Town of Davis
Special Council Meeting

Meeting: Special Council Meeting
Date: June 28th, 2022
Place: Davis Volunteer Fire Department Hall
Time: 6:30 pm

Mayor Al Tomson called the meeting to Order at 6:30 pm

Roll Call: Mayor Al Tomson, Council John Felton, Charlotte Wales, Jeannette Ware (via phone), Kevin Flanagan (via phone), Ron Hollis (via phone) and Recorder Jennie Helmick.

Guests: Betsy Whitehair, Cheryl Ball, Jennifer Britt (Parsons Advocate), Glenda Marshall, Julie Bortz, Bill Peterson, Eric Seachrist, Dawn McVicker and John McVicker.

***This Special Meeting was held to discuss the Short-Ferm Rental Moratorium. No other business was discussed or conducted at this meeting.**

Mayor Al Tomson started off by stating that he expressed his feelings at the Council Meeting that if we let the **Moratorium** lapse and we let the people who are on the waiting list start renting and any other people who come in in the next six months, we still probably won't be at the numbers of short-term rentals that we were targeting with our **Ordinance** that we have since abandoned. From his perspective we don't have to take legal action against anybody who might rent during the **Moratorium.** ***Mayor Tomson*** stated "We don't have to keep people from being able to try to do better for themselves financially to keep their homes or rental properties or whatever, so that is why he is in favor of letting the Moratorium lapse. I am not saying that I don't want to restrict short-term rentals in the future. I think the correct vehicle, least he has come to understand, is the **Comprehensive Plan and Zoning**. **The Planning Commission** for the **Town of Davis** is actively working on both, they are working on the Comprehensive Plan and they will immediately start zoning after that. Again, that's why I feel the way that I do. Anybody else have any comments?"

Councilman John Felton stated "So with that being said, if we would do away with the Moratorium and things get out of control, what happens then?" ***Mayor Tomson*** stated "Nothing. ***Councilman Felton*** stated "Then if things get out of control, we cannot do nothing." ***Mayor Tomson*** stated "Unless we want to put another Moratorium into effect, you're exactly right. We don't know what we don't know. Things could go any which way."

Councilman Kevin Flanagan stated "He would just like to add, he completely agrees with what ***Mayor Tomson*** said. The one big thing that he would like to add , we obviously seen our people advised us we were legal, on the other side of the coin we've seen people advised that says hey the town's not legal, we can't pick what judge we get, we've had two different views of this so we can pass this moratorium, have issues and then take someone to court, the judge could very easily look at the way the law is written, the same way that **Mr. Sayre** has and strikes it down, then we would be in the same position as if we never passed the **Moratorium.** Once that decision has been made, once that verdict is read, that decision is made, that decision will remain for every person we try to take to court and it's not going to change, it's going to set the precedent. That is the only thing that he would like to add, that's his big thing. He doesn't think that as the **Town,** we are prepared to really take a local resident who buys a house, trying to financially better himself or his property and take him to court, so that's the only thing I have to add to that. Keep in mind that we've seen different judgements, or two different verbiage or two different opinions on the matter and it could be the same thing with the judge if we do take it to court. The judge could very easily say, **Town of Davis**, tough luck, I agree with **Mr. Sayre,** they are completely able to operate and then we really, in my world, we get beaten." ***Councilman Felton*** stated "We have known this all along." ***Councilwoman Jeannette Ware*** (via telephone) asked "If that was ***Councilman Flanagan*** or ***Councilman Hollis*** on the phone talking." ***Mayor Tomson*** stated "It was ***Councilman Flanagan*** and asked if Jeannette or Ron had any comments that they wanted to share?"

Councilwoman Jeanette Ware stated "That she did. As she has said before, they have worked hard on everything concerning the short-term rentals. She doesn't think we should back down now. She thinks we should continue and she will make that Motion after the discussion is done but because this Special Meeting was to get the final vote on this and she knows discussions being

held but she thinks we should go with the extension of it and she will make that Motion on it in a minute." ***Mayor Tomson*** thanked Jeannette and stated the one thing he did want to say is he doesn't necessarily view his position as backing down, he thinks it's a different path to get to the same place. ***Councilwoman Ware*** stated she understood that from the earlier discussion. ***Mayor Tomson*** thanked her. ***Mayor Tomson*** asked Ron if he had anything to say or Charlotte or Jennie.

Councilman Ron Hollis stated "He would go ahead and go next. So objectively looking at this, it's like what was the whole reason. Well, we know what the reason was. Now you're making something that is imposing, not say fines, but also keep on some of the regulations we're trying to bring that back down, we don't have that ability but the end result being, my opinion, I think the main thing is being the planning Commission and that comprehensive plan which allows us to zone, to put those couple of things in place. How long that will be before that will be a usable document he doesn't know. He would like to ask that question and then, in other words, he is on the fence. He has thought about this and thought about this. He's not quite ready to vote yet. How long will it be before the **Comprehensive Plan** is where we can use it as it's stated?" ***Mayor Tomson*** stated that "He thinks Charlotte probably knows more than he does but he feels that the Comprehensive Plan will come to us very soon, probably."

Councilwoman Charlotte Wales stated that "At their (Davis Planning Commission) last meeting, asked Guest Nancy Luscombe to correct her if she is wrong, they are aiming at the last day of July. That was the sense that ***Mayor Tomson*** got from them that it's not going to be much longer for the **Comprehensive Plan.** ***Councilwoman Ware*** asked "If she may, Charlotte stated that would be in a draft form, sorry Jeannette, you were there too. Then **Council** will have to review it, once submitted, and if it's approved, then they are going to take steps to finalize it, pretty it up and make it an official like hard copy document." ***Councilwoman Ware*** asked "If she may say something again. ***Mayor Tomson*** stated "Yes." "The **Comprehensive Plan,** a lot of things are dependent on that. We do not have it in a draft form to present to **Council** yet, and she thinks we need that time to get that document done and then proceed with dealing with the short-term rentals after we have that in place because that's where maybe zoning will be considered. She has been working on this for five years. It's not complete yet, they've worked hard but the public meeting and different things have come up. She thinks they need to get the **Comprehensive Plan draft** to the **Council,** get it approved or sent back to them to work on, and then it goes out to the public, so she thinks we need to wait till it's completed but to extend the Moratorium."

Councilwoman Wales had a comment on that as well. "That the **Comprehensive Plan** doesn't get us to a point where we can lift the **Moratorium** and have its **Ordinance** go into place. They still have to get to the Zoning stuff after that. And again, that's going to take a significant period of time. It goes through a lot of the similar processes from her understanding of code and requirements but they basically have the **Comprehensive Plan** that lays the ground work for it but then the **Planning Commission** will have to go out again and canvass the public, and see how the public feels on that specific topic. They have to put together a report about all of that about what they're proposing, what the public feed back was, a lot of the similar steps and then prepare a proposed **Ordinance** based off of that report, and present both that report and draft Ordinance to **Council** again for their review and approval. Considering they are moving a lot faster now on the **Comprehensive Plan,** it's been seven years and she doesn't see the Zoning Ordinance, because again, it's a group of volunteers who are working on this when they have the time, it's not going to happen in a month. It's not going to happen in two months, it's going to take time."

Mayor Tomson asked ***Councilman Hollis*** if that helps him or makes it more difficult, timing wise. "We just don't know how long these things are going to take but he guesses the question he has to **Council** is, if we are looking right now at extending the **Moratorium** for six months, wanting to get these other documents done, what happens if the Zoning Ordinance isn't completed in the next six months, do we look at extending the **Moratorium** again even further, how far do we go, how long do we keep people up in the air with regards to moving forward with their plans and the things they are hoping to do. So, again, there are a lot of unknowns and we'll have to make a decision tonight, but he's trying to give people at least an opportunity to know where they stand and they can do things without really causing an adverse impact to the **Town,** to the best of what he thinks is going to happen. He doesn't know the outcome for sure. There may be twenty people who come in tomorrow and say they want to do short-term rentals. He doesn't think that's going to happen but he doesn't think we're going to have twenty people come in in the next six months who want to do short-term rentals, but he doesn't know."

Councilman Felton asked, "But if they do then what do we do? There's nothing we can do." ***Mayor Tomson*** stated "No. There's no going back. Once you're a short-term rental, you're grandfathered in."

Recorder Helmick asked if she could speak now? ***Mayor Tomson*** stated "Yes, she had waited very patiently." ***Recorder Helmick*** stated that "Her feelings on this are, we made a decision that we were going to do the **Moratorium.** To do this properly, we tried the **Ordinance,** was told it was illegal and so therefore we quit on that. We did according to what the STR groups attorney, **Mr. Sayre**, told us to do, which was to adopt a **Comprehensive Plan** and then to go forward with Zoning. I feel that if we give up now, we're giving into everyone. The residents of this **Town** did a survey, said they do not want anymore up there, not saying we are going to prevent anymore but I think we need to go forward and need to do the best that we can to do what we started out to do, to complete it. And if that means extending the **Moratorium** for six months and if that means extending it again, we have to sue somebody and the judge says we're illegal, then we can make a decision at that time but I think right now, I mean, we all knew from the very beginning that we could be sued but now they've changed their stance too. And now they're not suing us. So, does the attorney maybe feel that they don't have a standing? We don't know. I just think we need to go forward with what we decided."

Councilman Felton stated "Either way you look at it, it's unknown. But he feels, (was interrupted by **Guest John McVicker** who asked if we could put a cap on it, all this stuff, which ***Mayor Tomson*** stated "No we can't and we're not having public discussion, just the **Council**. We tried to do that originally (limit it) but we were told that it was illegal, so we backed off.") ***Councilman Felton*** stated "He didn't have a problem with it, but we need to limit it somehow and if we do away with this, there's no guarantee that it will get out of control or stay in control, but if we do away with this, we lose all control."

Mayor Tomson feels that "If we wanted to do this, which we all want to do this, maybe it should have happened two years ago. It didn't. Maybe it should happen now. We're not ready. Should it happen six months from now or nine months from now, he thinks it will inevitably happen, we'll have the number of short-term rentals that want to pop up, pop up, and I think we live with that, until we are in place to actually control it. To keep everybody in suspense, we've had people patiently waiting on the waiting list for months, for the 30th of June to come and have this Moratorium expire. We've got other people that are in the planning phases for doing short-term rentals that we know about. Now just to keep telling everybody to indefinitely wait, because I think in essence that's what we're doing, because in six months if we're not ready, then we're going to extend the Moratorium some more. Somewhere it needs to stop."

Recorder Helmick asked "At whose expense, the community's? I mean, really." ***Mayor Tomson*** said "What does it go back to, our original goal, 30 short-term rentals, not counting the ones that would be on William Avenue or Commercial district and he doesn't think we are going to get to thirty in the next six months. It's not just his gut feeling, he's looking at what's going on." ***Councilman Felton*** stated that "It might not be six months, it might be next year."

Councilwoman Ware said "The residents have already stated we have enough. Our residential area is starting to fill up with AirBNBs and we know the problems that we've had with some of them and it's not fair to those people who elected us to make decisions to protect them to just give up. Just stop and say okay let's just let it go and see what happens. I don't understand, never mind."

Mayor Tomson stated "Let's talk numbers for a second. We've got over 400 dwellings in Davis. Private residences, rental units, condos and things like that. So, of those 400 we've got about 20 AirBNBs in the residential areas, if that many. That's not being overrun."

Recorder Helmick asked "Then how many of those homes are second home owners who don't live here at all, they just come and stay, so you can't even count them in 22 compared to 400 and some because if you look in your neighborhoods, you're going to see how many of those homes are empty the majority of the year."

Councilwoman Ware said "If you look at Henry Avenue, between 7th and 5th, we have a lot of AirBnBs already and looking at one or possibly more just in the next few months on that little section. That street is narrow, we have enough problems with parking, as the home owner who resides there, to have just enough space to put your vehicles. Then you have AirBnBs that are

supposed to be rented out to possibly one family but then you get multiple vehicles, that's just one example. And if you look at the map that we put up on the wall in Town Hall, you can see where the cluster of Airbnb's are."

Councilman Felton said "One problem is we ain't no small Town no more. We can't live by small Town rules. The rules have changed; therefore, we have to change the rules. From what he's seen, we're already 20 years behind everybody else in Ordinances and everything else so we have to start somewhere."

Councilwoman Wales said that "We're not quitting, backing down or giving up. We're not stopping. This **Commission** is still working on the **Comprehensive Plan**. They are still going to work on the Zoning Ordinance, they're still taking all the steps but, in her mind, we put a short **Moratorium** in place, to give us time to write this document which we did. But then it was brought to our attention, to your point, we are behind the times and frankly we didn't know what we were doing. Then we got told you can't do that, because you have to have this and then you have to have this in order to do this. And at that point, in my point and to Al's point, we can't stop. I mean some of these people want to open something on William Avenue it would be perfectly fine. How long are they going to have to wait, you know, how much are you going to push off. I mean it's just this, it wasn't what it was initially intended to be and initially we even said we don't want to keep kicking this down the road. That's why we set a really short deadline for ourselves. It's not the same situation anymore and we're not giving up, we're just realizing that we didn't have everything done that needed to be done and we are way further behind on that than we thought at the time."

Councilman Felton said "Here's what he sees and he's lived here for forty-nine years and every time a problem like this comes up, it's the same situation. We can't go forward because of this, this and this. They give up. Then this happens that some people said was not going to happen and now here we are again. I've seen, I've watched for years, that is the biggest problem with this **Town**. Is every time there is a **Council** elected it's the same sh**, and he's not there to do the same sh**."

Mayor Tomson said "He uses the **Planning Commission** as an example where that was started three Councils ago and they've been working ever so slowly but making progress, for now the fourth **Council**. So, things don't just stop necessarily when the **Council** changes. It depends on what it is. If it's a good idea, subsequent **Councils** usually do keep them going. Some ideas need to die and sometimes a fresh set of eyes is what causes that to happen. But this, Jeannette has been on this, he was on this from the very beginning and the **Planning Commission** has been steadily moving forward. Learning as we go and the **Councils** been learning as we go but you know we're still moving in the right direction."

Councilwoman Ware stated that, "As Charlotte said a few minutes ago as she was speaking, she said we didn't know what we were doing. That's a slap in the face to all of them who have worked on it prior to last year when they had new members come on. They were doing the best they could with the advisement that they got from **Woodlands** and the **WV Law School.** They were doing the best they could. Charlotte stated that she was referring to **Council** and the **Short-term Rental Ordinance,** not the **Planning Commission**. Jeannette said she still thinks we were working at the point it was a lasting something, they didn't have to start all over again, but she thinks they have it to finish, get it approved and continue to work on. We have people last week who purchased property in **Town** and they're redoing their places, they need time to get their places in the order they want but we also need to take that amount of time and if it's six months with the original motion, she said at least six months or more if needed. When we get to the end of six months and it's more then we can be right where we are again but if we let the Moratorium lapse in two days, she thinks it's a bad decision for the **Council** and **Town.**

Mayor Tomson said that "Jeannette described **Henry Avenue** between **5th and 7th** and that's where he lives. He lives in the center of Short-term rentals and you know, it's not the worst thing in the world. He has great neighbors and he wishes he had more of them instead of short-term rental people coming in and out but it's tolerable and the other thing about it is he doesn't get to control **Henry Avenue** and we don't get to control everything that happens in **Davis.** People need to be able to do certain things that they want to do as long as it doesn't adversely affect other people. So, we're being controlling here and I'm wondering if we need to be this level of control when we are working on other things that are going to solve the problem down the road."

Mayor Tomson asked "If there was any more discussion. If not, then he will entertain a **Motion** in short-term rentals."

Councilwoman Ware* made a Motion that we extend the Short-term Rental Moratorium for at least the next six months or more if needed, Second by *Recorder Jennie Helmick.
Since there are people on the phone, Mayor Tomson will go person to person and ask for their vote;
Councilwoman Charlotte Wales-No
Mayor Al Tomson-No
Councilwoman Jeannette Ware-Yes
Councilman Ron Hollis-No
Recorder Jennie Helmick-Yes
Councilman John Felton-Yes
Councilman Kevin Flanagan-No

***Recorder Helmick* stated that there were 4 No(s) and 3 Yes(s). *Mayor Tomson* stated the Motion doesn't carry. The Moratorium will end on the 30th of June.**

***Motion to Adjourn made by *Councilwoman Charlotte Wales,* Second by *Councilman John Felton,* all in favor. Motion carried.**

Time of Adjournment was 7 pm.

Date of approval: July 13th
As read: _____
As corrected: _____

Alan Tomson, Mayor

Jennie Helmick, Recorder