



Legislation Details (With Text)

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Title:	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				

Sponsors:

Indexes: Appeals, Short Term Rental

Code sections:

Attachments: 1. CC_Woodburn STR Appeal, 2. 1950 1952 Woodburn STR permit appeal, 3. Staff Report - 1950 & 1952 Woodburn STR Denials, 4. 1950 & 1952 Woodburn Street - 500' Buffer, 5. PlanCOS Vision Map, 6. Appellant Statement, 7. Public Comments_WoodburnSTR, 8. 7.5.1704 ShortTermRentalPermitReviewCriteria, 9. 7.5.1702.B STR PermitRequired, 10. 7.5.906 (B) Appeal of Commission-Board

Date	Ver.	Action By	Action	Result
9/28/2021	2	City Council	approved	Pass
8/19/2021	1	Planning Commission	approved	Pass

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

Summary:

Owner/Applicant: Tara L. Sorenson
Original Appellant to City Planning Commission: Tara L. Sorenson
Location: 1950 & 1952 Woodburn Street; located west of the intersection of Woodburn Street and Terrace Drive.

The owner of 1950 & 1952 Woodburn Street is appealing the City Planning Commission's decision to uphold the administrative denial of the Short Term Rental permits for 1950 & 1952 Woodburn Street due to an ownership change pursuant to City Code Section 7.5.1702.B. The appellant is not eligible

for new Short Term Rental permits as they are designated as being non-owner occupied and active non-owner occupied Short Term Rentals are within the established 500' buffer, pursuant to Section 7.5.1704.C.

Previous Council Action:

N/A

Background:

Timeline of the denial of the Short Term Rental (STR) applications:

The non-owner occupied STR permits for 1950 Woodburn Street (STR-0779) and 1952 Woodburn Street (STR-0780) expired on July 31, 2021. The STR permits were originally issued in July 2019. As required, renewals in 2020 and 2021 were submitted prior to expiration.

Non-owner occupied STR renewal applications for STR-0779 and STR-0780 were submitted on June 24, 2021. Staff was not aware of nor notified of the previous ownership transfers and learned that they had occurred while reviewing the recent renewal applications. Pursuant to City Code Section 7.5.1702.B, STR permits expire upon a transfer of ownership. On June 25, 2021, the applicant was notified that staff was unable to renew the permits due to transfer of ownership. After further discussion with the property owner and internal staff, the renewal applications were officially denied on July 16, 2021.

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. In the appellant's appeal statement, they state that -

“...This exception is not codified or otherwise written outside of the Division's written statement made pursuant to this appellate process. The reason why such exception was created, Ms. Sorenson submits, is because a literal reading of the Code leads to absurd results...”

The denial of Ms. Sorenson's STR applications were not due to a name change due to marriage or divorce. The applications were denied because the property title transferred several times from one entity to another. Staff is unable to monitor and verify who the owners of LLCs are, especially when a title transfers from one entity to another entity, one person to another entity, etc.

The title has been transferred three times from the original STR permit issuance date. The property was transferred from Highland Properties 2919 LLC to Tara L. Sorenson in August 2019. In February 2020, the property transferred from Tara L. Sorenson to 1952 Woodburn LLC. The property then transferred back to Tara L. Sorenson in December 2020.

Because the STR permits expired, new permits would be required to continue operations; however, the property is not eligible for new non-owner occupied STR permits as the subject properties are within 500' of two other non-owner occupied STRs (See '1950 & 1952 Woodburn Street - 500' Buffer' attachment).

The property owner provided the attached appeal statement, dated August 27, 2021, which states (in part) -

“Ms. Sorenson appeals the denial of her renewal request by the Division on account of such denial

being (2) against the express intent of the ordinance, (3) unreasonable, (4) erroneous, and (5) contrary to law. See City Code Section 7.5.906.A.4.

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 circumstances would have the effect of serving 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. Ms. Sorenson's actions do not contravene the intended purpose. Instead, Ms. Sorenson simply engaged in financial and legal maneuvering for the purpose of (1) ensuring proper management of the property, (2) limiting her personal liability and (3) ensuring the continued affordability of the property.

Furthermore, Ms. Sorenson, by changing listed ownership of the property to 1952 Woodburn LLC was simply complying City Code 7.5.906.A.4 which allows for the property to be managed by a third party on behalf of the owner and controlled by Ms. Sorenson. For all intents and purposes, Ms. Sorenson retained full legal ownership and control of the property throughout all relevant time periods.

Through these actions there is no appreciable or conceivable detriment to the community of to the Division. Conversely, the position taken by the Division is adverse to the economic prosperity of the City of Colorado Springs and limits the availability of affordable short term rentals to Colorado Springs citizens and visitors..."

The transfer of the property from an entity to an individual, and vice versa, for financial and legal maneuvering is irrelevant to the Section of Code which states that, "The permit shall not be transferred or assigned to another individual, person, entity..."

City Code Section 7.5.1702.B. does allow the property to be managed by a third party on behalf of the property owner; however, this Section of Code also prohibits the transfer of ownership.

Any adverse economic impacts to the property owner are not relevant when applying the Code.

Background

Ordinance History

The STR Program began in January 2019. The original ordinance (Ordinance No.18-122) establishes that the transfer of ownership is not permitted, pursuant to 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."

As a further reminder to STR applicants, the above-referenced Section 7.5.1702.B is listed on Page 5 of the STR application. Owners/Applicants are required to read through and, with initialed sign off, acknowledge all language on the application. The information is also referenced on the STR website and in the email that is sent to all permit holders at the time of permit issuance.

After the initial adoption of the STR program, City Council directed Staff to amend the existing Code

to include the following -

- Sales tax (Ordinance No. 19-49) - Mandates that all STR permit holders be in full compliance of sales tax requirements with the City of Colorado Springs.
- Occupancy Limitations (Ordinance No. 19-82) - Limits the occupancy of an STR dwelling unit to two people per bedroom, plus two, with a maximum occupancy of 15 persons.
- Non-owner vs owner occupied requirements (Ordinance No. 19-101) - Defines “owner occupied” as residing on the property for a minimum of 185 days per year; establishes a 500’ buffer between non-owner occupied STRs; and precludes new non-owner occupied STRs in single-family zoned districts (R, R-1 9000, R-1 6000, and single-family PUDs).

Ordinance 19-101 went into effect on December 26, 2019 and as such, established that any existing non-owner occupied STR was vested to Ordinance 18-122 so long as permits were renewed prior to expiration and met all other established regulations to remain in compliance. While the most recent amendments were moving through the City Council review process, Staff communicated this information to all permit holders through numerous emails in an effort of maintaining transparency.

One of the emailed updates was sent on December 6, 2019, in which the property owner of 1950 & 1952 Woodburn Street received. The informational email provided information relating to Code changes which would be going into effect on December 26, 2019. The email stated (in part) -

“As mentioned in previous emails, the changes that were discussed yesterday will not impact current permit holders as long as the permit is renewed prior to expiration, assuming no changes to ownership occur. For those that are owner occupied now and change to non-owner occupied, the density restrictions WOULD apply after the regulations go into effect.”

Public updates and hearings were also held with both Planning Commission and City Council conveying the amendment process. Substantial media coverage communicated the change in regulations, as well. Adopted Ordinances are available to the public for reference on the City’s Short Term Rental website.

1950 & 1952 Woodburn Avenue Permit Denials

Because there are four existing non-owner occupied Short Term Rental permits (located on two properties) within 500’ (See ‘1950 & 1952 Woodburn Street - 500’ Buffer’ attachment), the subject property is not eligible for new non-owner occupied STR permits pursuant to City Code Section 7.5.1704 C, which states:

“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.”

Financial Implications:

N/A

Board/Commission Recommendation:

In April 2021, City Planning Commission heard an appeal for a Notice and Order to Abate issued to

an STR property for change of ownership, which thus expired the permit. The Motion failed with a 3-4-2 vote as the Planning Commission upheld the Notice and Order to Abate.

The administrative appeal for the subject property (1950 & 1952 Woodburn Street) was heard by the Planning Commission on August 19, 2021. Planning Commission voted 3-4-2 to deny the appeal and uphold the denial of the Short Term Rental renewal applications, based on the City Code Sections 7.5.1702.B and 7.5.1704.D, and that the appellant had not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4.

On August 19, 2021, City Planning Commission heard two appeals (CPC AP 21-00098 & CPC AP 21-00119) for denied Short Term Rental renewal applications.

The Motion for CPC AP 21-00098 failed with a 3-4-2 vote as the Planning Commission upheld the Denial of a Short Term Rental application. The majority of the Commissioners present stated that they were there to vote on what the Code says at this time, while other members believed that this technicality of the code was harming the residents in an unreasonable manner. The Commissioners agreed that a work session should be scheduled and City Council should work on revising this Section of the Code. The City Planning Commission voted as follows:

Aye: Commissioner Wilson, Commissioner Slattery, Chair Graham, Commissioner Almy

No: Commissioner Raughton, Commissioner McMurray, Commissioner Eubanks

Absent: Vice Chair Hente, Commissioner Rickett

The Motion for CPC AP 21-00119 failed with a 3-4-2 vote as the Planning Commission upheld the Denial of a Short Term Rental application. The Commissioners were concerned with the refinancing issue, as they believe it effects the applicant, at no fault of their own. Other members believed that this technicality of the code was harming the residents in an unreasonable manner. The Commissioners agreed that a work session should be scheduled and City Council should work on revising this Section of the Code. The City Planning Commission voted as follows:

Aye: Commissioner Wilson, Commissioner Slattery, Chair Graham, Commissioner Almy

No: Commissioner Raughton, Commissioner McMurray, Commissioner Eubanks

Absent: Vice Chair Hente, Commissioner Rickett

Minutes from the hearing are available in the packet.

Stakeholder Process:

There is no stakeholder process in the denial of a Short Term Rental renewal application. To notify the public of the appeal process for both the Planning Commission and City Council public hearings, the site was posted for 10 days prior to the hearings and postcards were mailed to the 93 property owners within 1,000 feet of the subject property. Staff received no communications in support or opposition of the request.

Alternatives:

1. Uphold the action of the City Planning Commission;

2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

Proposed Motion:

Deny the appeal and uphold the administrative denial of a short term rental permit for 1950 & 1952 Woodburn Street, based upon the findings that the appellant has not met the requirements of City Code Section 7.5.1704, and that the appellant has not substantiated that the appeal satisfies the review criteria set forth in City Code Sections 7.5.906.A.4 and 7.5.906.B.

N/A