



**CITY OF MANITOU SPRINGS  
PLANNING COMMISSION  
REGULAR MEETING MINUTES  
Wednesday, MAY 8, 2019, 6:00 pm**



**I. CALL TO ORDER**

A Regular meeting of the Manitou Springs Planning Commission was held in Council Chambers @ 606 Manitou Avenue. Chairman Delwiche called the meeting to order at 6:02 pm and declared a quorum present. The following Commission members attended:

- PRESENT:** Chair ALAN DELWICHE  
Vice Chair JEANNE VROBEL  
Commissioner MIKE CASEY  
Commissioner JULIA SIMMONS  
Commissioner BRYANT “TIP” RAGAN
- ABSENT:** Commissioner JULIE WOLFE (excused)  
Commissioner WHITNEY LEWIS (excused)
- STAFF:** Kimberly Johnson, Planning Director  
Michelle Anthony, Senior Planner  
Karen Berchtold, Senior Planner  
Dylan Becker, Planner I
- GUESTS:** Robert Todd, City Council Liaison  
Tareq Wafaie, Clarion Associates  
Waiverly Klaw, Department of Local Affairs

**II. APPROVAL OF MINUTES**

**ITEM 1.** April 10, 2019

**MOTION:**

Vice Chair Vrobel moved to amend Item 1 of the May 8, 2019 Regular Meeting Agenda to correct the date of the minutes to be approved as February 13, 2019.

**SECOND:**

Commissioner Simmons seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 4-0. Commissioner Ragan abstained as he was not present for the February 13, 2019 Regular Meeting of the City Planning Commission.

**MOTION:**

Vice Chair Vrobel moved to approve the February 13, 2019 Regular Meeting Minutes of the City Planning Commission, as presented.

**SECOND:**

Commissioner Simmons seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 4-0. Commissioner Ragan abstained as he was not present for the February 13, 2019 Regular Meeting of the City Planning Commission.

**III. NOTICE OF COUNCIL ACTION**

There was no Notice of Council Action to report.

*At this time, Chairman Delwiche reviewed the meeting procedures for those present in the audience and asked if any Commissioner had Ex Parte Contacts or Conflicts of Interest to declare. Hearing none, the meeting continued.*

**IV. UNFINISHED BUSINESS**

**ITEM 2. MNS 1801** – Minor Subdivision (Replat) – 708 Manitou Avenue – Kyle Fenner on behalf of the Manitou Springs Metropolitan District **POSTPONEMENT TO JUNE 2019 REQUESTED**

Michelle Anthony, Senior Planner, presented the City Memorandum dated May 2, 2019. Ms. Anthony stated the Applicants were requesting postponement until the June 12, 2019 Regular Meeting of the City Planning Commission in order to resolve some of the outstanding issues and questions to requested changes desired by the Manitou Springs Metropolitan District Board of Directors.

**MOTION:**

Vice Chair Vrobel moved to postpone MNS 1801 to the June 12, 2019 Regular Meeting of the City Planning Commission.

**SECOND:**

Commissioner Ragan seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 5-0.

**ITEM 3. Public Hearing - V 1907** – Variance (Lot Frontage) - 202 & 204 Roca Street - Becker/Johnson Inc. on behalf of Tim and Terry Haas, Owners

Michelle Anthony, Senior Planner presented the Staff Report dated April 5, 2019.

Vice Chair Vrobel inquired if Lot 2 and Lot 3 were required to obtain separate water and sewer connections. Ms. Anthony responded the Applicant will need to verify their intention in this regard.

Chairman Delwiche inquired the manner in which it would be determined which sides of the new lots would be considered the front, side, and rear of the properties when determining setback requirements. Ms. Anthony responded this was typically determined by which street the property had access and the manner in which the street was accessed. Ms. Anthony stated, in this case, the east side of the proposed lots would be considered

the front property boundary and the sides and rear boundaries were automatically assumed following the determination of the front property boundary.

Hearing no further questions for Staff, Chairman Delwiche invited the Applicant to the podium.

Johnny Johnson, 811 East Monument Street, Colorado Springs, stated he was amenable to the findings made in the Staff Report.

Hearing no further questions for, or comment from, the Applicant, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the meeting continued.

Vice Chair Vrobel stated she supported the request as long as Lots 2 and 3 were required to install separate water and sewer lines for each lot.

**MOTION:**

Vice Chair Vrobel moved to approve V 1907 to allow platting of Lot 2 and Lot 3 in the Tollie Subdivision without the required 45-foot street frontage and with the following findings in support of the variance:

1. That the representations in the application are valid and the application has met the criteria established in Section 18.32.010\* of the Zoning Code;
2. That the reasons set forth in the application and Staff's evaluation in regard to the Frontage Variance for Lots 2 and 3 justify the granting of the variance and the variance is the minimum that will make possible the reasonable use of the land;
3. That the granting of the variances will be consistent with the general purpose and intent of the City's Zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

**SECOND:**

Commissioner Simmons seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 5-0.

**ITEM 4. Public Hearing - MNS 1904** – Minor Subdivision (Create Three Lots) – 202 & 204 Roca Street - Becker/Johnson Inc. on behalf of Tim and Terry Haas, Owners

Michelle Anthony, Senior Planner, presented the Staff Report dated May 2, 2019.

Chairman Delwiche inquired, since paving the entire driveway would create a large amount of impervious surface, whether there was an intention or plan for how storm water and run-off were to be managed. Ms. Anthony responded the paving of the driveway, although creating a great deal of impervious surface, would actually help prevent the transportation of erosive materials from the hillside which was actually a larger issue.

Commissioner Casey inquired if the Fire Department felt there was a need for a fire hydrant. Ms. Anthony responded the Fire Department had determined there was no need for a fire hydrant.

Commissioner Casey inquired if Ms. Anthony knew the location of the nearest fire hydrant. Ms. Anthony responded she did not, but trusted the Fire Department who had reviewed the request, did.

Hearing no further questions for Staff, Chairman Delwiche invited the Applicant to the podium.

Johnny Johnson, 811 East Monument Street, Colorado Springs, stated he and his clients agreed with the majority of the information and recommendations made in the Staff Report, but wanted to discuss several issues or disagreements regarding the Staff Report.

Mr. Johnson stated there were other alternative materials which may be used regarding paving the driveway and suggested the Commission allow the property owners to install a more pervious hard surface, as opposed to concrete, asphalt, or pavers.

Mr. Johnson stated the proposed curb and gutter would be able to accommodate most trickle flows and mitigate potential erosion.

Mr. Johnson stated his owners were also concerned regarding the letter of credit as the potential locations and types of utilities for Lot 2 was not yet determined and was concerned the owners would need to rip up the pavement in order to install them when the time came to develop the lot. Mr. Johnson stated he was requesting the Commission defer the requirement for paving the driveway until the time came to develop Lot 2.

Mr. Johnson stated he would like a deferment of the bond regarding the letter of credit in exchange for a signed document, or deed restriction on the plat, stating the owners could not obtain a Property Improvement Permit or Building Permit for construction on Lot 2 until said bond was paid.

Commissioner Casey inquired, for clarification, if nothing would occur on Lot 2 until it was sold to a different party or owner. Mr. Johnson responded the current owners would proceed with the re-plat of the lot and get the plat recorded, but no construction or development would occur on the lot until it was sold.

Mr. Johnson stated, if this were allowed by the Commission, he and the owners would agree to all of the remaining plat corrections recommended by Staff.

Vice Chair Vrobel inquired what the Applicant meant by the Commission allowing a more pervious “hard surface” and also inquired what material was intended to be used. Mr. Johnson responded he and the owners simply did not want to be locked into a specific material until the paving work was to be implemented and suggested they be permitted to submit those materials for approval to the Planning Department once determined. Mr. Johnson stated there were a number of materials out today which may potentially be utilized.

Mr. Johnson inquired if it was a requirement for all new driveways and developments to pave the driveway with either concrete, asphalt, or pavers.

Kimberly Johnson, Planning Director, stated the City’s Code defined “hard surface” as either concrete, asphalt, or pavers and Staff was not comfortable allowing any deviation from this requirement as it may set an unwanted precedent.

Ms. Johnson stated she also took issue regarding allowing the utilities improvements to be reviewed and permitted at another time once the lot was sold to a new owner as this issue may pose an undue burden on the potential new owner when the time came to develop the lot. Ms. Johnson stated, if this were a potential

possibility, it would require some sort of subdivision agreement which notified a potential property owner of the situation and required them to take on the responsibility, both financially and development-wise, for those specific improvements.

Ms. Anthony stated Number Two in the Staff Recommendations, as recommended by Staff, would require the submission of a Utilities Plan showing separate water and sewer services, connection details, meter, and stop locations for each lot prior to the filing of the plat and recommended, if this condition was altered, for the owners to at least stub out the utilities for Lot 2 when they were installed for Lot 1 and Lot 3. Ms. Anthony stated the Code required the utilities to be separated for each lot and a Utility Plan depicting this was still required regardless of how the condition was modified.

Chairman Delwiche stated the plat would need to show the separation of the water and sewer lines for the two (2) duplexes as well prior to filing. Ms. Anthony responded if this was not completed by the time of filing, a letter of credit would be required regarding the matter.

Chairman Delwiche inquired if this would allow the owners to proceed as they intended regarding the plat. Ms. Anthony responded it would allow for this as the City would then also have the funds to perform the installation should things not work out as intended by the current owners. Ms. Anthony stated, if something occurred and went south, the City would be able to call on the letter of credit to collect those funds from the current owner, which would protect the purchaser of the property.

Ms. Anthony commented the only other option was to forbid the sale of any of the lots on the property until a Utility Plan or letter of credit was obtained by the City.

Ms. Johnson stated she also had concerns regarding allowing the owners to delay paving the driveway as, once a Building Permit had been issued, there was no way of holding back on a Certificate of Occupancy until all improvements had been completed. Ms. Johnson stated without a letter of credit and some sort of subdivision agreement, the City essentially had no control over, or guarantee that, the improvements would be properly completed.

Ms. Anthony stated this route, however, may pose significant problems down the road with the involvement of new owners who may not be as community minded as the current owners.

Vice Chair Vrobel stated she was content with the conditions, as presented in the Staff Report, and inquired if the Applicants would be amenable to accepting the conditions as presented.

Mr. Johnson responded the concern he and the property owners had was they had no intention of developing Lot 2 themselves and did not want to front that expense for whoever ended up purchasing the lot. Mr. Johnson stated he felt more comfortable taking the route they had originally suggested regarding no permit issuance for construction on that lot until the new owner submitted their own Utility Plan and posted the required bond.

Ms. Johnson stated this was a concern for Staff as the owners were essentially intending to sell the lot without understanding of when and how the utilities were to be placed and established. Ms. Anthony commented she felt this issue was best resolved by the conditions recommended in the Staff Report as it provided guarantees for the City and the potential future owner of the lot.

Hearing no further questions for, or comment from, the Applicant, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the meeting continued.

Vice Chair Vrobel stated there had been numerous issues involving water and sewer lines in the City and felt the conditions, as they were written in the Staff Report, were there to limit any potential issues which may arise in the future.

Commissioner Ragan stated he felt Staff had done an excellent job in protecting the interests of the City and potential future buyers and was in support of the conditions recommended by Staff.

**MOTION:**

Commissioner Ragan moved to approve MNS 1904 to create Lots 1, 2, and 3 in the Tollie Subdivision with the following conditions:

1. Prior to filing, the plat shall be updated to include the following:
  - a. The square footage of Lots 2 and 3 adjusted to provide a minimum of 8,756 square feet on Lot 3.
  - b. The label regarding the former Midland right-of-way shall be removed from the platted document, as will any lines not part of the platted lots, easements, or no build areas.
  - c. Any easement(s) required for separate water and sewer service lines for each lot as determined through submission of the Utilities Plan in Condition 2 below.
  - d. "Drainage" be added to the purpose of the access easement on the plat.
  - e. A graphic depicting the existing property configuration be added and the graphics be labelled "existing" and "platted".
2. Prior to filing the plat, a Utilities Plan showing separate water and sewer services, connection details, meter, and stop locations for each lot shall be submitted Public Services review and approval. If new service lines are required for either developed lot, a letter of credit at 125% of costs sufficient to guarantee the payment of tap fees and installation of required utilities improvements shall be provided to the City of Manitou Springs. Such utilities improvements shall be performed prior to any sale of Lot 1 or Lot 3.
3. Prior to filing the plat, the payment of Schools fees in lieu of land dedication in the amount of \$1,102 shall be paid to the City of Manitou Springs for remittance to School District 14. Further, Parks and Open Space fees in the amount of \$2,391 shall be remitted to the City, unless the PARAB and OSAC waive fees associated with the existing development. In that case, the Parks fee shall be \$129 and the Open Space fee \$437 based on the land area and single unit development anticipated on Lot 2.
4. The Declaration of Covenants shall be updated to reflect specific utilities easements or separate easement documents benefitting each lot (as necessary) shall be submitted for Staff review prior to filing of the plat. The covenants or easements shall make specific provisions assigning maintenance/repair/replacement responsibilities to the lot(s) that benefit from the utilities easements, including restoration of paving, landscaping, or other improvements that might be effected if a service line has to be installed or dug up. The covenants shall be updated to reflect that the access easement also allows drainage and that no parking is allowed on the shared driveway (even that portion on Lot 3 outside of the easement) so that private access and emergency services are not impacted. Both the access easement and the covenant documents shall incorporate language that the City of Manitou Springs must approve any proposed changes prior to adoption by the property owners and filing with the El Paso County Clerk and Recorder. These documents shall be finalized and provided to the City with the final plat Mylar for filing sequentially.
5. The Fire Department has approved a 15-foot wide driveway serving all three lots and this shall be shown on the plat, in easement documents, and provided on the property. The driveway shall be located

entirely within the access easement. The driveway and surface parking areas serving the existing duplexes shall be paved with asphalt, concrete, or pavers prior to the filing of the plat, or a Letter of Credit guarantee provided if filing of the plat pre-dates the improvements.

6. The grade of Roca Street along the frontage of the property shall be added to the Subdivision Site Plan.
7. A Certificate of Taxes from the El Paso County Treasurer's Office showing that property taxes are current shall be provided.
8. Addressing of Lots 1 shall remain as 202 Roca Street. Addresses for Lot 2 and 3 shall be as follows:
  - Lot 2 – 204 Roca Street
  - Lot 3 – 206 Roca Street
9. The Applicant has 90 days from the date of approval to provide all required information, corrections and additions, allow time for City review, and submit the final Mylar with easements, covenants and Letter(s) of Credit (as applicable) for filing or this approval will expire.
10. The Surveyor shall provide CAD drawings of the final, approved plat at the time of submission of the final Mylar for filing to allow the City to update its GIS data.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 5-0.

**V. NEW BUSINESS**

**ITEM 5. Preliminary Meeting - RE 1901** – Rezone (Commercial to General Residential) – 17 Mayfair Avenue – Joshua and Aaron Smit on behalf of Richard and Sharon Smit, Owners

Michelle Anthony, Senior Planner, presented the Staff Report dated May 2, 2019.

Commissioner Casey inquired why the construction of a garage with an upper floor living area triggered the need for the property to be rezoned. Ms. Anthony responded this was due to the current zoning of the property, which is the Commercial Zone Designation, as it does not permit stand-alone residential uses or structures. Ms. Anthony stated rather than require the owners to obtain a Major Conditional Use Permit to allow the stand-alone residential use in that zone, and for each subsequent time the owners wanted to develop the lot(s) further, it was determined the rezoning was the best option.

Ms. Anthony also stated the rezoning would also bring the long-term use of the property in to conformance with the correct zone designation.

Hearing no further questions for Staff, Chairman Delwiche opened the Public Hearing for public comment.

Aaron Smit, 17 Mayfair Avenue, inquired what necessitated the requirement for a plat to be created in order to rezone the property. Ms. Anthony responded it was a requirement under the City's Municipal Code.

Kimberly Johnson, Planning Director, stated the reason the replat was required to eliminate any unnecessary lot lines which were internal to the site as construction must occur within a given lot and not across lot lines. Ms. Johnson commented even though the current owners owned the entire parcel, they still had the legal right to sell one or multiple lots off of that parcel and the requirement was there to ensure there weren't any encroachments which may cause problems down the road.

Richard Smit, 17 Mayfair Avenue, stated there was a high fee associated with the change in zoning designation and inquired if the Commission had any say in whether those fees may be shared between his party and the City as the City also wanted the property to be rezoned. Chairman Delwiche responded the Planning Commission had no authority to do so, but the request still had one (1) more Planning Commission meeting and two (2) Public Hearings with City Council which was ample time to make this request for fee waiver known to either City Council or the Interim City Administrator, Leah Ash.

Ms. Johnson stated, regarding the fee, it was not the City's responsibility to initiate a rezoning for a non-conforming property, as this was the responsibility of the property owner, and there were a number of properties within the City in a similar situation and it was too cost prohibitive for the City to set a precedent on this request to pay for half of the fees. Ms. Johnson further stated neither City Staff nor the Planning Commission had the authority to waive fees as this was the sole responsibility of City Council and the City Administrator.

**MOTION:**

Vice Chair Vrobel moved to set the Public Hearing date for RE 1901 to the June 12, 2019 Regular Meeting of the City Planning Commission.

**SECOND:**

Commissioner Ragan seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 5-0.

**ITEM 6. Public Hearing** and Recommendation to City Council Regarding an Ordinance Repealing and Reenacting Title 16 of the City of Manitou Springs Municipal Code Concerning Subdivisions to Implement Hazard Mitigation Provisions

**ITEM 7. Public Hearing** and Recommendation to City Council Regarding an Ordinance Repealing and Reenacting Title 18 of the City of Manitou Springs Municipal Code Concerning Zoning to Implement Hazard Mitigation Provisions

Karen Berchtold, Senior Planner, introduced Tareq Wafaie of Clarion Associates and Waiverly Klaw of the Colorado Department of Local Affairs.

Tareq Wafaie, Clarion Associates, gave a presentation regarding the proposed Code changes and what they meant in terms of review process and requirements.

Vice Chair Vrobel inquired how much time these new regulations would add to current review processes. Mr. Wafaie responded, as this area was highly prone to geologic hazards, there were a number of companies in the area which could perform a geologic hazards review and this meant there were numerous options from which residents and developers may select. Mr. Wafaie stated the only requirement was the person performing the analysis be a licensed engineer and residents and developers were able to choose which outfit they preferred to perform the work. Mr. Wafaie stated the proposed procedure was actually more flexible than the current system in place.

Ms. Berchtold stated she had spoken with several local geologists and Colorado Springs had fairly recently started requiring more geologic hazard mitigation for developments. Ms. Berchtold stated she had been told that this actually created a market for this type of work in the area which mean more and more professionals in this field were being attracted to the region. Ms. Berchtold stated the timing would improve over time.

Commissioner Casey stated he felt the proposed process was reasonable and he was in support of the tiered approach, as well as, the flexibility of the process.

Commissioner Casey inquired if he had heard correctly that any commercial development would require a tier three process. Mr. Wafaie responded a more complex development which had a larger impact on adjacent neighborhoods and commercial properties should be required to obtain a full geologic hazards report, especially if the proposed development was a new commercial, mixed use, or multi-family structure as the potential impacts were greater to the public.

Commissioner Casey inquired if this was still the case for small commercial developments or additions. Mr. Wafaie responded any new stand-alone commercial development would be required to go through the tier three process for a full geologic hazards report, but additions, depending on the size of the addition, would be required to go through the lower tiers initially. Mr. Wafaie stated there were square footage thresholds for additions which determined which process would be required.

Commissioner Ragan stated he felt the tiered approach made sense and was impressed with how these changes had developed.

Hearing no further questions for Staff, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the meeting continued.

Kimberly Johnson, Planning Director, stated Staff was still working on a section of these regulations regarding the calculation of average slope as the current language was difficult to interpret. Ms. Johnson stated she had spoken with the current on-call engineer for the City and he had proposed some language changes and the inclusion of some graphics to clarify how the average slope was calculated. Ms. Johnson commented, as is, she was unable to perform the calculation due to the current language and understood why there was such difficulty for developers in performing the calculation.

Commissioner Casey inquired how the No-Build Area was to be determined and whether the threshold was to be seventeen percent (17%) or thirty percent (30%) for No-Build Area. Ms. Anthony responded anything thirty percent (30%) or greater slope was still considered a No-Build Area and the seventeen percent (17%) threshold was the trigger for a tier three geologic hazards report.

**MOTION:**

Vice Chair Vrobel moved to forward a recommendation to City Council for approval of the ordinance to repeal and reenact Title 16 of the City of Manitou Springs Municipal Code concerning Subdivisions to implement Hazard Mitigation Provisions.

**SECOND:**

Commissioner Ragan seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 5-0.

**MOTION:**

Vice Chair Vrobel moved to forward a recommendation to City Council for approval of the ordinance to repeal and reenact Title 18 of the City of Manitou Springs Municipal Code concerning Zoning to implement Hazard Mitigation Provisions.

**SECOND:**

Commissioner Ragan seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 5-0.

**VI. OTHER BUSINESS**

**ITEM 8. Short-Term/Vacation Rental Ordinance** – Update and Discussion Regarding Public Engagement Process.

Kimberly Johnson, Planning Director, stated she would like to postpone discussion regarding this item as she felt it was best to discuss the matter with more Commissioners present. Ms. Johnson stated she felt it was best to hold a work session regarding the matter to allow the Commission to fully delve into the engagement process for these amendments.

Ms. Johnson stated there were worksheets included in the Staff Report which, when filled out, would help determine the type of public engagement process these amendments would need with the intention of reporting the finding of the worksheets back to City Council.

Ms. Johnson stated there had been some discussion at the City Council level to go back and open the entire ordinance up to be amended and she had informed City Council there were concerns regarding doing so from the Planning Commission due to the time and effort it had taken to craft these regulations.

Vice Chair Vrobel commented she felt it was a good idea to reach out to the community to get feedback to determine if the current regulations are in line with the desires of the community.

Chairman Delwiche stated the idea behind this worksheet was to help the Commission determine what level of community engagement was necessary.

Vice Chair Vrobel stated the important matter to determine was the direction the community wanted to take in the future and whether that path was to remain more residential or to allow a short-term rentals on every corner.

Chairman Delwiche stated he felt this process was a bit murky as the Commission was essentially being directed by City Council to perform the work of a planning team in determining what type of engagement process was to be used.

Ms. Johnson commented there would be assistance for the Commission from a facilitator to aid them in the process of determining which level of engagement would be necessary and should the Commission determine the higher levels of the process were needed, the City would contract with Kona to work through the process.

Commissioner Ragan commented he was concerned regarding freely opening up neighborhoods for short-term rental operations as numerous studies had shown these types of operations significantly increased the value of homes and diminished the housing stock. Commissioner Ragan stated this was a concern for him considering one of the stated goals of Plan Manitou was to expand the availability of affordable housing. Commissioner Ragan stated he would like to see studies which showed the impacts these types of operations had on historic communities and social cohesion.

Commissioner Ragan stated there had also been numerous reports on community pushback in communities throughout the United States and beyond regarding the impacts of neighborhoods which had become oversaturated by short-term rental operations and felt it was incredibly important to strike the right balance between the issues.

Vice Chair Vrobel commented she agreed with Commissioner Ragan and also raised the issue of protecting the Commercial Zone and hotel operations so they were able to rent out their rooms in a sustainable capacity as well.

Chairman Delwiche commented there were also a number of bed and breakfast operators which were upset and felt disadvantaged in comparison to vacation rental operations because they were taxed at commercial rates, whereas vacation rentals were taxed at residential rates. Chairman Delwiche stated it seemed like a good idea to review the lodging tax regulations as well due to this.

#### **ITEM 9. Marijuana Ordinance - Update and Discussion Regarding Proposed Code Amendments.**

Kimberly Johnson, Planning Director, presented the City Memorandum dated May 8, 2019. Ms. Johnson stated these regulations were not a part of the Zoning Code and were outside the purview of the Commission, but wanted to provide the information in case any of the Commissioners wanted to include their input on the matter.

Ms. Johnson stated these changes were spurred by the license renewal process for these types of operations in which it was discovered that the City's regulations required the owners to reside in the State of Colorado and provide proof of residency for two (2) years prior to submission of the application. Ms. Johnson stated it was discovered that two (2) or three (3) of the owners of the establishments in the City did not reside in the State of Colorado and State Law regarding this requirement had been changed in the time since the City adopted its regulations.

Ms. Johnson stated she had reached out to City Council regarding the matter and the consensus was to amend the City's regulations to be in conformance with State Statutes. Ms. Johnson stated City Council had also given her the directive to look at clarifying the number of licenses versus number of locations issues.

Ms. Johnson stated she also wanted to amend the Code so the Medical Marijuana Regulations and the Retail/Recreational Marijuana were located in the same section to make administering the regulations easier, as well as making the regulations more uniform in terms of requirements like separation distances from sensitive land uses.

Chairman Delwiche inquired if any Commissioner had a disagreement or concern regarding the changes proposed, whether they should attend a City Council session to voice those concerns or by some other approach. Ms. Johnson responded the opinion of this Commission was important to City Council, as well as Staff, and encouraged the Commissioners to attend one of the City Council sessions regarding the proposed changes should they have any comment.

Commissioner Casey inquired if it was legal for these operations to have dual licenses, one (1) for medical and one (1) for recreational, in the same building. Ms. Johnson responded it was legal for the dual license operations to operate in the same facility, but there were some internal separation requirements within the facility at play in terms of separating the medical and retail sections of the facility.

Chairman Delwiche stated the initial intent when the Medical Marijuana Regulations were adopted was to allow four (4) separate licenses at four (4) separate locations, but when the Retail Marijuana Regulations were adopted, this shifted to allowing two (2) retail establishments which may potentially hold dual licenses and two (2) stand-alone medical establishments. Chairman Delwiche stated the initial intent was to allow for a total of four (4) establishments.

Chairman Delwiche stated as far as he was aware, despite both retail operations obtaining dual licenses, neither facility actually pursued the medical marijuana aspect of their businesses.

Chairman Delwiche also stated, due to this, he was concerned regarding how the proposed ordinance was written as it appeared to him to champion retail marijuana while suggesting medical marijuana patients only had the option to obtain medical cannabis in Colorado Springs if the dual licensed retail shops did not utilize their medical licenses.

Ms. Johnson stated the proposed ordinance contained language regarding dormant licenses and clarified some of the confusion regarding this issue and dual licensing, but some regulatory requirements, such as internal separation were actually State Statute which built in to the proposed ordinance.

Chairman Delwiche stated he was mostly concerned regarding the fact the proposed ordinance would limit the availability and options for medical marijuana patients to obtain their medicine should either of the retail shops decide not to sell medical marijuana products as they effectively held the only available licenses, thereby forcing the patients to only be able to obtain their medicine in an adjacent municipality. Chairman Delwiche stated he felt this did not serve the original intent of the regulations when originally adopted.

Vice Chair Vrobel inquired if the requirement for in-state residency was a State Statute. Ms. Johnson responded there was a State Statute which required this when the state regulations were initially implemented and at the time the City adopted its regulations. Ms. Johnson stated this is no longer a State Statute or requirement, yet the City's regulations had not yet been updated to reflect this.

Ms. Johnson stated this ordinance and its language had not yet been reviewed by City Council and was, at this time, just an initial draft compiled by herself and the City Attorney.

Bob Todd, City Council Liaison, stated he wanted to clarify when Maggie's Farm first opened, because they had their own grow and due to state regulations at the time, were able to offer medical marijuana to medical patients. Councilman Todd stated, at the time, the regulations had stated that, in order to sell medical marijuana to medical marijuana patients, the operation had to grow the product themselves and there was no allowance to purchase the product for medical marijuana commercially.

Councilman Todd stated Maggie's Farm had always grown its own retail and medical marijuana and had the required internal separations within their facility to sell both retail and medical marijuana.

Councilman Todd stated, regarding Emerald Fields, the new ownership was intent on obtaining medical marijuana and the State Statutes regarding the percentage of product which must be grown by the establishment owner had been declining in recent years. Councilman Todd stated on July 1, 2019, the requirement the establishment owner must grow any percentage of their medical marijuana product was to be eliminated entirely, thereby allowing Emerald Fields to purchase their medical marijuana commercially for sale to patients.

Councilman Todd stated, by July 1, 2019 both retail marijuana establishments in the City, Maggie's Farm and Emerald Fields, would also offer medical marijuana.

Chairman Delwiche stated the website for Maggie's Farm seemed to indicate the establishment only sold retail marijuana and asked for clarification from Councilman Todd regarding the matter. Councilman Todd responded he would look into the matter further and get back to Chairman Delwiche. Councilman Todd also stated, as of four (4) months ago, he can confirm that Maggie's Farm did sell medical marijuana as he had been a secret shopper there at the time.

Hearing no further questions for Staff, Chairman Delwiche opened the Public Hearing for public comment.

Eric Lutringer, 4845 Spokane Way, Colorado Springs, stated, as the compliance administrator for Maggie's Farm, he wanted to confirm that their operation had sold medical marijuana consistently for at least two (2) years at the time of this meeting. Mr. Lutringer also stated the website was currently undergoing a facelift and the new website design would include medical marijuana.

Hearing no further comment or questions from the public, Chairman Delwiche closed the Public Hearing.

Commissioner Casey inquired what the difference was between medical and retail marijuana establishments and wondered why the City cared how these operators handled their businesses. Chairman Delwiche responded the two products were taxed very differently and, to clarify what he meant, stated he had just wanted to ensure medical marijuana patients were able to have access to medicine locally as he had heard from some fellow residents this was something they desired. Commissioner Casey stated he felt it seemed like an overreach of government.

#### **ITEM 10. Live Streaming and Board Training - Discuss Live Streaming of Meetings and Board Training**

Kimberly Johnson, Planning Director, presented the City Memorandum dated May 8, 2019. Ms. Johnson stated up until the morning of this meeting, it had been her intention to begin livestreaming the quasi-judicial Commission hearings at the next regular sessions, but had been given the directive the morning of this meeting

not to initiate the livestreaming due to new understandings discovered regarding live streaming and closed captioning.

Ms. Johnson stated she would like to implement a regular board training and was currently working to establish a process and materials to create a training program for the City's various boards.

Commissioner Casey stated he would also like to see a requirement for Alternate Members of the City's boards and commissions to attend a certain number of meetings per year of the body in which they had been appointed in order to have a better understanding of how that particular body felt and handled applications and issues. Commissioner Casey stated he was also in support of the training program as it would help in the onboarding and initial meeting participation for new members.

Hearing no further questions for Staff, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the meeting continued.

## **VII. ADJOURNMENT**

Hearing no further business before the Commission, Chairman Delwiche adjourned the meeting at 8:37 pm.

*Minutes Prepared by Dylan Becker, Planner I*