



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Final Planning Commission

Thursday, March 17, 2016

8:30 AM

Council Chambers

1. Call to Order

- Present** 7 - Vice Chair Charles Donley, Sherrie Gibson, Robert Shonkwiler, Carl Smith, John Henninger, Jeff Markewich and Ray Walkowski
- Absent** 2 - Rhonda McDonald and Chairperson Eric Phillips

2. Approval of the Record of Decision (minutes) for the January 21, 2016 City Planning Commission Meeting.

Motion by Henninger, seconded by Smith, that the Record of Decision (minutes) for the February 18, 2016 City Planning Commission Meeting.. The motion passed by a vote of

- Aye** 7 - Donley, Gibson, Shonkwiler, Smith, Henninger, Markewich and Walkowski

3. Communications

CONSENT CALENDAR

These items will be acted upon as a whole, unless a specific item is called for discussion by a Commissioner or a citizen wishing to address the Planning Commission. (Any items called up for separate consideration shall be acted upon following the Consent Vote.)

4. CONSENT CALENDAR

- 4.A. [CPC CU 16-00005](#) A conditional use to allow a large daycare home at 4181 Knollvale Drive. Quasi-Judicial

Presenter:

Rachel Teixeira, Planner, Land Use Review, Planning and Community Development Department

Approved on Consent

Motion by Henninger, seconded by Gibson, 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

- 4.B. [CPC UV 16-00009](#) 60 First Street use variance development plan to allow a bed and breakfast use in an R zone district, located at 60 First Street.
Quasi-Judicial

Presenter:

Lonna Thelen, Principal Planner Land Use Review

Peter Wysocki, Director, Planning and Community Development

Approved on Consent

Motion by Henninger, seconded by Gibson, 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

Approval of the Consent Agenda

Motion by Henninger, seconded by Gibson, 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 7 - Donley, Gibson, Shonkwiler, Smith, Henninger, Markewich and Walkowski

Absent 2 - McDonald and Chairperson Phillips

5. UNFINISHED BUSINESS

6. NEW BUSINESS CALENDAR

**6.A. CPC CA
16-00008**

Reconsideration 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. - Legislative

Presenter:

Carl Schueler, Comprehensive Planning Manager, Department of Planning and Community Development

Peter Wysocki, Director of Planning and Community Development

Carl Schueler, Comprehensive Planning Manager, gave a Power Point presentation.

- This recommendation is staff-generated with the Code Scrub Committee functioning as a sounding board.
- Suggestions came from Infill Steering Committee / Infill Action Plan
- Conforming changes will need to be made elsewhere in the Code. These will depend to some degree on the number of days allowed for an appeal.
- An increase from 10 to 14 days is being recommended by staff. Industry representatives have concerns with potential delays this might create.
- The changes do not affect what decisions can be appealed- or what the appeal can be based on.
- The cost of appeals has been identified as an issue but is not being addressed at this time - that would be a part of a comprehensive fee change in the future.
- Staff described parties that can appeal:
 - Administrative based track
 - Applicant
 - Living within 500 ft. or receiving written notice
 - HOA representative
 - Hearing based process
 - Same as administrative but also includes anyone who provides written comments or testimony at the hearing
 - City can appeal a decision if they believed there was a legal issue with the decision
- Staff discussed parties that cannot appeal under the proposed change
 - Administrative
 - Those beyond 500 ft. or the noticed area
 - Not a legally constituted HOA
 - Hearing-based

- Located beyond 500 ft. or noticed area, and
- Did not provide written comments or testimony prior to the hearing
- Discussed how other jurisdictions handle appeals
- Discussed CONO's comments and concerns
- Discussed comments and concerns from the industry and practitioners
- Automatic bump applies to City Council only
 - Would no longer be allowed for applicant unless they are the applicant
 - Case for City Council continuance can still be made
- Only final decisions would be appealed with new change
 - Right now there are some decisions that can be appealed before they are at the final decision making level
- Staff is recommending going from a maximum of 10 days to 14 days
 - Allows more time for appellant to organize and become educated about the process
 - Creates more risk for the applicant
 - Days are calendar days starting the day after the hearing and if the day is on a weekend, it's due the next day by end of business
- Scheduling impact varies for administrative decisions
 - adds 4 days
 - In most cases the hearing dates are not affected
 - However 14 days could potentially extend the schedule by a month for monthly meetings.
- Neighborhood representatives prefer 14 days
- Development industry prefers current time frame
- Staff recommends approval to Council of draft language provided

Questions of Staff:

Commissioner Shonkwiler asked for clarification about what was meant by the statement "no longer allowed for appellant unless applicant is applicant." Mr. Schueler clarified what was meant.

Commissioner Markewich asked about a chart in the commissioner's packets (pg. 63). He wanted to know what was meant by "Inclusive". Mr. Schueler gave a brief description, indicating the broad definitions in these codes were inclusive of the more narrow categories.

Mr. Schueler explained how the process of appeals. City Attorney Marc Smith stated what the code allowed for both City Council and Planning Commission. He also described responsibilities of the Planning Commission and how discussions and decisions were made so City Council knew the thought process and why they voted a particular way.

Commissioner Donley said decisions that are quasi-judicial and if there are conflicts of interests he'd wanted Mr. Smith to offer some guidance. Mr. Marc Smith discussed situations that could increase chances for potential conflicts of interest and possibly compromise the quasi-judicial process.

Commissioner Markewich discussed different types of government and what is done and not done under each type. Mr. Wysocki answered those questions with descriptions of how the processes worked under each type and how decisions were reached.

Commissioner Donley stated when Commissioner Markewich made his decision it would be good to have his concerns noted in that area for that record.

Commissioner Donley discussed reasons for the longer delay. Mr. Schueler gave an explanation of what happens when a decision occurs, when the appeal was filed, the timing around that appeal and the date the appeal needs to be done per the code.

Commissioner Donley asked if a different calculation process was considered. Mr. Schueler said they were trying to stay as consistent with the code and state statute and calendar days are more consistently used in the Code and State statues than business days.

City Attorney Marc Smith stated the section of the code that gives the rules for computation is 1105. They number in terms of computing for days almost every type of business in the City is contained within Chapter 1 of the City Code so there is consistency between Chapter 1 and Chapter 7.

Commissioner Donley asked if there were no consideration given to statements regarding "appeals be made by the deadline for the next city council agenda." Mr. Schueler responded that they stayed with timing with what is in the code at the present time.

Commissioner Donley asked if the Department was sending notice of decisions to owners within 500 feet. Mr. Schueler responded that they normally did not.

Commissioner Shonkwiler discussed the 14 day period that was being requested as well as other periods of 11 and 12 days. Mr. Schueler said the code right now says 10 days for decisions no matter the type and described what using different number of days would look like in certain examples.

Mr. Wysocki gave background for suggesting the 14 day time frame and the processes that are impacted by that time frame.

Commissioner Markewich asked about a letter given to them from Mr. Munger regarding HOAs and legally recognized authorities. Mr. Schueler discussed notice being given to HOAs. There are other organizations that serve sections of our communities; however they are not formal organizations and could possibly not represent the interests of that neighborhood. Mr. Schueler discussed how these organizations can be part of the appeal process, other than as formal appellants. Commissioner Markewich asked if notification could be expanded to all informal groups representing neighborhoods. Mr. Wysocki discussed the list of HOA organizations and how they receive notification through the standard processes and when updates are need to make the list current with who needs to be contacted.

Meggan Herington, Land Use Review Manager offered clarification about formal or informal contacts regarding being part of the notification and if an organization is unknown to the Department, notification does not happen. There can be clarification of how you get on list for notification and we regularly try to communicate with CONO regarding this. But, that group has to come to us with information on who they are, their boundaries, who to contact.

Commissioner Gibson asked about the time frame for getting on the list for notification - HOAs list. Ms. Herrington stated CONO has asked that all HOAs get on the list and we want those HOAs on the list but we still need to have that boundary information and contact information. CONO's list is extensive and the Department is not sure it has every single one that is listed with CONO in our database and map.

Supporters of the application:

Kyle Campbell with Classic Consulting and Surveyors presented on behalf of HBA. The HBA is in support of the majority of what is in front of Planning Commission today. It provides better definition and clarity of who can appeal.

The one part they have challenges with is the increase from the 10 day time frame to the 14 days. This has consequences from a business and financial standpoint. His concern is increasing the administrative time frame to a 14 day window as well. He is not sure why the 14 day time frame was selected and they do not see a benefit to adding those 4 days. Regardless of the direct knowledge of a pending appeal, it is customary for developers to wait out the appeals period before proceeding further with their projects. This is especially evident with for non-local developers.

Commissioner Gibson discussed the 10 and 14 day time frames and what could work better for the business community. Mr. Campbell said 10 days has been on the books for a long time and so they are struggling with why it needs to be increased at all.

Commissioner Shonkwiler said his concern was whatever the number of days that were selected but the biggest impact caused by the 14 days is it can delay getting to the Planning Commission by another month, which can add extra time prior to a City Council meeting. If there was a time frame that would be workable without causing delays, he would support that.

Mr. Campbell said what would be practical would be to keep the 10 day time frame for administrative decisions and if the 12 day time frame did not cause further delay then they may be able to support that. He did not really like two different time frames and could see how that could cause confusion.

Commissioner Donley discussed what needs to be provided in the appeal letter and how an inexperienced community member could find that difficult.

Opponents of the application: None

DISCUSSION AND DECISION OF THE PLANNING COMMISSION:

Commissioner Markewich asked for clarification of the 12 day time frame and that it was only related to Planning Commission-related items. Mr. Schueler said it was - 12 days appears to have no adverse scheduling impact. However staff did not do undertake this analysis for the other boards (e.g. Downtown Review Board).

Commissioner Smith said a lot of discussion has already gone into this process of what's planned and why they've been made. HBA, CONO all of these groups have been involved in this process. He has some empathy of changing it from 10 day to 14 days. Some need extra time to be able to prepare and appeal. He will be in support of this change as it's written.

Commissioner Walkowski discussed that with this an appeal cannot happen unless it's a final action and the final action is with the City Council. Mr. Schueler said yes typically the change in the wording is "Final Decision"; final decisions happen with DRB or Historic Preservation Board and so those could be appeal, but typically are not.

Commissioner Walkowski said there is a balance and agrees with some of the comments and even though the paperwork to fill out for the appeal isn't that difficult, there is some work that needs to be done. So

there is some justification of expanding the time frame. However the developers and projects stop until that last day to appeal has passed, so that is a bit of an issue. So, he is trying to weigh both sides. However, he thinks with proper notice the development community could live with that as well.

Commissioner Markewich asked City Attorney David Andrews about when presenting the appeal allows and appellant more time than one's 4 minutes here at Planning Commission. He responded that, in order to preserve due process, the appellants essentially get elevated to have the same time as the applicant.

Mr. Andrews explained what the appeals do. Almost everything the Planning Commission does goes to Council. There are very few final decisions Planning Commission makes. So anyone who is not satisfied with that decision has the opportunity to come to Council whether they file an appeal or not. The process happens this way - because the decisions by Council are appealable to District Court based on a 106 Petition; what those petitions look at is whether the decision of the City Council is supported by any evidence (i.e. whether it is arbitrary). There is also fairness associated with that. There are some cases in Colorado that if the process is not fair, that could be grounds for overturning a City Council decision. The way this is addressed is at the beginning of the hearings they poll the audience members to see if there are citizens in opposition to an application. Many times no one shows up in opposition, but if there is, they caucus with everyone at the beginning and allow the opposition the same amount of time to present their case that the applicants get. Staff gives general background, then the applicant, and then allow anyone who is an opponent to get that same amount of time. If there are others there that want to speak they would get their three minutes. They are very aware of the obligation of City Council to afford full due process. In his view allowing appeals of things that are not final decisions they can introduce an element of gamesmanship in the appeal process. When you file an appeal under the current ordinances it bumps the hearing out. So we have people filing appeals just to get that bump. Because the City affords people full due process, it levels the playing field, and should remove the argument that appeals of non-final decisions are necessary.

Commissioner Shonkwiler said he wanted to get a feel for the number of days that would be used and come to an agreement that all can work with. His concern is if one of the dates gets them into an extra Planning Commission meeting or City Council meeting, this extra month for a developer this is critical. He believes the 12 day time frame is as far as they should go to provide additional opportunity to get an appeal in and get it done and we do not postpone hearings by a month. The rest of the changes he is very comfortable with. He believes the 12 day time frame

would be a good middle ground that works for everyone.

Commissioner Markewich said he was amenable to whatever number of days is selected. He was empathic from the development community or individuals that struggle with the process and would like to have that extra time. He has two primary concerns. 1.) The legislative branch which is responsible for land use has no ability to appeal a decision solely made by the executive branch. 2.) The definition within the packet related to whom as an informal HOA or informal group gets noticed and put on the list for the mailings and wants to make sure they clarify that and Commissioner Donley has an extra item that he is going to insert into the motion and wanted to voice his support with that clarification. Otherwise he supports the amended code.

Commissioner Henninger said reading through the information and the presentation by staff, they are voting on a collection of issues, some he may like and others he may not. But as part of their process, they allow just about anyone to come before them and speak. We will now be clarifying that more so than in the past. He is not sold on the need for this limitation. The time frame doesn't really make much difference but he would like things to be consistent within the city so it's not one number here and another number there but that it's already identified with code and that is what they should refer to. If he was sold better on the need he felt he could make a better decision but right now it's kind of a grab bag. He's comfortable with the way it is. He understands what Mr. Campbell brought up. You have professionals bringing information to them and then you have the citizens that voice their concerns. He thinks the timing is good and that's where he stands.

Commissioner Gibson said she would be amenable to a 12 day time frame as she brought up earlier as a time frame they could work with. The 14 days pushes it out further than it needs to be she recognizes the citizen's right to work through the process. She did not have any issues with any of the other language as it is written.

Commissioner Donley said the occasional 3 week delay is unacceptable in his mind they do not want to push out when the hearing could occur. So the 12 day time frame he is presuming is going to solve that problem. Adding a couple days is okay but adding more is not. That same time frame needs to be applied to DRB and Historic Preservation Board. He thinks the 12 days is a good compromise. He wanted to reinforce the fact that it's a challenge for citizens to come up with the specific reasons for the appeal. He would suggest the other part of the solution is for staff to be available to help the individual that wants to appeal so they can get the wording right; some sort of guidance or process so they can understand it. This way the appeal is done appropriately. The next part is the registration process. It's pretty clear in the rules that you have

recognized HOAs and you need to add a third category that being registered by the city will assure them of getting mailings and be able to appeal an item. So under A in the motion in the packet on pg. 53 under 7.5.906.A.1.b. - add an iii that says a city-registered HOA shall be able to appeal to open that up. You said they are able to but this needs to be codified. With respect to Commissioner Markewich's comment about the legislative branch and the lack of appeal option, he understands that with quasi-judicial decisions the Planning Commission cannot be making the appeal themselves nor can council. It's very problematic. He thinks there is some question in what the role of the Mayor is versus Council. He is not sure the the Charter's intent is always being followed and he wants to make sure they've thought that through. With respect to both branches that is something that needs to be on the high priority for consideration.

Mr. Wysocki said they can work out some of the language because he's a little concerned about the word "registration" because they do not register anybody it's a courtesy list.

Commissioner Markewich made a suggestion "formal or informal HOA or neighborhood group that is listed with the City Land Use Department". Mr. Marc Smith said they would take some time to think their way through it but certainly pass that recommendation on to council if that is adopted but they will come up with something and they try to be very careful with the language.

Commissioner Markewich said it wouldn't be included in their motion? Mr. Smith said no, if it's adopted that is one of the recommendations that will move forward so they are going to need time to accurately draft it. Commissioner Markewich asked if their motion would be to include item iii - something or some language similar to formal or informal HOA or neighborhood group listed with the City Land Use Department. Mr. Smith said he thought they understood the intent.

Commissioner Smith said he wanted to point out that just because there is a HOA or any other group that wants to comment on something does not mean that the majority of that HOA or group is or is not in favor of something. Usually, the board is speaking for the HOA group and he would guess there are many times when a board is not speaking for the majority of residents, whether it is a formal or informal group. So he is concerned about HOA and there are groups that just don't represent you very well.

A motion was made by Commissioner Shonkwiler and seconded by Commissioner Gibson to recommend adoption to City Council of an ordinance repealing and reordaining Section 906 (Appeals) of Part 9

(Notice, Hearings and) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of Colorado Springs 2001, as amended, pertaining to appeals with two wording changes. With these changes he would like to propose the motion be adopted.

1. On pg. 55 under "Scheduling" second sentence changing 14 days to 12.
2. On pg. 53 under paragraph B add sub-paragraph iii -"a group of citizens, listed with the Department".

His motion also allowed for minor legal and copy editing of the language by staff prior to City Council action.

Mr. Schueler suggested one further clarification would be to allow conforming changes elsewhere in the Code as necessary. Commissioner Shonkwiler said he would attach that to his motion.

Commissioner Donley said there would be a third item and that would be pending editing by the executive staff of the details of those amendments.

Aye: Donley, Bison, Shonkwiler, Smith, Markewich, Walkowski
(McDonald and Phillips excused)

No: Henninger

Motion by Shonkwiler, seconded by Gibson, that the Planning Case be accepted. Recommend adopting 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 with the three following amendments:

1. Pg 55, No. 2 Scheduling, second sentence, changing 14 days to 12,
2. Pg 53, item B, add iii, a group of citizens, listed with the City Planning Agency
3. Pending Staff will be making conforming and copy editing changes to this document. The motion passed by a vote of

Aye 6 - Donley, Gibson, Shonkwiler, Smith, Markewich and Walkowski

No 1 - Henninger

- 6.B. [CPC LUM 16-00003](#) An Ordinance amending the Comprehensive Plan 2020 Land Use Map reflecting changes from July 1, 2013 through June 30, 2015. - Legislative

Presenter:

Carl Schueler, Comprehensive Planning Manager, Planning & Development Department

Carl Schueler, Comprehensive Planning Manager gave a Power Point presentation.

The update usually occurs yearly as recommended in the ordinance originally approving the Comprehensive Plan. What created a need for these updates is changes to the master plan of the area that are substantial enough to trigger a change in the general categories used in the Land Use Map. Changes are also triggered when there is a need to create a new 2020 Map designation for a parcel that has been newly annexed. The City did not have many changes in the previous two years and so an update has been delayed. Also, while entering the data into the system some of the parcels went to a blank designation and that has to be corrected. All parcels are updated individually. An update such as this may occur a few more times prior to the complete update of the Comprehensive Plan.

This is a legislative item that will be presented to Council.

Questions of Staff:

Commissioner Henninger asked who does this update- is it contracted out. Mr. Schueler said he is the person that does it. He works with the IT department. It's a query that is completed in the GIS system and updating the database.

Commissioner Donley said that from what he can see it looks as though what is being updated are items that had approved previously by Planning Commission and Council and what is happening is the map is being brought up to what is current. Mr. Schueler confirms that was correct. Commissioner Donley thought it would have been useful to have seen what had been errors and went blank in the system and what was approved. Mr. Schueler there weren't really any errors just something happened to cause the data to be lost within the system so that will be some of the corrections that will happen with the updates.

Supporters of the application: None

Opponents of the application: None

Additional Questions of Staff: None

Discussion DECISION OF THE PLANNING COMMISSION:

Commissioner Walkowski stated he felt it was a reasonable update to the map and didn't see any problems with going ahead and approving the item and he was willing to make a motion.

Motion by Walkowski and seconded by Markewich to recommend adoption to approve of an ordinance to the City Council, amending the Comprehensive Plan 2020 Land Use Map by reflecting the land use map amendments adopted by the City from July 1, 2013 through June 30, 2015.

Aye: Markewich, Henninger, Gibson, Donley, Shonkwiler, Walkowski, Smith (McDonald, Philips excused.) Nay: None

Motion by Walkowski, seconded by Markewich, recommending adoption of an Ordinance amending the Comprehensive Plan 2020 Land Use Map reflecting changes from July 1, 2013 through June 30, 2015. The motion passed by a vote of

Aye 7 - Donley, Gibson, Shonkwiler, Smith, Henninger, Markewich and Walkowski

7. Adjourn