



**CITY OF MANITOU SPRINGS  
PLANNING COMMISSION  
REGULAR MEETING MINUTES  
Wednesday, April 13, 2016**

**I. CALL TO ORDER**

A Regular meeting of the Manitou Springs Planning Commission was held Wednesday, April 13, 2016, in Council Chambers @ 606 Manitou Avenue. Chair Delwiche called the meeting to order at 6:02pm and declared a quorum present. The following Commission members attended:

**PRESENT:** Vice Chair JEANNE VROBEL  
Commissioner TIP RAGAN  
Commissioner JULIE WOLFE  
Chair ALAN DELWICHE  
Commissioner MIKE CASEY  
Commissioner GLORIA LATIMER

**ABSENT:** Commissioner LORI BURRIS (Excused)

**STAFF:** Wade Burkholder, Director of Planning  
Michelle Anthony, Senior Planner

**II. APPROVAL OF MINUTES**

**ITEM 1.** March 9, 2016

**MOTION:**

Commissioner Vrobel moved to approve the March 9, 2016, minutes as presented.

**SECOND:**

Commissioner Latimer seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed 5-0. Commissioner Ragan abstained as he was not present for the March meeting.

**III. NOTICE OF COUNCIL ACTION**

**ITEM 2.** An Ordinance Amending Title 18 “Zoning” of the Municipal Code of The City of Manitou Springs, Colorado, in regard to Definition of and Setbacks for Storage Buildings in Residential and Commercial Zones; Appeals of Planning Staff Decisions; Increase of the Minimum Distance Requirement for Mailed Public Notification; and inclusion of The Requirements for Pre-Application Meetings and Electronic Submissions. *City Council postponed this discussion until May 3, 2016.*

**ITEM 3.** An Ordinance Amending Title 18 “Zoning” of the Municipal Code of the City of Manitou Springs, Colorado, in regard to Definition of and Setbacks for Storage Buildings in Residential and Commercial Zones; Appeals of Planning Staff Decisions; Increase of the Minimum Distance Requirement for Mailed

Public Notification; and inclusion of The Requirements for Pre-Application Meetings and Electronic Submissions. *City Council postponed this discussion until May 3, 2016.*

**ITEM 4.** An Ordinance of the City of Manitou Springs, Colorado, adding a new chapter 18.89 concerning Vacation Rentals in the City of Manitou Springs and Adding a New Definition of Vacation Rentals to Chapter 18.60. *Mr. Burkholder said there were no changes other than a requirement for carbon dioxide detectors. First hearing will be May 3, 2016.*

*Chair Delwiche reviewed the meeting procedures for everyone present and asked if any Commissioner had Ex Parte Contacts or Conflicts of Interest to declare. Hearing none, the meeting continued.*

#### **IV. UNFINISHED BUSINESS**

**ITEM 5. V 1511 - Lot Size/Density Variance (Allow Second Dwelling Unit) - 107 Oak Place - Andy Wells, Applicant. (POSTPONMENT REQUESTED)**

**ITEM 6. MNS 1504 - Minor Subdivision (Create One Lot) - 107 Oak Place - Andy Wells, Applicant. (POSTPONMENT REQUESTED)**

#### **MOTION:**

Commissioner Vrobel moved to postpone **V 1511** and **MNS 1504** to the May meeting.

#### **SECOND:**

Commissioner Ragan

#### **DISCUSSION:**

There was no discussion

#### **VOTE:**

Motion passed 6-0.

**ITEM 7. V 1510 - Front Setback Variance (Allow New Dwelling Unit Construction) - 356 Ruxton Avenue - Joel Grotzinger, Applicant. (POSTPONMENT REQUESTED)**

**ITEM 8. V 1512 – Lot Size/Density Variance (Allow Additional Dwelling Unit) - 356 Ruxton Avenue - Joel Grotzinger, Applicant. (POSTPONMENT REQUESTED)**

#### **MOTION:**

Commissioner Vrobel moved to postpone **V 1510** and **V 1512** to the June meeting.

#### **SECOND:**

Commissioner Ragan

#### **DISCUSSION:**

There was no discussion

#### **VOTE:**

Motion passed 6-0.

**V. NEW BUSINESS**

**ITEM 9. MNS 1602** - Minor Subdivision (Create One Lot) - 27 & 29 Delaware Road - Kevin Lloyd on behalf of Christina Parker, Applicant

Senior Planner Michelle Anthony presented the staff report dated April 9, 2016.

Chair Delwiche asked if there were any questions for staff.

Commissioner Wolfe asked if the variance had to be granted.

Ms. Anthony replied it would be hard not to grant the variance however, she supposed you could not grant it.

Commissioner Wolfe asked if it was an option for the authorization to be retroactively denied if it's not or be conditioned on this building occurring within the next year and if it does not, we would be back to the separate lots adding she thought that would seem to make more sense.

Ms. Anthony replied we could not issue a building permit until the plat was filed. Ms. Anthony added if she felt there was a high possibility this would not happen, she would have said the variance needed to be processed now and if it were not necessary, it would be a moot point. Ms. Anthony did not feel after all the time and expense the applicant had gone through this would not happen.

Commissioner Wolfe said she was simply trying to understand the sentence about processing the variance. She supposed it meant the variance is defacto shall be granted and they would simply have to pay the additional fees. Ms. Anthony added and goes through the process. Ms Wolfe asked if that was really what it meant. Ms. Anthony said yes, that is really what it means.

Chair Delwiche asked if there were any other questions for staff. Hearing none, the applicant was invited to the podium.

Kevin Lloyd, Rampart Surveys, 1050 Tamarac Parkway, Woodland Park, CO said he was there on behalf of the applicant who lives out of state. Mr. Lloyd stated he appreciated staff's thorough recommendations and simply wanted to answer any questions if there were any.

Chair Delwiche asked if he was comfortable with the recommendations. Mr. Lloyd replied most definitely adding they are all very reasonable adding they were doing what needed to be done to clean up the title which would release the cousin who was not aware they were on the title.

Chair Delwiche asked if there were any questions for the applicant.

Commissioner Wolfe asked if the other people were already on the title and the cousin was granted a life estate. Mr. Lloyd replied that was correct. She was a cousin and the property had been in the family for over 80 years and everyone thought it was in the name of only the two sisters however when the title company prepared the title work for our application process, the cousin's name was discovered. A quit claim deed had been issued to remove her name from the title.

Hearing no further questions, the meeting was opened to the public. Hearing no public comment, the meeting was closed to the public.

Commissioner Ragan stated this would not affect the way he would vote however wanted to go on record as saying people should have to pay their fees for the land dedication whether it had happened before or not. When you bring properties together, separate them, bring them together, separate them, he did not understand the idea that because it had been done one time, that property is forever exempt from the fees. He felt the fees should be required every time and wanted to encourage stopping the grandfathering.

Ms. Anthony said she did not think that would be possible because it's fees in lieu of land dedication. Once you have dedicated land, you can't keep requiring dedication. She did not think we could keep requiring the fees in lieu but agreed; we do need to look at it and if there is something that can be done, an impact fee or something.

Commissioner Ragan agreed adding considering the administrative cost and time and energy, there should be some kind of dedication or resources to the City to make this happen adding it is fair and right to have some sort of monies coming to the City when there are attempts to renegotiate a plot.

Commissioner Casey mentioned to staff he thought it would be important to add the word "two" to the recommendation. Chair Delwiche asked where that was. Ms. Anthony replied it was right before the last sentence, right before where it says the lot is not sufficient, it should say for "two dwellings".

**MOTION:**

Commissioner Ragan moved to approve **MNS 1602** - to create Lots 1, Parker Subdivision with the following conditions:

- 1) Prior to filing, the plat shall be updated to include the following:
  - a) Inclusion of the area of vacated right-of-way in the plat graphics, existing legal description and square footage of the parcel
  - b) Either dedication of the area surrounding the City's existing, storm-sewer inlet, or the current easement granted to the City of Manitou Springs
  - c) Proof the third party has been removed from property ownership, or the addition of that person as a signatory on the plat
- 2) An evaluation of the documents noted on the current Property Binder from the Title Company to confirm none of them are applicable or should be incorporated into the proposed plat.
- 3) An up-to-date Certificate of Taxes showing all property taxes are current shall be submitted prior to filing of the plat.
- 4) The property owner shall pay the fees in lieu of land dedication for Parks, Open Space and Schools as shown in the above table or as recalculated based on the final property square footage and any previous fees paid for the portion of the property that was part of the Rancis Subdivision.
- 5) Should the combination of the existing cottages on the property not be substantially complete within one year from the date of filing of the plat, the property owners will be responsible for:
  - Processing a Lot Size/Density Variance for two units on the undersized lot
  - Payment of additional fees-in-lieu based on two units instead of a single unit.
- 6) The Surveyor 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 for filing or this approval will expire.
- 7) 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

**VOTE:**

Motion passed 6-0.

Vice Chair Vrobel wanted to add that she agrees with Commissioner Ragan and said it could be discussed another time but she did agree.

**ITEM 10. VAC 1601** - Vacation-Right-of-Way (A portion of E. Fountain Place) – 0 East Fountain Place – Jerry Glass, Applicant

Director Wade Burkholder presented the staff report dated April 8, 2016

Chair Delwiche asked if there were any questions for staff.

Commissioner Wolfe asked if use of the subject right-of-way was unnecessary. Mr. Burkholder replied that was the finding, yes.

Chair Delwiche asked what the existing right-of-way was. Mr. Burkholder replied according to the survey, 30'.

Chair Delwiche said he was somewhat skeptical of this one explaining if you look at the exhibit, it showed 165' and says +/- 5' and it also says they are requesting approximately 1050 square feet be vacated. Mr. Delwiche said if you do the math that came to an average of 6.5', which was a bit more than 5' especially when you are talking about a 30' right-of-way. He was confused about why we would say that right-of-way was unnecessary adding generally, we have right-of-ways that are wider than the paved right-of-way. In the past when we have reviewed vacations, it was more like a dead end street that would never be developed. Here there are houses all along the other side. Mr. Delwiche asked why was it staff's conclusion this was not used.

Mr. Burkholder replied the decision was based on Public Services Department and the fact that there are no plans to ever widen the existing road or improve curb and gutter at this time. There are no plans to use that 30' of width.

Mr. Delwiche said at some point, that roadway may need to be improved adding it was already rough and asked how would the city manage that if we have one little section that is 5' or 6' narrower. Would the city then have to get permission from a new property owner to accomplish that. Mr. Burkholder replied at that point it would likely only become a 25' road. Mr. Delwiche replied we are in effect, narrowing the entire roadway for that whole stretch of Fountain Place.

Mr. Burkholder said that would be a guess, he did not know how they would handle it in the future adding there are options one of which would be to work with the owner and ask for more if the City needed more. Another would be not having a full 25' - 30' wide road.

Commissioner Latimer asked when this comes through as a major development plan submission would this vacation be a part of that. Mr. Burkholder replied yes. Ms. Latimer clarified if the vacation were denied this evening, would it come back as two separate actions. Mr. Burkholder replied no, they are two separate actions adding if this is approved by City Council; it would become the property owners and would be incorporated in the major development. If it were not approved, it would remain City ROW and could not be used as part of a major development.

Chair Delwiche asked if there were any further questions for staff. Hearing none, the applicant was invited to the podium.

Mr. Glass introduced himself and his daughter, Jackie Glass, 3611 Holyoke Street, Colorado Springs began by saying he and his daughter own the lot at 0 East Fountain Place that they would like to develop. Mr. Glass made his presentation while Ms. Glass showed a slide presentation.

Mr. Glass purchased the lot in 1982. There was a diagram of the lot shown on the screen. Mr. Glass said the lot was zoned commercial in a residential area. Mr. Glass used a pointer to show on the screen, to the north of the lot there is an automotive garage on Manitou Avenue approximately 20' below the grade of the lot. To the south, there is an older neighborhood. To the east, there is a single apartment and to the west is one single family home.

Mr. Glass said before he can develop the property, there was a problem on the property line between his property and the City's property. The problem is along Fountain Place where the City property meets his property. Ms. Glass showed some recent photographs of where the city property line met his property line. The lot is 167' long depending on where you are on the property, the city's property could be 2' or as much as 6' from the curb and it varies from where you stand. Part of the curb is falling into his lot. There is a crack in the road with a 4" gas line underneath the crack.

There were more photographs of the road caving in, the crack and curb falling away. Mr. Glass showed more pictures of the curb falling away and the road actually tilting down into the lot.

Mr. Glass said he had a meeting with Ms. Anthony saying there was no way to develop this lot with these problems and she offered to repair the curb at his expense. Ms. Anthony advised him he cannot work on city property but suggested if he request a vacation of right-of-way to the curb, which would give the ability to make the repairs.

CSU did a locate and where the crack was in the road, they found a 4" mid pressure, main gas line. The gas line eliminated most of the ideas we had to repair. CSU would not allow any activity within 3' of the gas line in any direction. After much thought, he believed he came up with a possible solution. Mr. Glass showed more photographs as he explained his plan to use the front of the building as a retaining wall. He is asking for the right of way for the property line back up to the street curb adding he would like it on the street side of the curb. He planned to backfill the area. From the new property line to the building would be the 15' setback. Mr. Glass showed a side view showing the area he planned to backfill. Mr. Glass showed a 3D image of what the lot would look like. By doing this, it would generate 7 oversized parking spaces and would leave enough room between the parking and the building for some greenery. The next slide showed five single-family residences on this lot. Mr. Glass showed pictures and said he believed this development would make the street wider and safer considering most of the schoolchildren use this road often. Mr. Glass showed photographs of what the back of the building would look like adding there would be 32' of turnaround room for vehicles. There are five more parking spaces in the garages, which are over-sized one-car garages. If you consider the 20' long driveways, there are five more spaces.

Mr. Glass said this design would also solve CSU's problem with the pipe saying the pipe would be 3' south of the proposed property line and the property line is 15' from the proposed building giving 18' distance from the pipe to any building.

Mr. Glass said they felt this project would be positive for all parties concerned adding this lot would not be used for commercial use, which he felt the neighborhood would appreciate. Mr. Glass said again this would make the whole neighborhood safer and look better. Mr. Glass said the development would be a buffer between the heavy commercial business to the south and the neighborhood to the north. Mr. Glass said the development should also cut down on noise and undesirable views from the auto shop and Manitou Avenue down below. This development would not block any desirable views. He believed it would help the property values in the neighborhood. He believed the town would benefit because there could be five more families in town and the city would collect all kinds of fees from him. Some of the neighbors would like him to turn the lot into a park. He wished he could accommodate. Doing this or any other development on this lot would depend on the street problem being fixed. Mr. Glass said he is not only looking for approval for the vacation of right-of-way but for the entire development. Mr. Glass asked if there were any questions.

Chair Delwiche said this is a commercial lot. Mr. Glass said yes it is. Mr. Delwiche asked staff if they advised a rezoning would be required. Mr. Burkholder said he did advise Mr. Glass the lot would need to be rezoned.

Mr. Delwiche asked if we are putting the cart before the horse here adding there is some controversy surrounding rezoning from commercial. Because of the lack of commercial property why would we give it up. Mr. Burkholder replied that is certainly an option adding he felt the applicant would like to know what property he has to work with for his future plans for the minor development. Ms. Anthony stated staff had encouraged the applicant to rezone the property, as it has no commercial access it is fronting a neighborhood. Ms Anthony said from a staff standpoint, she would not recommend the property be commercially developed; it would not be compatible with the neighborhood adding it should have been rezoned maybe as a condition of subdivision. The applicant is willing to do that and not try to figure out how to use it commercially. Ms. Anthony said she did not know how you could and not have an impact on the neighborhood. Mr. Glass added he had talked with most of the neighbors and they definitely do not want something commercial.

Commissioner Casey asked if there was a mailing notification. Ms. Anthony replied no but it was posted. It is part of the subdivision code and we do not have that requirement yet. Mr. Casey asked if there were any comments from the neighbors. Mr. Burkholder said he spoke with a neighbor who questioned what the overall plan was adding he worked with him and answered his questions. He may be here this evening. Mr. Casey told the applicant he had a great presentation. Mr. Glass thanked him. Mr. Glass said the only concern about the whole project is you saw the way the street is caving in. We will be putting in all new drive up curbing and it will really look nice but the street will still be caved in and he cannot touch the street adding it would be nice if the city would come in with some black top to level out everything. Other than that, we have everything covered.

Commissioner Wolfe asked if the city were willing to fix the road, you would not need to be here today about this but because the city continues to refuse to fix the road, you want to acquire ownership of that portion of the road so you can fix it. Mr. Glass replied exactly and it was not just the road because remember the city property is part of the cliff so to fix that road you would have to put up something right in the middle of the cliff that would support the road. If you think about it, it just cannot be. It would be as hard as if he put up a retaining wall to keep the city property off his property. The whole thing has to be fixed. Mr. Glass added, this way, the city does not have to put out a dime, it would all be part of our development, it will shore up everything.

Chair Delwiche asked if there were any further questions for the applicant. Hearing none, the meeting was opened to the public.

Robert Woodward, 435 East Fountain Place said he did not have a problem with this but felt there should be a better legal description rather than simply plus or minus description. Once you open the right of way, the road will be narrowed and there are cars that park there. It may become so narrow that cars would not be able to park there. He was not concerned except he would have liked more definition of where that right of way would be and he is more concerned with what they will put on there as far as the improvements later on. He did not want improvements that would have an adverse affect the value of his property. Commissioner Casey said one of the conditions would be an accurate and clear description. Mr. Woodward said yes, everything is plus or minus. We should know exactly what that right of way would be before it is approved.

Brian Galloway, 439 East Fountain Place lives directly across the street from the property. Mr. Galloway said the street is not wide enough for two lanes of traffic to travel if you look at his photographs there are cars that park there on the north side of the street. When a car is parked there, it is only wide enough for one car to pass. When there are two cars, its gridlock and someone has to pull over to let the other pass. If he is talking about taking part of the street away and making it more narrow, we will lose our parking. It may potentially become a one-way. It is too narrow right now for parking and two lanes of traffic. Mr. Galloway also agrees with Mr. Woodward regarding the property values.

Eldon Jourdan, 48 Puma Path has driven this road for 33 years and it has always been a problem with how narrow it is. You always have to treat it as a one-way road. There is a problem with all the high school kid flying down the road and kids walking on the road. Mr. Jourdan said he had developed many properties in Manitou and he never had the city develop something for him. If he is going to do this, it is out of his pocket and if he does do it, the road should become a little wider not the same. Mr. Jourdan asked why we should give up public property to accommodate him

adding if he were doing it, he would understand that he would have to create a retaining wall and work with it. Mr. Jourdan felt it was wrong to give up the public access.

Chair Delwiche asked if there would be any further public comment. Hearing none, the meeting was closed to the public.

Mr. Glass said he could not agree with what he just heard saying no one comes close to the edge of the road. Because of the road deterioration, that makes the road narrower. He does not intend to make the road narrower; he will be adding some width to it. As far as the city developing that, you can see where the property line is and how the city could shore this up; he could not see how it could be done. You either do the whole thing or not at all.

Chair Delwiche felt without specific dimensions, he could not imagine voting in favor of this even with the dimensions, he would still be reluctant to give up the city property adding all we are doing is adding 1000 square feet to the applicant's property which enhances his development and he did not think the city was in that business.

Vice Chair Vrobel said, she had a problem with it because she wanted a legal description adding she just did not know what she was looking at. She was just not clear on exactly what we were getting. She felt she was looking at something she did not know what it would be. She cannot support it unless she could see it and there is no adequate legal description at this point. Ms. Vrobel could not vote on this positively until she could see exactly what was being proposed.

Commissioner Latimer said it did seem like there were linked issues here. We are dealing with them separately and it felt to her like they should see the whole package because one does affect the other and perhaps the first one is the zoning issue.

Commissioner Ragan said there are different levels of analysis here. He is reluctant to approve something that is unclear. We deal with unclear boundaries all the time and to go along with creating another one, he is very uncomfortable with it. It was not clear what the actual width, which right away makes him feel he could not approve it at that time. When he read the staff, recommendation and it said the application is incomplete, he was not sympathetic, and the application must be complete. Mr. Ragan hoped the applicant would take lessons learned from his experience tonight and come back with a complete application adding the primary concern is for the city not to give property away to make a development more feasible. Mr. Ragan was also concerned that in the future, the city would have an interest in improving this road and what we would be doing here is giving up the right to do that and he was very reluctant to do that. Mr. Ragan was not in favor of 2-1/2 parking spaces per house given our traffic considerations.

Commissioner Casey said it was obviously vague but he was surprised the city had no input, that the Public Services Department had no input adding that should be demanded. They should have some input on this.

**MOTION:**

Commissioner Ragan moved to deny **VAC 1601** - Vacation-Right-of-Way due to vagueness and incomplete nature of the application.

**SECOND:**

Commissioner Wolfe seconded the motion

**DISCUSSION:**

There was no discussion

**VOTE:**

Motion to deny approved, 6-0

Mr. Delwiche stated for the public this is not the final decision it will go tentatively go before City Council on May 3, 2016.

Commissioner Vrobel wanted to comment that she is worried about a subdivision that could not spell Manitou correctly.

**ITEM 11. V 1602 - Side Setback Variance - 2 Fountain Place - Douglass K. Edmundson on behalf of Diane Fitzkee, Applicant.**

Senior Planner Michelle Anthony presented the staff report dated April 9, 2016.

Chair Delwiche asked if there were any questions for staff.

Commissioner Casey wanted to know what was meant in the first line of the staff report where it said 5' if approved by the Historic Preservation Commission (HPC). Ms. Anthony replied the HPC had authority in the general residential zone to grant a 5' setback so it would not be necessary to come before the Planning Commission for a variance. Ms. Anthony stated that was a code update from several years ago. Mr. Casey questioned the "if approved". Ms. Anthony said this is the way the code was written however, the HPC did previously approve a 5' setback but it ended up being smaller than that and need to go before the Planning Commission.

Chair Delwiche hearing no further questions for staff, invited the applicant to the podium.

Douglass Keithly Edmondson, 7 Keithly Road said as always, he praised Ms. Anthony for taking the broken information he supplied her and putting it into a comprehensive package adding he really appreciated that.

Mr. Edmondson said the most compromised portion of the house literally collapsed and ran out the front door during the heavy rains. The main back portion of the house was built on two stacks of railroad ties. His desire is to replace the entire foundation under the existing structure. Mr. Edmundson believed the house was an outhouse with a corridor built between it and the main building. The improvements will be made in the existing footprint plus 4' to the south. He would add the staircase access and a back door. Currently the only way to gain access is through the front door. We are making attempts to preserve the off street parking.

Mr. Edmondson said the new building would not have any negative visual impact; it will not block anyone's view. It will be built back into the hillside. It will be very cozy and aesthetically pleasing.

Mr. Delwiche asked if there were any questions for the applicant. Hearing none, the meeting was opened for public comment.

Lindsey Neuber, 6 Fountain Place was unsure where the second story would be built. Ms. Neuber said she had a beautiful view of Pikes Peak. She saw the pole put up to demonstrate height and she is afraid her view will be obstructed. She is worried about her property value. She said she and her husband like to sit in the living room and look at Pikes Peak, they do not want to sit and look at the Incline. This is their biggest issue.

Ms. Anthony asked Ms. Neuber to look at a picture in the packet of her house in relation to the existing house asking are those your side windows. Ms. Neuber replied the very top windows are the master bedroom. The main living floor with the deck, were she spends 95% of her time are the bottom windows.

Ms. Anthony said the second floor addition will be over part the back long area, not over the front part of the house. Ms. Neuber said the front part of the house faces the incline. The back where they are building is right where Pikes Peak is.

Ms. Anthony said it might block the views. It did not appear that it would block views unfortunately, it is one of these things you are not guaranteed. Ms. Neuber said this would be on her fence line so now they have to look at the side of this house...it's frustrating. Ms. Anthony said those are valid comments.

Mr. Delwiche asked if there were any further comments. Hearing none, the meeting was closed to the public.

Commissioner Ragan said there were many aspects of the application he found compelling however he now thought he did not have enough information to make a good judgment. Mr. Ragan said it was true views are not guaranteed adding at the same time, there are expectations about setbacks, etc that protect people. We are being asked to grant a variance that may have a negative impact on the property owner adjacent which made him uncomfortable. He would like this to come back with greater information from the planners about the impact on the adjacent properties and the their property values.

Chair Delwiche said he was kind of ambivalent, he did not know what to do. Mr. Delwiche said it was a special case adding normally we would say view is not your right but we also say setbacks are your expectation. Here we know there is an existing setback issue and now we are going to make it bigger.

Commissioner Wolfe asked if this issue tied into # 5 where it says "reasonable protections are afforded adjacent properties" is that where this comes in there may not be reasonable protection for this woman's property, asking if that was where it would fit.

Chair Delwiche said he thought so. The applicant states protections and surrounding properties such as visual impact, obstruction and so on have been taken into consideration but maybe they have not.

Commissioner Wolfe asked if that was all the code said the one sentence that said "reasonable protections are afforded" Ms. Anthony replied yes.

Vice Chair Vrobel said she tended to think views are not guaranteed, she did not think we aren't taking all of the neighbors view, we aren't taking them from the master. Exactly how much impact there would be from the area she lived in a great deal, there will be the feeling, I'm just not sure because it is hard to tell by the information provided. Ms. Vrobel felt the commission needed more information or maybe do a site visit so they could see what they were going to approve or disapprove.

Ms. Vrobel asked staff if the item could be postponed until they get more information. Ms. Anthony replied yes adding she felt the applicant should work with the neighbor to find out what would and would not be blocked.

Chair Delwiche liked the idea of postponing and asked for a motion.

Ms. Sellers said the correct action was a motion to table it to a date certain.

MOTION:

Vice Chair Vrobel moved to table **V 1602 - Side Setback Variance** to the May 11, 2016 meeting.

Commissioner Casey asked short of a height variance was there any reason the item should come back.

Ms. Anthony replied it would come back for the minor subdivision.

**SECOND:**

Commissioner Wolfe seconded the motion.

**DISCUSSION:**

There was no further discussion.

**VOTE:**

Motion passed 6-0.

**ITEM 12. MNS 1602** - Minor Subdivision - 2 Fountain Place - Douglass K. Edmundson on behalf of Diane Fitzkee, Applicant. **(POSTPONMENT REQUESTED)**

**MOTION:**

Vice Chair Vrobel moved to postpone **MNS 1602 - Minor Subdivision** - 2 Fountain Place to the May 11, 2016 meeting.

**SECOND:**

Commissioner Ragan seconded the motion.

**DISCUSSION:**

There was no discussion.

**VOTE:**

Motion passed 6-0.

**ITEM 13. RE 1601** - Rezoning (General Residential to Open Space – Initial Hearing) - 0 Dudley Road - City of Manitou Springs, Applicant.

Senior Planner Michelle Anthony presented the staff report dated April 17, 2016.

Chair Delwiche asked if there were any questions for Staff. Hearing none, the meeting was opened for public comment. Hearing no public comment the meeting was closed to the public.

**MOTION:**

Commissioner Wolfe moved to set the Rezoning request for a public hearing at its May 11, 2016 Regular Meeting.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no further discussion.

**VOTE:**

Motion passed, 6-0.

At 7:54pm Chair Delwiche called for a 5 minute break before the next item.

The meeting was called to order at 8:06pm.

**ITEM 14. AP 1601 and Review of CU 1207 - 515 Ruxton Avenue - Spencer Wren on behalf of the Manitou & Pikes Peak Railway, Applicant.**

Director Wade Burkholder presented the staff report dated April 8, 2016.

Chair Delwiche said there are two items for consideration. One item is the insufficient parking plan and the second item was that a new conditional use permit is required.

Mr. Burkholder said that is correct.

Chair Delwiche asked if there were any questions for staff.

Commissioner Latimer asked for an explanation regarding number nine on page seven.

Mr. Burkholder said it referred to the CUP review that was supposed to take place within a year and the parking plan that was to be submitted within six months after the approval.

Chair Delwiche talked about an email chain that Planning said the CUP had expired and later recanted that statement.

Commissioner Wolfe was confused that the City retracted it's statement about the permit having expired.

Mr. Burkholder replied that was correct, the conditional use permit was approved in 2012 however they were not in compliance with the original approval.

Commissioner Wolfe asked if the City had any recourse in situations where a condition had not been met.

Ms. Sellars replied the City council can revoke a conditional use permit if the conditions have not been met.

Commissioner Wolfe asked if there was a specific ordinance authorizing that. Ms. Sellers said it was in the code. Ms. Wolfe said she couldn't find that in the materials provided. Ms. Sellers thought that was because the issue was about Wade's two decisions. Ms. Sellers added the City Council is the authority who revokes. There is no revocation process at this level.

Commissioner Wolfe asked if the appeal itself was limited to whether it was in the reasonable for the Planning Director to determine the parking plan is insufficient.

Ms. Sellers replied yes, Wade's two decisions is the items in front of you.

Commissioner Wolfe asked is it true on page six of the report, that if the use of the railway has, in fact, expanded, then that, quote, requires approval of a conditional use permit for the operations of the facility, itself. It was her understanding that we're looking at conditional use approval regarding the parking.

Mr. Delwiche said that's where it's two separate issues in one appeal. The first issue is in regard to a decision the Planning Director made which was the parking plan was insufficient. They need to do the traffic study. The second issue was the need for a conditional use to operate the Cog, regardless of parking. So it's two items that we are here to decide.

Chair Delwiche said when we get down to taking a vote, he wanted to break that into two pieces. We'll do each one separately because they are so different from each other.

Commissioner Wolfe asked if the City Attorney agree that if the Cog Railway has, in fact, expanded its use over the last 125 years, then there is a legal requirement that a conditional use permit be issued for continued operation.

Ms. Sellers replied yes, the code says existing legal non-conforming uses can continue. However, they cannot be expanded or enlarged. Ms. Sellers said for whatever reason, in 2012, the conditional use permit only addressed the parking. It didn't actually address the actual railway operation, just the parking. Wade made a decision regarding the parking plan for that conditional use permit. At the same time, there's indications from the Cog that the activity had expanded or enlarged, and at that same time, Wade said, by the way, we think you might need a conditional use permit because you've expanded your non-conforming use.

A discussion ensued about what the commission was supposed to decide on. Ms. Sellers said the appeal is regarding Wade's decisions.

Chair Delwiche asked the applicant to the podium.

Mr. Les Gruen, 6 South Tejon, Suite 550, Colorado Springs said he had worked with the Cog's owner for about 20 years on land use matters, and based on the briefing from the Planning Director and the questions asked by Commissioner Wolfe, you can see that this is a complex matter that we have before us. Mr. Gruen was contacted when the e-mails started flying between the Planning Department and Mr. Wren.

Mr. Gruen said he would be making the majority of the presentation. But Mr. Spencer Wren was here, as well as our parking consultant, Scott Paling of Martin and Martin Consulting Engineers. We also have Mike Myers, the Cog Railway's parking manager. Spencer's been at the Cog for 10 years; Mike's been there for 15 years.

Mr. Gruen said they are appealing an administrative decision that contradicts the staff recommendation, the unanimous Planning Commission decision, and the unanimous City Council decision that was made three and a half years ago. We are asking you to direct staff to process the parking plan that had been submitted. We believe there's no basis for requiring the Cog Railway to go through a conditional use process on account of expanded use. What the Cog Railway has done and is doing has essentially been unchanged for many, many years.

Since the Incline use has expanded by legalizing, their employees have gone from one year-round employee for the parking management to three year-round employees, and from eight seasonal employees to seasonal employees. There are a lot of people making sure that traffic is working as efficiently as it possibly can. I'd like to comment on the staff report. We so strongly disagree with this. Mr. Gruen discussed several reasons they disagreed with the staff report. I'm prepared to answer a lot of questions, but he concluded that the director's finding is not proper, in our opinion. And I would say, at this point, that we were improperly informed early on, by not submitting a parking plan within six months, that the conditional use permit had expired, and therefore, we need to go through a whole conditional use process. That's what started this whole thing. the current staff recommendation is inconsistent with the original staff recommendation, it's inconsistent with this Planning Commission's approval three and a half years ago, and it's inconsistent with the City Council approval, all of which the Cog Railway has relied on these past three and a half 24 years.

Commissioner Ragan said just as a point of information, you said that there hasn't been any train changes there haven't been any trains added or what not during the peak season.

Mr. Gruen said that is correct.

Commissioner Ragan asked had there been any trains added throughout the year/

Mr. Gruen said yes and Spencer can get into further detail on this.

Commissioner Ragan said he didn't know whether it's due to climate change or what, but in the past they couldn't run trains because of the weather, now because of climate, there's more of an opportunity to take people to the top of Pikes Peak. So weather permitting, there have been more trains running than there have been in the past. Mr. Gruen replied there are the same number of cars and the same capacity.

Commissioner Ragan wanted to point out that was not completely true there has been expansion of use. It's just that you didn't talk, in your presentation, about outside of the peak season. maybe this is semantics to you, and actually, this doesn't have a huge impact in how he would find about this, but just as a point of fact, saying that there are 500 trips a year and a thousand trips a year, just because the 500 are now outside of season, that is an expansion of use.

Mr. Gruen said for all of the reasons he mentioned, they ask the Planning Commission to reverse the Planning Director's decision to not accept the parking plan. We believe that parking plan absolutely satisfied condition number three. It was written specifically to satisfy that condition, and if you read the condition, the plan is consistent with that.

Mr. Gruen said Things slip through the cracks all the time. This particular staff write-up should have been available to us, as an applicant, on Friday by 5:00. It was not made available on-line until 5:00 on Monday adding he never received any notification and had to get it off line on Monday. He wasn't questioning the validity of the hearing because notice wasn't proper but only mentioned it as an example of things falling through the crack.

Commissioner Wolfe asked Mr. Gruen What his position on the traffic impact analysis under 18.72.130 was and was it his position that they were somehow exempt from A, subsection C. Mr. Gruen answered yes. Ms. Wolfe asked him to help her understand his reasoning. Mr. Gruen said it should have been requested when the proposal was made in 2012 adding that was how it was typically done and that was what the code provided for.

Spencer Wren, 320 Crystal Hills Blvd, general manager of the Manitou Pikes Peak Railway said he had been with the railroad since 1984 and worked for the incline from 1978 to 1984 noting he had been very involved with the Ruxton corridor since 1978.

Commissioner Wolfe asked Mr. Wren in his capacity, is the Cog subject to and required to comply with city code chapter 12.32. Mr. Wren replied of course they were. Ms. Wolfe asked Mr. Wren if he believed they were in compliance. Mr. Wren replied definitely.

Mr. Wren stated he believed the queuing situation for the Cog Railway had not changed substantially since they added trains in 1989.

Chair Delwiche attempted to get the meeting back on track and said we are talking about the appeal, the two issues on the table asking does expanded use trigger an additional condition use and was the planning director correct in mandating that we do this differently in rejecting the parking plan that was submitted. Those are the two items.

Commissioner Ragan asked the city attorney about the issue raised by Mr. Gruen and the validity of the hearing asking from her perspective would the validity be called into question. Ms. Sellers replied she did not think so adding there was a requirement for property posting and public notice and staff has to answer those questions as to whether those were complied with. Getting the staff report by a certain period of time is not part of the code and is not a requirement.

Director Burkholder said yes, the property was posted and it was advertised.

Mr. Burkholder wanted to make a few points which were Mr. Gruen indicated that the Cog has become management intensive, adding additional employees. That to him further made the point that the use had expanded. Also, the condition says that shall specify operation standards. He wanted to make the point that the condition also talked about selected fee collection equipment and signage. Operation standards included three other issues. If Planning Commission had reviewed this in one year, there would have been a different conversation. The operation standards are not being met, that was his finding. Mr. Burkholder said it was his finding that queuing is a matter of operational standard in this case. He supports the Cog, it is a 125 year old business however it is not exempt from any of the regulations of the code.

Jay Beeton, 124 Fairview Avenue said when he looked at the parking plan that was submitted, he could not figure out how it could be acceptable. He would have liked to know when the parking consultant made his observations because in the summer on a weekend the simple chore of driving downtown to get a sandwich could take 30 to 40 minutes. Mr. Beeton said he had been caught in the queue well below where Ruxton splits at the Iron Springs Chateau. Mr. Beeton said they do their best but the bottom line was there are a lot of confused people.

Connie Brachtenbach, Waltham Avenue wanted to go on record stating she believed the denial of the appeal should be upheld. She would like the planning department move forward with requiring the cog to submit a conditional use permit. She felt very strongly the quality of life in the Ruxton Canyon corridor and the historic district was being severely negatively impacted by the traffic congestion. It had absolutely changed the way of life for those of us who live on that western part of town. She did not wish to deny the Cog their right to operate a business something needed to be done to address the issues. They've admitted that they've added more trains, and that they've expanded their season. And again, with the Incline traffic, she thought that just made an already bad situation worse.

Jeff Bieri, 386 Pilot Knob lives very close to the Cog. Mr. Bieri agreed with Commissioner Ragan, it was erroneous for the Cog to say they have not increased their production over the past few years. There is a very good likelihood with the building of the summit house atop Pikes Peak, this is going to get bigger and bigger and we need to find some collaboration with the Cog. Mr. Bieri agreed with Ms. Brachtenbach, if you need to get out or get in on the weekends, it is just tough. Mr. Bieri said he knew people move away because of this. It is time to start addressing the growth.

Chris Bowden, 107 Fairview Avenue said we have to draw a line on bitching at the Cog. The Cog's been there for 125 years. They've been bringing people up there. He knew that when I moved in. What he does bitch about the Cog is they got into the Incline parking business. He wondered if they didn't take on that animal, and they regret taking on that animal, if they stopped that right there and didn't have Incline parking,

that we'd be here for any of this. We're still going to have the traffic issues, but when the Incline parking and the Cog, when they jumped into that revenue stream, they complicated it, because it's run by a fuel.

Matt Tucker, 448 Winter Street, said in terms of the appeal of whether or not the conditional use permit should be called into question at this point, I'd highlight a couple of things. Fairly plain from a non-legal eye, that two of the conditions to which the Cog was to be held were not met. A plan for parking was not submitted, and a review was not conducted. Those things did not happen. The second thing I would highlight is in terms of the greater should there be a greater look at the Cog's operation in terms of a conditional use permit? They've changed the nature of the business by establishing paid parking. They now have an Incline gift shop, an Incline T-shirt shop doing a number of different things

Chair Delwiche asked if there were any further public comments.

Ray Ferguson, 634 Ruxton, said he lives at the very end of the road. We've been here a long time He meant tonight. He didn't want to just say the same stuff over and over. Wade's comment on the employees, enhancement of the employees, he thought that was a good comment. If you got more employees, you must have more business. Regarding the stopping the queuing lane, up there in front, and he and Spencer know this. He referred to it as the Clog, and he said it at a lot of meetings. Mr. Ferguson said that lovingly, but he did refer to it as the Clog as far as there is no lane. They've made reference to the traffic flow to get into that parking lot. No way to get them off.

Chair Delwiche asked if there would be any further public comment. Hearing none, the meeting was closed to the public and the applicant was invited to the podium.

Mr. Spencer Wren want to thank everyone here for your support and comments. This is a great thing for Manitou to see a contentious issue like this that's really being treated really well, really politely. So I thank you all for that. I agree with a lot of stuff that was said. I do disagree; I think that Chris said it more succinctly than anybody - the Incline has turned into a beast that needs to be managed properly, and we have tried to manage our portion of it properly, but it has been a real challenge. It continues to be a challenge. It will continue to be a challenge.

Commissioner Ragan asked Mr. Wren about the hours of operation during the summer season. Mr. Wren said they stop at 6:30pm.

Commissioner Casey said to Mr. Spencer, when you mentioned the original conditional use, you didn't understand, and then you talked about the months in April and so forth. Do you remember that at all? Could you rephrase that a little bit? Mr. Wren answered we have expanded our operations saying like today, we ran two trains, one at 9:20 and 1:20 in April. We didn't run that in 1989, for example. So we have expanded our operations, but we haven't substantially contributed to additional traffic.

Commissioner Wolfe asked from Memorial Day through Labor Day, the number of trains per day that are run is identical to the number of trains per day that have run historically during that time frame.

Mr. Wren said no, that is not true. from June 15th to August 15th, the same amount of trains have run since 1989.

Commissioner Wolfe said so the expansion isn't the per-day usage of the trains it's just the busy season. And you've gone from three to eight employees in management. Mr. Wren replied no, in year-round employees.

Ms. Wolfe asked if that was because of the expansion in the number of trains during the off season . Mr. Wren said that is part of it, yes.

Commissioner Casey asked if the pain was worth the gain meaning is the income from the Incline parking worth paying three employees. Mr. Wren replied saying that was a good question.

Mr. Gruen thanked Mr. Spenser, Chair Delwiche and the Commissioners and said he wanted to quickly wrap things up. Mr. Gruen said the Cog Railway is certainly one of the crown jewels of Manitou. It's operations have essentially remained unchanged for a very long time.

Mr. Gruen said when you look at the non-conforming use ordinance, the way that he read it doesn't relate to staff. It relates to alterations or expansion of a building. So if you've got a building, and then you expand it, you've got a problem with any banned public use, is the way that he believed it was written. Mr. Gruen referred back to this commission's approval of CU 1207 back in 2012, and both the staff report and your approval recognized the value of using excess capacity in that lot for Incline parking. And he believed there was still value in that.

Mr. Gruen said their request was that this Planning Commission evaluate and reconfirm what they did three and a half years ago, and direct the Planning Department to accept a parking plan that is in conformance with the condition that was part of that conditional use permit, and to make the decision that no further conditional use review is required; that this particular hearing satisfies all of the conditions that needed to be satisfied as the basis of the approval of CU 1207. So thank you very much for your patience and for the courtesy.

Commissioner Wolfe asked about the holding lane for cars going into the lot saying she couldn't figure it out.

Mr. Wren said there are two lanes that we try to utilize but ideally there should be one. Mr. Wren talked about the two utility poles going to the Ruxton hydro plant which are in the middle of the lane. there are two queuing lanes, but we don't use -- we try to use them as much as possible, and we don't use them a lot.

Commissioner Wolfe said they can't really be used because of the two poles in the way.

Chair Delwiche, hearing no more comments closed the meeting to the public and said to the commissioners unless we have a question, I respectfully ask Wade to stay out of the discussion, just because he isn't a part of the appeal part, and so we need to address this.

Mr. Delwiche said we have to take them one at a time and vote on them one at a time. So I'm just going to -- since I'm chairing this, let's talk about the new conditional use first.

The commissioners discussion ensued. Ms. Sellers said you've heard the evidence and you are the deciding body. Chair Delwiche asked Ms. Sellers to read the tenet one more time. Ms. Sellers read 18:42:010.

Commissioner Ragan thanked Ms. Sellers saying there are a lot of secondary issues that have been raised and they are important. Mr. Ragan said the Cog is a great asset to the community. The cog is a good neighbor. Mr. Ragan felt a lot of the problem was because of the Incline. Mr. Ragan wanted to know is it maintenance or has it expanded. The new 8 operations of the stores up there, that has increased. The number of people who are there are increased. The number of trains outside of the high season has increased.

Commissioner Casey did not agree saying he did not think the maintenance of the additional shops was an issue adding, people aren't going to drive up there to buy a t-shirt. They buy a t-shirt while they are on the

train. The expansion of more trains, the longer season, it is like a pressure versus volume issue. If they had increased more trains at the same time, then, yes, they have more volume. Mr. Casey believed the business expanded when they got into the Incline parking and that is the monster we all created. Mr. Casey asked if we stop the incline parking would that solve the problem. He did not know.

Commissioner Latimer agreed, the Cog is a wonderful asset to the community. She would like to see a traffic impact when you have, 2,400 cars, perhaps--you probably don't have that many--but you have the capacity of about 2,400 people per day, that, as business, it is a part of your responsibility to figure out how to -- how to manage that appropriately. And the fact that the queuing is causing such concerns, it seems to me, she would really like to see the traffic impact.

Commissioner Vrobel said she too lived on Ruxton. She thought the Cog is an extremely wonderful business but she thought that there were requirements to submit a parking plan with certain things and it wasn't addressed. Ms. Vrobel felt the Planning Director was right in denying the parking plan and she also believed a new conditional use should be put in place. Ms. Vrobel said everyone wants to see the Cog operate but we do need to address these problems.

Commissioner Wolfe agreed with Commissioner Ragan, there has been an expansion. It sounded to her like it is undisputed that there may not be an expansion of trains per day but it sounds like there is an expansion of use beyond August. She did not understand how some could argue there was no expansion.

Chair Delwiche agreed with Commissioner Casey. There clearly has been an expansion of volume but with any business, that is a good thing. I think a conditional use process in this case is just going to delay getting to the root problems that we all have to solve, which is figuring out the congestion, figuring out traffic, collaborating. All we're going to do is go through a bunch of bureaucracy, and we're going to sit here and have another six-hour marathon, or three, and nothing's going to change.

Chair Delwiche asked for a motion in regard to requiring a new conditional use.

**MOTION:**

Commissioner Ragan moved to uphold the Planning Directors decision to require a new Conditional Use Permit for Manitou & Pikes Peak Railway, The Cog.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion

**VOTE:**

Motion passed, 4-2. Commissioner Casey and Chair Delwiche voted in the negative.

Chair Delwiche asked for a motion in regard to the parking plan as submitted.

**MOTION:**

Commissioner Ragan moved to affirm and uphold the Planning Directors decision to reject the Parking Plan submitted.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion

**VOTE:**

Motion passed, 5-1 Chair Delwiche voted in the negative.

The applicants left at 9:48pm.

Chair Delwiche ask for a motion in regard to CU1207

**MOTION:**

Commissioner Wolfe moved to request City Council revoke CU 1207 finding the applicant failed to submit a parking plan within six months of City approval and for that basis alone; there is non-compliance with the conditional use permit CU 1207 that was issued in November of 2012.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion

**VOTE:**

Motion passed, 5-1 Chair Delwiche voted in the negative.

**VI. OTHER BUSINESS**

**ITEM 15.** Reminder of Master Plan Work session on April 20, 2016 at 6:00pm.

**ITEM 16.** Reminder of Board and Commission Training on May 19<sup>th</sup>, 2016 at 5:00pm.

**VII. ADJOURNMENT**

Hearing no further business, Chair Delwiche adjourned the meeting at 10:33pm.

Minutes prepared by Sherri Johnson, Planning Technician