



**CITY OF MANITOU SPRINGS
PLANNING COMMISSION
REGULAR MEETING MINUTES
Wednesday, April 12, 2017**

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 6:01pm and declared a quorum present. The following Commission members attended:

PRESENT: Chair ALAN DELWICHE
Vice Chair JEANNE VROBEL
Commissioner MIKE CASEY
Commissioner JULIE WOLFE
Commissioner GLORIA LATIMER
Commissioner JULIA SIMMONS (arrived 6:23 pm)
Alternate Commissioner CAREY STORM

ABSENT: Commissioner LORI BURRIS (excused)

STAFF: Wade Burkholder, Planning Director
Michelle Anthony, Senior Planner
Dylan Becker, Planner I
Kathryn Sellars, City Attorney's Office (attending via teleconference)

GUESTS: Coreen Toll, City Council Liaison

II. APPROVAL OF MINUTES

ITEM 1. March 8, 2017

MOTION:

Commissioner Wolfe moved to approve the March minutes with the following changes:

1. Page 14, Line 38 change "for sale" to "available" in reference to PlanManitou hard copies.
2. Page 15, Line 14 change "Commissioner Latimer" to "Commissioner Vrobel" regarding 25-year statement.

SECOND:

Commissioner Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 5-0. Commissioner Storm abstained as she was not present for the March Meeting.

III. NOTICE OF COUNCIL ACTION

ITEM 2. RE 1601 – RE 1611 – Rezone Open Space Parcels. First Reading of the Rezoning Ordinance by City Council was held on March 7, 2017. Second Reading was held on March 21, 2017, and approved as presented by a vote of 5-1.

ITEM 3. RE 1612 – RE 1623 - Rezone Open Space Parcels. First Reading of the Rezoning Ordinance by City Council was held on March 7, 2017. Second Reading was held on March 21, 2017, and approved as presented by a vote of 5-1.

ITEM 4. MaCUP 1702 – Major Conditional Use (Expansion of Manitou Brewing Company) – 725 Manitou Avenue – Pam and Kevin LeGrande on behalf of Manitou Brewing Company, Applicants. City Council considered the Planning Commission recommendation on March 21, 2017, and approved as recommended by a vote of 7-0.

ITEM 5. Adoption of PlanManitou – The resolution adopting PlanManitou was approved as recommended at First Reading by City Council on March 21, 2017 by a vote of 5-2.

Chairman 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

There was no unfinished business to discuss.

V. NEW BUSINESS

ITEM 6. RE 1701 – Rezone (Low Density Residential to Open Space – Initial Hearing) 0 Crystal Avenue (Schedule No. 7408218002) – City of Manitou Springs, Applicant

ITEM 7. RE 1702 – Rezone (Low Density Residential to Open Space – Initial Hearing) 0 Pawnee Avenue (Schedule No. 7408217002) – City of Manitou Springs, Applicant

ITEM 8. RE 1703 – Rezone (Low Density Residential to Open Space – Initial Hearing) 505 Jensen Lane (Schedule No. 7408222005) – City of Manitou Springs, Applicant

ITEM 9. RE 1704 – Rezone (Low Density Residential to Open Space – Initial Hearing) 515 Jensen Lane (Schedule No. 7408222004) – City of Manitou Springs, Applicant

ITEM 10. RE 1705 – Rezone (Low Density Residential to Open Space – Initial Hearing) 525 Jensen Lane (Schedule No. 7408222003) – City of Manitou Springs, Applicant

ITEM 11. RE 1706 – Rezone (Low Density Residential to Open Space – Initial Hearing) 320 Red Mountain Lane (Schedule No. 7408205003) – City of Manitou Springs, Applicant

ITEM 12. RE 1707 – Rezone (Low Density Residential to Open Space – Initial Hearing) 210 Bellvue Avenue (Schedule No. 7408205006) – City of Manitou Springs, Applicant

ITEM 13. RE 1708 – Rezone (Low Density Residential to Open Space – Initial Hearing) 340 Red Mountain Lane (Schedule No. 7408205004) – City of Manitou Springs, Applicant

ITEM 14. RE 1709 – Rezone (Low Density Residential to Open Space – Initial Hearing) 350 Red Mountain Lane (Schedule No. 7408205005) – City of Manitou Springs, Applicant

ITEM 15. RE 1710 – Rezone (Low Density Residential to Open Space – Initial Hearing) 240 Topaz Drive (Schedule No. 7408205007) – City of Manitou Springs, Applicant

ITEM 16. RE 1711 – Rezone (Low Density Residential to Open Space – Initial Hearing) 508 Red Mountain Lane (Schedule No. 7408218004) – City of Manitou Springs, Applicant

ITEM 17. RE 1712 – Rezone (Low Density Residential to Open Space – Initial Hearing) 520 Red Mountain Lane (Schedule No. 7408218003) – City of Manitou Springs, Applicant

ITEM 18. RE 1713 – Rezone (Low Density Residential to Open Space – Initial Hearing) 0 Red Mountain Lane (Schedule No. 7408218007) – City of Manitou Springs, Applicant

ITEM 19. RE 1714 – Rezone (Low Density Residential to Open Space – Initial Hearing) 420 Red Mountain Lane (Schedule No. 7408218006) – City of Manitou Springs, Applicant

ITEM 20. RE 1715 – Rezone (Low Density Residential to Open Space – Initial Hearing) 505 Red Mountain Lane (Schedule No. 7408218005) – City of Manitou Springs, Applicant

Planner I, Dylan Becker, presented the staff report regarding RE 1701 – RE 1715, dated April 7, 2017.

Hearing no questions for staff, Chairman Delwiche opened the hearing for public comment.

Pat Sorensen, 1035 Laguna Point, stated she owned the property at 1096 Laguna Point which was adjacent to the proposed rezonings. Ms. Sorensen was concerned if the open spaces were subject to the development of hiking trails, the open space designation may affect the privacy of her property. Chairman Delwiche commented staff had stated any plans for the open space would need to go through the process for an Open Space Management Plan before anything could be developed.

Commissioner Wolfe stated if there was a suggestion to develop any of these spaces with a trailhead, she recommended Ms. Sorensen attend the Open Space Management Plan meetings that would occur as a result in order to be a part of the process and final decision regarding her concerns.

Hearing no further comments, Chairman Delwiche closed the Public Hearing.

MOTION:

Commissioner Wolfe moved to set the requests for Rezoning (RE 1701 – RE 1715) for Public Hearing at the next regular session meeting on May 10, 2017.

SECOND:

Commissioner Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

ITEM 21. MNS 1702 – Minor Subdivision - 606 Manitou Avenue and 118 Lover’s Lane – City of Manitou Springs, Applicant

Planning Director, Wade Burkholder, presented the staff report dated April 7, 2017. Mr. Burkholder stated the City had exceeded the required dedication for parks via existing Mansions Park. He also noted grades of the surrounding streets were missing from the Subdivision Site Plan and the Planning Department would have this added to the site plan, as well as a plat note stating there were no slopes greater than thirty percent (30%).

Commissioner Wolfe commented she thought City Hall and the Fire Department were above the base flood elevation. Mr. Burkholder responded City Hall, at floor level, was just above the flood elevation but the pilings below were not.

Chairman Delwiche stated the Commission had never resolved the issue pertaining to waiving fees and he would like to see that resolved. Commissioner Wolfe commented it would be another ordinance for the Commission to work on.

Hearing no further questions for staff regarding the report, Chairman Delwiche opened the floor for public comment.

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

MOTION:

Commissioner Vrobel moved to approve MNS 1702 to create three lots in the Park and Public Facility zoning districts with the following conditions:

1. A plat note shall be added stating the absence of “No Build” areas on this property due to topography.
2. The plat shall be amended with dashed lines and labels noting areas not part of this subdivision.
3. The subdivision site plan shall be amended to provide the grades of existing streets adjacent to the parcels.
4. Topographic contours will be added to the subdivision site plan per Code requirements.
5. The surveyor has 90 days from the date of approval to provide all required information, corrections and additions, allow time for review, and submit the final Mylar for filing or this approval will expire.
6. 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:

Commissioner Wolfe seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

ITEM 22. V 1701 – Variance (Rear and Side Setbacks) - 606 Manitou Avenue and 118 Lover’s Lane – City of Manitou Springs, Applicant

Planning Director, Wade Burkholder, presented the staff report dated April 7, 2017.

Commissioner Casey inquired if staff knew what was being stored in the enclosed portion of the Mansions Park Pavilion. Mr. Burkholder responded it was used as Fire Department storage for equipment. Commissioner Casey commented there used to be a work-out area there and wondered about the vulnerability of the equipment being in the floodplain. Mr. Burkholder responded there was some work-out equipment still there, but the facility was fairly packed with items.

Commissioner Wolfe asked if the \$28,000 the City spent annually on insuring the parcel against floods would be reduced through the proposed Minor Subdivision and Variance and if it would be a significant amount, such as cutting the cost by a third. Mr. Burkholder responded it would significantly reduce the cost, but he did not have the actual amount.

Commissioner Simmons arrived at this point in the meeting and took her seat at the dais.

Hearing no further questions for staff regarding the report, Chairman Delwiche opened the floor for public comment.

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

MOTION:

Commissioner Vrobel moved to approve V 1701 to allow Side Yard Setback Variances to Lot 1 of Mansions Subdivision from 5’ to 4.49’ on the east property line, on Lot 2 from 5’ to 0.69’ on the west property line, and a Rear Yard Setback Variance on Lot 2 of Mansions Subdivision from 10’ to 5.83’ with the following findings:

1. That the representations in the application are valid and the applications have 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 setback and lot coverage justifies the granting of the variances and the variances are the minimum that will make possible the reasonable use of the land.

3. That the granting of the variances will be in harmony with the general purpose and intent of the City's Visions Plan and the Zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

SECOND:

Commissioner Storm seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0. Commissioner Simmons abstained as she was not present during the entire presentation and discussion regarding the agenda item.

ITEM 23. CP 1701 – Concept Plan (Three Story Multi-Use Building) – 1335 Manitou Avenue – Greg Wellens on behalf of Elezier Inc., Applicant

Senior Planner, Michelle Anthony, presented the staff report dated April 7, 2017 and noted CP 1701 was not a formal request and an application would at some point come through the review process. Ms. Anthony stated the Commissioners should not indicate whether or not they would approve certain things, but give feedback regarding preferences or concerns.

Commissioner Simmons stated she appreciated the live/work concept.

Commissioner Storm stated she was also in favor of the live/work concept and enjoyed the idea of something new coming to that particular area of town and felt it would be a great first step.

Commissioner Casey inquired if the developers could build right up to the City's property as proposed. Ms. Anthony responded they would be able to do so because patios, retaining walls, and landscaping do not require setbacks.

Commissioner Wolfe stated it was her understanding the Commission was not permitted to make requirements about the building materials since the structure would not be in a historic district. Ms. Anthony responded through the Major Development process, there was information required regarding building materials and although there were no guidelines like there were for the Historic Preservation Commission, the Planning Commission could condition any approval regarding materials.

Commissioner Wolfe inquired about the impact of noise from the rooftop patio on neighbors and stated she did not want it to have a negative impact on residents. Ms. Anthony responded this comment was good for the applicants to hear and provide further information on.

Commissioner Vrobel stated she liked the concept and the idea of small, new apartments and stated she would like to see the entire bottom floor be utilized as retail space.

Commissioner Latimer stated in regard to Park and Open Space, it would be wonderful if PARAB could partner in this concept due to the proposal's proximity to Soda Springs Park and various Mineral Springs within the City.

Chairman Delwiche inquired where the zip line was in relation to the property. Ms. Anthony responded the zip line was on the other side of the City Park property. Chairman Delwiche stated a better, big picture layout would be important to have in the future for consideration of this item. He stated his concern about the proposed building and uses being adjacent to residential properties and there may be issues regarding noise and hours of operation.

Hearing no further questions for staff regarding the report, Chairman Delwiche invited the applicant to the podium.

Todd Liming of Planning Matters, 438 N. Prospect Street, Colorado Springs, on behalf of Greg Wellens and Elezier Inc., applicant, took the podium. Mr. Liming stated Greg Wellens was not able to make the meeting due to a prior commitment and they were within a month or two of a Major Development Plan submittal. He noted they had tried to stay true to Code as much as possible. Mr. Liming stated, in discussions with Mr. Burkholder and Ms. Anthony, it was recommended they move the building up to Manitou Avenue and place the parking in the rear, as opposed to the original plan which had the parking in front and the building in the back. Mr. Liming commented the recommendation proved to be a better arrangement because it allowed the entrance to be moved off of Welcome Lane, which had not yet been fully established and completed. Mr. Liming stated they had thought of adding a second building on Welcome Lane, but it tended to bury the building and they decided to focus their efforts on a single three-story building with smaller apartments and studios. He continued they might be able to add one or two more parking spaces, but creating more space for parking would mean an increase in retaining walls and their heights and they would start bumping up against the landscape build-out ratio. Mr. Liming stated there could not be more than seventy-five percent (75%) lot coverage in the Commercial Zone.

Commissioner Wolfe suggested they could make the building a little smaller to allow for more parking. Mr. Liming responded that was a possibility they could look into and would also look into reducing or doing away with the forward patio to solve the problem.

Commissioner Storm inquired if the developers could simply change the materials used in the hardscape, to something like gravel or permeable paving, to reduce the hardscaped areas. Mr. Liming stated they could.

Mr. Liming inquired if the Commission had any questions regarding the elevation of the parking in the plans and stated he felt they had tried to meet the consensus of the neighborhood meeting from 12-13 months prior, which indicated the neighborhood would prefer for there to be a building at this location as opposed to a parking lot or a trailhead. Mr. Liming stated in the all-parking scenario, which was presented at the neighborhood meeting, they were able to demonstrate the possibility of 33-35 parking spaces without going too far up the grade. Mr. Liming indicated he was concerned because now there was going to be a building with twenty-five (25) parking spaces and he felt they were meeting both what staff had asked them to do, as well as what the neighbors had recommended at the neighborhood meeting.

Commissioner Casey stated he felt it was an attractive building design. Mr. Liming inquired which alternative the Commission had preference for between scenarios A and B. Commissioner Casey responded he thought the flat rooftop would generate interesting conversation and stated the parking in the rear of the building was a good idea because it couldn't be seen from Manitou Avenue. Mr. Liming responded the parking would be elevated and people would enter the building on the second floor and referred to the set-up as a "walk-out commercial building". Mr. Liming stated he would like to see a Café or Deli in half or a third of the ground floor space.

Commissioner Casey inquired if the outdoor roof-top patio was intended for tenants only. Mr. Liming responded it was originally conceived to be a spot for a café, however there was concern the parking requirement would become an issue under that scenario and the space was now intended to be used by the eight (8) tenants. Mr. Liming also stated, in reference to earlier comments about noise concerns created by the commercial use of the space, it was an issue because sound echoed and travelled very well in the canyon.

Commissioner Vrobel stated she liked the pitched roof concept and expressed her concerns about the flatter roof and the restaurant or café being too big. Commissioner Vrobel commented she would rather see the commercial space in the building be used for retail.

Mr. Liming inquired about the Commission's preference of stone or amount of stone to be used on the front façade of the building. Commissioner Storm responded she preferred manufactured stone over brick and she felt it fit in better with Manitou Springs' historic appearance. Commissioner Wolfe stated she thought much of the manufactured stone used in some of the newer construction in the City looked like plastic or vinyl, but felt there was likely no other viable option. Commissioner Vrobel commented she thought the river rock manufactured stone looked far less plastic, despite there being no examples of its use in Manitou Springs. Ms. Anthony noted the stone on Adam's Mountain Café was real moss-rock which had been painted to look like limestone. Mr. Liming stated if there was an example of a manufactured stone the Commission preferred, they would be more than happy and willing to look at that alternative. He commented there was a new house in the Old North End of Colorado Springs which had the type of manufactured stone Greg Wellens wanted to use. Ms. Anthony asked for the address and Mr. Liming indicated he would provide this to her. Commissioner Casey recommended Mr. Liming refer to the Historic Guidelines of the City regarding stone selection.

Hearing no further questions for the applicant, Chairman Delwiche opened the Public Hearing.

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

VI. OTHER BUSINESS

ITEM 24. Review and Recommendation to City Council Regarding Amendment of the Zoning Code to Regulate Adult or Sexually-Oriented Businesses

Senior Planner, Michelle Anthony, presented the staff memo dated April 7, 2017 and stated it was the third time the Commission had reviewed the Adult or Sexually Oriented Business ordinance. She stated, in regard to a store in the downtown zone that wanted to open a sexually oriented section in their business, the City would not be able to prohibit such businesses in the Downtown Zone through the ordinance. The original draft ordinance had indicated a percentage under which a business would not be considered a sexually oriented operation, and this was removed with the thought it would prohibit any level of operation without being subject to the regulations. However, the City Attorney clarified that businesses for which this was a minor component would not fall under the regulations. Anthony commented through discussions with Attorney Kathryn Sellars there were more ways than one to determine principal business purposes – such as the amount of revenue sexually oriented merchandise brought in compared to non-sexually oriented merchandise; or the amount of floor space the sexually oriented merchandise occupied. Ms. Sellars recommended not using percentages for this reason, although it was still an option, and stated there could be legal challenges in taking that route. Ms. Anthony stated if a business in the Downtown Zone wanted to include sexually oriented content and it was a minor portion compared to the principal business, there would

be no way to prohibit the business from operating in the Downtown Zone, as the business would not be considered sexually oriented below a certain threshold.

Commissioner Wolfe inquired if the City could define an adult store as any commercial establishment which offers, sells, or rents anything sexually oriented or adult in nature. Ms. Sellars responded the City could not do so because if the sexually oriented aspects of the business were small or minimal, the secondary adverse effects would not be present. Ms. Sellars stated there needed to be some kind of threshold, either a percentage pertaining to principal business purposes or within the language of the ordinance and stated the City should work to define what a principal business purpose actually was. Ms. Sellars commented a percentage would be objective, but could lead to having to allow operations the City might not be comfortable with but without percentages the City could be accused of making arbitrary decisions that could be challenged legally. She inquired if the City wanted hard, fast rules that were very clear or if they preferred more flexibility with the potential risk of being challenged.

Commissioner Vrobel inquired if Ms. Sellars meant by flexibility that a business could have a tiny corner of their store that sold sexually oriented materials or entertainment, which took up very little floor space, but the sales of the sexually oriented aspects of the business generated 75% of their revenue, then one of their principal business purposes would be sexually oriented. Ms. Sellars responded the Commission may want to flesh out the definitions for principal business purposes, whether it be for advertising, revenue, or display space.

Commissioner Wolfe inquired if the City would be in trouble in regard to the First Amendment by simplifying the ordinance to prohibit any adult or sexual material other than where specifically designated within the City which would prohibit any other business from having even two percent (2%) of their income or business purposes from being sexually oriented. Ms. Sellars responded it had the potential to be an issue because if a business had a small percentage of their principal business purposes which were sexually oriented, there would not be any secondary adverse effects which allow the City to put the ordinance into place and stated the City could face a challenge on a Constitutional issue for being too restrictive. Ms. Sellars stated the regulation would not fulfill the governmental interest because it was over burdensome, which was the reason there needed to be a threshold of some kind.

Ms. Anthony commented the Commission needed to work on defining principal business purposes and inquired if the Commission wanted to add some additional criteria to the ordinance which gave staff some parameters to determine how they could calculate principal business purposes based on floor space or some other means. Ms. Anthony commented if a business was new they may not initially know what percentage of their revenue would be generated from the sexually oriented components of the business.

Commissioner Wolfe inquired if Ms. Sellars knew of any cities that included principal business purposes as part of their definitions section to better flesh out and define the term for cities that chose not to use the percentage/square footage approach. Ms. Sellars responded she was not aware of any which had a broader definition for principal business purposes, but she would continue to look into the matter.

Commissioner Wolfe inquired if the reason was due to the fact most cities took the percentage approach. Ms. Sellars responded about fifty percent (50%) of the cities took the percentage approach and stated most of the cities which had a principal business or significant business definition left them fairly broad and open for staff to interpret and enforce.

Commissioner Wolfe inquired if Ms. Sellars had concerns about litigation for using that type of terminology and for it not being defined in the ordinance. Ms. Sellars responded she was not aware of any litigation in those other cities, but needed to research the topic more thoroughly before making a definitive statement. Ms. Sellars stated Jefferson Parker felt the percentage approach was best because it was more objective and stated Mr. Parker acknowledged the more general approach would allow more flexibility for the City despite opening the City up to the risk of being sued. Ms. Sellars commented if the City had put a threshold of thirty percent (30%) in the ordinance, a business could come in at twenty-five percent (25%) and operate in the historic downtown area and there would be nothing to prevent that operation from legally occupying the space in the Downtown Zone.

Commissioner Wolfe asked if the courts generally allowed municipalities to come up with their own definition of principal business purposes without the definition actually having to be in the Code, thus allowing the City to interpret it on a case by case basis so long as there was a rational basis to do so. Ms. Sellars responded there had to be a substantial factual basis for the determination. Ms. Sellars stated the courts would look to see if staff had a substantial factual basis which determined the business in question's principal business purpose to be sexually oriented and the manner in which that was determined.

Commissioner Wolfe inquired if the City chose not to define principal business purposes, would the threshold for principal business purposes of fifty percent (50%) be reasonable. Ms. Anthony responded the ordinance stated "one" of the principal business purposes and emphasized the word one in her statement.

Commissioner Casey inquired about the reasoning behind Ms. Sellars having concern over using percentages to help define principal business purposes. Ms. Sellars responded she had clients which removed percentages from their ordinances for the same reasons she had stated previously and because they wanted more flexibility in determining what a principal business purpose was. Ms. Sellars stated the removal of percentages would allow the City more authority to address sexually oriented businesses in the manner they wanted to.

Commissioner Casey expressed his concern about over defining the term "principal business purposes" because these businesses would be applying for Major Conditional Use Permits and the City could impose conditions of approval and treat each business on a case by case basis. Ms. Anthony responded the businesses being discussed would not apply for Major Conditional Use Permits because if the sexually oriented component was not one of its principal business purposes, the Code would allow them to operate provided their principal business purposes and uses were permitted in the zone.

Commissioner Vrobel commented she felt it was better to leave the definition loose without a percentage because there were many ways of determining principal business purposes and felt the City would do better to have the flexibility and authority to determine the principal business purposes on a case by case basis.

Commissioner Wolfe commented this would give the City more flexibility to use this language, but it also increased the chances of the City getting sued and there were pros and cons to both approaches.

Chairman Delwiche stated percentage could be subjective depending on how it was utilized and commented it could refer to revenue, display space, or square footage.

Commissioner Wolfe stated it would still have to be defined at which percentage, but did not have to define what the percentage referenced. Ms. Anthony responded the City would have to consider the questions they should be asking potential businesses with a sexually oriented component so the City could ultimately

regulate them in the manner they desired. Ms. Anthony commented she usually preferred when the Code was detailed and precise, but in this case she liked the idea of having the flexibility to determine principal business purposes.

Commissioner Wolfe commented the City could always amend the Code in the future should any issues arise.

Commissioner Storm inquired how big an issue sexually oriented businesses were in town. Ms. Anthony responded there were no sexually oriented businesses in the City currently, but there had been recent inquiries from potential businesses and stated if there was already an existing business in town with a sexually oriented component, the City could do research to determine how to better define a principal business purpose.

Commissioner Wolfe inquired if there were Constitutional concerns for the City should it decide to limit businesses whose principal business purpose was sexually oriented to hours of operation the same as for bars. Ms. Sellars stated the issue came back to proving the existence of negative, secondary effects and asked for clarification if the Commission wanted to restrict the hours of operation for sexually oriented businesses to the same hours of operation for bars.

Commissioner Wolfe stated she did not understand why a sexually oriented business would need to stay open until 2:00am as she thought there would be more adverse secondary effects between 9:00pm and 2:00am. She asked if the City could limit their hours of operation to 8:00pm as was recently imposed on the retail marijuana stores and if the City was entitled to be concerned about increased negative, secondary adverse effects late at night when people were potentially drinking. Ms. Sellars responded the City would need to provide case studies which show secondary adverse effects increase later in the evening and stated certain parameters had been upheld in court, but she was not aware of any municipalities which had imposed a closing time as early as 8:00pm. Ms. Sellars commented the City would need to have empirical evidence showing that after a certain time, the negative secondary effects increased in order to provide reasoning to restrict the hours of operation that dramatically.

Commissioner Wolfe inquired if there were cities which had studies showing the secondary adverse effects and time of day. Ms. Sellars responded she had not seen any cases that had been upheld with hours as early as the Commissioner was proposing.

Commissioner Wolfe asked if it wasn't that the cases were not upheld, but that they never made it to court and inquired if there were any cases which had been brought to court regarding challenging the closing time of sexually oriented businesses. Ms. Sellars responded in those cases, the businesses were open until 1:00am or 2:00am and the courts looked into whether or not the hours were narrowly tailored to further the governmental interest of eliminating the negative, adverse secondary effects. Ms. Sellars stated the court upheld the closure of the businesses at 1:00am as narrowly tailored because it was a depletion of Police time and resources during the late night hours, there were safety concerns for employees, and increased drug use, loitering, prostitution, and more. Ms. Sellars commented the court found the secondary negative adverse effects increased after 1:00am.

Commissioner Wolfe asked if the Manitou Springs Police Department found Friday nights and Saturday nights they were stretched thin from 10:00pm until the early morning hours, would that give the City a basis for restricting sexually oriented businesses hours to 10:00pm. Ms. Sellars responded the City simply needed

something to rely on - whether in the form of local evidence or evidence from other municipalities and other studies.

Commissioner Storm commented she thought in the City would have to tie impacts to alcohol sales in some way. Ms. Anthony responded alcohol wasn't managed in the same manner that sexually oriented businesses could be.

Commissioner Wolfe asked if there would be a problem if the ordinance stated, based on actual data regarding the diminished Police force during the night hours, that sexually oriented businesses needed to be closed by 10:00pm, or would the City potentially be challenged on the basis bars should also close at 10:00pm for contributing to negative adverse secondary effects. Ms. Sellars responded Ms. Anthony was correct in her statement the City was not able to regulate alcohol the same way. Ms. Anthony stated whatever recommendation the Commission made, the entire conversation would be occurring again with City Council and Council may not feel comfortable with some of the things the Commission may or may not recommend.

Ms. Anthony commented, as far as hours of operations went, there was some justification for the City of Manitou Springs to restrict those hours because the Police Department was small and late night calls could mean the Police was stretched too thin. Ms. Anthony stated, despite the small Police force, it would not be advisable for the City to impose an 8:00pm closing time on Sexually Oriented Businesses.

Commissioner Wolfe inquired if 8:00pm was the time imposed on Retail Marijuana stores. Ms. Anthony responded Recreational Marijuana stores were just approved to stay open until 9:00pm and because of the unique situation the City was in regarding Recreational Marijuana being illegal federally, there had not been litigation regarding secondary impacts. Ms. Anthony stated she had altered the morning hours of operation in the staff recommendations to limit hours of operation on Monday through Saturday from 10:00am to 12:00am as she felt a Sexually Oriented Business could make a reasonable income during those hours.

Commissioner Wolfe stated she did not think the issue was whether or not Sexually Oriented Businesses could make a reasonable income, but was if the City could prove negative secondary effects for Sexually Oriented Businesses operating from 10:00pm to 7:00am, the if the City would win the lawsuit. Commissioner Wolfe stated it sounded like the hours the Commission recommended to City Council would have to fit within the parameters of the negative secondary adverse effects. Ms. Anthony stated she was concerned if the City was overly restrictive, Sexually Oriented Businesses may file a lawsuit claiming the regulations are too restrictive to even operate. Commissioner Wolfe stated there was justification for not allowing Sexually Oriented Businesses to be open before 10:00am on the grounds children may see things on their route to school in the morning and expressed the hours of operation for Sexually Oriented Businesses needed to conform to the negative adverse secondary effects present.

Ms. Anthony continued with presentation of the staff memo.

Commissioner Wolfe inquired if the City was able to regulate the number of Sexually Oriented Businesses that could open as the City had done with the marijuana stores. Ms. Anthony stated she did not believe the City was able to do so. Ms. Sellars commented she was not aware of any other land use regulated by numbers and stated the City Attorney's office felt uncomfortable regulating Sexually Oriented Businesses in that manner.

Commissioner Storm, regarding the proposed wording in Section Two of 5.86.20, inquired if the word “not” was intended to be added in front of where a Sexually Oriented Business could be located. Ms. Anthony confirmed this was correct and she would make that change.

Commissioner Wolfe inquired if the City would be able to make the separation distance one thousand feet (1,000 ft.). Ms. Anthony stated the Commission could increase the separation distance beyond 500 feet as long as there was one location within the City where a Sexually Oriented Business would be permitted to operate, but stated she was unsure with a separation distance of a thousand feet if there would be any sites available. Ms. Anthony stated Ms. Sellars was less enamored with there being no minimum distance standard stated from residential zone districts, public community centers, etc. due to the subjective nature of the distinctions.

Commissioner Wolfe stated it seemed like the City could make the distinction between the Commercial Zone which abuts up to a Residential Zone and it also seemed if the City needed to get more specific, in terms of negative secondary impacts, the items listed under Two B, referring to the locations without a minimum distance standard, could be added to the list included in the five hundred foot (500 ft.) separation distance. Ms. Anthony responded staff would need to map it out and expressed concern there would not be any space available to Sexually Oriented Businesses if Residential Zones were included in the separation distance.

Commissioner Wolfe inquired if there was any location where the Commercial Zone was not abutting a Residential Zone. Ms. Anthony stated initially when staff started the distance separation analysis, the proposed language did include Residential Zone Districts in the five hundred foot (500 ft.) separation distance and it effectively eliminated any usable space or property for Sexually Oriented Businesses. Ms. Anthony stated she had gone back and looked at the distance separations for Retail and Medical Marijuana and changed the proposed separations for Sexually Oriented Businesses to be similar to the code requirements for those uses.

Commissioner Wolfe inquired if there was a part of the Commercial Zone that had the most residences adjacent to it. Ms. Anthony responded the west end appeared to have the most residences in the Commercial Zone.

Commissioner Wolfe inquired if the City would be in legal trouble for restricting the west end Commercial Zone to disallow Sexually Oriented Businesses from operating there. Ms. Sellars responded the City could be as restrictive as they desired as long as one parcel was available. Commissioner Wolfe asked for clarification that only one parcel needed to be available to Sexually Oriented Businesses. Ms. Sellars confirmed. Ms. Anthony stated the problem with doing so was it would be difficult to word the proposed ordinance without ending up with zero properties available, especially with wording which disallowed Sexually Oriented Businesses from operating adjacent to Residential Zones.

Commissioner Wolfe asked for clarification that nearly all of the Commercially Zoned parcels abut Residential Zone Districts. Ms. Anthony responded the Trading Post parcels on the northeast end of town, at the end of Beckers Lane were vacant and so long as the City used the words “use” instead of “zone”, there may be a possibility for a Sexually Oriented Business to operate at that location. Ms. Anthony also stated on the east end Commercial Zone, there were residences at the Santa Fe Motel, which would eliminate the area from usage for Sexually Oriented Businesses.

Commissioner Wolfe stated she would like to see a distance separation analysis map which included the Residential Zone Districts in the separation to see if there was any property available for Sexually Oriented Businesses to operate. Ms. Anthony responded this would potentially eliminate any properties in the Commercial Zone from being available. Commissioner Wolfe stated she would like to see if there were any parcels in the Commercial Zone which did not abut a Residential Zone and stated there only needed to be one available. Ms. Anthony stated there may be one parcel near Higginbotham which would be available under those circumstances, but still thought there was Residential Zoning adjacent to the parcels which would eliminate it as a possibility. Ms. Anthony stated, however, if the wording was “use” rather than “zone”, there was a greater possibility for Higginbotham to be available. Commissioner Wolfe stated she agreed with Ms. Anthony and the wording should be “Residential Use” rather than “Residential Zone”. Ms. Sellars stated as long as there was one parcel where a sexually oriented business could locate, the City would be legally safe and commented the difficult task would be wording the ordinance in just a way which will not eliminate all of the properties from availability.

Chairman Delwiche asked for clarification on definitions for “adjacent” and “abutting”. Commissioner Wolfe responded abutting meant it was right up against it. Ms. Sellars commented the only issue with using wording pertaining to “Residential Use” as opposed to “Residential Zone”, was it created a potential moving target where one person may use the space as a business, who then leases it to another person as a residence and could create a situation in which the one parcel which was available to Sexually Oriented Businesses would suddenly become unavailable.

Chairman Delwiche stated he did not believe there to be any residences in the vicinity of the Trading Post. Ms. Anthony responded there weren’t many residences in the area, but there was Residential Zoning. Commissioner Wolfe inquired if the City could specifically state Higginbotham was the only location in which the City would allow a Sexually Oriented Business to operate without having to make statements about use or would it be considered too arbitrary. Ms. Sellars responded since it would not be set up through the City’s Zoning Regulations, the City would have to rezone those parcels to their own designation which sets them apart from every other Zone.

Commissioner Casey inquired if the City could state no Sexually Oriented Businesses on Manitou Avenue period. Commissioner Wolfe added the stipulation that no Sexually Oriented Businesses on Manitou Avenue and they must be located in the Commercial Zone. Ms. Sellars responded the City could do so.

Commissioner Wolfe inquired if the Commission was just discussing the ordinance and did not need to make a recommendation to Council. Chairman Delwiche responded there were still four months left on the moratorium and the Commission did not need to make recommendations yet.

Commissioner Wolfe asked if staff could find out night time Police schedules which could be used to show how thinly the force was stretched during those hours, to make a map showing separation distances which include Residential Zones, and a map showing the separation distances using Manitou Avenue.

Commissioner Casey inquired if it would be easier to comprehend the hours Sexually Oriented Businesses were opened as opposed to closed. Ms. Anthony stated she would make the changes.

Commissioner Wolfe stated she felt if the Police Department would put into writing how thinly stretched their resources were during late night hours, it would give the City enough justification to impose earlier closing hours for Sexually Oriented Businesses and provide reasoning to eliminate negative secondary impacts. Ms. Anthony stated she thought Commissioner Wolfe’s recommendation was a good idea as it

would provide solid reasoning to base the restrictions upon and staff would gather more information to bring to the next discussion regarding the proposed ordinance.

ITEM 25. Review and Recommendation to City Council Regarding Changes of the Long-Term Lodging Ordinance

Planning Director, Wade Burkholder, presented the staff memo dated April 7, 2017.

Mr. Burkholder stated he was concerned by tying long-term occupancy lodging room rental days to square footage as opposed to the twenty percent (20%) calculation establishments would no longer be able to use all of their allotted time during the winter when tourism had slowed down and fewer vacationers were occupying rooms. Mr. Burkholder also stated, in discussions with City Attorney Jeffrey Parker, Mr. Parker wasn't sure staff had interpreted the twenty percent (20%) calculation correctly and had said the math and calculations made sense, but did not feel that was the intent of the ordinance. Mr. Burkholder stated he respectfully disagreed with Mr. Parker's assessment.

Commissioner Wolfe inquired if there was some manner of solving the issue Mr. Parker had brought up and whether the City could write the ordinance to state how the math would be interpreted. Ms. Anthony responded she felt the language should stay the same and there did not necessarily need to be a change made.

Mr. Burkholder stated he felt the intent of the wording was to provide some flexibility as far as when establishments could use their allotted long term occupancy lodging, such as during slower periods of the year.

Chair Delwiche stated he felt tying the space available for long term lodging to square footage was a step backwards for the City.

Commissioner Wolfe stated Mr. Parker was not concerned about the wording, but how the math was being interpreted. Ms. Anthony responded Mr. Parker thought the intent was twenty percent (20%) of the space, which was incorrect.

Mr. Burkholder stated staff's recommendation was to keep the wording in the ordinance as is.

Commissioner Vrobel commented some rooms did not have bedrooms, but had a studio layout. Ms. Anthony commented the language could read "occupancy shall be no more than two occupants per bedroom or single studio space".

Commissioner Casey stated he felt there was not a need to add such language because a studio space was covered under the wording for a minimum living room size of 220 square feet and stated it covered both. Mr. Burkholder responded one of the proposed changes would replace the 220 square feet per occupant language.

Commissioner Casey asked for clarification whether or not both proposals would cover the issue of studio rental spaces and rental spaces with a bedroom. Ms. Anthony responded there were actually three (3) proposals to alter the language. Commissioner Casey stated one addresses the quantity of people and the second one addresses the size, so either way the City was covered for both.

Mr. Burkholder stated, in regard to the second and third proposals for changing the language of the ordinance, he had argued for a range instead of a solid square footage requirement because the City had a lot of older structures and he did not want to have to deny establishments from having long term occupancy lodging for being slightly off of the natural light square footage requirement needed. Mr. Burkholder stated the City Attorney preferred set limits and proposed cutting the square footage requirement in half for both living room size (from 220 square feet to 110 square feet) and natural light area size (from 8% to 4%). Mr. Burkholder commented the proposed reduction would allow many of the older structures which would not be able to conform easily to have a better chance to obtain approval.

Commissioner Wolfe inquired about the reduction of natural light percentage and asked why staff had decided to reduce the minimum area of natural light by fifty percent (50%) as opposed to twenty-five percent (25%) and commented she felt a fifty percent (50%) reduction was too much. Mr. Burkholder responded the reductions were recommended by the City Attorney's Office, but the Commission could recommend any percentage they desired as long as the recommendation was precise and did not use a range.

Commissioner Storm inquired if the City knew the average size of rooms which people would be utilizing as long term lodging rentals and if it was close to the wording in the proposals. Mr. Burkholder responded it varied, but the rooms at the El Colorado Lodge were just under four-hundred square feet (400 square feet) - which was rather small - to rooms which were just over one-thousand square feet (1,000 square feet).

Commissioner Storm commented taking the square footage minimum down to one-hundred and ten square feet (110 square feet) seemed reasonable and inquired if there were any spaces in town which were actually that small. Mr. Burkholder responded there were.

Commissioner Casey inquired if staff knew why Mr. Parker proposed the recommendations. Mr. Burkholder inquired if Commissioner Casey meant the numbers which were recommended. Commissioner Wolfe inquired if Mr. Parker specifically recommended to reduce the natural light requirement by fifty percent (50%). Mr. Burkholder responded it was a starting point for the Commission to begin with, but whatever decision was made, the wording needed to be precise. Ms. Anthony commented staff would be fine with a twenty-five percent (25%) reduction.

Commissioner Storm inquired what the City would be at risk of in regard to wording of the ordinance.

Commissioner Wolfe stated one of the risks discussed was on health and safety pertaining to cramming tons of people into a tiny space.

Commissioner Storm remarked the proposed language referring to occupancy would solve that issue.

Chairman Delwiche commented the City had originally adopted the Universal Building Code requirements which were more restrictive and those requirements caused issues regarding couples who were not permitted to live together because of space criteria. Ms. Anthony commented on the other hand, there were certain minimum habitability standards for long term residential use and the rationale behind them was that having certain amounts of room, light, air, etc. per person was needed to meet health and safety standards. Ms. Anthony also commented she felt reducing the requirements by fifty percent (50%) was a bit too radical, as the City wanted to promote health and safety.

Commissioner Wolfe suggested natural light percentage and minimum living room requirement be reduced by twenty-five percent (25%), as opposed to fifty percent (50%).

Mr. Burkholder stated the final change made to the proposed ordinance was an added subsection title License Required. This was the result of a lawsuit between the City and a lodging operator who had sublet the property and contended he was not required to obtain a business license because he was not the property "owner". The proposed subsection would reduce legal risks for the City in the future by clarifying the language.

MOTION:

Commissioner Wolfe moved to forward the recommendations to City Council for amendment of the Long Term Lodging Regulations as follows:

- keep the existing language pertaining to the twenty percent (20%) calculation
- reduce the minimum living room requirement to not less than one-hundred and sixty-five square feet (165 square feet) of floor area per occupant
- reduce the minimum natural light requirement to six percent (6%)

SECOND:

Commissioner Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

DISCUSSION REGARDING NON-AGENDA ITEMS

Public Comment:

Commissioner Casey stated he wanted to recommend a change to future meeting agendas to add a Public Comment on Non Agenda Items section to allow any member of the public to speak for two or three minutes on any topic they wished similar to City Council. Commissioner Casey commented the Commission would not have to respond, but simply hear.

Chairman Delwiche commented the public comment did not have to be an agenda item, but any item they felt was of concern.

Commissioner Vrobel inquired as to why the Commission would want to do this. Commissioner Casey responded it would allow the public to say whatever they wanted.

Commissioner Storm commented the Commission would not have to respond, just listen.

Chairman Delwiche stated there was nothing in the existing procedure which would allow the public to address the Commission on non-agenda items.

Commissioner Wolfe commented she was in favor of the idea.

Commissioner Vrobel commented she thought it was a good idea for City Council to do this, but doubted the validity for the Commission's use.

Commissioner Burris inquired if the Commission followed Robert's Rules of Order. Chairman Delwiche confirmed the Commission did. Commissioner Burris stated in that case, anything which was not germane to the agenda could be denied.

Commissioner Wolfe inquired if someone came in to complain the zip line was too noisy, but were not on the agenda, could they express those concerns. Ms. Anthony responded they would not on the agenda for something as such that because there was a forum for complaints through staff and expressed her concern with making this change and the potential for meetings to take longer and could see problems with comments about items that could then come forward as a formal request. Ms. Anthony stated the Planning Commission was not the same as the City Council. Ms. Anthony was also concerned it could be unfair to applicants which were on the agenda to have to wait through items that were not.

Commissioner Wolfe responded the non-agenda items could be discussed at the end of the meeting, after the applicants which were on the agenda.

Ms. Anthony provided the recent example of someone who wanted to get on agendas for the Historic Preservation Commission and the Planning Commission for items which did not require their approvals or under their purview. There was an appropriate application process to go through and would, frankly, be a waste of the Commissions' time. Commissioner Casey stated Ms. Anthony's point was valid and he withdrew his proposal.

Commissioner Wolfe stated she felt when there was an item on the agenda of major importance to the community and there were thirty people waiting to speak on the issue, making them wait until 8:30 or later could force many of them to have to leave before they were able to voice their concerns. She felt this could lead to conspiratorial ideas and irritation on behalf of those wanting to speak and recommended putting agenda items which seemed like they would receive a lot of public comment in the beginning of the agenda as a courtesy.

Chairman Delwiche stated he felt it would be unfair to the other applicants on the agenda whose applications were quick to move them farther down on the list.

Ms. Anthony stated staff typically put items on the agenda in a first come, first serve manner where if someone is the first applicant to make a submittal, they would be the first item on the agenda.

Commissioner Wolfe stated she knew very well that people can become very angry when they make a special attempt to arrange to come to a meeting and they are forced to sit for hours. Ms. Anthony responded it was hard either way the Commission chose to handle the situation.

Commissioner Casey stated he felt the City items could have gone last on the agenda for this meeting. Chairman Delwiche commented the City items went pretty fast and were not much of a problem.

Commissioner Vrobel inquired if something could be added to the agenda which stated the City took the items in the order they were received to be put on the agenda as a means of explaining to the public why staff had put the agenda items in the order they were in.

Commissioner Wolfe stated she thought it was a good idea to have non-agenda items be able to be brought to the Commission as a means of being more community-user friendly with residents, as was often brought up in PlanManitou.

Commissioner Casey inquired if there was a fee associated with Mr. Liming's Concept Plan Proposal. Ms. Anthony responded there was.

Chairman Delwiche stated the Commission needed to think and further discuss whether or not they wanted to allow non-agenda items to be brought to the Commission.

VII. ADJOURNMENT

Hearing no further business, Chairman Delwiche adjourned the meeting at 8:32 pm.

Minutes prepared by Dylan Becker, Planner I