

**CITY OF COLORADO SPRINGS PLANNING COMMISSION**

**MINUTES / RECORD-OF-DECISION**

**THURSDAY, OCTOBER 20, 2016,  
CITY HALL COUNCIL CHAMBERS  
107 NORTH NEVADA AVENUE,  
COLORADO SPRINGS, COLORADO 80903**

**PRESENT:**

Phillips, Henninger, Markewich, Shonkwiler, Walkowski, Smith, McDonald, Gibson, Graham

**ABSENT:**

None

**ALSO IN ATTENDANCE:**

Mr. Peter Wysocki, Planning and Development Director  
Mr. Marc Smith, City Senior Corporate Attorney

**UNFINISHED BUSINESS CALENDAR**

**DATE:** October 20, 2016  
**ITEM:** 5.A  
**FILE NO.:** CPC CA 16-00008  
**PROJECT:** Appeals  
**STAFF:** Carl Schuler, Comprehensive Planning Manager

**STAFF PRESENTATION:**

Mr. Carl Schuler, Comprehensive Planning Manager, gave an update to what has happen since the item was asked to be taken back to the Code Scrub committee.

What is presented has been endorsed by the entire Code Scrub. Some significant changes are the automatic bump being removed for all parties; the body that is hearing the appeal is the one that determines standing; 10-days is to be the time frame to file an appeal. Mr. Schueler referenced a typo where it should say 10-days and it says 12-days, it should be 10-days.

Renee Congdon, City Attorney's Office said another significant change is the parties of interest of who can bring forth the appeal. Ms. Congdon stated it would be someone who provides written comments to an administrative decision, but also have to have a legally protected interest under the City Code to file the appeal. This will be the same on an appeal for a hearing based decision it would be those who provided written comments, attended the hearing, provided comment, and also have a legally protected interest under the City Code in order to bring an appeal. This was done to ensure that anyone who is bringing an appeal actually has something at stake.

**Questions**

Commissioner Markewich asked how should the motion worded for the 10-days.

Commissioner McDonald said 12-days are listed on other pages. Ms. Congdon said it is supposed to say 10-days throughout. Commissioner McDonald asked about version B. Ms. Congdon said they weren't voting on version B.

**In support:**

None

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#### **Opposition**

Councilman Knight was appearing in his public role as a Councilman and also as City Counselor from District 1. What was present hasn't been agreed to by Council's side. The changes the Code Scrub committee looked at have not addressed all of Council's concerns and have not been brought back to Council. The changes being discussed he's hearing for the first time so there will be a lengthy discussion when it comes to Council. He was there to address the 10 versus the 12 versus the 14-day time frame and gave a history of the item and time frames. He stated the arguments haven't changed during this time. This is an area between him and representing his District who have been hurt by the 10-days and the development community that has their impacts. At 12-days there is zero impact. He was there to ask the Commissioners to stick with their original votes of 12-days

#### **Rebuttal**

Commissioner Walkowski asked why it went back from the 12-days to the 10-days. Mr. Schueler said the Code Scrub Committee discussed this at length and recommended the 10-days as acceptable. The neighborhood advocates agree with the 10-dyas because of the other changes that were included as well. City Staff and CONO want to ensure the communication process clear and really try and pay attention to it. They have consensus of staff and everyone on the Code Scrub Committee that 10-days is acceptable.

Commissioner Markewich discussed the 10-days end on a Sunday therefore in actuality they are giving people until Monday, which is the 11<sup>th</sup> day. Mr. Schueler said for Planning Commission yes, but this applies to all hearing bodies and they have different days items are heard. Commissioner Markewich said what's frustrating was the Commission has voted twice to go with the 12-days, but it got kicked back to the Code Scrub Committee and now it's back to 10-days. Mr. Schueler said it's the discretion of the Planning Commission if they want to put it at 12-days but everyone's recommendation is 10-days.

Ms. Congdon provided details of how they got to this point from when it went to Council the last time. Council said to take the ordinance back to the Code Scrub Committee and get their recommendation, then bring it to Planning Commission, get your recommendation then take it back to City Council.

That's what was done. There were two meetings of the Code Scrub Committee where they discussed the ordinance and went item by item in the two versions. One was the versions recommended by Planning Commission and the other was what was recommended by Councilmen Knight. They went through what was different between the two and as they did that, other items came up. Members of the committee said since it was sent back to them to address certain items why not look at everything. That's what was done and that is how other items came up that needed to be corrected. Every single provision was discussed in the ordinance, they received comments from the members and on each of them a vote was taken and there was consensus on each item. The committee wanted to give the Planning Commission a recommendation they were all behind, but you have the authority to change that. Because what City Council is hoping for is a recommendation from you.

#### **DISCUSSION AND DECISION OF THE PLANNING COMMISSION:**

Commissioner Markewich said adding the extra day didn't seem to make a difference when they discussed it before and so they voted to go to 12-days. He liked the changes of standing but still supports the 12-day time frame. He doesn't believe giving citizens an extra day is going to overburden staff or developers.

Commissioner Walkowski said he felt citizens are not going to naturally know how to appeal an item and felt those extra two days are important. He doesn't believe it will overburden staff or developers as so he is also leaning for the 12-days.

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Commissioner McDonald said when this was discussed before 12-days made a difference in the calendar for when something went to Council. She felt like the Code Scrub Committee reconsidered this thoroughly and the recommendation of 10-days is what they made so she supports keeping it at 10-days as written.

Commissioner Graham was inclined to agree with Commissioner Markewich. When this was discussed before there was a unanimous decision for 12-days and giving those extra two days to the citizens is valuable to them. He recommends 12-days.

Commissioner Smith this is going to Council and this has been worked on for months and whatever they decide to do he felt it should be done unanimously.

Commissioner Gibson said she was firm on the 12-days when it was discussed before but she willing to accept it at 10-days.

Commissioner Henninger said he is supportive of the way it's written and staying at 10-days and that it's incumbent upon the city to help the citizens when they come to file an appeal. He thinks 10-days is sufficient.

Commissioner Shonkwiler said there were solid reasons why the Code Scrub Committee selected the 10-days and was a unanimous decision by the Committee. The neighborhood organizations agreed with the 10-days, those most affected by this are also in support of the 10-days. He was in favor of the 10-days as part of the Code Scrub Committee. We need to trust in the process. He will vote for the recommendation as presented. City Council has the ability to change that decision if they want to. The Code Scrub Committee has been tasked with cleaning up areas in the code and this is one of them and there is a bit of a risk to not go with the system that has been set up. This ordinance is a much improved version from what they had seen previously. So he respects the process and his peers on the Code Scrub Committee and what they've come up with.

Commissioner Smith said he agrees with Commissioner Shonkwiler. They've gone through the process and if Council doesn't like it they can change it. He still felt whatever the recommendation it should be unanimous.

Motion Commissioner Markewich, seconded by Commissioner Graham to recommend approval to City Council of an ordinance repealing and reordaining Section 906 (Appeals) of Part 9 (Notice, Hearings and Appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to appeals, and changing all references of 10-days to 12-days calendar days.

Commissioner Shonkwiler motions to amend the motion, seconded by Commissioner Smith to have it be 10-days.

Commissioner Phillips says to vote on the first motion. Commissioner Markewich clarified his motion is to remove all references of 10-days and change them all to 12-days.

Commissioner Phillips directs Commissioner Shonkwiler to clarify his amendment which was to amend the motion which requires a separate vote to change it to back to 10-days rather than 12-days.

City Attorney Marc Smith stated that amended motion includes the correction of the typo to be changed from 12-days to the 10; Commissioner Shonkwiler said yes. City Attorney Marc Smith said this is a vote to amend the number of days to 10-days not to take action on the number of days. If that passes they will have to have another motion and vote.

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Aye: Phillips, Henninger, Shonkwiler, Smith, McDonald, Gibson,

No: Markewich, Walkowski, Graham

Passed: 6-3

City Attorney Marc Smith stated since that passed the motion has been amended to include 10-days throughout the ordinance and a vote needs to be taken on that.

Commissioner Markewich asked if needed to withdraw his previous motion. Mr. Marc Smith and Mr. Wysocki, Planning Director said no that wasn't needed.

Mr. Marc Smith said the motion on the table is recommending approval of the ordinance as written with the correction of the typo where it said 12-days to be 10-days. Commissioner Markewich stated since he voted against the amendment he stated he wanted to withdraw his motion so he is not moving the original motion. Mr. Marc Smith said no that motion has already been amended, voted on and passed so that can't be undone.

Commissioner Phillips asks for another motion, Mr. Marc Smith says the motion is already there, and seconded to approve the amendment.

Aye: Phillips, Henninger, Shonkwiler, Smith, McDonald, Gibson, Markewich, Graham

No: Walkowski

Passed: 8:1