



# City of Colorado Springs

Plaza of the Rockies  
South Tower, 5th Floor  
Blue River Board Room  
121 S Tejon St, Colorado  
Springs, CO 80901

## Meeting Minutes - Final Planning Commission

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Thursday, August 19, 2021

8:30 AM

Hybrid Meeting - Open to Public  
Call 720-617-3426 Conf ID: 815 137 01#

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### 1. Call to Order

#### Roll Call

- Present:** 6 - Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks
- Excused:** 4 - Commissioner Raughton, Vice Chair Hente, Commissioner Rickett and Alternate Griggs

### 2. Approval of the Minutes

- 2.A. [CPC](#) Minutes for the June 17, 2021 City Planning Commission meeting.  
[21-480b](#)

Presenter:  
Reggie Graham, Chair

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to approve the minutes for the June 17, 2021 Planning Commission meeting.**

**The motion passed by a vote of 6:0:3:0**

- Aye:** 6 - Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy, Commissioner Eubanks and Alternate Griggs
- Excused:** 3 - Commissioner Raughton, Vice Chair Hente and Commissioner Rickett

### 3. Communications

Peter Wysocki - Director of Planning & Community Development

### 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.)**

#### Garden of the Gods West

- 4.A. [CPC ZC](#) Ordinance No. 21-86 amending the zoning map of the City of  
[21-00053](#) Colorado Springs relating to 2.78 acres located at 1105 West

Garden of the Gods Road and 4470 Forrest Hills Road, from PIP2/C5/P (Planned Industrial Park and Intermediate Business with Planned Provisional Overlay) to C5 (Intermediate Business).

(Quasi-Judicial)

Related File: CPC CP 21-00054

Presenter:

Daniel Sexton, Planning Supervisor, Planning & Community Development

Peter Wysocki, Director, Planning & Community Development

**This Ordinance was referred on the Consent Calendar to the City Council.**

**4.B.** [CPC CP 21-00054](#)

A concept plan for the Garden of the Gods West project illustrating the redevelopment of two commercially developed lots into three new lots for a mix of commercial uses and ancillary site improvements.

(Quasi-Judicial)

Related File: CPC CP 21-00054

Presenter:

Daniel Sexton, Planning Supervisor, Planning & Community Development

Peter Wysocki, Director, Planning & Community Development

**This Planning Case was referred on the Consent Calendar to the City Council.**

**NEC Peterson & Carefree (Sand Creek Townhomes)**

**4.C.** [CPC ZC 21-00062](#)

Ordinance No. 21-79 amending the zoning map of the City of Colorado Springs relating to 6.95 acres located at the northeast corner of Peterson Road and North Carefree Circle, from R5/cr/AO (Multi-Family Residential with Conditions of Record and Airport Overlay) to R5/AO (Multi-Family Residential with Airport Overlay).

(Quasi-Judicial)

Related File: CPC CP 21-00063

Presenter:

Daniel Sexton, Planning Supervisor, Planning & Community Development

Peter Wysocki, Director, Planning & Community Development

**This Ordinance was referred on the Consent Calendar to the City Council.**

- 4.D. [CPC CP 21-00063](#) A concept plan for the NEC Peterson & Carefree Townhomes project on 6.9 acres located at the northeast corner of Peterson Road and North Carefree Circle.

(Quasi-Judicial)

Related Files: CPC ZC 21-00062

Presenter:

Daniel Sexton, Planning Supervisor, Planning & Community Development

Peter Wysocki, Director, Planning & Community Development

**This Planning Case was referred on the Consent Calendar to the City Council.**

**PACE Program**

- 4.E. [CPC CU 21-00076](#) A Conditional Use Development Plan for a Program of All-Inclusive Care for the Elderly (PACE) project illustrating the change of use from religious worship/office to adult daycare in an existing 58,774 square foot commercial building and ancillary site changes, located at 8595 Explorer Dr.

(Quasi-Judicial)

Presenter:

Andrew Bowen, Senior Planner, Planning & Community Development

**This Planning Case was approved on the Consent Calendar.**

**Approval of the Consent Agenda**

**Motion by Commissioner McMurray, 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 6:0:2:0**

**Aye:** 6 - Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 3 - Commissioner Raughton, Vice Chair Hente and Commissioner Rickett

**ITEMS CALLED OFF CONSENT**

**5. UNFINISHED BUSINESS**

**5.A.**     [CPC PUD  
20-00109](#)     Postpone a PUD development plan for the Creekside at Rockrimmon project to the November 18, 2021 Planning Commission meeting.

(Quasi-judicial)

Presenter:

Kerri Schott, Planner II, Planning & Community Development

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to postpone the Creekside at Rockrimmon PUD development plan to the September 16, 2021 City Planning Commission Hearing in order to gather information from Army Corp of Engineers regarding jurisdictional wetland assessment. The motion passed by a vote of 6:0:3:0**

**Aye:** 6 - Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 3 - Commissioner Raughton, Vice Chair Hente and Commissioner Rickett

**5.B.**     [CPC AP  
21-00064](#)     An appeal of a Notice and Order to Abate Zoning Violation for the property located at 1830 Palmer Park Boulevard for failure to maintain off street park and maneuvering areas.

(Quasi-Judicial)

Presenter:

Kurt Arnoldussen, Senior Code Enforcement Officer, Planning and Community Development

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to postpone the appeal to the September 16, 2021 City Planning Commission Hearing. The motion passed by a vote of 6:0:3:0**

**Aye:** 6 - Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 3 - Commissioner Raughton, Vice Chair Hente and Commissioner Rickett

**5.C.**     [CPC AP  
20-00178](#)     Postpone an appeal of a Notice and Order to Abate for violation of a carport for the property located at 1325 Challenger Drive to the November 18, 2021 Planning Commission hearing.

(Quasi-Judicial)

Presenter:

Kurt Arnoldussen, Senior Code Enforcement Officer, Planning and Community Development

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to postpone the appeal for the Notice and Order to Abate violation to the November 18, 2021 Planning Commission. The motion passed by a vote of 6:0:3:0**

**Aye:** 6 - Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 3 - Commissioner Raughton, Vice Chair Hente and Commissioner Rickett

**Rollcall**

Commissioner Raughton was able to join the meeting remotely via MS Teams.

**Present:** 8 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy, Commissioner Eubanks and Alternate Griggs

**Excused:** 2 - Vice Chair Hente and Commissioner Rickett

**5.D.** [CPC AP 21-00001](#) Postpone an appeal of a Notice and Order to Abate for violation of a carport for the property located at 1315 Challenger Drive until the November 18, 2021 Planning Commission hearing.

(Quasi-Judicial)

Presenter:

Kurt Arnoldussen, Senior Code Enforcement Officer, Planning and Community Development

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to postpone the appeal for the Notice and Order to Abate violation issued against 1315 Challenger Avenue to the November 18, 2021 Planning Commission. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6. NEW BUSINESS CALENDAR**

**Date Joint Venture Addition No. 1 Annex**

**6.A.** [CPC A 20-00141](#) Ordinance No. 21-80 annexing the area known as Date Joint Venture Addition No. 1 located southeast of Date Street and Beverly Street consisting of 0.331-acres.

(Legislative)

Presenter:

Katie Carleo, Planning Supervisor, Planning and Community Development

Peter Wysocki, Planning and Community Development Director

**Staff presentation:**

Katie Carleo, City Planning, presented a PowerPoint with the scope and intent of this project.

**CURRENTLY UNINCORPORATED EL PASO COUNTY**

- RM-30 (Residential Multi-family)
- Existing vacant land

**ENCLAVE**

- Meets contiguous boundary requirement
- City Annexation Plan supports elimination of enclaves
- Close boundary and gap to services

**PROPOSED APPLICATIONS**

Annexation: Voluntary Annexation by property owner

Zone Change: establishing a R5 (Multi-family) for single-family attached

Preliminary Final Plat

**ZONE CHANGE**

Establishing R-5 (Multi-family)

Allow use by right: Single-Family Attached Residential

**PRELIMINARY FINAL PLAT**

Use: Single-Family Residential

4 individual lots

- Access from Date Street
- Water Quality provided on site

**PUBLIC POSTING AND NOTIFICATION**

- Postcards sent to 185 property owners within 1000-foot buffer
  - Internal review and prior to public hearing

**PUBLIC PARTICIPATION COMMENTS**

- None received

**Applicant Presentation:**

Applicant was present for any questions but had no presentation.

**Questions:**

Commissioner Slattery asked if these were anticipated for sale product or rentals? Ms. Carleo said she believed they're anticipated for sale.

**Supporters:**

N/A

**Opponents:**

N/A

**Questions of Staff:**

N/A

**Rebuttal:**

N/A

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

None

**Motion by Commissioner McMurray, seconded by Commissioner Eubanks, to**

recommend approval to City Council the annexation of .331-acre as the Date Joint Venture Addition No. 1 Annexation, based upon the findings that the annexation complies with all of the Conditions for Annexation Criteria as set forth in City Code Section 7.6.203. The motion passed by a vote of 7:0:2:0

**6.B.** [CPC ZC 21-00016](#)

Ordinance No. 21-81 amending the zoning map of the City of Colorado Springs pertaining to 0.331-acre located southeast of Date Street and Beverly Street establishing the R-5 (Multi-family Residential) zone.  
(Legislative)

Presenter:

Katie Carleo, Planning Supervisor, Planning and Community Development

Peter Wysocki, Planning and Community Development Director

**Motion by Commissioner McMurray, seconded by Commissioner Eubanks, to recommend approval to City Council the establishment of .331-acre as R-5 (Multi-family Residential) zone district, based upon the findings that the change of zone request complies with the three (3) criteria for granting of zone changes as set forth in City Code Section 7.5.603(B). The motion passed by a vote of 7:0:3:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.C.** [AR PFP 21-00105](#)

Date Joint Venture Preliminary Final Plat for property located southeast of Date Street and Beverly Street consisting 0.331-acre.  
(Quasi-Judicial)

Presenter:

Katie Carleo, Planning Supervisor, Planning and Community Development

Peter Wysocki, Planning and Community Development Director

**Motion by Commissioner McMurray, seconded by Commissioner Eubanks, to recommend approval to City Council the Date Joint Venture Preliminary/Final Plat, based upon the findings the proposal meets the review criteria for subdivision plats as set forth in City Code Section 7.7.102; for preliminary plat as set forth in City Code Section 7.7.204; and for final plat as set forth in City Code Section 7.7.303. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**Gold Hill Mesa**

- 6.D. [CPC ZC 21-00051](#) Ordinance No. 21-82 amending the zoning map of the City of Colorado Springs relating to 33.36 acres located southeast of the Highway 24 and 21st Street intersection with 29.6 acres rezoning from PBC (Planned Business Center) to TND (Traditional Neighborhood Development) and 3.76 acres rezoning from TND (Traditional Neighborhood Development) to PBC (Planned Business Center).

(Quasi-judicial)

Related Files: CPC CP 04-00127-A7MJ21, AR NV 21-00388. AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development  
 Peter Wysocki, Planning & Community Development Director

**Staff presentation:**

Hannah Van Nimwegen-McGuire, City Planning, presented a PowerPoint with the scope and intent of this project.

Applications:

**CPC ZC 21-00051 - Zone Change:**

- Rezoning 33.3 acres from PBC (Planned Business Center) to TND (Traditional Neighborhood Development)

**CPC CP 04-00127-A7MJ21 - Major Concept Plan Amendment:**

- A major amendment to the Gold Hill Mesa concept plan to illustrate the increase in acreage allotted for residential land use, mixed use areas, and proposed amphitheater.

**AR NV 21-00388 through 00395 - Eight Nonuse Variances:**

- Eight nonuse variances to the TND (Traditional Neighborhood Development) section of the Zoning Code.

Public Notifications and Involvement

Mailings & Posters

- Public notice was mailed to 952 property owners upon the applications' submittal and prior to today's hearing. Site was posted with a poster both times
- New posters were posted following the submittal of the nonuse variances
- CONO emailed notification to all registered HOAs and metro districts within 1,000 feet of the property

Neighborhood Meetings

- Gold Hill Mesa HOA and development team hosted three neighborhood meetings
- A fourth meeting was held on August 10, 2021. Formal notification was sent to 1,126 property owners and two posters were posted
  - This meeting was attended by roughly 100 individuals

Concerns



- Traffic, building height, view protection, community amenities, and noise generated by the amphitheater

Nonuse Variances

1. Increase the size of Accessory Dwelling Units (ADU) on 7,000 square foot lots
2. Increase lot coverage to 75%
3. Allow a second story above a porch and stoops in lieu of a front porch
4. Allow a greater range in the front build-to-zone on all residential lots
5. Increase allowed building height
6. Allow garage faces to be even with the front façade of the home
7. Allow wider driveways at the build-to-line for 50 residential lots
8. Increase the proportion of the front façade of a home which may be a garage door for a maximum of 50 residential lots

Traffic & Geotechnical Review

**Traffic Impact Study:**

- Analysis of future traffic conditions indicates that the addition of site-generated traffic is expected to create minimal negative impact to traffic operations for the existing and surrounding roadway system
- Broadway & 21st Street will require a traffic signal be installed with a northbound right turn lane onto Broadway
- 21st Street is to be widened between Gold Hill Mesa Drive & Broadway

**Geologic Hazard Report & Review:**

- The report concluded the concept plan area can be developed following additional study of specific areas and recommendations to mitigate hazards
- CGS concurred with the report’s findings. Recommended notes be added to the concept plan:
  - Potential mitigation
  - Requirement for site specific reports to be submitted at a future stage

Master Plan & PlanCOS

**Midland Master Plan:**

- The Midland Master Plan was established in 1980, and states, “owners submit master plans for development in this area” for the Gold Hill Mesa area.

**PlanCOS:**

- The Vision Map identifies the area as a Newer Developing Neighborhood.
- The residential component of this project is supported by elements in the Vibrant Neighborhoods chapter by fitting within the Emerging Neighborhoods typology.
- The commercial component of the Gold Hill Mesa project speaks to the Thriving Economy chapter of PlanCOS.
- Gold Hill Mesa fits within the Neighborhood Center typology within the Unique Places chapter.

Recommendations:

**ZONE CHANGE - CPC ZC 21-00051**

- Recommend approval to City Council the rezone of 33.3 acres from TND (Traditional Neighborhood Development) and PBC (Planned Business Center) to TND (Traditional Neighborhood Development) and PBC (Planned Business Center), based upon the findings that the

change of zoning request complies with the three (3) criteria for granting of zone changes as set forth in City Code Section 7.5.603(B).

**MAJOR AMENDMENT TO THE GOLD HILL MESA CONCEPT PLAN -  
CPC CP 04-00127-A7MJ21**

- Recommend approval of the Major Amendment to the Gold Hill Mesa Concept Plan, based upon the finding that the concept plan amendment complies with the review criteria for establishing a concept plan as set forth in City Code Section 7.5.501.E.

**NONUSE VARIANCES - AR NV 21-00388 through -00395**

- Recommend approval of the nonuse variances to the code section TND (Traditional Neighborhood Development) code, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B.

**Applicant Presentation:**

John Olson presented a PowerPoint with the scope and intent of this project.

**Questions:**

Commissioner McMurray asked if the nonuse variances will apply throughout or to Filings 12 and 13?

Mr. Olson said that was correct and that those are going to apply to the TND zoning elements, which are filings 12 and 13. The music park remains as a PBC zone. Most of the nonuse variances are just carryovers with some slight adaptation from the previous filings at Gold Hill Mesa.

Commissioner McMurray said he was trying to understand the relationship of how all these variances will fit in. HE said it was kind of a grab bag of different things. Some of them feel like they're kind of pushing towards more of a suburbanization model than a TND in terms of what it will allow and how that will end up looking. Commissioner McMurray said it seemed like some of the lots would not need all the variances, so was it just a handful of lots that would need the nonuse variances.

Mr. Olson said he has very much dissuaded the suburban aspect and thought Commissioner McMurray was referencing the front loaded garages for the neighborhood. He said they want to keep that ability to do so, but the plan does not have any front loaded garages currently on this site plan. Mr. Olson said it makes for a very pedestrian friendly neighborhood. However, they want to allow for the opportunity for that in case something happens that that would potentially force that to go back. There are a handful of those front loaded garages existing in the neighborhood. Mr. Olson said he believed they have some builders in line that are really thinking outside the box and thinking about how spaces can really happen. There is a mix of building topologies of instead of walkout basements, there will be drive under garages where the lower floor is a garage. The second floor would be the main living space, which is very typical of a lot of urban, single family homes today, except that we're working with grade, which makes it an easier experience, especially for visitors coming to the home to visit without climbing a flight of steps.

There is potentially another topology that would have the garage off an alley on

the second floor and going down to the first floor being another space that then walks out onto a sidewalk from a front door. So, while we're thinking about these things, we need to make sure we have builders on board. So, we want to make sure we allow for those nonuse variances as a part of the existing TND going forward.

Commissioner Graham asked about these variances being carryovers with the exception stoops and lot coverage, but they've been tweaked a little bit. Mr. Olson pointed out some of the tweaks to the commissioners.

Mr. Olson and I had to read that. Just kidding. If you had one of them up, I could probably point to some of the tweaks. So, for example, on the front loaded garages, we put a cap of, of 50 homes that would have that condition. Same with the driveway. So that's one of the tweaks that seemed like there were some of the lot coverage was always one, but we tweaked it up to 70 or 75. And that was based on a mathematical equation of how a small lot home what their equations would actually come out to. Okay.

Commissioner McMurray asked if the carryover Mr. Olson was talking about were nonuse variances that were applied on previous filings? Mr. Olson said that was correct and that some of the recent filing had a lot of those elements, and over time more got added. Mr. Olson said they are trying to maintain the character of Gold Hill Mesa going forward into this.

Commissioner Slattery asked if Gold Hill Mesa was one of the few TND neighborhoods in the City, and Mr. Peter Wysocki, Director of Planning and Community Development said it had not been used much simply because developers have selected to use PUDs in many cases. Mr. Olson added that the Lowell and Spring Creek neighborhoods are also TNDs.

Commissioner Slattery asked if the maximum of 50 residential lots on the garage coverage was just to discourage that type of building product from the future as homebuilders? Mr. Olson said they wanted to provide some assurances that this will be a pedestrian friendly neighborhood and put a cap on it, but still allow for some of those instances where we don't know if a builder comes to us and says they can't do it, so this allows a backup plan to allow that walkout.

Commissioner Slattery asked if the ADUs were a new variance in these filings or was that already occurring in Gold Hill Mesa. Mr. Olson said the ADU nonuse variance was already there with a very small handful of these.

Commissioner McMurray wanted to hear more about the exceptional physical conditions as it relates to the variance standards that would tie in with these nonuse variance requests.

Mr. Olson pointed out the garage facing frontage and the wider driveway, and that those two are really tied together to have the ability for a walkout basement. The other one is a little bit of a difficult element. One of the design parameters have a lot of typography on the site. To utilize that grade has been an interesting aspect. One, it's an opportunity for great views from the existing Mesa top and

below the Mesa, and for these future residents and these future homes. It's also an obstacle because they want to keep the costs down.

Commissioner Graham wanted to know if the light at Broadway and 21st took into consideration all the things coming. Mr. Olson said the concept plan was originally conceived in 2004 when there was a traffic analysis. The site was envisioned for a great amount of traffic for retail and restaurant space. The economy has changed that a bit and residential demand for traffic is much less than what a retail and restaurant capacity would be, so that has been studied extensively.

Commissioner Slattery asked what the vision was for the mixed use area and if it is more of a professional office over an individual unit and not like a corner store concept?

Ms. Olson explained the TND zoning promotes mixed use. So, think a townhome, or a single family home, that would have a front ground floor as a professional office with a little sign. That's what this mixed use is really aiming at and allowing to add that extra kind of mix and element to a neighborhood. Ms. Olson said he sees it as owner occupied ground floor, professional office type space with a little sign.

Commissioner Slattery asked programming wise if the amphitheater concept would be like the clubhouse in Mesa with a type of programming, or was it envisioned as ticket sales? Or how would that function because there was a lot of the public comment regarding that.

Mr. Olson said there was a great answer for that, and it depended on what the end user is. If someone comes in and wants to purchase the amphitheater and have a ticketed venue, then that would be great, however, it would need to go through a development plan process through the City, but we needed to show it in the concept plan to allow for it. At a minimum, it would be The Music on the Mesa kind of element moving down the hill into that area into a new refined, very cool park space.

Ms. Olson shared they are in the process now of developing two new metropolitan districts, as well as a business improvement district. The music park would be included in the business improvement district because it is a benefit to the commercial uses and restaurants that would go in there. It will also help with the maintenance costs, install costs and all those elements to make it a cool space.

**Supporters:**

**Opponents:**

Rick Orłowski, resident

- Concerned about the music center being commercialized
  - Currently, the concerts are small and for local use, whereas if it is commercialized, it is no longer for local use, and this is a negative for the community

- Concerned about parking access and where would people park
- The noise is a concern and what will be the noise limitations, would be a problem for the residents who live close by
- Commercialization option should not be approved

**Rebuttal:**

Mr. Olson said at this point, they did not know what that amphitheater would be. It has to go through the development plan process through the City, which will be analyzed through the standard process. There has been acoustic testing at this site, so the concerns of how audio and noise would be handled they are cognizant of, but those details would have to get flushed out during the planning process. Mr. Olson also pointed out that prior concept plans have always been pointing this out as an amphitheater space in this area and has been part of the vision for a decade.

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner Raughton said there are several things that he is pleased about. On two occasions, he has had to take exception to the modifications of the Gold Hill Mesa plan. One was dealing with a proposal to bring in a big box store called Walmart, and in this revision, that is not in this plan, but the village concept is still retained (inaudible). He was very pleased to see a step toward three dimensional uses. Commissioner Raughton said he would like to hear comments about the preservation of the iconic tower stack that's in the center of the project, and how it will be maintained and preserved over time. He added that this is an excellent example of urban renewal of taking a toxic industrial site and converting it successfully, and an excellent example of infill development in our city.

Mr. Olson said it is there intentions to continue to keep the stack there. There will be some work that is necessary for the preservation of it, so it is not absolutely locked in because more analysis needs to happen. During the last round, it was going to cost equal amounts to preserve it, which is the preference of the developer and make it a great beacon for the City and community. The equal price is to preserve it as it is to take it down, so the goal is to certainly preserve it.

Commissioner McMurray said he is frustrated about the set of nonuse variances being considered because he feels like if they are coming backing back again to ask for the same set of variances to enable a project like Gold Hill, which is high quality in its design that he was not sure that variances were necessarily the optimal tool to achieve the outcome. It might be worth just changing the zoning standards to allow for these things. Given the precedent that the Planning Commission has set with these variances in the past on other applications in Gold Hill, he didn't feel a compelling need to make that a major heading at this time.

Commissioner Almy said he agreed with Commissioner McMurray and that this project was very well thought out and it was trying to provide a good product for the city and for future residents. Commissioner Almy did say we were using a nonuse variance sort of against what its purpose is. The nonuse is really to allow for the developer to develop the property the way he envisions it and not

the fact that you can't use the property for anything else. Commissioner Almy said he thought we were sort of bastardizing the process, but with all that said, he was still in favor of the product.

Commissioner Eubanks said because this is such an interesting location with the grade and with the prior use that the nonuse variances make sense. She said she did not know if she would call them extraordinary physical conditions, but she agreed she liked the concept plan and the thought put into the trail connections. She added she would be voting in favor of this project.

**Motion by Commissioner McMurray, seconded by Commissioner Slattery, to recommend approval to City Council the rezone of 33.3 acres from TND (Traditional Neighborhood Development) and PBC (Planned Business Center) to TND (Traditional Neighborhood Development) and PBC (Planned Business Center), based upon the findings that the change of zoning request complies with the three (3) criteria for granting of zone changes as set forth in City Code Section 7.5.603(B). The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.E.** [CPC CP 04-00127-A7 MJ21](#) Major Amendment to the Gold Hill Mesa Concept Plan illustrating a mix single-family detached, single-family attached, an amphitheater, and commercial land uses located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, AR NV 21-00388. AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to recommend approval of the Major Amendment to the Gold Hill Mesa Concept Plan, based upon the finding that the concept plan amendment complies with the review criteria for establishing a concept plan as set forth in City Code Section 7.5.501.E. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

6.F. [AR NV 21-00388](#)

A nonuse variance from City Code, Section 7.3.907.A.11 to allow 750 square foot accessory dwelling units on lots less than 7,000 square feet in size within the Gold Hill Mesa Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner McMurray, seconded by Commissioner Slattery, to recommend approval of the nonuse variance to code section 7.3.907.A.11 to allow 750 square foot accessory dwelling units on lots less than 7,000 square feet in size, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

6.G. [AR NV 21-00389](#)

A nonuse variance from City Code, Section 7.3.907.A.2 to allow to allow 75% lot coverage within the Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to recommend approval of the nonuse variance to code section 7.3.907.A.2 to allow to allow 75% lot coverage, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.H.** [AR NV 21-00390](#)

A nonuse variance from City Code, Section 7.3.907.A.5 to allow a roof or enclosed second story above a first story porch and to allow stoops in lieu of front porches within the Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388. AR NV 21-00389, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner Eubanks, seconded by Commissioner Wilson, to recommend approval of the nonuse variance to code section 7.3.907.A.5 to allow a roof or enclosed second story above a first story porch and to allow stoops in lieu of front porches, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.I.** [AR NV 21-00391](#)

A nonuse variance from City Code, Section 7.3.908.A.2 to allow a 5 to 25-foot build-within-zone on all residential lots within the Gold Hill Mesa Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388. AR NV 21-00389, AR NV 21-00390, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director



**Motion by Commissioner McMurray, seconded by Commissioner Slattery, to recommend approval of the nonuse variance to code section 7.3.908.A.2 to allow a 5 to 25-foot build-within-zone on all residential lots, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.J.** [AR NV 21-00392](#)

A nonuse variance from City Code Section 7.3.104.A.8 to allow a 40-foot building height within the Gold Hill Mesa Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388. AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00393, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner Eubanks, seconded by Commissioner Wilson, to recommend approval of the nonuse variance to code section 7.3.104.A.8 to allow a 40-foot building height, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.K.** [AR NV 21-00393](#)

A nonuse variance from City Code Section 7.3.907.A.15 to allow garage faces to be even with the front façade of the home within the Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388. AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00394, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner Eubanks, seconded by Commissioner Wilson, to recommend approval of the nonuse variance to code section 7.3.907.A.15 to allow garage faces to be even with the front façade of the home, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.L.** [AR NV 21-00394](#)

A nonuse variance from City Code, Section 7.3.907.A.14 to allow 24-foot wide driveways for a maximum of 50 residential lots within the Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388, AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00395

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner Slattery, seconded by Commissioner McMurray, to recommend approval of the nonuse variance to code section 7.3.907.A.14 to allow 24-foot wide driveways for a maximum of 50 residential lots, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**6.M.** [AR NV 21-00395](#)

A nonuse variance from City Code, Section 7.3.907.A.16 to allow 50% of the front façade of home to be a garage face for a maximum of 50 residential lots within the Concept Plan Amendment area located southeast of Highway 24 and 21st Street

(Quasi-Judicial)

Related Files: CPC ZC 21-00051, CPC CP 04-00127-A7MJ21, AR NV 21-00388. AR NV 21-00389, AR NV 21-00390, AR NV 21-00391, AR NV 21-00392, AR NV 21-00393, AR NV 21-00394

Presenter:

Hannah Van Nimwegen-McGuire, Senior Planner, Planning & Community Development

Peter Wysocki, Planning & Community Development Director

**Motion by Commissioner McMurray, seconded by Commissioner Wilson, to recommend approval of the nonuse variance to code section 7.3.907.A.16 to allow 50% of the front facade of home to be a garage face for a maximum of 50 residential lots, based upon the finding that the request complies with the review criteria for granting nonuse variances as set forth in City Code Section 7.5.802.B. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**Almagre Community Housing - Zebulon Flats URA - Lofts at 1609**

- 6.N. [CPC MP 21-00123](#) The Zebulon Flats Urban Renewal Area Plan for the redevelopment of 3.3-acres for a 137-unit multi-family affordable housing community in the PBC/AO (Planned Business Center with Airport Overlay) zone district.  
(Legislative)

Presenter:

Tasha Brackin, Senior Planner, Planning & Community Development

**Staff presentation:**

Tasha Brackin, City Planning, presented a PowerPoint with the scope and intent of this project.

**Site Details**

Existing Zone: Zoned PBC AO (Planned Business Park with Airport Overlay)

Existing Use: 3.3 acres; Vacant/undeveloped

Proposed Development: 137-unit Affordable Apartment Development

Proposed Urban Renewal Area: Zebulon Flats/Lofts at 1609

Intent of urban renewal plan is to encourage and facilitate redevelopment and to eliminate blight

Master Plan: Not part of any master plan

- Target area 4 of Community Development Department;
- South Academy Economic Opportunity Zone;

- Pikes Peak Economic Opportunity Zone.

**Public Notification and Involvement - Postcards sent to 147 property owners;**

One written comment received, included in packet with responses from applicant

**CPC URBAN RENEWAL AREA PLAN**

Recommend to City Council that the Zebulon Flats Urban Renewal Area is consistent with the city comprehensive plan, based upon the findings contained in the above section of the staff report.

**CPC CU 21-00046 - CONDITIONAL USE DEVELOPMENT PLAN**

Approve the Conditional Use Development Plan, based upon the finding that the request meets the review criteria for granting a Conditional Use as set forth in City Code Section 7.5.704 and a

Development Plan, as set forth in City Code Section 7.5.502(E).

**CPC NV 21-00120 - NON-USE VARIANCE - BUILDING HEIGHT**

Approve the Nonuse Variance for building height, based upon the finding that the request meets the review criteria for granting a Non-use Variance, as set forth in City Code Section 7.5.802(B) and 7.5.802(E).

**Applicant Presentation:**

Lisa Sorenson with Cohen-Esrey Development Group presented a PowerPoint with the scope and intent of this project, along with Lupe Cantu, Davis Partnership Architects.

**Project Initiatives**

- Provide long-term quality affordable housing
- Designed for affordable accessible housing
- Connect with the Southeast community
- Opportunity for Disadvantaged Businesses
- Healthy living and National Green Building Standards
- Public Improvements

**Unit Mix, Rents & Market Study Data**

The affordable rents are 17% to 25% lower than market rate properties

**Comprehensive Plan & PlanCOS**

The fixed 4% credit rate combined with the TIF financing will allow us to add extra project benefits and add a parking garage with 56 covered parking spots. This will result in more green space for a playground, dog park and outdoor gathering areas.

The proposed site is located at 1609 Zebulon Drive in the Valley Hi neighborhood.

Per the PlanCOS map this area has been identified as a Reinvestment Area & Community HUB.

*Neighborhood planning and attainable housing* are specifically listed as a major initiative in the Plan COS Alignment.

Lofts at 1609 will contribute to both initiatives through the construction of a \$35 million multi-family community and the corresponding benefits

We want to be a community partner in addition to providing housing. We want to provide a place to meet, gather, and connect people to the community through jobs, social networking, and empowering people to be self-sufficient by providing housing as the cornerstone.

**Questions:**

Commissioner Graham asked how the number of ADA units was calculated. Ms. Sorenson answered that it had to do with how the units stacked in the architectural design. Ms. Sorenson said she believed ADA accessible units were the 3-bed units, which have more room and turning radiuses and other accommodations that might be needed.

Mr. Lupe Cantu agreed and said they tried to provide a multi-level access for the Type A or wheelchair accessible units. Mr. Cantu said they were able to take advantage of the stacking that occurred in the wall alignment between the multiple levels.

Commissioner Graham asked if the rates were fixed or would they adjust with the cost of living. Ms. Sorenson said once a year, HUD provides the Area Medium Income (AMI) per county and those are the guidelines used for any increase in rent.

**Supporters:**

N/A

**Opponents:**

N/A

**Questions of Staff:**

N/A

**Rebuttal:**

N/A

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner McMurray said the project looks great but commented that he did not feel like we have a way of connecting public improvements along these major corridors, like crossing Chelton or Academy. Those are not pedestrian friendly by any definition. The way the process is currently set up doesn't have a way to make those links between the applications that are coming in and the growing need that we will see for those improvements. Commission McMurray said he was interested in considering way that we can address that moving forward.

Commissioner Graham said he thought this was a great project and much needed in the southeast.

**Motion by Commissioner Eubanks, seconded by Commissioner Wilson, to recommend to City Council the Zebulon Flats Urban Renewal Area is consistent with the city's comprehensive plan based upon the findings contained in the staff report. The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

- 6.O.**    [CPC CU 21-00046](#)    A conditional use development plan for Zebulon Flats (aka Lofts at 1609) to develop a 137-unit multi-family affordable housing community. (Quasi-Judicial)

Presenter:  
Tasha Brackin, Senior Planner, Planning & Community Development

**Motion by Commissioner Eubanks, seconded by Commissioner Wilson, to approve the Conditional Use Development Plan, based upon the finding that the request meets the review criteria for granting a Conditional Use as set forth in City Code Section 7.5.704 and a Development Plan, as set forth in City Code Section 7.5.502(E). The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

- 6.P.**    [CPC NV 21-00120](#)    A non-use variance to City Code section 7.3.204 and 7.4.102.C.2 to allow an overall building height of 59'-10" where maximum building height is 45-feet with an additional 5' for ornamental features.

Presenter:  
Tasha Brackin, Senior Planner, Planning & Community Development

**Motion by Commissioner Eubanks, seconded by Commissioner Wilson, to approve the Nonuse Variance for building height, based upon the finding that the request meets the review criteria for granting a Non-use Variance, as set forth in City Code Section 7.5.802(B) and 7.5.802(E). The motion passed by a vote of 7:0:2:0**

**Aye:** 7 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Chair Graham, Commissioner Slattery, Commissioner Almy and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

**Short Term Rental Permit Appeals**

- 6.Q.**    [CPC AP 21-00098](#)    An appeal of the administrative denial of the Short Term Rental permits for 430 & 440 N 24th Street for an ownership change,

pursuant to City Code Section 7.5.1702.B.

(Quasi-Judicial)

Presenter:

Carli Hiben, Program Coordinator, Planning and Community  
Development

**Staff presentation:**

Carli Hiben, City Planning, presented a PowerPoint detailing why the short term rental permits were not renewed.

**City Code Section 7.5.1702(B) -**

*The Short Term Rental unit permit does not run with the property but is issued to the specific owner of the property. The permit shall expire upon sale or transfer of the property. The permit shall not be transferred or assigned to another individual, person, **entity**, or address but may be managed by a third party on behalf of the owner.*

**City Code Section 7.5.1704(C) -**

*No non-owner occupied Short Term Rental unit shall be located within five hundred feet (500') of another non-owner occupied Short Term Rental unit. The five hundred feet (500') separation measurement shall be made in a straight line without regard to intervening structures or objects from the nearest property line of the proposed short term rental unit to the nearest property line of another Short Term Rental unit.*

**500' Non-Owner Occupied Buffer**

430 N 24th Street is approximately 274 feet from 2329 W Uintah St and 466 feet from 608 N 24th Street.

440 N 24th Street is approximately 305 feet from 2329 W Uintah St and 435 feet from 608 N 24th Street.

**History**

- Ordinance 18-122 - established STR Program  
Permit transfer not permitted
- Ordinance 19-49 (went into effect December 26, 2019)  
Established the 500' non-owner occupied buffer.
- Permits Issued  
May 2020 to Tara Investments LLC
- Ownership Transfer  
January 25, 2021 to RI Property 3 LLC
- Renewal  
May 2021 - did not submit until June 21, 2021
- Denial (June 23, 2021)  
Ownership transfer  
Within 500' buffer of 2 established non-owner occupied STRs

**Appellant:**

Paul Rising, Owner

The property has never changed hands and was simply switched to an LLC for protection purposes only. Mr. Rising has owned this property since it was built in 2004. This property is specifically tied to Mr. Rising's livelihood and what pays the bills. If he would have known what this caused, he would have never done it. Mr. Rising said he was acting on the advice of his financial advisor.

Mr. Rising said he understood why the stipulation was made to prevent changing hands with multiple owners of short term rentals, but that he was a guy who owns a place that he wanted to put in a trust for his family. Currently, he uses it as his livelihood and going from a short term rental to renting would be a 50% cut in wages, which would extremely affect his family. Mr. Rising said he thought every single situation should be looked.

**Questions:**

Mr. Rising asked if he was the original person in the area to own a short term rental, how were the other two in the area allowed to have a permit. Ms. Hiben explained they that the other short term rental permits were submitted prior to December 26, 2019 and were also grandfathered.

Commissioner Graham asked if the correspondence the City provides to each owner has all the guidelines as to what will cause termination. Ms. Hiben explained that on page five of the application and page two of the renewal application cites the section of code where the transfer or sale would result in the expiration of the permit.

Commissioner Eubanks asked if the two other properties within the 500 foot radius already short term rentals and approved at the same time? Ms. Hiben explained they were all grandfathered in prior to December 26, 2019. At that time, they did not have to meet the requirements for the 500 foot buffer.

Commissioner Eubanks asked if the units in question would be allowed to stay if it were not for the ownership change? Ms. Hiben said they are permitted to stay unless they would transfer ownership or not renew their application.

**Supporters:**

N/A

**Opponents:**

N/A

**Questions of Staff:**

Commissioner Raughton asked Mr. Ben Bolinger, City Attorney's office, if it was possible to somehow covenant or restrict if there is a change of ownership to a third party or another party that would (*Inaudible due to audio feedback*) be a short term rental.

Mr. Bolinger noted that Code Section 7.5.1702.B states that the short term rental unit permit does not run with the property but is issued to a specific owner of the property. Permits shall expire upon sale or transfer of the property and permits shall not be transferred or assigned to another individual person, entity,



or address, but may be managed by a third party. The question is, could the code say something different, and yes, it could, but currently, this is what the code says.

Commissioner Eubanks asked if it would be possible for Mr. Rising to revert to the previous LLC? Mr. Rising said he would be willing to do that.

Mr. Bolinger said this came up the last time we had an LLC transfer and that we could not require a property owner to transfer property. Mr. Bolinger said that based on that, the decision today needs to be based on the facts that have happened to date.

Mr. Peter Wysocki, Director of Planning and Community Development, asked Ms. Hiben if there had been any complaints filed on the property. Ms. Hiben said there were a couple of comments from property owners in the area, but that they did not even know that a short term rental existed there. Their comments were basically that they did not want any short terms rentals to be there.

**Rebuttal:**

N/A

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner Slattery commented to Mr. Rising that he was in a predicament after taking advice that didn't turn out as expected. Commission Slattery explained that the Planning Commission has seen this situation before with LLCs and ownership on advice of a financial advisor. Commissioner Slattery said she would be denying the appeal because she thought it sets a dangerous precedent with an LLC being able to change hands without going through another hearing, as well as it is the rule. She said she understood this was a hardship, but she would be voting in favor of the code.

Commissioner Raughton said as a point, he will vote to deny the staff recommendation in hopes that the verbiage in the ordinance is (*Inaudible due to audio feedback*). Commissioner Graham said he thought Commissioner Raughton was trying to say that he hopes at some point, this issue could be re-evaluated.

Commissioner McMurray commented that a similar item was heard in April and his position has not changed. He said he understood the intent of the various facets of the ordinance but thought there should be some mechanism in place that enables the resident or land owners who are taking this step, understandably, to unwind this and take it back to the status quo. He said he believed we were harming the residents on a technicality of the code and not upholding the public interest in a meaningful way. Commissioner McMurray said if we saw out of town actors or corporate actors doing this, then it would be a problem, but if we're imposing this kind of hardship on our own citizens, then it is highly unreasonable. Commissioner McMurray said he would be voting to uphold the appeal and would like to see a way to establish a process that allows this to get addressed somehow.

Commissioner Almy told Mr. Rising that he understood his predicament, but he

was given bad advice. He commented that the Commissioners' job was to weigh this against the ordinance and vote accordingly. That doesn't mean they were unfeeling to his situation as Commissioner McMurray had already stated. Commissioner Almy said there should be other recourses available to Mr. Rising and hopefully that will show up, but he was in favor of denying the appeal as recommended.

Commissioner Graham said he empathized with Mr. Rising's situation, but he was obligated to follow the code that was written. He said he would be denying the appeal based on that.

**Motion by Commissioner Slattery, seconded by Commissioner Wilson, to deny the appeal and uphold the denial of the Short Term Rental renewal applications, based on City Code Section 7.5.1702.B and the criteria found in City Code Section 7.5.1704, 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 4:3:2:0**

**Aye:** 4 - Commissioner Wilson, Chair Graham, Commissioner Slattery and Commissioner Almy

**No:** 3 - Commissioner Raughton, Commissioner McMurray and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

- 6.R. [CPC AP 21-00119](#) An appeal of the Planning Commission's decision to uphold the administrative denial of a Short Term Rental permit for 1950 & 1952 Woodburn Street.

(Quasi-Judicial)

Presenter:  
 Carli Hiben, Program Coordinator  
 Peter Wysocki, Director of Planning and Community Development

**Staff presentation:**

Carli Hiben, City Planning, presented a PowerPoint detailing why the short term rental permits were not renewed.

**City Code Section 7.5.1702(B) -**

*The Short Term Rental unit permit does not run with the property, but is issued to the specific owner of the property. The permit shall expire upon sale or transfer of the property. The permit shall not be transferred or assigned to another individual, person, **entity**, or address but may be managed by a third party on behalf of the owner.*

**City Code Section 7.5.1704(C) -**

*No non-owner occupied Short Term Rental unit shall be located within five hundred feet (500') of another non-owner occupied Short Term Rental unit. The five hundred feet (500') separation measurement shall be made in a straight line without regard to intervening structures or objects from the nearest property line*

*of the proposed short term rental unit to the nearest property line of another Short Term Rental unit.*

1952 Woodburn Street is within 500 feet of two other short term rentals.

- Permits Issued
  - July 2019 to Highland Properties 2919 LLC
- Ownership Transfer
  - August 8, 2019 to Tara L. Sorenson
  - February 7, 2020 to 1952 Woodburn LLC
  - December 23, 2020 to Tara L. Sorenson
- Denial (July 16, 2021)
  - Ownership transfer
  - Within 500' buffer of 2 established non-owner occupied STRs

**Applicant Presentation:**

Charlie Ruprecht (sp), attorney representing the owner, presented a PowerPoint detailing the appeal.

Owner, Tara Sorenson, respectfully requests that the Planning Division grant her appeal and reverse the denial of her two short term rental renewal applications because the denial is contrary to the intent of the law and unreasonable pursuant to 7.5.906(4)(b)(1-5).

**Timeline:**

- **May 2019:** Property purchased by Owner Sorenson in by using a "Reverse 1031 Exchange" and placed into HIGHLAND PROPERTIES 2919 LLC
- **June 2019:** Owner applied for a STR permit and listed herself as the "Owner"
- **July 2019:** STR permit issued.
- **August 2019:** Property retitled from HIGHLAND PROPERTIES 2919 LLC to TARA SORENSON
- **February 2020:** Property retitled from TARA SORENSON to 1952 WOODBURN LLC
- **June - July 2020:** Owner's STR permit renewal is granted
- **December 2020:** Owner retitles property from 1952 WOODBURN LLC to TARA SORENSON for the purpose of refinancing property
- **July 2021:** Owner's STR renewal application is denied pursuant to 7.5.1702(B)

**Facts:**

- HIGHLAND PROPERTIES 2919 LLC & 1952 WOODBURN LLC are single-member LLCs under the exclusive control of Ms. Sorenson at all relevant times
- At all relevant times, Ms. Sorenson remained the owner-in-fact of the property exercising exclusive control
- Ms. Sorenson explicitly inquired as to who should be listed as "Owner" at the time of her initial application
- Should the appeal be denied, the subject property is no longer eligible for

new non-owner occupied STR permits

**Criteria for Review of an Administrative Decision**

"[T]he appellant must substantiate [that the] decision is incorrect because of one or more of the following:

- (1) It was against the express language of this zoning ordinance, or
- (2) **It was against the express intent of this zoning ordinance**, or
- (3) **It is unreasonable**, or
- (4) It is erroneous, or
- (5) It is clearly contrary to the law."

7.5.906(4)(b)(1-5)

**City Code Section 7.5.1702.B:**

"The Short Term Rental unit permit does not run with the property but is issued to the specific owner of the property. The permit shall expire upon sale or transfer of the property. The permit shall not be transferred or assigned to another individual, person, entity, or address but may be managed by a third party on behalf of the owner

**Intent of City Code Section 7.5.1702.B**

Ms. Sorenson submits that the intended purpose of City Code Section 7.5.1702.B is to ensure that legal control over the properties being benefited by a STR permit does not transfer away from the individual or entity to whom the permit was initially granted.

Such circumstance would have the effect of severing the relationship between the applicant/permit holder and the City of Colorado Springs in a manner that would make it more difficult to ensure compliance with applicable STR regulations

Planning's written statement in this matter indicates that it has already created non-codified exceptions to 7.5.1702(B):

"When applying the Code, Staff remains consistent in upholding the policy that ANY transfer of ownership results in the expiration of the STR permit automatically **with the exception of name changes due to marriage and/or divorce.**"

**Inconsistent Position:**

At the April 15, 2021 appeal hearing concerning the denial of another STR renewal, the Planning took the position that:

- STR property could be owned by an LLC
- An LLC owning property subject to a STR permit could be sold or transferred to a new entity owner without violating 7.5.1702(B)

Ms. Sorenson challenges the Planning Department to answer the following questions:

- What is the purpose of the transfer provision of 7.5.1702(B)?
- What is the practical difference between allowing for a change of name in the case of marriage or divorce and the situation discussed today?
- How does the Agency's position benefit the City?

- How does Owner Sorenson's position adversely impact the City?

Because the Planning Department's decision is against the intent of 7.5.1702(B), and is unreasonable, Ms. Sorenson is entitled to a grant of her appeal and a reversal of the decision denying her permit renewal.

Mr. Ruprecht added that Ms. Sorenson was told by a Planning staff member that she need not be concerned about who the owner is listed as, which was an egregious mistake or misrepresentation by the individual, and if the appropriate information was provided at that time, this whole situation could have been avoided because Ms. Sorenson would have understood that if she were to change the ownership name, that would put her in a situation where she could be denied the permit.

**Questions:**

02:50:17 Commissioner Graham asked Ms. Sorenson if the information she received from Planning staff was in writing regarding the ownership name.

Ms. Sorenson said she spoke to the Planning staff over the phone and went into detail what her intent was with the Reverse 1031. Ms. Sorenson added that if she knew it was going to be an issue, she never would have purchased the property. Ms. Sorenson said before she ever made any change, she would first call the City to ensure what she was doing was okay.

Commissioner Almy asked what the listed name was on the June 2019 application? Mr. Ruprecht said on the application it was Tara Sorenson, which is the same name on the property today. Ms. Hiben clarified that the owner was Highland Properties 2919 LLC, and at that time, Ms. Sorenson relayed to Ms. Hiben that staff had told Ms. Sorenson that it was okay. Ms. Hiben explained she was not with the City at that time and could not confirm what was relayed. Commissioner Almy said he wanted to know the name physically on the application, and Ms. Hiben said it was the name Tara Sorenson.

Commissioner Almy stated that the ownership name might not have been accurate but the ownership change in August of 2019 reflected as Tara Sorenson. Mr. Ruprecht said the application just has a signature bar for the owner. Because the property was under Highland Properties 2919 LLC, the business can't sign, it would have to be Tara Sorenson that signed. Regardless of whether it was in the LLC or titled to Ms. Sorenson individually, the application would have been exactly the same.

Commissioner Slattery pointed out the timeline staff showed did not show that the 1031 exchange was not even an issue in terms of transfer of ownership. It was the things that occurred in 2020 after the law had changed and gone into effect and asked Staff if that was correct. Ms. Hiben explained it was the title transfer that occurred in August 2019 and then the other two transfers that occurred in February 2020 and in December of 2020.

Ms. Ruprecht said that shows inconsistent enforcement because when Ms. Sorenson applied for the initial STR permit it was in the Highlands LLC. When Ms. Sorenson applied for the renewal one year later, the property was in the

second, Woodburn LLC. Only on her second renewal request in 2021 was the denial made, even though the basis for the denial was retitling of the property back in 2019.

Commissioner Graham asked staff if they agreed there were inconsistencies in the titling from one name to another name, and then staff subsequently picked up on the change, and was that setting a precedence? Ms. Hiben said she could not speak for the staff member who approved it last year.

Mr. Peter Wysocki, Director of Planning and Community Development, said if an error was made it was made, but that he did not think an error sets precedence. Commissioner Graham said that if the permit was renewed in the past after name changes, why would the appellant think it would be different and not renewed.

Ms. Sorenson said she called multiple times to the Planning department to always clarify what the rules were and does not understand after successfully renewing for two years she suddenly gets denied.

Commissioner McMurray said fundamentally it comes down to the criteria and the argument of intent and reasonableness. The position of about half the commissioners has been that it doesn't meet the intent and that it is unreasonable. The appellant has made a convincing argument as to why that is. Commissioner McMurray said Planning Commission has made the mistake twice, and it doesn't have to happen again.

**Supporters:**

N/A

**Opponents:**

N/A

**Staff clarifications:**

Mr. Wysocki said there could be a discussion regarding the intent or the purpose of why the STR code was written and adopted the way it was, however, after holding numerous public hearings with numerous individuals of single-family residential neighborhoods objecting to non-owner occupied STRs, the City Council considered all pros and cons of short term rentals. The outcome of the STR ordinance was that there was general intent to amortize non-owner occupied short term rentals in single-family residential neighborhoods. That is why, at the request of City Council, Staff wrote the criteria, the way it is. At this point, the Planning Commission has the authority to request that code amendment be proposed to rewrite that particular code section as it pertains to change of ownership. Staff can bring it back to the commission for deliberation and request changes, but on the other side of that, there will be the citizen and neighborhood comments and their feeling towards short term rentals, but the intent of approving permits not running with the land but running with the ownership was to amortize non-conforming STRs. There were numerous discussions about how to deal with STRs like the separation requirements, the number of blocks, the frontage, and more. It's easy to debate the spirit and intent of whether or not we erred in interpretation of the code, but

as staff who participated in numerous hearings and months of writing the code, the intent was to ultimately amortize non-conforming STRs. Mr. Wysocki said he was not making a judgement on whether the code is right or wrong, but that the Planning Commission does have the ability to direct staff to work on the code amendment, since there has been a lot of struggle with these decisions and it is a tough situation.

You're sort of in a tough position to make these decisions so if you need to clarify the code which

**Rebuttal:**

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner Graham said he was particularly sensitive to the refinance issue, which is at no fault of the applicant. If an applicant has a short term rental permit but wanted to refinance their property, they would lose their permit as soon as they refinance their property from their LLC name back into their personal name. Commissioner Graham said we are hindering the applicant from taking advantage of a financial situation like a refinance where we know the intent was not to change ownership, but only to satisfy government regulations. Commissioner Graham said he believed the Planning Commission should request some type of amendment to this code to consider those type of situations. There are certain circumstances that we know the owner did not change.

Commissioner Raughton said the Planning Commission's highest and best use is to advise City Council. There is a relatively new ordinance that is worded in such a way that it may be described as ham-handed and not sensitive to all the ownership issues arising. Commissioner Raughton advised the Planning Commission to speak to council directly and say this ordinance needs an amendment because currently the Planning Commission is strapped by the wording. In this case, we are so strict in our interpretation that we're creating an adverse effect on the people that have property rights, and I think we are subject to certain legal consequences if we don't amend the rule.

Commissioner Slattery said a few of the commissioners would like to take Mr. Wysocki up on his offer to review code for an amendment at a future date. Commissioner Slattery said she was going to interpret the code as it today. Commissioner Slattery said she was going to interpret the code as it today. As we've seen through carport issues, there could potentially be a grace period or something as things get reviewed for technicalities to continue to operate. It seems like there should be some sort of code amendment that dresses a real human to an entity change, or something along those lines.

Mr. Ruprecht asked if there was a process to hold the decision while the code is reconsidered.

Mr. Wysocki said there is always the opportunity to postpone the vote. What Commissioner Slattery was referring to was a moratorium on enforcement, which is what the City has done with carports; however, the Planning

Commission does not have the authority to adopt a moratorium and it would have to go to City Council. Staff would need to have similar dialogue with the City Council on whether or not they wish to adopt the moratorium. Mr. Wysocki reiterated that the Planning Commission could postpone this item today.

Senior city attorney Ben Bolinger said he did not want to speak definitively, but a moratorium on enforcing setbacks on carports is different than a moratorium on enforcing permitting requirements for businesses operating in residential zones.

Commissioner McMurray asked if the Planning Commission would be affecting a de facto moratorium by upholding the appeal. It would give them a year grace period while this gets sorted out. If the law doesn't change, the next time they apply, the rules would be clearer or more defined. If it is changed, then it would be a nonissue next year anyway.

Commissioner Almy said in this case, the STR has gone through a couple of name changes for reasons that are other legal requirements, but at the end of the day, it winds up with an individual owning the property. An LLC can change ownership several times and no one would ever know about it. So, this coming out of an LLC and into a personal name is different than from a personal name going into an LLC.

Commissioner Eubanks pointed out the staff report indicated the name was in a previous LLC but transferred to a different LLC. Commissioner Slattery said she thought she heard from the appellant that it was her intent to take it out of her personal name.

Ms. Sorenson said with the first LLCs, it had to do with the 1031 Exchange, and she did not have a choice in that matter. She then chose to put it in an LLC because of her security clearance, and then she took it out because of the refinance. Ms. Sorenson said she wanted to put it back in an LLC but has paused everything until there is a determination for this.

Mr. Bolinger advised that if the Planning Commission finds that a transfer in, out, or otherwise of a single member LLC is not a transfer, it wouldn't matter if it's going in or coming out. It's either a transfer or it's not. If you're going to look through to the beneficial ownership, it's either a transfer, or it's not that. Mr. Bolinger clarified that nobody is ever forced to do a 1031 exchange for a refinance. A 1031 is a capital gains tax shelter as you're doing your loan to get a different interest rate. If you voluntarily choose to do those things, then yes, a 1031 requires that the property be transferred, and the bank may not want to refinance LLC, but nobody's required to do this.

Commissioner McMurray said he agreed with that; however, it is an ancillary point to the issue of intent and reasonableness. It's not a fundamental distinguisher. In that regard, the initial appellant and this appellant are effectively the same in terms of their situation.

Commissioner Wilson said she still sees it as a change of ownership. The difference between this appeal and the last appeal is that staff recommended to Ms. Sorenson a certain way and then she followed that advice. If Ms. Sorenson



had not been advised to do something a certain way, maybe she would not have put it in an LLC.

Commissioner Eubanks asked if there was any rule preventing an LLC to own an STR. Mr. Wysocki said there were several STRs owned by LLCs and there is nothing that prohibits corporate ownership.

Mr. Ruprecht said based on his review of the very similar hearing that occurred in April on this issue, the Planning Department's position was that if an STR property was owned by an LLC, then the LLC could be sold to an infinite number of different owners, and that still would not trigger that provision that would cause the denial of the application renewal.

**Motion by Commissioner Slattery, seconded by Commissioner Wilson, to deny the appeal and uphold the denial of the Short Term Rental renewal applications, based on the City Code Section 7.5.1704, 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 4:3:2:0**

**Aye:** 4 - Commissioner Wilson, Chair Graham, Commissioner Slattery and Commissioner Almy

**No:** 3 - Commissioner Raughton, Commissioner McMurray and Commissioner Eubanks

**Absent:** 2 - Vice Chair Hente and Commissioner Rickett

## **7. PRESENTATIONS/UPDATES-None**

## **8. Adjourn**