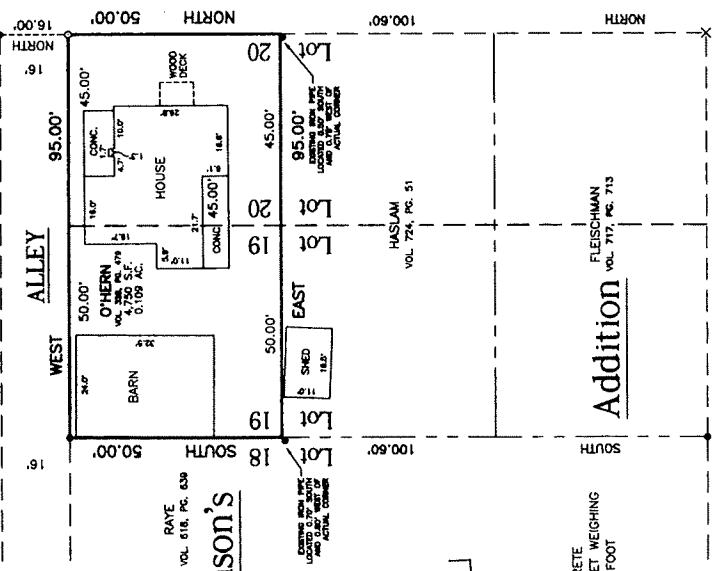
12.19.19
Date of review meeting

Applicant Signature

Chris R. [Signature]
Staff Signature



- LEGEND**
- = EXISTING IRON
 - X = EXISTING "X" IN CONCRETE
 - o = 1" x 24" IRON PIPE SET WEIGHING 1.13 LBS. PER LINEAL FOOT



Sorenson's
RAYE
VOL. 618, PG. 639

Addition
FLEISCHMAN
VOL. 717, PG. 713

EAST PINE STREET

LANSING AVENUE

DESCRIPTION:

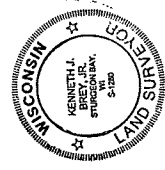
The North 50.00 feet of Lots 19 and 20, Block 1, Sorenson's Addition and containing 4,750 square feet of land.
Located in Section 7, Township 27 North, Range 26 East, City of Sturgeon Bay, Door County, Wisconsin.

SURVEYOR'S CERTIFICATE

I, Kenneth J. Brey, Jr., registered land surveyor for Brey - Stuewe & Braun Surveys, Ltd., do hereby certify that I have surveyed the property described herein and that the adjacent map is a true representation thereof and shows the size and location of the property, its exterior boundaries, the location of all visible structures, boundary fences, apparent easements, roadways and visible encroachments, if any.

This survey is made for the use of the present owners of the property and also those who purchase, mortgage or guarantee title thereto.

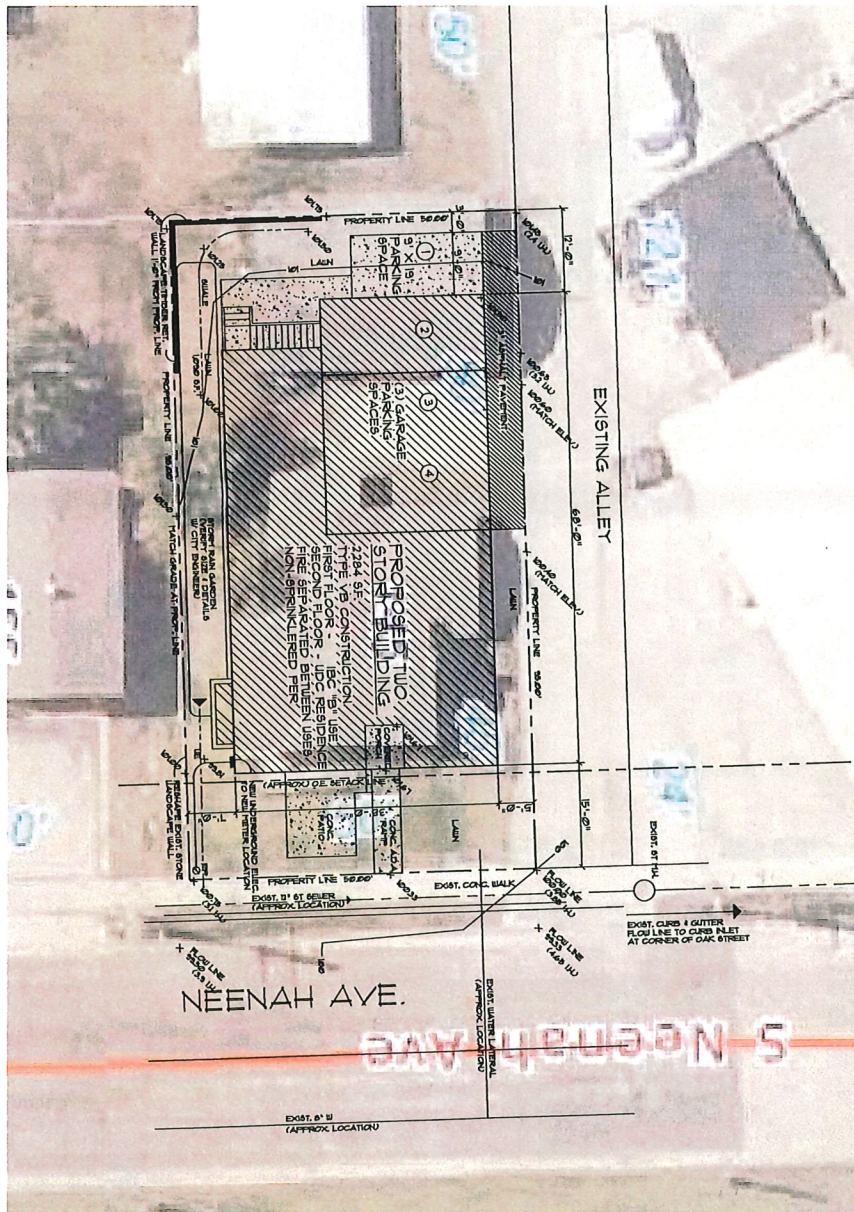
Dated 10-24-01
Kenneth J. Brey, Jr.
R.L.S. S-1280



281-46-65-01901

7-27-01 742

SURVEY IN
LOTS 19 AND 20, BLOCK 1, SORENSON'S ADDITION,
SECTION 7, T. 27 N., R. 26 E.,
CITY OF STURGEON BAY, DOOR COUNTY, WISCONSIN
FOR
ROBERT O'HEARN - OWNER
BY
BREY-STUEWE & BRAUN SURVEYS, LTD.
LAND SURVEYORS
208 S. 4TH AVE.
STURGEON BAY
OCTOBER 24, 2001
D-01127



PROPOSED SITE &
UTILITY PLAN
SCALE: 1/8" = 1'-0"
NORTH

PROPOSED APARTMENT BUILDING FOR:
JEFF JAHNKE
STURGEON BAY, WISCONSIN

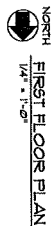
Architect:
Daniel J. Meissner
AIA, LLC
1230 E. Calumet Street Appleton, WI
920.428.0982

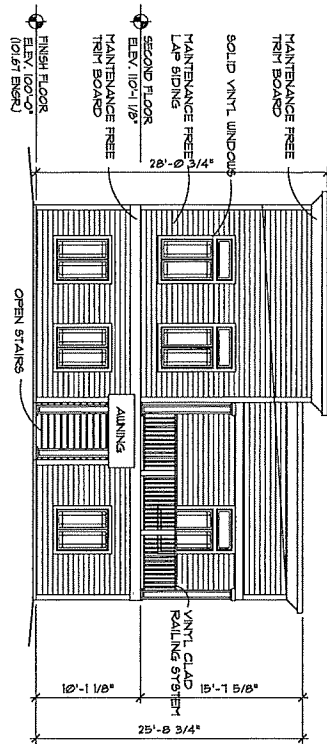
Design Associate:
Concept One Design & Development
335 E. HALB AVE.
GREEN BAY, WISCONSIN
(920) 655-4500
dmeissner@conceptone.com

REV. NO.	DATE	DESCRIPTION

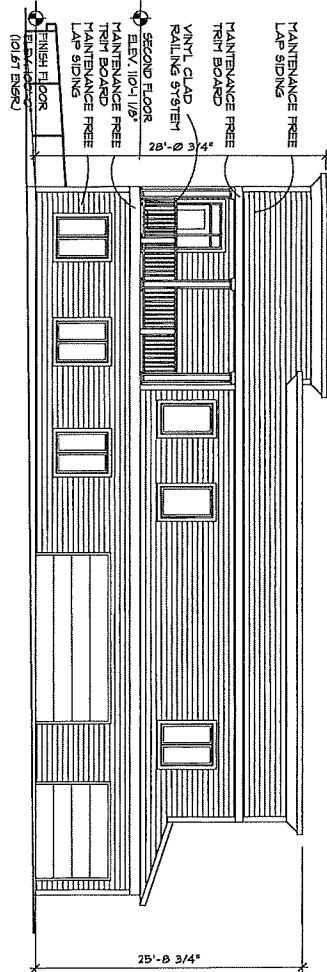
DATE
1/11
BY
C.J.
PROJECT NUMBER
14011

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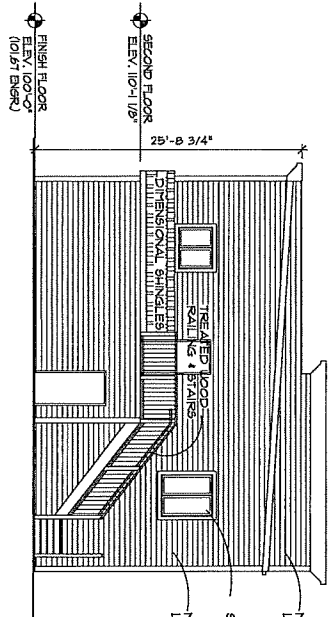
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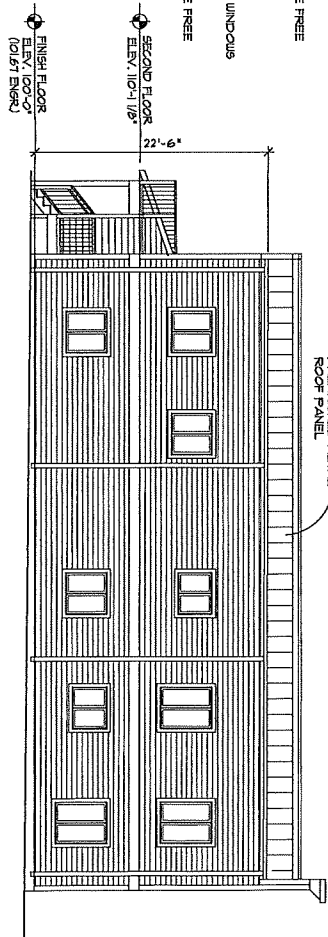
EAST ELEVATION
3/16" = 1'-0"



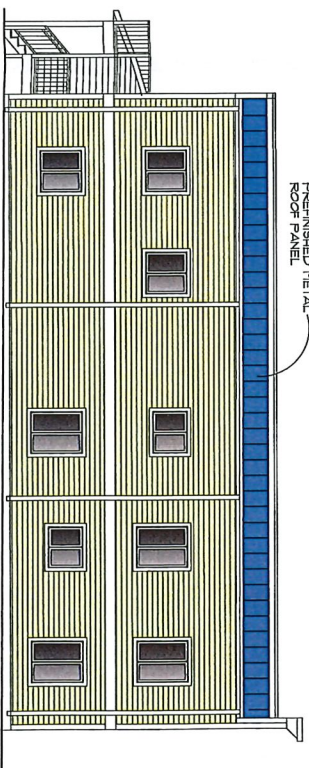
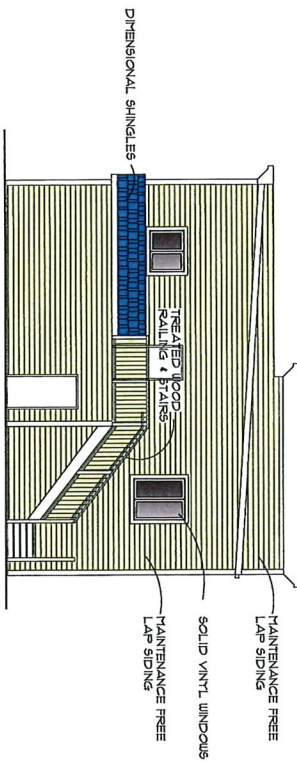
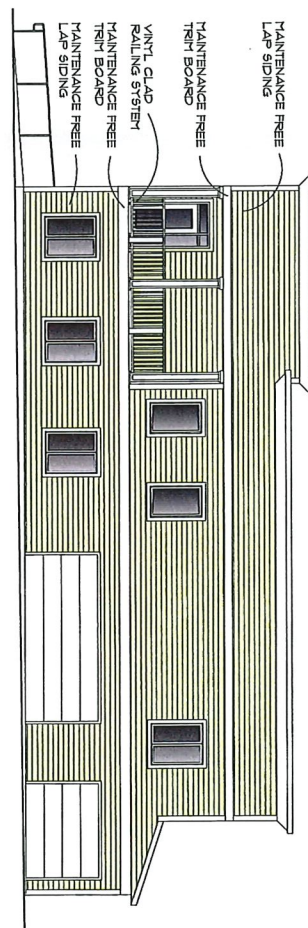
NORTH ELEVATION
3/16" = 1'-0"



WEST ELEVATION
3/16" = 1'-0"



SOUTH ELEVATION
3/16" = 1'-0"



NOTICE OF PUBLIC HEARING

The City of Sturgeon Bay Plan Commission will conduct a public hearing in the Council Chambers, 421 Michigan Street, Sturgeon Bay, Wisconsin on Wednesday, January 15, 2020 at 6:00 p.m. or shortly thereafter, regarding a petition from Jeff Jahnke to rezone a parcel to Planned Unit Development (PUD). The subject property is located at 145 S. Neenah Avenue, parcel # 281-46-65011901. The proposed PUD would allow the property to be redeveloped into a mixed use two-story building including two 3-bedroom apartments with attached garages and one office unit. The application and PUD plans are on file with the Community Development Department, located at 421 Michigan Street, and can be viewed weekdays between 8:00 a.m. and 4:30 p.m. The public is invited to give testimony in favor or against the proposal, either in person at the hearing or in writing.

By order of:
City of Sturgeon Bay Plan Commission

Location Map

145 S Neenah Ave PUD




Legend



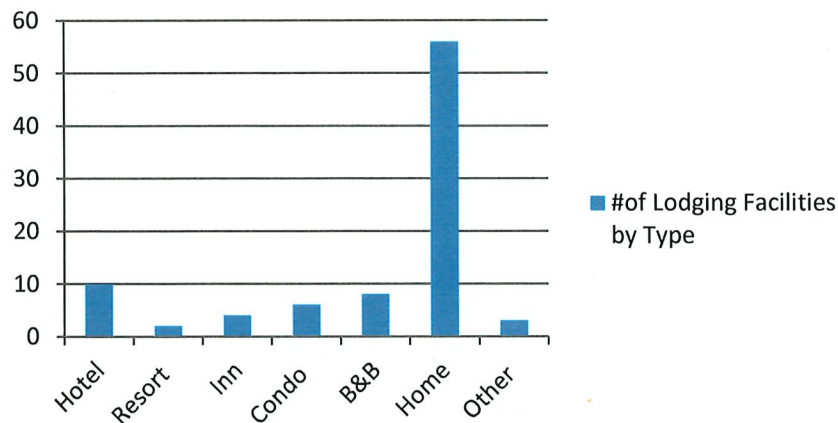


MEMO

To: Plan Commission
From: Christopher Sullivan-Robinson 
Date: January 9, 2020
Subject: Tourist Room House Ordinance Review

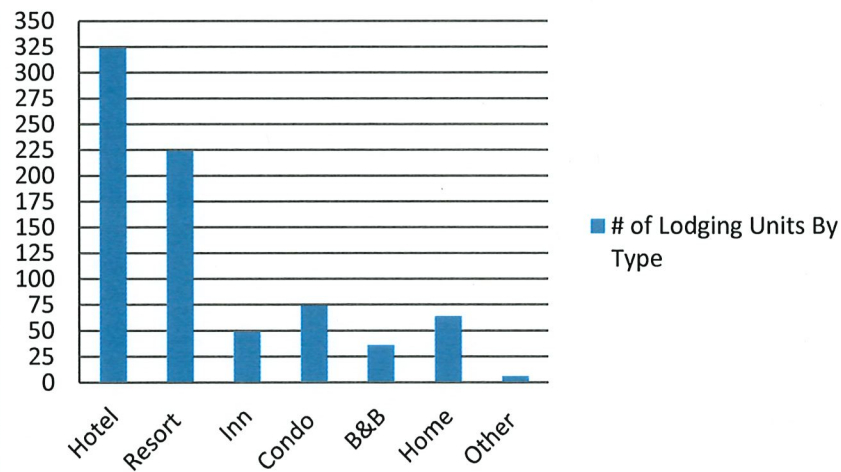
1. Does the City have the ability to cap the number of licenses granted? (David Ward)
 - a. Review legal opinion (Marty)
2. Are there issues with the current ordinance? (Mark Holey)
 - a. Parking: The current ordinance does not specify a required amount of parking for tourist rooming houses. By default this falls back to administration to rule the appropriate amount of parking.
 - i. Residential Dwellings in the City are required to have two parking spaces.
 - ii. B&B's are required to have 2 spaces plus 1 space per lodging unit.
 - b. The Sturgeon Bay Police Department and Community Development Department do not have any nuisance issues on file.
3. Is there a comparison of home rentals vs room rentals? (David Hayes)
 - a. There are only 3 room rentals of the total 49 active permits.
4. Are there any enforcement measures for TRH related nuisance issues? (Debbie K.)
 - a. This ordinance is governed under the City's zoning code, which has enforcement measures in place.
5. What is the hotel capacity of Sturgeon Bay?
 - a. Attached is a breakdown by municipality of the various types of lodging facilities and number of units. This information was provided by the Door County Tourism Zone Commission.

Sturgeon Bay Lodging Facilities by Type



b.

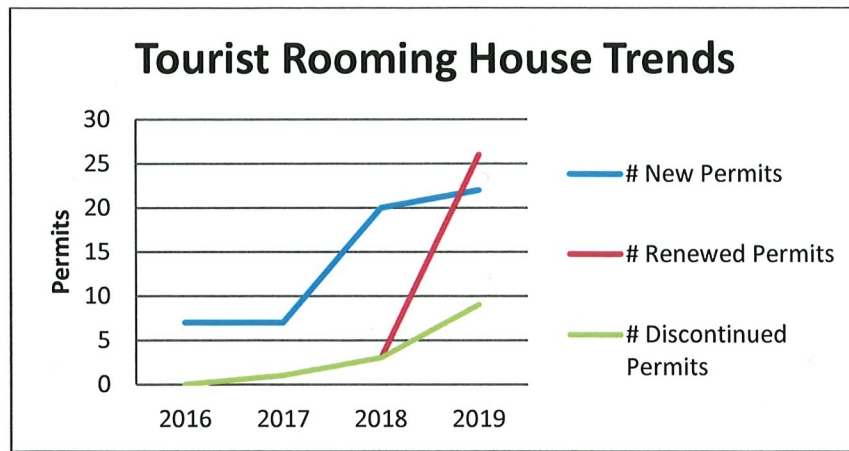
Sturgeon Bay Lodging Units By Type



c.

6. What is the Tourist Rooming House Permit Trend? (Dave Ward)

- a. The City is starting to see the number of new permits level off. The number of renewals was greater than the number of new permits. In addition, the number of deactivations is rising. The total active TRH's continues to rise.



b.

7. What are the City's regulatory options? (David Ward)

a. See the attachment

MEMORANDUM

To: Marty Olejniczak
From: James M. Kalny *gmK*
Date: January 10, 2020
Subject: Rooming House Regulation Questions

Recently you posed several questions regarding the nature and extent of the regulations of rooming houses to the extent permitted under § 66.1014 Wis. Stats. Each question you list is stated in bold and followed by my analysis and opinion.

Please let me know of any questions.

1a. If the City elects to prohibit short-term rentals of 6 days or fewer, can existing licensed tourist rooming houses be grandfathered?

I would advise against it. This is not a zoning ordinance; it is a police regulation. Justice Abrahamson, analyzed the difference between the types of regulations in the case of *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 338 Wis.2d 488 (809 N.W.2d 362). The case involved the efforts of a Town to prohibit a frac-sand quarry. Cooks Valley had enacted what it phrased a zoning regulation that created essentially a conditional use type review for frac sand mines. Unfortunately, Cooks Valley is in a county-wide zoning county and the town had failed to forward the zoning regulation to the county for approval. As the regulation was never approved at the county level, it could not be enforced as a zoning provision. With that background, Justice Abrahamson analyzed the difference between zoning regulations (subject to grandfathering) and police regulations (not subject grandfathering). The Court used six points in its analysis:

1. Zoning ordinances typically divide a geographic area into multiple zones or districts.

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2. Within the established districts or zones, certain uses are typically allowed as of right and certain uses are prohibited by virtue of not being included in the list of permissive uses for a district.
 3. Zoning ordinances are traditionally aimed at directly controlling where a use takes place, as opposed to how it takes place.
 4. Zoning ordinances traditionally classify uses in general terms and attempt to comprehensively address all possible uses in the geographic area,
 5. Traditionally, though not always, zoning ordinances make a fixed, forward-looking determination about what uses will be permitted, as opposed to case-by-case, ad hoc determinations of what individual landowners will be allowed to do.
 6. Traditional zoning ordinances allow certain landowners whose land use was legal prior to the adoption of the zoning ordinance to maintain their land use despite its failure to conform to the zoning ordinance.

Applying these rules to the tourist rooming house provision, the better conclusion is that the Sturgeon Bay ordinance regarding tourist rooming houses is a police regulation.

1. The tourist rooming house ordinance does not apply to a specific district, but applies City wide - the purpose of the ordinance is not a division of land to permit a certain use, but is instead a regulation on how certain uses must operate.
2. The tourist rooming house ordinance is not part of a list of allowed uses within a zone - it is not in the nature of a regulation of a use in a particular zone. It does not serve to prohibit or permit any use, only regulate it.
3. The tourist rooming house regulations go to how the use takes place, not where.
4. The tourist room regulations to not serve to comprehensively lay out allowed uses in a particular area.
5. The tourist rooming regulations do not make a fixed determination of property use within a certain area.
6. Point 6 of Justice Abramson's analysis was not given much consideration by that court because the Cooks Valley ordinance specifically provided for grandfathering. Justice Abrahamson simply observed nothing in the law prohibits a municipality from grandfathering licensed uses (as noted below however that observation is misleading in the context of our analysis).

As further evidence of the police/licensing nature of municipal tourist rooming house regulation in Wisconsin, note that the statute that enables municipal regulation of tourist rooming houses limits the City's right to regulate to requiring a license (see Wis. Stat. § 66.1014 (2)(d)2).

Also the notion of grandfathering does not work well with the type of regulation we have in place. Grandfathering allows the existing use to continue to permit the licensee to recoup investments caused by the initial regulations. The regulations regarding limitations on duration of rentals did not cause investment or alteration to the structures that needs to be protected. The 50% rule would not apply in this case as the ability of the City to regulate at all is limited prohibiting rental of such establishments, not placing requirements on the use per se. Likewise, the one-year cessation of operation is not applicable. If a licensee wanted to stop operating for a year or two, the City would not be in a position to prohibit a later application.

What the state left the City to regulate is, under current law, a police/licensing matter not a zoning matter. Consequently, traditional notions of grandfathering are not applicable in this case. The license is good for the set period so long as the licensee stays in compliance. There is no duty to grandfather in this case.

However, contrary to what Justice Abrahamson implied, it does not necessarily follow that those currently operating without a 6-day limitation can be grandfathered. Grandfathering the existing licensees would create a classification within the law. In essence the grandfathered licensees would have a more advantageous right to use their license than subsequent applicants as they could do one day rentals. When a law creates a classification between similarly situated individuals, equal protection issues arise. Wisconsin uses a five-fold test for reviewing equal protection challenges to classificatory schemes found in *Omernik v. State*, 64 Wis. 2d 6, (19, 218 N.W. 2d 734, 1974):

- (1) All classification must be based upon substantial distinctions; (2) the classification must be germane to the purpose of the law; (3) the classification must not be based on existing circumstances only; (4) and law must apply equally to each member of the class; and (5) the characteristics of each class should be so far different from those of other classes as to reasonably suggest the propriety of substantially different legislation.

In my opinion, grandfathering the existing businesses runs afoul of items 3 and 5 of the test above. In making this analysis, the case of *State ex. rel. Grand Bazaar Liquors Inc. v. City of Milwaukee*, 105 Wis.2d, 203 N.W.2d 805 (1982) is instructive. In that case the City sought to require that only those businesses whose monthly gross receipts are more than 50% liquor sales would be allowed to have a liquor license. The law went on to grandfather existing businesses. As to item 3 the court held:

. . . Unless a statute is curative or remedial, and therefore temporary, the classification must not be based on existing conditions only, but provision must be made for future acquisitions to the class as other subjects acquire the characteristics which form the basis of the classification. This principle is of considerable importance when attempts are made to draw distinctions based on

time, putting in one class all the instances existing on a designated date, and placing all others in another class. Under certain circumstances, where such a procedure would discriminate unwarrantably in favor of establishments, things or persons existing, or engaged in particular occupations on a given date, the courts have held that the classification is in denial of the equal protection of the laws.

Grand Bazaar Liquors, 105 Wis.2d at 216-17.

As to item 5 the Grand Bazaar Court held:

Part (5) of the Omernik test requires that the characteristics of each class should be so far different to reasonably suggest the propriety of substantially different legislation. The grandfather clause establishes two separate classes who's only distinguishing feature is whether they sold liquor before or after June 30, 1977. We cannot conclude that these two classes are "so far different" from one another as to reasonably suggest the propriety of substantially different legislation.

Id. at 217.

In my opinion grandfathering the existing licensees now would discriminate unwarrantably in favor of establishments that have the license in a circumstance where the two classes created by the ordinance are not significantly different. Consequently, I recommend against grandfathering existing licensee's.

1b. If yes, would their grandfathered status continue after the one-year initial license or two-year renewal license expires? In other words, is the use grandfathered or just the current license?

See above. Whatever time is set, there is an undue advantage to the current licensees that provides them an advantage to others similarly situated.

Please note however, as this is a police regulation, in my opinion you would prohibit rentals under 7 days as allowed by law as grandfathering would not apply to these licenses.

2. Can the City put a cap on the number of licenses granted?

This could be equal to the number of existing licenses granted, but not necessarily. They might decide to pick a certain number of licenses that the City can support without impacting permanent housing or causing other problems. Once the cap limit is met, no more licenses would be issued except that, if any existing license is subsequently not renewed, a new tourist rooming house license could be issued to replace it.

The cap on the number of licenses for the uses permitted under the statute could effectively prohibit the operation of a tourist rooming house once the license quota has been met. Wis. Stat. § 66.1014. Limits on residential dwelling rental prohibited, provides in relevant part:

(2)

(a) Subject par. (d), a political subdivision may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer.

(b) If a political subdivision has in effect on September 23, 2017, an ordinance that is inconsistent with par. (a) or (d), the ordinance does not apply and may not be enforced.

(c) Nothing in this subsection limits the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with the provisions of pars. (a) and (d).

(d) 1. If a residential dwelling is rented for periods of more than 6 but fewer than 29 consecutive days, a political subdivision may limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days. The political subdivision may not specify the period of time during which the residential dwelling may be rented, but the political subdivision may require that the maximum number of allowable rental days within a 365-day period must run consecutively. A person who rents the person's residential dwelling shall notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins.

2. Any person who maintains, manages, or operates a short-term rental, as defined in Wis. Stat. § 66.0615 (1) (dk), for more than 10 nights each year, shall do all of the following:

a. Obtain from the department of agriculture, trade and consumer protection a license as a tourist rooming house, as defined in s. 97.01 (15k).

b. Obtain from a political subdivision a license for conducting such activities, if a political subdivision enacts an ordinance requiring such a person to obtain a license.

In my opinion, 1(a) does not permit a municipality to take any action that would prohibit the use of residential property as specifically allowed by the statute. The statute grants residential property owners the right to use their housing units as tourist rooming houses for periods of more than 6 but fewer than 29 consecutive days for up to 180 days a year (those days may be required to run consecutively if the City wishes). The language that allows political subdivisions to enact regulations specifically states the regulations cannot be inconsistent with the mandates of the statute. If a quota were set and a residential property owner applied for a license to do what the statute allows and was denied licensure because the quota had been filled, enforcing that ordinance would be directly contrary to the use of property permitted in and protected by the statute.

That being said, the statute specifically allows regulation of rentals under 7-day duration. If the City were to set a quota on those allowed to rent under 7 days, there is no direct conflict with the operation of the statute and the analysis turns to a question of equal protection and application of the law. However, with regard to the quota on 7 day rentals, equal protection issues are evident. If we said existing or a set number of establishments could continue the less than 7 day rentals, the City would be creating a classification of the licensees. Through that classification the law would give one class of licensee a considerable advantage over the other simply because of when they happened to get their license. Otherwise similarly situated licensees would be treated differently under the law. In my opinion that would be a violation of the equal protection clause and therefore not advisable.

3. One concern about limiting tourist rooming houses to 7-day rental periods or longer is enforcement. We believe TRH managers could simply use 7-day rental agreements and prorate the rental rate for guests who only want to stay for 1 to 6 days. As long as the unit is only rented to one person/entity per week, the arrangement presumably would not violate the code. Do you agree? I guess that as long as the unit is rented no more than 52 times in a year, the intent of the limitation is arguably met.

I agree that the rule, as stated in the statute, is difficult to enforce. If the intent was to limit occupancy of less than 6 days, the statute should have been drafted in those terms. It was not. It was drafted in terms of the rental period. If a licensee rents on a weekly (7-day minimum basis) it is entirely possible that a renter may only occupy the unit for a portion of that time. The more limited use of the rental does not violate the statute so long as the rental agreement is set in terms of 7 or more days' duration. The statute does not prohibit a low weekly rental that could be set to attract weekend occupants.

If the City were intent in trying to impose the 6 or less prohibition, I would recommend that our ordinance speak in terms of minimum occupancy. I think that type of provision would be legally defensible as consistent, but more restrictive with the state legislation and therefore within home rule authority. However, this type of regulation would be extremely difficult to enforce and still easy to abuse or defend.

Conclusions:

In my opinion:

1. If the City grandfathered the existing licenses the classification created by that legislation would be in violation of the equal protection clause.
2. As the regulation of tourist rooming houses as permitted by the state is in the nature of licensure, not zoning, and as there is no serious argument that there is a vested interest in the right to rentals of less than 7 days, the City could impose the less than 7 days' provision across the board.

3. Setting a cap on the rooming house licensees renting for more than 6 days would be contrary to the express authorization of the statute any municipal action that contravenes that authorization is preempted by the state law.
4. Setting a cap on the number of licenses for less than 7-day rentals would result in some licensees having the ability to do the shorter rentals while others would be prohibited from so doing. Consequently, setting that cap would violate of equal protection.
5. Enforcing the less than 7-day rental provision is very difficult and intrusive. While legal it would be difficult to accomplish effectively and evenhandedly.

12-13-19 BY UNIT REPORT

102 permits issued since 5-17-19 (not necessarily a new property to the rental market)

Permitting Entity	# Permits	Units	Year Round Units (all)	# of new permits since 5/17/19	Hotels	Hotels/Units	Reserve	Resort Units	Inns	Inns (Units)	Casinos	Comedor (Units)	Boats	RVs (Units)	Homes (Units)	Other (Units)
Baileys Harbor	107	374	206	8	5	79	3	100	5	30	0	0	2	17	91	124
Brussels	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Clay Banks	7	7	0	1	0	0	0	0	0	0	0	0	0	0	7	0
Egg Harbor - Town	116	408	318	13	1	4	2	239	0	0	47	60	2	9	62	75
Egg Harbor - Village	70	407	160	3	3	85	4	225	1	10	24	26	0	0	36	59
Ephraim	87	518	201	1	6	132	9	275	2	11	5	2	1	18	64	80
Gibraltar	164	636	85	11	10	314	4	105	3	14	41	56	3	16	102	129
Forestville - Town	2	2	1	0	0	0	0	0	0	0	0	0	0	0	2	2
Forestville - Village	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Jacksonport	64	159	85	6	1	12	2	72	0	0	7	5	0	0	52	62
Nasawaupee	47	153	21	7	0	0	3	79	0	0	1	1	0	0	43	73
Liberty Grove	179	477	192	15	6	97	4	156	1	11	6	15	1	1	161	197
Sevastopol	82	238	152	8	1	16	4	116	1	8	3	0	2	16	71	82
Sister Bay	104	573	465	10	5	143	6	269	3	69	32	28	0	0	58	64
Sturgeon Bay - City	89	777	736	8	10	324	2	224	4	49	6	74	8	36	56	64
Sturgeon Bay - Town	32	39	19	3	0	0	0	0	0	0	0	0	0	0	32	39
Gardner	24	67	48	3	1	16	1	21	0	0	1	2	1	2	19	25
Union	5	5	1	0	0	0	0	0	0	0	0	0	0	0	5	5
Washington Island	81	223	65	5	6	48	5	59	1	9	0	0	1	4	65	83
TOTALS	1260	5063	2755	102	55	1270	49	1940	21	211	173	269	21	119	926	1170
70.48% of permits advertise online with sites such as Airbnb, VRBO, Homeaway, Flipkey, and TripAdvisor (5/17/19 65%) (12/1/16 52.86%) (5/23/17 - 59.90%) (11/27/17 - 62%) (5/11/2018 - 63%)																
Of total units, 2755 or 54.3% are offered for year-round rental.																
Resorts: 3.8% of permits (units = 39.3%)																
Inns: 1.7% of permits (units = 4.2%)																
B&B: 1.7% of permits (units = 2.0%)																
Other: 1.2% total permits (units = 1.1% total)																
Of the 92 new permits since 12-12-18- 20 came from property mgmt companies 21.7%																
New permits don't include new permits created to deal with owner/agent split permits																
Hotels: 4.4% of permits (units = 25.0%)																
Condos: 13.7% (units = 5.3%)																
Homes: 73.5% (units = 23.1%)																
Permit Holders w/Agents = 363 (28.8%) 5/17/19 > 336 (27.7%) 12/12/18 > 329 (28.1%) 5/11/18 > 350 (31.2%)																
Agents Listings Advertised on Lodging Platforms - 188 (55.95%)																

Options for Regulating Tourist Rooming Houses (Short-Term Rentals)

Note: The City cannot prohibit (but can regulate) rental periods of 7 days or longer, except it can limit the duration of such use to 180 consecutive days in any calendar year.

1. Status Quo (current ordinance) – Tourist Rooming Houses (TRH's) are permitted for all dwelling units subject to obtaining a license and a few restrictions.
 - a. Advantages
 - i. Maximum flexibility for property owners
 - ii. No need to change code
 - iii. Room tax collections
 - iv. Matches county regulations
 - b. Disadvantage
 - i. Potential impact to neighborhoods
 - ii. Potential impact to traditional lodging industry
 - iii. Potential impact to long-term rental housing stock
2. Adopt additional requirements – TRH's would still be permitted, but subject to more requirements such as inspections, proof of insurance, paved off-street parking, occupancy limitations, change permit duration, etc.
 - a. Advantages
 - i. Property owners still allowed to do short-term rentals
 - ii. Might prevent neighborhood concerns
 - iii. Equity with traditional lodging industry
 - iv. Room tax collection
 - b. Disadvantages
 - i. Requires more administration
 - ii. Potential impact to long-term rental housing stock
3. Madison approach – Rentals with owner present are not restricted. Rentals without owner present are limited to 30 days per year. Only owner may operate the TRH.
 - a. Advantages
 - i. Allows owners to obtain some income without turning the unit into full-fledged business
 - ii. Owner present (other than the max 30 days) prevents neighborhood concerns
 - iii. Less impact to long-term housing stock
 - b. Disadvantages
 - i. More administration required
 - ii. More restrictive than rest of county
 - iii. Less flexibility for property owners
 - iv. Most active permits are for off-premise owners

4. Weekly only - Prohibit rental periods of less than 7 days (with or without additional requirements)
 - a. Advantages
 - i. Presumably less impact on residential neighborhoods due to less turnover
 - ii. Still allows some flexibility to property owners
 - b. Disadvantages
 - i. Enforcement could be difficult
 - ii. TRH's could have weekly rental contracts but prorate fee based with shorter actual stay (workaround)
5. Maximum restriction - Prohibit rental periods of less than 7 days and limit rental periods of 7–28 days to 180 consecutive days in a calendar year (with or without additional regulations)
 - a. Advantages
 - i. Presumably less impact on residential neighborhoods due to less turnover
 - ii. Might preserve long-term rental stock due to TRH restriction
 - b. Disadvantages
 - i. More administration required for licensed TRH's
 - ii. TRH's could have weekly rental contracts but prorate fee based with shorter actual stay (workaround)
 - iii. Less flexibility for property owners
6. Regulate by Zone – Allow commercially zoned properties to rent under the current city ordinance and put a 7-day minimum rental restriction on residential zoned properties and/or a maximum use restriction of 180 days out of a 365 day period.
 - a. Advantages
 - i. This creates less impact in residential areas and promotes this use in commercial areas.
 - ii. Potentially preserves and maintain renter and owner occupied housing
 - iii. Allows some ability to rent a home on a short term basis
 - b. Disadvantage
 - i. Room tax collection goes down
 - ii. TRH's could have weekly rental contracts but prorate fee based with shorter actual stay
 - iii. Enforcement can be difficult



VANDEWALLE & ASSOCIATES INC.

To: Mayor David Ward, City of Sturgeon Bay Plan Commission, City of Sturgeon Bay Staff
From: Jeff Maloney and Meredith Perks, Vandewalle & Associates
Date: Thursday, January 09, 2020
Re: Comprehensive Plan Update – Opportunity & Focus Areas Map

The Draft Opportunities and Focus Areas Map illustrates proposed areas for additional focus in the Comprehensive Plan. Sturgeon Bay's existing Comprehensive Plan identifies downtown, the east boatworks, and Egg Harbor Road as catalytic sites, we want this Plan to build on these areas and chose additional Opportunity Areas for focus.

We are asking the Plan Commission to review the Target Area Map and provide the following feedback:

1. Please confirm if these are the Focus Areas that should be included in the Comprehensive Plan. Should any other areas be included?
2. The Comprehensive Plan will include conceptual redevelopment plans for **three** of these proposed areas. Please indicate which three areas should include more detailed concept plans?
3. Please share any ideas you have on what you would like to see in these Opportunity and Focus Areas in the future. What are the land uses, what is the character or feel or the area?

Please provide your comments to the Community Development Director.

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