

# City of Colorado Springs

*Due to COVID-19 Health Concerns, this meeting will be held remotely.*



## Meeting Minutes - Final

Thursday, October 15, 2020

8:30 AM

Remote Meeting - Call 720-617-3426

Conf ID: 937 260 312#

### Planning Commission

*Those who wish to join/comment during the meeting by phone should wait to be admitted into the meeting after calling in.*

*For those who participate by calling in, you will be muted upon entry to the meeting.*

*Once an item has been heard, the Chair will open the public portion of the hearing for those who wish to comment. There is a three (3) minute time limit for each person.*

*In order to speak, you must press \*6 on your phone to unmute yourself.*

**1. Call to Order**

- Present:** 9 - Jim Raughton, James McMurray, Natalie Wilson, Scott Hente, Andrea Slattery, Marty Rickett, John Almy, Alison Eubanks and Tracey Griggs
- Excused:** 1 - Reggie Graham

**2. Approval of the Minutes**

- 2.A.** [CPC 20-526](#) Minutes for the August 20, 2020 City Planning Commission Meeting

Presenter:  
 Reggie Graham, Chair of the City Planning Commission  
 Postponed- Minutes are incomplete.

- 2.B.** [CPC 20-569](#) Minutes for the September 17, 2020 City Planning Commission Meeting

Presenter:  
 Reggie Graham, Chair of the City Planning Commission  
 Postponed - Minutes are incomplete

**3. Communications**

Peter Wysocki - Director of Planning and 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.)**

**Barnes Center Apartments**

- 4.A.** [CPC CU 20-00062](#) A Conditional Use Development Plan for a 182-unit multi-family apartment project with a clubhouse and ancillary site improvements, located between Integrity Center Point and Powers Boulevard.

(Quasi-Judicial)

Presenter:  
 Daniel Sexton, Principal Planner, Planning & Community Development

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

- 4.B. [CPC R 20-00103](#) An Administrative Relief request to allow a building height of 51 feet 6.75 inches where 45 feet is the maximum building height allowed per City Code Section 7.3.204, located between Integrity Center Point and Powers Boulevard.

(Quasi-Judicial)

Presenter:  
Daniel Sexton, Principal Planner, Planning & Community Development

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

**Colorado Springs Storage**

- 4.C. [CPC V 18-00183](#) Ordinance No. 20-90 vacating portions of public right-of-way known as Pagosa Street, Blanco Street, Osage Street, and an alley as platted in the Portland Heights Subdivision consisting of 0.979 of an acre.

(Legislative)

Related Files: CPC V 18-00183, CPC PUZ 18-00182, CPC NV 20-00020, CPC PUD 18-00184

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

**This Ordinance was recommended for approval on the Consent Calendar to the City Council.**

- 4.D. [CPC PUZ 18-00182](#) Ordinance No. 20-91 amending the zoning map of the City of Colorado Springs related to 3.88 acres located west of the Resort Point and Garner Street intersection from R (Estate Residential) to PUD (Planned Unit Development: Recreational vehicle, trailer, or watercraft storage yard with no permanent structures).

(Quasi-Judicial)

Related Files: CPC V 18-00183, CPC PUZ 18-00182, CPC NV 20-00020, CPC PUD 18-00184

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

Peter Wysocki, Director, Planning & Community Development

**This Ordinance was recommended for approval on the Consent Calendar to the City Council.**

- 4.E. [CPC PUD 18-00184](#) The Colorado Springs Storage Development Plan for a recreation vehicle, trailer, and watercraft storage yard generally located west of the Resort Point and Garner Street intersection.

(Quasi-Judicial)

Related Files: CPC V 18-00183, CPC PUZ 18-00182, CPC NV 20-00020, CPC PUD 18-00184

Presenter:

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

Peter Wysocki, Director, Planning & Community Development

**This Planning Case was recommended for approval on the Consent Calendar to the City Council.**

- 4.F. [AR NV 20-00020](#) A Nonuse Variance to code section 7.4.206 to allow asphalt millings as the paving surface for a vehicle storage area generally located west of the Resort Point and Garner Street intersection.

(Quasi-Judicial)

Related Files: CPC V 18-00183, CPC PUZ 18-00182, AR NV 20-00020, CPC PUD 18-00184

Presenter:

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

Peter Wysocki, Director, Planning & Community Development

**This Planning Case was recommended for approval on the Consent Calendar to the City Council.**

### **Cedar Heights Tank Nos. 1 & 2**

- 4.G. [CPC ZC 20-00114](#) Ordinance No. 20-85 amending the zoning map of the City of Colorado Springs pertaining to a 16,117 square feet located at 3150 N 30th Street from R/HS (single-family residential with Hillside overlay) to PF/HS (Public Facility with Hillside overlay).

(Quasi-Judicial)

Related Files: CPC ZC 20-00114 and CPC ZC 20-00115

Presenter:

Kerri Schott, Planner I, Planning and Community Development

**This Ordinance was recommended for approval on the Consent Calendar to the City Council.**

**4.H.**     [CPC ZC  
20-00115](#)

Ordinance No. 20-86 amending the zoning map of the City of Colorado Springs pertaining to 10,000 square feet located at 4055 North 30th Street from R/HS (single family residential with Hillside overlay) to PF/HS (Public Facility with Hillside overlay).

(Quasi-Judicial)

Related Files: CPC ZC 20-00114 and CPC ZC 20-00115

Presenter:

Kerri Schott, Planner I, Planning and Community Development

**This Ordinance was recommended for approval on the Consent Calendar to the City Council.**

**Jovenchi Addition No. 1**

**4.I.**     [CPC A  
19-00157](#)

Ordinance No. 21-09 annexing the area known as Jovenchi-1 Addition No. 1 Annexation located northwest of New Life Drive and Interquest Parkway consisting of 2.088 acres.

(Legislative)

Related Files: CPC A 19-00157R, CPC A 19-00157, CPC ZC 20-00034

Presenter:

Katie Carleo, Principal Planner, Planning & Community Development  
Peter Wysocki, Planning and Community Development Director

**This Ordinance was recommended for approval on the Consent Calendar to the City Council.**

**4.J.**     [CPC ZC  
20-00034](#)

Ordinance No. 21-10 amending the zoning map of the City of Colorado Springs pertaining to 2.088 acres located northwest of New Life Drive and Interquest Parkway establishing the A (Agricultural) zone.

(Legislative)

Related Files: CPC A 19-00157R, CPC A 19-00157, CPC ZC 20-00034

Presenter:

Katie Carleo, Principal Planner, Planning & Community Development  
Peter Wysocki, Planning and Community Development Director

**This Ordinance was recommended for approval on the Consent Calendar to the City Council.**

**Stericycle Medical Waste Transfer Facility**

4.K. [CPC DP  
20-00028](#)

The Stericycle Medical Waste Transfer Facility Certificate of Designation to allow a medical waste transfer facility at 2602 Durango Drive.

(Quasi-Judicial)

Presenter:

Lonna Thelen, Principal Planner, Planning & Community Development

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

Approval of the Consent Agenda

Approval of the Consent Agenda

**Motion by Commissioner Raughton, seconded by Commissioner Rickett, 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:** 8 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Scott Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

**Absent:** 1 - Chair Graham

**ITEMS CALLED OFF CONSENT**

**5. UNFINISHED BUSINESS**

**Flying W Ranch Appeal**

5.A. [CPC AP  
20-00061](#)

An appeal of the administrative 2-year extension of the temporary use permit for the Flying W Ranch office located at 2870 Chuckwagon Road.

(Quasi-Judicial)

Presenter:

Peter Wysocki, Director, Planning & Community Development

**Staff presentation:**

Peter Wysocki, Director of Planning and Community Development, presented a PowerPoint describing the administrative approval of a 2-year time extension of a Temporary Use Permit and the premise of why it was appealed.

**General Information**

- Flying W Ranch is approximately 1,400 acres consisting of several parcels
- The temporary office building is on approximately 18.4-acre parcel, but the office site is approximately one acre
- The building is approximately 2,924 SF with wood siding and composite shingle roof
- Building permit approved by Pikes Peak Regional Building Department
- Access to the temporary office provided from “behind the gate”
- No exterior lighting
- Improved surface for ADA parking stalls
- Not opened to the general public
- Connected to CSU water and wastewater
- Zoned A (Agriculture)
- The office area is incorporated in the overall Development Plan for the Chuckwagon business, but subject to the terms and conditions of the Temporary Use Permit (TUP)

**Background**

- City Code Sections 7.5.1401 through 7.5.1405 authorize and establish criteria for issuance of temporary use permits.
- Purpose: *The temporary use permit is a mechanism by which the City may allow a use to locate within the City on a short term basis and by which it may allow seasonal or transient uses not otherwise allowed...*
- Temporary modular offices allowed for up to 2 years, with an additional up to 2-year extension.
- Initial TUP permit approved by the City on February 28, 2017
  - Neighborhood meeting
  - No appeal filed
- Two-year retroactive extension issued by the City on March 12, 2020
  - No observed changes to the operation
  - A number of notes/conditions added to mitigate the perceived impacts
- Appeal filed on March 23, 2020

**Premise for Appeal**

- Violates zoning because offices are not allowed in A zone
- Permanent nature and use of the building

- The office is used by Markit! Forestry, which is a separate business from the Flying W Chuckwagon business
- Traffic and noise generated by the business
- Inadequate parking due to Markit! Forestry operation

### **Appeal Criteria**

City Code Section 7.5.906.A.4.b - a successful appeal must be found to meet the following criteria:

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

### **Recommendations**

#### **Staff recommends denial of the appeal**

- Upholds the approval of the time extension
- TUP would expire February 28, 2021
- Could be appealed to the City Council by the appellant
- Should Flying W wish to make the use permanent, a separate Land Use Review (LUR) process is required

#### **Appellant Presentation:**

Malcolm Thompson, with Harbor Pines HOA, presented a PowerPoint with the scope and intent of his appeal.

- Flying W had a 2-year temporary use with the possibility of an extension for 2 years but they forgot to file the extension
- HOA questioned that and then Flying W filed for the extension when they realized they were tardy in doing so
- Near the end of the 2-year extension
- Residents have put up with the traffic because building projects take longer than anticipated, in addition to them having to cope with COVID
- ISSUES
  - Building is built on a concrete foundation and does not look like a temporary structure
  - They never intended this to be a temporary building
  - Believes Flying W will file for a zone change and or variance later on and this feels like a bait and switch and we feel cheated
- Did not follow Temporary Use
  - Flying W presented something to the city but has done something else
  - Use outside the hours: Construction starts between 6:00 - 6:30 and hours were supposed to be between 7:00 and 5:00, and only

## Monday-Friday

- Another business running out of it: Additional traffic with allowing a business called Markit, a forestry reclamation business, which Leanne Wolf has part ownership, to run out of the building
  - After complaints, Markit got another office; however, in the pictures provided you will see many Markit trucks at this facility all the time
- Construction is complete at this point
  - Now they have plans for more construction down the road
- Under the temporary use, it talks about value and quality of the surrounding neighborhood, the proposed location will not be adversely affected
  - Pictures show how neighborhood is being affected
  - Properties facing the building are selling typically 10% lower than those that are not affected
  - Were told by Flying W that the building was temporary
  - Flying W has stated there is no intent to remove this building
- Believed the temporary permit would not have been renewed if the appeal had been heard, but because of COVID there were postponements
- HOA would not have appealed if the building was temporary; however, in meetings and emails, Flying W has stated they were not going to remove the building
- Wants the city to tell them to stop using the building because their construction is done
- They have reopened and are operating Chuckwagon dinners
- Flying W is using the building as offices and running the business, not for construction
- Asked the Planning Commission to terminate the temporary use permit and to move the building

**Applicant Presentation:**

Bruce Wright, representing the Flying W Ranch, along with Leanne Wolf

- Intent of the rebuild was not just to rebuild the dinner building but to rebuild the entire western town that was there before
- When temporary use permit was obtained, expected it would take about two years to bring the first phase of the rebuilding, which is the dinner hole, and then to figure out the next step in rebuilding the village
- The reclamation from the flood damage and flood control took longer than anticipated
- Processing the development plan took longer than anticipated.

- Part of the planning is where to the office permanently; does it stay where it is; does it move
- Markit business started out reclaiming on Flying W from the fire, but it did such a good job it has been hired by other cities and counties across the country and grown beyond expectations, so a victim of our own success
- Equipment has been relocated out by the airport and they are moving their office building to a different site to accommodate them, so they will not be there much longer
- Intent of the development plan was an all-encompassing approval for rebuilding the Flying W and the proposed project is to allow the Flying W Ranch to rebuild in accordance with the 1071 annexation agreement for the property
  - It does not restrict or modify the annexation agreement in any way
  - Construction of uses permitted in the 1971 annexation agreement will not require a new development plan amendments or modifications of the development plan
  - Development plan identifies the permissible building areas where the redevelopment can occur, and that permissible building area encompasses where the office is now; it goes all the way down to Flying W Ranch road
  - It further states that buildings can be up to 50-feet high in the area where the office is
  - The reason the extension of the temporary use permit was applied for rather than for permission to make the building permanent in accordance with the approved development plan is because they are unsure where they want the office to be
- Flying W is asking for enough time to decide where they really want the office to be and by the end of the winter season, they will have made up their minds
  - If a decision is made to keep it where it currently is, they will apply for leaving it there permanently, as approved in the development plan
  - There is a chance it makes more sense to move the office closer to the rebuild of the entire village

**Questions:**

Commissioner Rickett said the commissioners are here to interpret codes and based on city code section 7.5.1403.(j), which gets into the uses, one is Christmas tree sales, and two are contractor offices and equipment sheds. Commissioner Rickett said it was his understanding that the purpose of the

building initially was a contractor office for rebuilding Flying W and asked if that was correct.

Mr. Wysocki said it was more than that. It was for Flying W Chuckwagon staff office to manage the reconstruction, preopening of the Chuck Wagon business and the ranch itself. It was really beyond a contractor office where there is a general contractor and staff coming in and checking in reviewing blueprints, or whatever. It was really beyond that. Basically, they had no facilities there because it all burned down during the Waldo Canyon Fire, so to be fair, it was really beyond that. It was for the Flying W Chuckwagon business to have an office so they can check people in, check contractors, and they can hold construction and business operation meetings.

Commissioner Rickett then said to move on to item 3, which would be temporary offices and bank facilities and mobile homes. Is that what the staff made their recommendation on its temporary offices?

Mr. Wysocki said yes and that there was another section below for longer term that allows temporary cells and office buildings for up to two years with a two-year extension.

Commissioner Rickett said that was number 4 and where he has a sticking point. Number four, titled Temporary Real Estate Sales Offices. *Temporary real estate office, sales offices and or a business office for the builder may be located within modular buildings or mobile homes, in accordance with the following criteria, and that's where it's real estate office within model homes, the temporary real estate sales office or business office for the builder may be located within model home for the purposes of making lots or homes within the specified development.* And then it goes into timeframe, which is the two-year initial and two-year extension. So, the way it reads is that is specific to builders in developments, because it says within a specific development. So, they're either marketing lots, or homes within a specific development that's right out of the code.

Mr. Wysocki said he was correct and further explained we essentially, if you will, under a separate section of city code, not in temporary use permits, there's ability for the manager or designees to do similar use determinations. That's what Mr. Wysocki alluded to earlier, that the code cannot address every single scenario or question or zoning issues. We basically looked at this as ability to call this kind of similar to that. It has obviously in our opinion, very limited improvement very limited impacts.

In order to allow the Chuckwagon business to rebuild, after trying to rebuild since summer of 2013, and be an asset to our community, we utilized that code

provision and similar use determination to follow those general if you want, if you will book ends, to allow them the ability to rebuild. There came a point in the process where we quite frankly, and I think even the owners will argue that quite frankly, we just didn't know how long this would take to rebuild. This is an interesting use; it's a very rural, agricultural, agribusiness type of use that our city code doesn't really address. There's a 1971 annexation agreement that binds the city to allow certain uses on the overall property. It wasn't as clear as black and white as Commissioner Rickett just read. In a combination of different code sections, we made a determination that we will issue a temporary use permit for up to two years and allowed the two-year extension. Again, the original approval was not appealed. We held neighborhood meetings, and that's where we are today.

Commissioner Rickett asked if the Flying W was done and if they actually have business now? Mr. Wysocki said he would let the representative from Flying W answer that but went on to say that they are done with Phase 1. They are done with operating the Chuckwagon business, they have those sorts of primary facilities constructed, and they have done a great job of rebuilding. There are more improvements and uses that the owners would like to construct in the future, whether that's near term or long term, Ms. Wolf can speak to that. But to answer the question for phase one, they are primarily done but there could be other uses associated with the Chuckwagon restaurant that will come in the future.

Commissioner McMurray asked what the timeline was for the Markit office? Ms. Leanne Wolf said Markit was scheduled to move to 2424 Garden of the Gods already, but because of COVID, it has been put off month by month. She believed it should be no later than this January. It has all been negotiated, the lease is signed, and it's literally just getting the buildout because of COVID

Commissioner Rickett asked if Markit was doing business out of the office with other projects, not just Flying W? Mr. Wright said yes, they were doing business outside of Flying W because they were a victim of their own success and that is why they will be moving the Markit offices to a separate location.

Commissioner Eubanks asked if the building was movable, what was the construction and if it were a modular building? Mr. Wright said it was movable but not as moveable as a trailer. It is more movable than a permanently fixed house. Commissioner Eubank asked if it was permanently affixed, and Mr. Wright said no, not yet but it might be.

Commissioner Slattery asked if the commissioner would be provided a copy of the development plan. Mr. Wright said that Mr. Wysocki has the approved development plan on file, and it is for the entire rebuild.

**Supporters for the appellant:**

Steve James, President of the Harbor Pines HOA

- Were informed last year from Flying W that Markit would be relocated at the end of the year and wants to know what happened with that since Markit is still operating out of the building
- Property valuations are a concern because people selling their homes in that area are having a hard time

**Opponents:****Rebuttal:**

Appellant Rebuttal, Mr. Malcolm Thompson

- Applicant indicated they could rebuild everything that was there before, but he does not believe there was anything in the location of the temporary office before
- They are trying to mix rebuilding with what was existing and developing the whole thing and they should be kept separate
- Temporary building is by itself and about a mile from the village and right on top of the housing in the neighborhood
- Concerning that the applicant has carte blanche to just develop anything they want based upon that previous situation

Leanne Wolf and Bruce Wright

- Ms. Wolf informed that they have already moved their service area for Markit out towards the airport
- Mr. Wright said when the overall development plan was being processed, there were neighborhood meetings that were held and there was no objection by any of the neighbors to the permissible building area, from behind where the current chuckwagon building is and all the way to Flying W Ranch Road; no one objected to that being a permissible building area
- No one objected to the 50-foot height for buildings in that area for anything to the east of where the current chuckwagon building is
- To the west of that there is permission to go up to 60-feet high for three buildings
- All of that was in front of the neighborhood and there were no objections to what had been approved
- Said they had the right under the development plan to put buildings related to the Flying W operation all the way down to Flying W Ranch Road for a height of up to 50 feet; they do not plan on doing that because it would be too obtrusive

- All they are asking for is extending the temporary permit to get through planning for the next phase this winter
- Knows that if they want to leave the building where it is, they will need to come back to the planning department for approval as a permanent use pursuant to the approved development plan, and at that time, the neighbors would have a chance to be heard, or it could be decided that the building needs to go up where the rebuild is, in which case it would be moved

**Questions of Staff:**

Commissioner Rickett asked Mr. Wysocki if he could confirm that the development plan is as the applicant stated. Mr. Wysocki said he did not have the development plan with him, as it was approved some time ago, but a development area was established with the allowed uses that were originally operational during the time of the annexation agreement. There has been much debate what that was because the records are not very clear. However, Mr. Wright was accurate that the development area does extend downhill and covers the chuckwagon business proper and goes down. Those uses are related to the Chuckwagon operation.

Commissioner Rickett said then it was not to an outside business like Markit, and Mr. Wysocki said that was correct.

Commissioner McMurray asked if the development plan was approved administratively or through the planning commission. Mr. Wysocki said it was administratively approved and further clarified that if it is a use that is related to the ranch operation, or the Chuckwagon business, that would be administrative. If it is expanding the uses, like an office building that is not related to the operation, then that is a different issue because the property is on agriculture. Since the property is zoned agricultural, structures like corrals or barns that are basically intended for operation of a ranch, that would not require anything from the City's perspective other than the building permit. If it is just a use for the operation of Chuck Wagon and or associated uses, that would just be a development plan amendment, which of course is appealable.

Commissioner McMurray asked if the code stipulates anything about the nature of the construction that is allowed under the temporary use permit. The idea most of us would have would be similar to a trailer concept, but does it expressly dictate what types of construction work under this approach. Mr. Wysocki said he would need to pull up that code section, but there was a requirement to receive permits from the regional building department. Mr. Wysocki said he believed there was a concrete foundation, but it was kind of a ribbon foundation to attach a modular mobile home. Mr. Wysocki said it was not permanent in nature and was a perimeter foundation, so the building doesn't

move off.

Commissioner McMurray asked if the building schematic shown in the application was that building part of the original application in 2017. Mr. Wysocki confirmed that it was.

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner Almy said we are really talking about an appeal to the extension of the permit, which is independent from this development plan, which would allow further public interaction, if and when Flying W decides they want to execute something there. Commissioner Almy pointed out there's only four months left on the extension, so, even if they want to do something else with that building, other than vacate with clear signs they're going to take it out or remove it, or move it, actions really need to start soon. Also, the whole thing has been clouded and this goes back to the original discussion about the extension by the fact that there was no real oversight on this permit. The fact that it was a year late approving the extension casts a little doubt between the applicant and the appellant here. Clearly there has been not goodwill that has been going on, but the bottom line is there is only four months left.

Commissioner Almy said that right now, we have to hold the applicant to his extension request and that is they will either do something to remove that building or do something to make that building approved. Commissioner Almy said he was not in support of the appeal, but he did understand where the appellant was coming from. He said he also understand the applicant and the fact that we had a major fire that they're trying to rebuild from. That temporary use permit was approved based on that. Now we have the extension, which has a very limited life and should satisfy people at the end. Commissioner Almy said he would vote to deny.

Commissioner Slattery said she saw both sides here. She can see that the building looks permanent, but it is obviously a double wide or triple wide structure that can be moved with patches to the exterior and the floor. They are pretty common in construction. Commissioner Slattery commended the applicant for making it look nice to fit with the neighborhood. Some of the uses with the Markit business that have been occurring, perhaps not intentionally, are being rectified, those don't seem to fit with the temporary use plan. Really, this is a four-month issue and she anticipated seeing everyone back in these chambers soon. Commissioner Slattery said she would be denying the appeal and sees this as a bigger picture issue.

Commissioner Rickett said he will be supporting the appeal, and it is based on code. The code is clear that the only modular buildings allowed by our code 7.5.1403.1.4 is temporary real estate sales office, and that's either in A or in B. That's the only place that allows for a modular structure. Granted there is only four months left and they will be before us again amending the development

plan to leave the structure where it's at. Commissioner Rickett said he is following code, and it is very clear the other items are all mobile, and that's the only ones that are modular.

Commissioner McMurray said he sees this is a little bit of a complicated situation and recognized some of the some of the dynamics at play dealing with unusual circumstances and things that can't necessarily be foreseen. He said he was on board what's shown in the staff report in terms of the justification for upholding the application and denying this appeal. That being said, he recognized many of the appellant's arguments and there was definitely some validity to those. Commissioner McMurray said as this moves forward, he will be putting a pretty high level of scrutiny on whether or not how this may become permanent and the impacts that it could have on the neighborhood.

Mr. Ben Bolinger clarified that a yes vote on the motion denies the appeal and the temporary use extension stands as approved by staff with the permit expiring on February 28, 2021.

**Motion by Commissioner Almy, seconded by Commissioner Slattery, to deny the appeal, thereby upholding the administrative approval of the temporary use permit for the Flying W Ranch office, based upon the finding that the temporary use complies with the temporary use permit review criteria in City Code Section 7.5.1403, as well as the finding that the appeal criteria in Section 7.5.906.A.4 are not met.**

**The motion passed by a vote of 5:2:1:1**

**Aye:** 5 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Commissioner Slattery and Commissioner Almy

**No:** 2 - Commissioner Rickett and Commissioner Eubanks

**Absent:** 1 - Chair Graham

**Recused:** 1 - Scott Hente

**6. NEW BUSINESS CALENDAR**

**8720 Anglewood Court Appeal**

- 6.A. [CPC AP 20-00130](#) An appeal for the Notice and Order to abate the zoning code violation issued to the owner of 8720 Anglewood Court on August 25, 2020 for violation of short-term rental permit requirements.

(Quasi-Judicial)

Presenter:

Sean Cope, Senior Code Enforcement Officer, Neighborhood Services

Mitch Hammes, Neighborhood Services Manager

**Staff presentation:**

Sean Cope, Senior Code Enforcement Officer, explained the process and the evidence leading up to the Notice of Violation and Order to Abate.

**Applicant Presentation:**

Ryan Decker, appellant and owner of 4720 Anglewood Court, went over the actions he has taken to resolve the issues.

- Onsite and online have highlighted the rules and other information
  - No partying
  - No noise
  - Site is located in a neighborhood
- Installed cameras
- Check the residence by completing drive-bys and proactively monitor the home
- Have canceled reservations due to violations as soon as are made aware
- Installed an internal noise monitor to give an indication of occupancy and noise inside the residence
- Neighbors have cell phone numbers if there is a problem
- Reached out to neighbors with a good neighbor letter
- Personally, have conversations with clients highlighting the rules
- Rules posted at the residence

**Citizen comments:**

Several citizens called in and reiterated their complaints to the police department and to code enforcement. Those complaints can be viewed in the packet provided to the Commissioners.

**Rebuttal:**

- Mr. Decker addressed the listeners of the meeting and reiterated that if they had an issue to please call him so he can address it.

**DISCUSSION AND DECISION OF PLANNING COMMISSION:**

Commissioner Raughton asked Mr. Decker what advice he received that he came to appeal this notice because it sounded like he has been mitigating the problems?

Mr. Decker explained they had been mitigating for over a year and that they are taking reasonable action. However, the city has failed to lay out any sort of action that we can take beyond what we are doing. Mr. Decker said he is still looking to be more proactive. Mr. Decker said he is asking for clear plans and clear guidelines that are reasonable that he can take.

Commissioner Raughton told Mr. Cope that it sounded like he has been diplomatic and asked if he had provided information on how to mitigate the

problems other than simply sending the appellant a notice

Mr. Cope said he has spoken to Mr. Decker on several occasions on recommendations on how to improve and to stop future incidents.

Mr. Cope explained the notice of violation serves as an official documentation to let Ryan Decker know of our concerns, and we wish future occurrences to be eliminated.

Commissioner Raughton asked what the follow up would be if Mr. Decker didn't comply? Mr. Cope said that would have to be addressed at the time of the complaint and where the complaint was coming from. Whether it was from the police department or a citizen, it would involve another conversation with Mr. Decker.

Commissioner Raughton said this was a relatively new ordinance which was very controversial, and he knows how difficult it can be where there are no clear expectations. Commissioner Raughton said he believed those expectations is what is being done right now at this hearing.

Commissioner Almy said the commissioner recognizes this is a new process, but we're not here to adjudicate the ordinance that put the short-term rentals in place. Commissioner Almy asked Mr. Cope if he could explain subjectively how this property compares to other properties that he got across the whole city? Are they one standard deviation above? Or are they way above his normal experience?

Mr. Cope said regarding short term rental properties, this is above what he has received in the past. He said we do receive citizen complaints regarding noise, but not at this volume.

Commissioner Almy said the notice has examples of what is being done incorrectly, and asked Mr. Cope if the corrective actions taken are tracked to close them out, or maybe keep a record of what is still outstanding?

Mr. Cope said the case is monitored but there was not a checklist item that the owner has to abide by the notice of violation. We just don't want further complaints. Commissioner Almy asked if the corrective actions are tracked, and Mr. Cope said yes, that is done through conversations with Mr. Decker; he has the notes Mr. Decker has provided him and those are all put into the case that we can monitor through the process until the case is closed.

Commissioner Almy said it sounds like Mr. Decker is trying to address these things, but when dealing with a quiet neighborhood, there's going to be friction there forever. It won't absolutely go away. But in order to keep the business viable, you're going to have to respond to it. Commissioner Almy said he was not sure of the reason for the appeal, and Mr. Decker was taking actions to correct what was being asked to abate. Commissioner Almy said he was not necessarily going to be in favor of approving the appeal.

Mr. Decker said his issue was he was contacted by Mr. Cope on February 15,

and together they outlined several steps that could be taken, and there were no issues for six months and no contact, until another complaint came in and then the Notice of Order was sent. There was no phone call or any sort of checkup or substantiation of the complaint, and that's why he was pushing back against the reasonableness of the notice.

Commissioner Rickett asked Mr. Cope if there had been a total of 13 calls within the last year. Mr. Cope said that was correct, 3 calls were called into Neighborhood Service and the other 10 were police department calls.

Commissioner Rickett thanked Mr. Decker and believed there was some good dialogue regarding the issue. In the past, Commissioner Rickett said he has not necessarily agreed with code enforcement, but in this case, he said he thought he might agree with code enforcement. Commissioner Rickett again commended Mr. Decker on working with the neighbors and on improvements to try to keep these issues to a minimum.

Mr. Decker said regarding the quantity of the complaints, he believed three of the code enforcement issues were duplicates, and three of the police calls were tips and not from neighbors, so it was actually seven events. Of those seven events, two of them, police said was non-issue, and two others police never verified.

Commissioner McMurray said thinking about down the line and another complaint comes in, and there's definitely a pattern where we're seeing some issues on the property, maybe a couple of instances where it might have been a little bit less certain. Let's say we get another borderline sort of call around something that can't be verified, how short is the leash? Given the formality of the language, it says the next one will result in suspension. How does that work?

Mr. Cope said that would probably require further investigation and discussion. It's hard to speculate. The notice of violation is the first step, if we aren't seeking to revoke or suspend, but it brings our concerns to the owner, and communication has been great. With this, we can work on future issues and other enforcement going forward when it comes to short term rental enforcement.

Commissioner Hente mentioned that a little over a year ago, we had a hearing in front of Planning Commission, and it was basically for a revocation of a license on a different property. We voted not to revoke that license at the time. Just to clarify, that's not what we're talking about here. What we're talking about here is basically a warning letter for law. In layman's terms, is that a fair way to say it? Correct.

Mr. Wysocki said that's an accurate way to describe this, and as a reminder for the commissioners, city code does lay out a revocation or suspension process, basically on sort of chronic and repeated offenses that are not rectified upon these warning letters. This is not what we are hearing today. But the remedy and city code is that the manager can initiate a revocation or suspension proceedings, which come automatically to the Planning

Commission and is not something that is done administratively, basically, based on the preponderance of chronic and repeated violations.

Commissioner Rickett asked Mr. Cope how many orders to abate has Neighborhood Services issued for short term rentals? Mr. Cope replied he believed this would be the second one regarding short term rentals.

Commissioner Rickett commended both. Mr. Cope on presenting great information and appreciated that Mr. Decker is working on doing everything he can to reduce the noise in the neighborhood.

Commissioner Eubanks commented that she understood it's frustrating to Mr. Decker, that he's done all this work to try to mediate these issues, and she believed he really has done that work. But the notice in order is specifically just to document that the problem exists, and it's not intended to require specific changes for past events, it's just to show that these problems have existed and to try to prevent similar occurrences in the future. Since that is the intent of this notice and order, Commissioner Eubanks said it was relevant, and should stand up, and so she will be voting in favor of it.

Commissioner McMurray said he appreciated the thoughtfulness of the discussion today, and certainly can understand the impulse of the appellant to appeal here and recognized from all appearances of the great lengths that he was going to make this situation work. From all appearances, Mr. Decker was putting forth a really good faith effort there and said his heart is sort of there with him. However, based on the actual review criteria for the appeal and applying that, he will be denying the appeal and upholding the action. Commissioner McMurray said he wanted to wish everyone well and hoped that this moves forward positively.

Commissioner Raughton said he will be voting to deny the appeal. Given this is a relatively new ordinance, we do have to perfect our processes within zoning and notification, so that it's clear that this is not something that terminates the short term rental, but is actually notice, as was previously stated that this is a documentation of the notices that have been received. It's a step along the way, and the cooperation is encouraged. So, with that, Commissioner Raughton said we have a responsibility ultimately within the city and the administration to perfect our own operation too.

Commissioner Hente said he echoed what he has heard from his fellow commissioners. Commissioner Hente said he made reference to a hearing that we had a little over a year ago, where there was a proposed revocation, and at the time he thought that going to a suspension was a little bit too far, and maybe we're looking for a middle ground. Commissioner Hente said he thought the middle ground was exactly where we are at today, which was to basically put everybody on notice, that we're looking at it, and we're sensitive to the neighbors' concerns. But we want to have a property owner, as we're seeing with Mr. Decker, who seems to be responsible to want to make things fixed. So based on that, Commissioner Hente said he will be voting to deny the appeal because I think this is an excellent tool that we have, which serves as a good indicator of what we can do going forward.

**Motion by Commissioner Rickett, seconded by Commissioner Raughton, to deny the appeal and uphold the Notice and Order to Abate violation issued against 8720 Anglewood Court on August 25, 2020, based on the finding that the appeal does not meet the criteria for granting an appeal as set forth in City Code Section 7.5.906.A.4. The motion passed by a vote of 8:0:1:0**

**Aye:** 8 - Commissioner Raughton, Commissioner McMurray, Commissioner Wilson, Scott Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

**Absent:** 1 - Chair Graham

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

## **8. Adjourn**