



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

Thursday, April 15, 2021

8:30 AM

Remote Meeting - Call 720-617-3426

Conf ID: 815 137 01#

1. Call to Order

Rollcall

Present: 8 - Commissioner McMurray, Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy, Commissioner Eubanks and Griggs

Excused: 2 - Commissioner Raughton and Chair Graham

2. Approval of the Minutes

Present: 7 - Commissioner McMurray, Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Excused: 2 - Commissioner Raughton and Chair Graham

2.A. [CPC 21-222](#) Minutes for the February 18, 2021 Planning Commission Hearing

Presenter:

Scott Hente, Vice Chair, City Planning Commission

Motion by Commissioner Rickett, seconded by Commissioner McMurray, to approve the February 18, 2021 Planning Commission Hearing minutes. The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner McMurray, Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Absent: 2 - Commissioner Raughton and Chair Graham

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.)

301 South Union

- 4.A. [CPC ZC
21-00005](#) Ordinance No. 21-43 amending the zoning map of the City of Colorado Springs pertaining to 8.83 acres located at 301 South Union Boulevard from PF (Public Facility) to OC (Office Complex).

(Quasi-Judicial)

Presenter:
Tasha Brackin, Senior Planner, Planning & Community Development
Peter Wysocki, Director, Planning and Community Development

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

- 4.B. [CPC CP
21-00006](#) The 301 South Union Concept Plan for development of 128 residential units and 17,900 square feet of commercial space, on 8.83 acres, located at 301 South Union Boulevard.

(Quasi-Judicial)

Presenter:
Tasha Brackin, Senior Planner, Planning & Community Development
Peter Wysocki, Director, Planning and Community Development

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

Advanced Technologies Campus Addition No. 1 Annexation

- 4.C. [CPC A
20-00143](#) An ordinance annexing to the City of Colorado Springs that area known as Advanced Technology Campus Addition No.1 consisting of 160 acres located southwest of Drennan Road and Foreign Trade Zone Boulevard.

(Legislative)

Related Files: CPC A 20-00143R, CPC A 20-00143, CPC MP 20-00160, CPC ZC 20-00159

Presenter:
Katie Carleo, Planning Supervisor, Planning & Community Development
Peter Wysocki, Director of Planning & Community Development

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

- 4.D. [CPC MP
20-00160](#) A resolution of the City Council of the City of Colorado Springs, Colorado approving the Establishment of the CSU Advanced Technology Campus Master Plan pertaining to 160 acres located southwest of Drennan Road and Foreign Trade Zone Boulevard.

(Legislative)

Related Files: CPC A 20-00143R, CPC A 20-00143, CPC ZC 20-00159

Presenter:

Katie Carleo, Planning Supervisor, Planning & Community Development

Peter Wysocki, Director of Planning & Community Development

This Resolution was referred on the Consent Calendar to the City Council.

4.E. [CPC ZC 20-00159](#)

An ordinance amending the zoning map of the City of Colorado Springs pertaining to 160.05 acres located southwest of Drennan Road and Foreign Trade Zone Boulevard establishing the PF/AO/APZ-2 (Public Facility with Airport and Accident Potential Zone-2 Overlay) zone.

(Legislative)

Related Files: CPC A 20-00143R, CPC A 20-00143, CPC MP 20-00160

Presenter:

Katie Carleo, Planning Supervisor, Planning & Community Development

Peter Wysocki, Director of Planning & Community Development

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

Approval of the Consent Agenda

Motion by Commissioner Rickett, seconded by Commissioner McMurray, 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 7:0:2:0

Aye: 7 - Commissioner McMurray, Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

Absent: 2 - Commissioner Raughton and Chair Graham

ITEMS CALLED OFF CONSENT

5. UNFINISHED BUSINESS

6. NEW BUSINESS CALENDAR

Banning Lewis Ranch Village A

- 6.A. [CPC MP 87-00381-A2 6MJ20](#) A Resolution of the City Council of the City of Colorado Springs, Colorado, approving a major amendment to the Banning Lewis Ranch Master Plan relating to 297.08 acres located east of Banning Lewis Parkway between Dublin Boulevard and Stetson Hills Boulevard changing land use designations to residential and commercial.

(Legislative)

Related Files: CPC V 20-00123; CPC PUZ 20-00124; CPC PUP 20-00125; CPC ZC 21-00038; CPC CP 21-00039

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
Peter Wysocki, Director, Planning & Community Development

Staff presentation:

Katelynn Wintz, City Planning, presented a PowerPoint with the scope and intent of this project.

Applicant Presentation:

Rick Haering, LAI Design Group, presented a PowerPoint with the scope and intent of this project.

Questions:

Commissioner McMurray asked if Banning Lewis Ranch (BLR) Villages 1-3 built out according to the original plan or did those require master plan updates over time. Mr. Haering said those did require master plan amendments and added Banning Lewis Ranch had a fairly high density proposal in the 80s when it was started, and generally the market demands reducing land densities down to around medium density use.

Commissioner Rickett asked why there was a downgrade of Banning Lewis Parkway.

Mr. Peter Wysocki, Director of Planning and Community Development, explained the original Banning Lewis Ranch master plan annexation agreement approved by the city in the 1980s planned BLR Parkway to be within a 300 foot right of way and act essentially as an expressway/freeway. When the City redid the annexation agreement two or three years ago, the City adopted an amended and restated annexation agreement for Banning Lewis Ranch, which encompassed pretty much the entire BLR. It was determined then that the City could reduce the right of way from 300 feet to 142 feet, which meets the current standard for a major arterial road. It can still accommodate six or seven lanes, but a big, wide roadway section was not needed, so this proposal now meets the amended and restated annexation agreement between the City and all the

owners.

Ms. Wintz added there was a financial impact analysis that was completed as part of the master planning for this project, and the city finance department found that there would be a positive cumulative cashflow for the city over a 10-year period with the proposed changes.

Supporters:

None

Opponents:

None

Questions of Staff:

None

Rebuttal:

None

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner McMurray said he did not think this project was in harmony with PlanCOS. Commissioner McMurray added he did not believe building additional single-family housing subdivisions promoted housing diversity, and only promotes the status quo. As far as the economic vitality aspect, the development does not maximize infrastructure investments, or minimize the City's future maintenance, and is just the opposite. Even though the short-term fiscal impact for 10-years shows a net benefit to the City, we have ample evidence that in the long run beyond that timeframe it will be a net negative to the City. That does not represent the highest and best use of the master plan. Commissioner McMurray said he was not in support of this project.

Motion by Commissioner Rickett, seconded by Commissioner Almy, to recommend approval to City Council the major master plan amendment to the Banning Lewis Ranch Master Plan, based upon the findings that the request meets the review criteria for granting a master plan amendment as set forth in City Code Section 7.5.408. The motion passed by a vote of 6:1:2:0

Aye: 6 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Commissioner McMurray

Excused: 2 - Commissioner Raughton and Chair Graham

- 6.B. [CPC V 20-00123](#) Ordinance No. 21-44 vacating portions of a public right-of-way known as Banning Lewis Parkway, Stetson Hills Boulevard, Dublin Boulevard and interior roadways consisting of 49.6 acres.

(Legislative)

Related Files: CPC MP 87-00381-A26MJ20; CPC PUZ 20-00124;

CPC PUP 20-00125; CPC ZC 21-00038; CPC CP 21-00039

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
 Peter Wysocki, Director, Planning & Community Development

Motion by Commissioner Rickett, seconded by Commissioner Almy, to recommend approval to City Council the street vacation for portions of Banning Lewis Parkway, Stetson Hills Boulevard, Dublin Boulevard, and interior roadways based on the findings that the request meets the review criteria granting a street vacation as set forth in City Code Section 7.7.402(C). The motion passed by a vote of 6:1:2:0

Aye: 6 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Commissioner McMurray

Excused: 2 - Commissioner Raughton and Chair Graham

6.C. [CPC PUZ 20-00124](#) Ordinance No. 21-45 amending the zoning map of the City of Colorado Springs relating to 282 acres located northeast of Stetson Hills Boulevard and Banning Lewis from Multi-Family and Single Family Residential with Streamside and Airport Overlays (R5/SS/AO and R1-6000/SS/AO) to PUD/AO/SS (Planned Unit Development: Single-Family Detached and Single-Family Attached Residential, 3.5-7.99 Dwelling Units Per Acre and 8-11.99 Dwelling Units Per Acre, and a Maximum Building Height of 35 feet; with an Airport and Streamside Overlay

(Quasi-Judicial)

Related Files: CPC MP 87-00381-A26MJ20; CPC V 20-00123; CPC PUP 20-00125; CPC ZC 21-00038; CPC CP 21-00039

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
 Peter Wysocki, Director, Planning & Community Development

Motion by Commissioner Rickett, seconded by Commissioner Almy, to recommend approval to City Council the PUD zone change from Multi-Family Residential and Single-Family Residential with Streamside and Airport Overlays (R5/R1-6000/SS/AO) to Planned Unit Development: Single-Family Detached and Single-Family Attached Residential, 3.5-7.99 Dwelling Units Per Acre, 8-11.99 Dwelling Units Per Acre and a Maximum Building Height of 35 feet; with Airport and Streamside Overlays (PUD/AO/SS) based upon the findings that the request meets the review criteria for establishing a PUD zone, as set forth in City Code Section 7.3.603, and the review criteria for a zone change, as set forth in City Code Section 7.5.603. The motion passed by a vote of 6:1:2:0

Aye: 6 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Commissioner McMurray

Excused: 2 - Commissioner Raughton and Chair Graham

6.D. [CPC PUP 20-00125](#) A PUD Concept Plan for Banning Lewis Ranch Village A establishing the residential development pattern for 282-acres, located southeast of Dublin Boulevard and future Banning Lewis Parkway.

(Quasi-Judicial)

Related Files: CPC MP 87-00381-A26MJ20; CPC V 20-00123; CPC PUZ 20-00124; CPC ZC 21-00038; CPC CP 21-00039

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
 Peter Wysocki, Director, Planning & Community Development

Motion by Commissioner Rickett, seconded by Commissioner Almy, to recommend approval to City Council the PUD concept plan for Banning Lewis Ranch Village A, based upon the findings that the request meets the review criteria for establishing a PUD concept plan, as set forth in City Code Section 7.3.605, and 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 6:1:2:0

Aye: 6 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Commissioner McMurray

Excused: 2 - Commissioner Raughton and Chair Graham

6.E. [CPC ZC 21-00038](#) Ordinance No. 21-46 amending the zoning map of the City of Colorado Springs relating to 15 acres located southeast of Dublin Boulevard and Banning Lewis from Multi-Family and Single Family Residential with Streamside and Airport Overlays (R5/SS/AO and R1-6000/SS/AO) to PBC/AO/cr (Planned Business Center with Airport Overlay and conditions of record).

(Quasi-Judicial)

Related Files: CPC MP 87-00381-A26MJ20; CPC V 20-00123; CPC PUZ 20-00124; CPC PUP 20-00125; CPC CP 21-00039

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
 Peter Wysocki, Director, Planning & Community Development

Motion by Commissioner Rickett, seconded by Commissioner Almy, to recommend approval to City Council the zone change from Multi-Family Residential and Single-Family Residential with Streamside and Airport Overlays (R5/R1-6000/SS/AO) to PBC/cr/AO (Planned Business Center with conditions of record and Airport Overlay), based upon the findings that the zone change meets the review criteria as set forth in City Code Section 7.5.603 with the following conditions of record:

Prohibited Uses Include:

- Miniwarehouse**
- Sexually Oriented Business**

The motion passed by a vote of 6:1:2:0

Aye: 6 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Commissioner McMurray

Excused: 2 - Commissioner Raughton and Chair Graham

6.F. [CPC CP 21-00039](#) A Concept Plan for Banning Lewis Ranch Village A establishing commercial development for 15 acres, located southeast of Dublin Boulevard and future Banning Lewis Parkway

(Quasi-Judicial)

Related Files: CPC MP 87-00381-A26MJ20; CPC V 20-00123; CPC PUZ 20-00124; CPC PUP 20-00125; CPC ZC 21-00038

Presenter:

Katelynn Wintz, Senior Planner, Planning & Community Development
 Peter Wysocki, Director, Planning & Community Development

Motion by Commissioner Rickett, seconded by Commissioner Almy, to recommend approval to City Council the Concept Plan for Banning Lewis Ranch Village A Commercial, based upon the findings that the request meets 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 6:1:2:0

Aye: 6 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery, Commissioner Rickett, Commissioner Almy and Commissioner Eubanks

No: 1 - Commissioner McMurray

Excused: 2 - Commissioner Raughton and Chair Graham

Short Term Rental Appeal

6.G. [CPC AP 21-00036](#) An appeal of the Notice and Order to Abate the zoning code violation issued to the owner of Short-Term Rental Permit STR-0933 for the property located at 1425 Winding Ridge Terrace.

(Quasi-Judicial)

Presenter:

Sean Cope, Neighborhood Services, Senior Code Enforcement Officer

Mitch Hammes, Neighborhood Services Manager

Staff presentation:

Sean Cope, Senior Code Enforcement Officer, presented a PowerPoint with the scope and intent of this project.

The property is a single-family residential home zoned PUD/HS (Planned Unit Development) that only permits single-family residential uses. The zone district does allow for the operation of a permitted, owner-occupied, short-term rental. The Short-Term Rental Permit STR-0933 is issued to Ian Kallenbach, not the current owner, 1425 Winding Ridge Terrace LLC, as listed with the El Paso County Assessor. The short-term rental license issuance date is August 8, 2020 and would expire August 8, 2021 had the property not transferred ownership. The property transferred ownership on July 17, 2020. The original permit was issued prior to the City Code being adopted that prohibited non-owner-occupied short-term rentals in single-family residential zone districts.

§7.5.1702: SHORT TERM RENTAL UNIT PERMIT REQUIRED

It shall be a violation of this part for the owner or short-term rental tenants to fail to comply with the following rules and regulations:

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.

Staff Recommendation:

Deny the appeal and uphold the Notice and Order to Abate violation issued against 1425 Winding Ridge Terrace on March 10, 2021, based on the finding that the appeal does not meet the criteria for granting an appeal as outlined in City Code Section 7.5.906.A.4. and 7.5.1007.

Appellant:

Mr. Ian Kallenbach attended the meeting via the phone.

Mr. Kallenbach said there were two areas where he could ask for an appeal and one is does it go against the express intent of the zoning ordinance. Mr. Kallenbach said in his opinion, it does go against that intent. He agreed with the idea that if a property transfer to another individual and ownership were to change hands, then they should have to reapply for a permit. Mr. Kallenbach said that is what he believed the intent of the code is. Ms. Kallenbach said through his conversations with Mr. Mitch Hammes, Neighborhood Services Manager, he believed they were in agreement that the intent was if the property actually changed hands/ownership, and that is why Mr. Hammes offered him on November 13, 2020 for him to change the property back to his and his wife's

name.

Mr. Kallenbach said he agreed that when a property is transferred, that they would need to reapply, but that was not what happened in their case. There is nothing wrong with it being an LLC, it's that is the property controlled by the same people who were controlling it before. Mr. Kallenbach said that, not only him, but many other homeowners in Colorado Springs will be in the same conundrum. In his talks with Mr. Hammes, Mr. Hammes shared that there were at least five others that were in a situation, like what he and his wife are in. And that is why he believed this is against the express intent of the zoning ordinance.

Mr. Kallenbach said that it is just the unreasonable nature of this situation when there are citizens out there that are trying to abide by the code itself and stay within the lines, but due to the nature of short term rentals, there is a chunk of liability of people that you barely know signing third party contracts with Airbnb and other places that don't really get into a lot of the liability. Mr. Kallenbach shared that they carry an umbrella policy and do some other things to protect themselves, but one of the thing they wanted to do was move it into an LLC for estate planning purposes, as well as for limiting nuisance lawsuits or any sort of lawsuit entanglements that might impact his family from people at the property. It is unreasonable to say to citizens, "Sure you can rent your property, but don't put it in a limited liability company," and if you do that, you should have done it three years ago.

Mr. Kallenbach asked the commissioners uphold the appeal and let he and his wife put the ownership back in their name, because originally, you could have it under an LLC. He also said it was unreasonable to ask people to rent their properties but hamstringing them in their ability to organize their estate planning and the liability of it all.

Questions:

Commissioner Slattery asked if the initial permit was granted prior to the code change within the R1 (Residential) area.

Mr. Cope explained the initial permit was issued in August of 2019 and the code was amended in December of 2019, which changed the R1 zone into owner occupied only. Since the permit was given before the code change, this permit was accepted and grandfathered in under the previous rules.

Commissioner Rickett asked if Mr. Kallenbach had licensed this property originally under an LLC, would this have been grandfathered in. Mr. Cope and Mr. Mitch Hammes, Manager of Neighborhood Services, agreed that it would have been grandfathered in.

Commissioner Rickett said if an LLC holds the permit, can that property be sole without the LLC having give up the permit?

Mr. Ben Bolinger, City Attorney, explained that LLCs are entities which are separate from the human beings that own them. When an LLC owns a piece of property, the LLC owns it, the person does not own it. The LLC can be sold, the

property stays with the LLC, and then there is a different person in control of it because that person owns the LLC. That is the benefit of owning property through some sort of business entity.

When the code was written and approved by City Council, it included the section 7.5.1702, which includes the phrase, "the permit shall not be transferred or assigned to another individual person, entity, or address, but may be managed by third party on behalf."

Commissioner Hente wanted to know what constitutes a change in ownership, like in this case the husband and wife end up transferring the ownership to an LLC where the owners are the same two individuals. Mr. Bolinger said the LLC is now the owner in that situation. That same couple could sell the LLC to somebody else, and that would not be a sale of property. Transferring the property from individuals to an LLC, regardless of who the owner is, is the sale of property.

If the LLC had been the one to apply for the permit in August of 2019, then the LLC would have been grandfathered in.

Commissioner Rickett asked if any property was quit deeded without sale, would that be considered a transfer because at that point, it is not necessarily a sale. Mr. Bolinger said the code uses the language sale or transfer, so it is still covered under the code.

Supporters:

None

Opponents:

Richard Lambert, Jessica Lambert

- Ignorance of the law is not an excuse not to adhere to the law
- Any damage to neighbors' properties would not be covered by the Kallenbach's insurance
- Detrimental to the neighborhood
- Fire risk with pine needles laying on the front yard

Irene (inaudible)

- Reiterated what the other two callers said

Mike Applegate, Neighborhood Preservation Alliance

- Has concerns about short term rentals all over town
- Intent of the ordinance was clear that the transfer of ownership isn't a property right, rather it is a privilege granted by to the City of Colorado Springs
- Council further clarified the intent in December of 2019 when the single-family restriction was put in place in that the property owner had to occupy the home
- With an LLC, this ownership could transfer forever into perpetuity for any and the city would have no way to track that

Rebuttal:

Mr. Kallenbach

- Mr. Hammes' email said, "As we discussed, the simple solution is to put the property back into your own name and then compliance with the city code has been achieved. There is no penalty or punitive measures at that point and the matter will be considered resolved, as compliance with the city code has been achieved."
- The decision for to move back to Mr. Kallenbach's name within 24 hours was not true
- Mr. Kallenbach asked that Mr. Hammes to take it up with the other city officials to see if he could keep the name under the LLC
- The information he was getting was not the same information that was said today

Questions of Staff:

Commissioner Rickett asked Mr. Kallenbach if there was any additional correspondence from November 3 until he receive the notice of violation? Mr. Kallenbach said to his knowledge there was no correspondence. Mr. Hammes said he would get back to him in 2 weeks, but he heard from him in late January saying that they were revoking the permit. Mr. Kallenbach said he did receive an apology from Mr. Hammes for giving faulty information.

Mr. Hammes said he remembered having a conversation with Mr. Kallenbach but was unsure when. Mr. Hammes said he told Mr. Kallenbach that the city attorney's office said there was no going back, and this was a transfer and that was specifically in the code. Mr. Hammes said he gave Mr. Kallenbach the options of occupying the property as an owner-occupied short-term rental, or rent it for longer than 30 days, which is not considered a short-term rental.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Almy commented that the commission must look at what the ordinance says and not any of the discussions that took place. He said everything was triggered when the applicant changed to an LLC from personal ownership. That triggered the need for a new permit that was not completed. Even with all the discussions that went on that might have caused confusion or misunderstanding, when you get into this situation, formal communication is required to prevent any confusion. Commissioner Almy said the ordinance is clear and that he would not be in favor of the appeal.

Commissioner Slattery said the original application date and the intention of having a non-owner occupied in R1, which was originally permitted, but along with that there was the no sale or transfer of the property. The transfer of the LLC for estate purposes or not, is a transfer that based on the nature of estate planning, is to pass the property on, which goes against the intent of having that protection in place for the neighborhood R1 or not. The other thing was how quickly the permit rules changed from R1 non-owner occupied to making that a requirement, which seems that it is important for the city and important to the residents to uphold that, whether there was a transfer or not in the R1, the

intention is there now. A transfer did occur, and it was unfortunate the applicant didn't do due diligence but the original law and the current code both uphold not keeping this property as a short-term rental. Commissioner Slattery said she would be voting in support of denying the appeal.

Commissioner McMurray said it seemed to him that this might be a bit against the intent of the ordinance as was crafted. He asked how an LLC worked.

Commissioner Rickett said he would like Mr. Peter Wysocki, Director of Planning and Community Development, to work with City Council to define how the LLC works in the rental situation. Commissioner Rickett said he did not feel that the LLC follows the intent of the code. If the LLC could be sold numerous times and the permit still can sustain through that forever in perpetuity, that does not meet the intent of the code.

Commissioner McMurray said if the LLC would be controlled by the appellant, then nothing has really changed. But if control of that LLC transfers to someone else, then that is a different animal. Commissioner McMurray said he would support denying the appeal. If the appellant still has the opportunity to transfer it back into their name because they should not be punished for making a misstep because they were not intending to take advantage of any loopholes, they were trying to make a decision that made sense for them. So, if the commission denies it, and the appellant could change it back, then he would be okay with it.

Mr. Wysocki said what is considered a transfer needs to be addressed. This one is a more difficult because we are dealing with a non-owner-occupied issue as well. We need to be respectful of the code and intent, as well as the neighborhood's complaints about whether the permit should be revoked or expired. Do we need to look at the code and address the level of ownership change? That will take months because this will have to come back to Planning Commission for their recommendation and then onto City Council. So, separate from the motion, you can give staff the direction on how we go on with this topic.

Commissioner Rickett said he felt there was intent to follow the code, and the code has not been around long, and it is still being worked through. He felt Mr. Hammes was peeling for the city back on November 13 when he said to Mr. Kallenbach he could put it back in his name. The appellant said yes to that if everyone agreed. Then it goes back with additional discussions with other city officials, as Mr. Kallenbach was hoping to keep it in the LLC. Commissioner Rickett said he understood the neighborhood's concerns and agreed with several of their comments. He believed as we work through this process, the rental should cease until there is a formal approval or disapproval in the end, and all the different appeal processes have been completed. Commissioner Rickett said he would be voting in support of the appeal, as the appellant has tried to follow the code and the city did agree to allow him to go back in his own name. Commissioner Rickett felt that the city agreed to allow him to do that.

City Attorney Ben Bolinger said the commission is there to determine if there was a violation or not and recommended that the motion be either that the appeal be upheld and find there was no violation, or deny the appeal and uphold

the Notice of Order.

Commissioner Almy said one of the neighborhood comments mentioned the short-term rental was not in accord with the neighborhood covenants and asked if that was investigated.

Mr. Hammes said code enforcement does not look at the neighborhood covenants because they are private agreements between property owners. Commissioner Almy said he thought that neighborhood covenants overrode the allowance of a permit in a neighborhood. Mr. Wysocki said the city does not enforce the covenants. That is up to the property owners within the HOA or neighborhood organization. Commissioner Almy asked if there was a signoff for HOA when applying for a permit, and Mr. Wysocki said the city advises the applicants to make sure they check what their covenants are, but there is no formal signoff.

Mr. Bolinger clarified that covenants are private contracts the city has no part of. The city would not enforce it from the standpoint of acting like a party and going to District Court, and then additionally, the District Court has jurisdiction over contract enforcement, not the city.

Commissioner Hente said the code is clear in it says if there is a transfer of ownership, which is clearly documented, then we need to go by code. He did not want the Planning Commission to interpret the code. If there has to be changes to the code, that is clearly a product of what staff would do, followed by a recommendation, then a decision by the council. Commissioner Hente was troubled when a representative of the city tells a citizen they could do something, then it would be okay. In this case, that something was putting the property back into the homeowners' names. Again, he said he was troubled by that, but the City Council needs to address that issue because that really a subject for them versus the Planning Commission. Commissioner Hente said he felt like the commission should deny the appeal because it is a violation of the code.

Commissioner Rickett made a motion to uphold the appeal based on the written documentation from Mr. Hammes on November 13, 2020, stating the appellant has the opportunity to put that property from an LLC back into their own names, and therefore be able to get their permit back.

Commissioner McMurray asked if the appeal was upheld would the homeowner be allowed to change the property from the LLC to revert to the original names and keep the permit.

Mr. Wysocki said that approval would be writing a deal, but there are other remedies. The property could be rented out full time and it would not have to be a short-term rental, or they could occupy the premises for more than 185 days a year. Reverting it back into the owners' names is not the only remedy, so the remedy should not be put in the motion.

Commissioner Rickett wanted clarification on if the appeal was denied, the owner could no longer use the property and a non-owner-occupied rental based

on its location. Mr. Bolinger said you cannot require somebody to change ownership of a property. Commissioner Rickett said that is what the city agreed to in writing whether is with the ordinance or against the ordinance does not matter. It is an agreement that was already made.

Mr. Bolinger said Mr. Hammes does not have the authority to change the code through an agreement, and even if you expressed your desire that that agreement be followed through, you are only expressing your desire, there is no authority to enforce that.

Commissioner Rickett reiterated he would like Mr. Wysocki to speak to City Council during a work session on the LLC aspect of short-term rentals. He said he firmly believed that does not meet the intention of the code that the LLC can be transferred without following the code. Commissioner Rickett said that needed to be addressed and defined better in the code as we move forward.

Motion by Commissioner Rickett, seconded by Commissioner McMurray, to uphold the appeal and deny the Notice and Order to Abate the violation issued against 1425 Winding Ridge Terrace on March 10, 2021, based on the finding that the appeal does meet the criteria for granting an appeal as set forth in City Code Section 7.5.906.A.4. The motion failed by a vote of 3:4:2:0

Aye: 3 - Commissioner McMurray, Commissioner Rickett and Commissioner Eubanks

No: 4 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery and Commissioner Almy

Excused: 2 - Commissioner Raughton and Chair Graham

Motion by Commissioner Slattery, seconded by Commissioner Wilson, to deny the appeal and uphold the Notice and Order to Abate the violation issued against 1425 Winding Ridge Terrace on March 10, 2021, 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 4:3:2:0

Aye: 4 - Commissioner Wilson, Vice Chair Hente, Commissioner Slattery and Commissioner Almy

No: 3 - Commissioner McMurray, Commissioner Rickett and Commissioner Eubanks

Excused: 2 - Commissioner Raughton and Chair Graham

7. PRESENTATIONS/UPDATES

8. Adjourn