

City of Colorado Springs

*Regional Development Center
2880 International Circle
Colorado Springs, CO 80910*



Meeting Minutes

Wednesday, December 14, 2022

9:00 AM

Hearing Room - 2nd Floor

Planning Commission

1. Call to Order and Roll Call

Present: 9 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente, Vice Chair McMurray, Commissioner Rickett, Commissioner Slattery, Alternate Griggs and Alternate Cecil

Absent: 1 - Alternate Morgan

Excused: 2 - Commissioner Briggs and Commissioner Raughton

2A. Approval of the Minutes

2A.A. [CPC 22-791](#) Minutes for the October 12, 2022, City Planning Commission meeting.

Presenter:

Scott Hente, Chair of the City Planning Commission

Motion by Vice Chair McMurray, seconded by Commissioner Rickett, to approve the minutes for the October 12, 2022, City Planning Commission hearing. The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente, Vice Chair McMurray, Commissioner Rickett and Commissioner Slattery

Absent: 2 - Commissioner Briggs and Commissioner Raughton

2B. Changes to Agenda/Postponements

3. Communications

Mike Tassi - Assistant Director of Planning and Community Development

Mr. Tassi thanked everyone for their service this year and wished everyone happy holidays. He also thanked them for their patience as they have navigated technical issues.

4. CONSENT CALENDAR

These items will be acted upon as a whole, unless a specific item is called for discussion by a Commissioner/Board Member or a citizen wishing to address the Commission or Board. (Any items called up for separate consideration shall be acted upon following the Consent Vote.)

2050 Southgate Road Mini-Warehouse

4.A. [CPC CU 22-00064](#) A conditional use development plan for a 68,890 square foot mini-warehouse in the C-5 (Intermediate Business) zone district located at 2050 Southgate Road, Suite 170.

(Quasi-Judicial)

Presenter:

Matthew Alcuran, Planner II, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Davis at Briargate

- 4.B. [CUDP-22-0002](#) A conditional use development plan for a multi-family development consisting of 246 units; the site is zoned PBC (Planned Business Center) and is located at 9121 Highlands Ridge Heights consisting of 13.43 acres.

(Quasi-Judicial)

Presenter:

Gabe Sevigny, Planning Supervisor Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Rio Vista Townhomes

- 4.C. [CUDP-22-0004](#) A conditional use development plan for a multi-family residential development in a PBC/AO (Planned Business Center with Airport Overlay) district located in the southwest corner of Rio Vista Drive and Barnes Road.

(Quasi-Judicial)

Presenter:

Tamara Baxter, Senior Planner, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Street Name Change - Starpoint Way

- 4.D. [CPC SN 22-00111](#) A street name change from Intruder View to Starpoint Way located within the Woodmen Ridge Apartments Filing No. 2 at 7480 Hornet Point.

(Quasi-Judicial)

Presenter:

Peter Lange, Planner II, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Lighthouse Early Care and Education

- 4.E. [UVAR-22-0006](#) A use variance development plan to allow for the Lighthouse Early Care and Education commercial daycare center and ancillary childcare services on a R-4 (Multi-Family Residential) zoned property located at 506 East Moreno Avenue.

(Quasi-Judicial)

Presenter:

Matthew Alcuran, Planner II, Planning and Community Development

This Planning Case was approved on the Consent Calendar.

Approval of the Consent Agenda

Approval of the Consent Agenda

Motion by Commissioner Rickett, seconded by Commissioner Almy, that all matters on the Consent Calendar be passed, adopted, and approved by unanimous consent of the members present. The motion passed by a vote of

Aye: 7 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente, Vice Chair McMurray, Commissioner Rickett and Commissioner Slattery

Absent: 2 - Commissioner Briggs and Commissioner Raughton

5. ITEMS CALLED OFF CONSENT - None

6. UNFINISHED BUSINESS

Hancock Commons Urban Renewal Area

- 6.A. [URA 22-728](#) A resolution making certain legislative findings and approving the Hancock Commons Urban Renewal Plan.

Related Files: 22-767

Presenter:

Jariah Walker, CSURA Executive Director

Staff Presentation:

Gabe Sevigny, Planning Supervisor, gave a presentation describing the scope and intent of the project.

There were no public comments, and no comments or questions from the Commissioners.

Motion by Commissioner Rickett, seconded by Commissioner Slattery, to recommend approval to City Council the Hancock Commons Urban Renewal Area Plan based on the finding that it is consistent with PlanCOS, the City's Comprehensive Plan. The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente, Vice Chair McMurray, Commissioner Rickett and Commissioner Slattery

Absent: 2 - Commissioner Briggs and Commissioner Raughton

7. NEW BUSINESS CALENDAR

Short Term Rental Appeal

7.A. [APPL-22-00](#) An appeal of the administrative approval of the Short Term Rental permit application for 5135 Wild Rose Lane.

[02](#)

(Quasi-Judicial)

Presenter:

Carli Hiben, Program Coordinator, Planning and Community Development

Motion by Commissioner Slattery, seconded by Commissioner Rickett, to uphold the appeal and deny the administrative approval of the Short Term Rental renewal application, based on City Code Section 7.5.1703.A-B., and that the appellant has substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4. The motion failed by a vote of 2:5:2:0

Aye: 2 - Commissioner Rickett and Commissioner Slattery

No: 5 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente and Vice Chair McMurray

Absent: 2 - Commissioner Briggs and Commissioner Raughton

Staff Presentation:

Carli Hiben, Short Term Rental Program Coordinator, gave a presentation.

Appellant Presentation

Ron Toman, President, Eagle Rock Neighborhood Association, gave a presentation. He is representing the 15 property owners of the Eagle Vista Estates neighborhood. They do not agree that the documentation provided by the Applicant and required by the City meets the definition of an owner-occupied short term rental.

Applicant Presentation:

Jenny Vostatek, homeowner of 5135 Wild Rose Lane, gave a presentation. She stated that all requirements for the application have been met and approved and they have fulfilled all the necessary requirements regarding

minimum occupancy.

Supporters of Appeal:

Ginger Bolt, 5140 Wild Rose Lane, stated the Vostateks do not live at the house.

Connie Williams, 5150 Wild Rose Lane, stated they see a constant stream of short term renters in and out of the property and that the Vostateks actually reside at their other \$2 million property off of Woodmen Road.

Daniel Smith, resident of Eagle Rock neighborhood, stated that the Vostateks live at their other property and that neighbors see increased traffic due to short term renters.

Stu Davis, 5175 Wild Rose Lane, admits the Vostateks have been good neighbors for the past 13 years, but they do not live at this property. He has seen many people at the property who are not the owners.

Rosemary Toman, 5155 Wild Rose Lane, gave examples of how they know the Vostateks do not live at the property.

Judy Evans, 5120 Wild Rose Lane, stated Jenny Vostatek previously complained about another (former) Air BNB on the street and also fought alongside her neighbors to close their street to decrease traffic.

Opponents:

None.

Appellant Rebuttal:

Ron Toman said they are not against short term rentals, their issue is about the 185 days of occupancy, which they feel the Vostateks do not meet.

Applicant Rebuttal:

Jenny Vostatek restated that her family lives on the property for the 185 days required and they are in full compliance with all applicable rules.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Carli Hiben reaffirmed that she relies on the affidavit the applicant is signing under perjury that they are following City code and other submitted documents for proof of residency.

Commissioner Slattery asked Ms. Hiben if definition of occupancy is in City code and there is not.

Chair Hente asked the City Attorney to weigh in. Lisa O'Boyle confirmed it is not in City Code. Commissioner Slattery said the state definition is overnight and that is what she is using. Lisa O'Boyle said she will research this further.

Commissioner Slattery asked the Applicant to come back up. There has been evidence presented that voter registration for both Jenny and Sean Vostatek were changed to their 1365 Northfield Road address. Commissioner Slattery asked when and why they changed this back to the Wild Rose address. Ms. Vostatek said the Northfield property is in the county, so they changed it back to Wild Rose so they could take part in City elections. This happened in November. Commissioner Slattery then asked how many overnights they have spent at the property. Ms. Vostatek answered they didn't count overnights because the City definition does not state this. They keep track of occupied days with their booking calendar, which shows 224 days. Ms. Vostatek said other definitions of owner occupied include coming to take out the trash or to check on the property. She believes they spent 120 overnights on the property. They are currently occupying the home full-time for three or four months for the 120 days and they will continue to come to check on the house in order to fulfill the requirement of 185 days.

City Attorney Lisa O'Boyle referenced City Code section 7.2.201, which says *"occupied" or "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied."* which isn't terribly helpful.

Commissioner Almy asked staff for the definition of primary residence. Carli Hibben said it is when someone lives and occupies the premises for 185 days unless the City Attorney has additional information. Lisa O'Boyle said City Code does not include such a definition. The number of days was designed to establish occupancy for more than half the year.

There was further discussion on what constitutes occupancy as a primary residence.

Commissioner Almy had a question for the homeowners association. The short term rental agreement is a City ordinance but does not necessarily override HOA covenants. Mr. Toman confirmed that was correct. Commissioner Almy asked if the HOA has considered amending their covenants to not include short term rentals, to which Mr. Toman answered they have not. He restated they are not opposed to short term rentals and their issue is about occupancy. They believe the Vostateks are circumventing the intent of short term rentals.

Commissioner Rickett reviewed the code enforcement cases and found that the code inspector never encountered the homeowners when he visited the property. He asked the Applicant to confirm that they only spend 120 overnights on the property, and she agreed. Ms. Vostatek said there is no clear definition of occupancy in the short term rental application. The ordinance does define owner occupied as actually occupied by the owner for not less than 185 days each year.

Commissioner Rickett agreed that more clarification is needed, but it is clear about primary residence and the state definition means overnight.

Commissioner McMurray said the big picture is the intent of the code. When this commission decided on the 185 day requirement, it was to prevent situations with absentee landlords or faceless corporate entities taking over management. In this case, the property owner lives in town. He believes the property owners have made a good faith effort to abide by the provisions of the code as it is written. This exposes a deficiency in how the code is written and administered. He is in agreement with the staff recommendation that the property owner has met the requirements. He will vote to deny the approval and also recommend to staff that we address this to provide more clarity.

Commissioner Rickett disagreed. The whole purpose of the 185 days was to make sure a property owner wasn't renting out multiple properties. He believes it is clear that occupancy means overnights. He will support the appeal.

Commissioner Almy agreed that 185 days was intentional. He believes the Applicant is stretching the definition to the limit. He will support the appeal.

Commissioner Slattery agreed with Commissioner Rickett. She heard enough evidence that the property owner does not fulfill the occupancy requirements and she will support the appeal.

Chair Hente said their role is to rule on what the City code says, even if it is poorly written. He believes the property owner followed the rules and will not support the appeal.

Commissioner Hensler said this is a grey area but thinks the property owner has taken advantage of that and stretched the rules to their benefit. She agreed with other commissioners about the intent of the ordinance. The property owner, however, has followed the rules, so she will likely not support the appeal.

Motion and Vote:

Commissioner Slattery made a motion to approve the appeal and deny STR renewal
Commissioner Rickett seconded the motion.

Vote:
Vote fails 2-5

Commissioner McMurray made a motion to deny the appeal and approve STR renewal.
Commissioner Almy seconded the motion.

Commissioner McMurray recommended that staff work to update the definition of occupancy.

Motion by Vice Chair McMurray, seconded by Commissioner Almy, to Deny the appeal and affirm the administrative approval of the Short Term Rental renewal application, based on City Code Section 7.5.1703.A-B., and that the appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4. The motion passed by a vote of 5:2:2:0

- Aye:** 5 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente and Vice Chair McMurray
- No:** 2 - Commissioner Rickett and Commissioner Slattery
- Absent:** 2 - Commissioner Briggs and Commissioner Raughton

1756 Silversmith Apartments Appeal

- 7.B. [APPL-22-0003](#) An appeal of the Planning Commission decision to deny an appeal of the administrative approval of the development plan amendment for 1756 Silversmith Apartments, located at 1756 Silversmith Road.

Presenter:
Katelynn Wintz, Planning Supervisor, Planning and Community Development
Peter Wysocki, Planning Director, Planning and Community Development

Staff Presentation:
Katelynn Wintz, Planning Supervisor, gave a presentation describing the scope and intent of the project.

Appellant Presentation:
Michael Ford, resident at 1707 Redbank Drive, gave a presentation providing the neighborhood concerns, including lower property values, health/safety impacts, business impact and school impact.

Applicant Presentation:

Elizabeth Likovich, Senior Vice President with Aimco, gave a presentation on changes they have made to the project in response to previous public comment in an attempt to make it more compatible with the neighborhood.

David Carnicelli, Architect with Stantec, continued with the presentation.

Raleigh Wood, Civil Engineer with Kimley Horn, continued with the presentation.

Nicole, land use counsel for landowner, continued with the presentation.

Supporters:

None

Opponents:

Laura Nelson, Executive Director of the Apartment Association of Southern Colorado, said this project is very well suited for the area. We are always in need of more housing options.

Dave Dazzlich, Vice President of Government Affairs for the Colorado Springs Chamber and EDC, supports the need for more workforce housing for the region.

Appellant Rebuttal :

Mr. Ford said his biggest concern is privacy and view. He stated he is curious if the traffic studies took into account the 800+ apartments that are being built. He has questions about the proposed height of the buildings.

Applicant Rebuttal:

Ms. Likovich said they are addressing neighborhood concerns as best they can. They are lowering the height and reducing impact on the views of neighbors. It is compliant with the Flying Horse neighborhood and master plan.

Staff Comments:

Ms. Wintz confirmed the zoning history and requirements of this parcel and adjacent parcels.

Questions:

None

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Almy said the appellant has raised good points, but they are a little too late. The applicant has improved the project to address

previous concerns. He will not support the appeal.

Commissioner McMurray commended the applicant for the positive change to the project.

Commissioner Hensler agreed with Commissioner McMurray.

Motion by Vice Chair McMurray, seconded by Commissioner Rickett, to Deny the appeal, upholding Staff's administrative approval of the 1756 Silversmith Apartments major development plan amendment, based upon the finding that the application complies with the review criteria in City Code Section 7.5.502.E, and that the appeal criteria found in City Code Section 7.5.906.A.4 are not met. The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner Almy, Commissioner Foos, Commissioner Hensler, Chair Hente, Vice Chair McMurray, Commissioner Rickett and Commissioner Slattery

Absent: 2 - Commissioner Briggs and Commissioner Raughton

8. PRESENTATIONS/UPDATES

9. Adjourn