



**CITY OF MANITOU SPRINGS
PLANNING COMMISSION
REGULAR MEETING MINUTES
Wednesday, May 10, 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 6:02 pm 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 LORI BURRIS
Alternate Commissioner CAREY STORM

ABSENT: Commissioner JULIA SIMMONS (excused)

STAFF: Wade Burkholder, Planning Director
Michelle Anthony, Senior Planner
Dylan Becker, Planner I

GUESTS: Coreen Toll, City Council Liaison

II. APPROVAL OF MINUTES

ITEM 1. April 12, 2017

MOTION:

Commissioner Wolfe moved to approve the April Minutes with the following changes:

- Page 12, Line 26: Change times from 7:00 am to 10:00 pm, to 10:00 pm to 7:00 am

SECOND:

Commissioner Latimer seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0. Commissioner Burris abstained as she was not present for the April Meeting.

III. NOTICE OF COUNCIL ACTION

ITEM 2. Ordinance No. 1417 Updating Submittal Requirements and Pre-Application Meetings, This proposed ordinance was reviewed in 2016 by the Planning Commission; forwarding to the City Council was delayed by Staff. The ordinance was passed at Second Reading by City Council on May 2.

ITEM 3. Ordinance No. 1517 Updating Submittal Requirements and Pre-Application Meetings, This proposed ordinance was reviewed in 2016 by the Planning Commission; forwarding to the City Council was delayed by Staff. The ordinance was passed at Second Reading by City Council on May 2.

ITEM 4. Ordinance 1617 Regarding Changes to the Long-Term Lodging Regulations was further reviewed and revised by the City Attorney following comments from the Planning Commission. The ordinance was discussed at First Reading by City Council on May 2 and was scheduled for Second Reading by City Council on May 16.

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

ITEM 5. RE 1701 – Rezone (Low Density Residential to Open Space – Public Hearing) – 0 Crystal Avenue (Schedule No. 7408218002) – City of Manitou Springs, Applicant

ITEM 6. RE 1702 – Rezone (Low Density Residential to Open Space – Public Hearing) - 0 Pawnee Avenue (Schedule No. 7408217002) – City of Manitou Springs, Applicant

ITEM 7. RE 1703 – Rezone (Low Density Residential to Open Space – Public Hearing) - 505 Jensen Lane (Schedule No. 7408222005) – City of Manitou Springs, Applicant

ITEM 8. RE 1704 – Rezone (Low Density Residential to Open Space – Public Hearing) - 515 Jensen Lane (Schedule No. 7408222004) – City of Manitou Springs, Applicant

ITEM 9. RE 1705 – Rezone (Low Density Residential to Open Space – Public Hearing) - 525 Jensen Lane (Schedule No. 7408222003) – City of Manitou Springs, Applicant

ITEM 10. RE 1706 – Rezone (Low Density Residential to Open Space – Public Hearing) - 320 Red Mountain Lane (Schedule No. 7408205003) – City of Manitou Springs, Applicant

ITEM 11. RE 1707 – Rezone (Low Density Residential to Open Space – Public Hearing) - 210 Bellevue Avenue (Schedule No. 7408205006) – City of Manitou Springs, Applicant

ITEM 12. RE 1708 – Rezone (Low Density Residential to Open Space – Public Hearing) - 340 Red Mountain Lane (Schedule No. 7408205004) – City of Manitou Springs, Applicant

ITEM 13. RE 1709 – Rezone (Low Density Residential to Open Space – Public Hearing) - 350 Red Mountain Lane (Schedule No. 7408205005) – City of Manitou Springs, Applicant

ITEM 14. RE 1710 – Rezone (Low Density Residential to Open Space – Public Hearing) - 240 Topaz Drive (Schedule No. 7408205007) – City of Manitou Springs, Applicant

ITEM 15. RE 1711 – Rezone (Low Density Residential to Open Space – Public Hearing) - 508 Red Mountain Lane (Schedule No. 7408218004) – City of Manitou Springs, Applicant

ITEM 16. RE 1712 – Rezone (Low Density Residential to Open Space – Public Hearing) - 520 Red Mountain Lane (Schedule No. 7408218003) – City of Manitou Springs, Applicant

ITEM 17. RE 1713 – Rezone (Low Density Residential to Open Space – Public Hearing) - 0 Red Mountain Lane (Schedule No. 7408218007) – City of Manitou Springs, Applicant

ITEM 18. RE 1714 – Rezone (Low Density Residential to Open Space – Public Hearing) - 420 Red Mountain Lane (Schedule No. 7408218006) – City of Manitou Springs, Applicant

ITEM 19. RE 1715 – Rezone (Low Density Residential to Open Space – Public Hearing) - 505 Red Mountain Lane (Schedule No. 7408218005) – City of Manitou Springs, Applicant

Michelle Anthony, Senior Planner, presented the staff report dated May 4, 2017.

Hearing no questions for staff, Chairman Delwiche opened the Public Hearing. Hearing no comment from the public, the Public Hearing was closed.

MOTION:

Vice Chair Vrobel moved to forward a recommendation to approve RE 1701 – RE 1715 to City Council with the findings a public need exists and the use and locations are compatible with adjacent land uses.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

V. NEW BUSINESS

ITEM 20. VAC 1701 – Vacation of Right-of-Way (Two Areas Abutting the Property) – 304 Pawnee Avenue - Karen To, Applicant

Michelle Anthony, Senior Planner, presented the staff report dated May 4, 2017.

Commissioner Casey inquired why the lot would become two lots under the proposed vacation. Ms. Anthony clarified it would not become two lots but would become more than one whole platted lot, which was required by the Zoning Code in order to issue building permits. Ms. Anthony stated the legal description would read something like, “Lot One (1) Meese Subdivision plus the vacated portions of the Pawnee right-of-way.” She also noted the vacated areas could not be used for building setbacks unless those areas were platted into one, whole lot with the rest of the property.

Commissioner Wolfe inquired if there was any other impact other than the setbacks. Ms. Anthony responded additional building on the site was improbable; the vacation would add square footage to the property which would be taxed.

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

Karen To, 304 Pawnee Avenue, stated she was glad her proposal was moving forward and was excited to fix the retaining wall which was bulging for decades. Ms. To expressed concern that she would not be able to fix the walls otherwise, which could cause them to fall into the right-of-way.

Hearing no further comment from, or questions for, the applicant, Chairman Delwiche opened the Public Hearing. Hearing no comment from the public, the Public Hearing was closed.

MOTION:

Commissioner Wolfe moved to forward a recommendation of approval for VAC 1701 to City Council with the following findings:

1. The use of the areas of the rights-of-way as shown on the vacation exhibit are unnecessary for future public access; and
2. The proposed vacation will not deprive abutting properties of adequate, legal access.

SECOND:

Vice Chair Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

ITEM 21. MNS 1701 – Minor Subdivision (Divide One Lot into Two Lots) – 17 Sandra Lane – John and Fran McGee, Applicants

ITEM 22. SW 1701 – Subdivision Waiver (Encroachment into 30%+ Slopes for Driveway to Future Residence) – 17 Sandra Lane – John and Fran McGee, Applicants

Michelle Anthony, Senior Planner, presented the staff reports for MNS 1701 and SW 1701 dated May 5, 2017. Ms. Anthony also presented a spreadsheet denoting the lot sizes of properties adjacent to 17 Sandra Lane and found the average lot size to be ten-thousand five-hundred square feet (10,500 ft²). Ms. Anthony noted there was a lot of variation, with the smallest lot size being four-thousand three-hundred square feet (4,300 ft²) and the largest lot size being almost twenty-five thousand square feet (25,000 ft²). Ms. Anthony read an email from Craig Carnick, 1355 Indian Oaks Place, into the record. Mr. Carnick requested denial of both MNS 1701 and SW 1701 based on the topography of the current lot, the lot sizes would be small compared to others in the neighborhood, and having two small homes was not in keeping with the surrounding properties and would lower property values.

Commissioner Latimer inquired if the proposed driveway at Sandra Lane would cut into the No Build Zones. Ms. Anthony responded the No Build Zone had a slope steeper than thirty percent (30%) which was why they needed a waiver to build the driveway connecting to Sandra Lane.

Commissioner Wolfe inquired which unnecessary hardship was listed in the findings. Ms. Anthony responded the unnecessary hardship would occur in the event of forcing a shared or second driveway coming in from Oak Ridge Road, which would create extra traffic on that one, small street and take up usable area on the Oak Ridge Road-adjacent lot. Ms. Anthony also commented, from Mr. Carnick's letter, it seemed the neighborhood did not find the shared driveway idea appealing. Commissioner Wolfe inquired if she was correct in thinking the unnecessary hardship wouldn't be an unnecessary hardship unless the subdivision was approved. Ms. Anthony responded she was correct.

Chairman Delwiche inquired if there were any findings or requirements needed to approve the subdivision and asked for clarification whether, if the lots met the minimum requirements for subdivision, the applicants were entitled to do so. Ms. Anthony responded there was little discretion in regard to subdivisions and in some municipalities these sorts of actions are handled administratively.

Commissioner Wolfe inquired if the Commission had to approve the Minor Subdivision and asked for clarification whether or not it was mandatory to approve an application which met the requirements. Ms. Anthony responded the wording of the Code did not appear to be discretionary and commented if the Commission did deny the request it could open the City up to liability and potential lawsuit.

Chairman Delwiche inquired if the Commission allowed the Subdivision, was the Commission then creating a situation mandating the need for a Subdivision Waiver and if this could be used as a grounds to deny the request. Ms. Anthony stated the Commission could deny the Subdivision Waiver.

Chairman Delwiche inquired if the Commission denied the waiver, would they not essentially be saying if the applicants wanted to go through with the Subdivision, they would have to share a driveway. Ms. Anthony stated this was correct.

Commissioner Wolfe asked if the Commission legally had to approve the Subdivision, but the discretion came in through the language in the Code regarding unnecessary hardships on the Subdivision Waiver. Ms. Anthony responded if the requirements are met for the Minor Subdivision in the Code, there should be no reason for denial and the Subdivision Waiver was more discretionary.

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

John McGee, 324 Clarksley Road, stated he believed the eighteen-thousand four-hundred square foot (18,400 ft²) lot would fit the area when divided in half with other lots in the area. The proposed Minor Subdivision seemed to fit with the lot sizes of the neighborhood which, on Sandra Lane, averaged around four-thousand to eight-thousand square feet (4,000 – 8,000 ft²) and nine-thousand to ten-thousand square feet (9,000 – 10,000 ft²) on Oak Ridge Road. Mr. McGee commented the lot sizes were congruous with surrounding properties. He noted people were not looking for five thousand square foot (5,000 ft²) houses, but for two-thousand five-hundred square feet (2,500 ft²) or less. He did not agree the lot would be difficult to build on. He stated they were requesting the Subdivision Waiver to allow the driveway to enter on Sandra Lane, which would require a retaining wall to get to the building site. Mr. McGee commented the alternative would be to put in a driveway from Oak Ridge Road to Lot 1, but felt their proposal would be better for traffic, a better fit in the neighborhood, and so access to each house could be separate.

Commissioner Casey inquired why subdivide the lot into two as opposed to keeping it as one lot. Mr. McGee stated it was a matter of the economy and he was able to sell houses at two-thousand two-hundred square feet (2,200 ft²) easily, but he did not think the market was strong enough, possibly even risky, for five-thousand square foot (5,000 ft²) houses.

Chairman Delwiche stated Mr. McGee only needed to build one house. Mr. McGee responded they could and would do so if necessary.

Chairman Delwiche commented just because Mr. McGee could build one house, it did not have to be a large house. Mr. McGee responded the lot had been for sale for a long time and if he were to build a small house on the large lot it would not make sense in regard to return on investment. Mr. McGee felt it would be difficult to sell a two-thousand square foot (2,000 ft²) house for \$550,000.

Hearing no further comment from the applicant, Chairman Delwiche opened the Public Hearing.

Eric Billmeyer, 1325 Indian Oaks Place, stated he understood Mr. McGee's financial concerns, but the community loved open spaces. Mr. Billmeyer stated he spoke with Mr. McGee a month prior and as a fluvial geomorphologist, he disagreed with the assessment there were no drainage issues on the property. He stated the property was a natural drainage course and there was a lot of water which flowed through the area and his neighbor at 1335 Indian Oaks Place had major issues with water coming into their basement. Mr. Billmeyer also stated the lot sizes in the area were actually much bigger than Mr. McGee had indicated and the adjacent properties on Sandra Lane had lot sizes which were seventeen-thousand to nineteen-thousand square feet (17,000 – 19,000 ft²) on average, although he conceded the lot sizes across the street from the property on Sandra Lane were much smaller. Mr. Billmeyer stated he felt there only needed to be one house at the location and the other lot could be dedicated as an easement for trails to incorporate the historical use of the property as a pass-through for the community.

David Tolle, 18 Sandra Lane, stated his main concern was the drainage and during heavy rains he experienced flooding. His main concern in regard to drainage was the driveway onto Sandra Lane and water hitting the driveway, flowing downhill, and flooding his property. Mr. Tolle stated he would like to see studies and engineering solutions to eliminate the possibility of his property being flooded.

Vice Chair Vrobel inquired if Mr. Tolle had been flooded recently. Mr. Tolle responded he was not currently having issues, but had in the past and building the driveway would funnel water directly onto his property; he had experienced two-three inches of mud deposits in his basement in the past.

Carey Merritt, 3 Oak Ridge Road, stated she was drawn to the neighborhood because of large lots and open spaces. She understood Mr. McGee had a right to build, but felt the City should consider the neighborhood residents and their concerns. She stated dividing the property into two lots was not in keeping with the integrity of the area and the lot sizes would be about half the typical size in the neighborhood. Ms. Merritt expressed concern about the height of the development and its potential for altering the views. She indicated neighborhood kids often played in the cul-de-sac because it was one of the few safe, flat places for them in the neighborhood. She remarked the lot was designed to accommodate only one house and allowing the subdivision would only benefit one individual while undermining the integrity and property values of surrounding homes and felt the Commission needed to consider this in making their final decision.

Tracy Brogan, 18 Sutherland Road, stated she thought the lots in the area were large because of the steep grades, slopes, and topography. She stated erosion and water damage were an issue in the neighborhood and currently all of Crystal Hills drained down Sutherland Road. The soil was crumbly and washed away quickly and she felt there was a risk building two houses at the location. Ms. Brogan stated there had to be retaining walls and bracing to prevent the proposed driveway from disintegrating and washing down the hill, as she had personally experienced with her own driveway. She also noted a corner of the No Build Zone abutted her property and was concerned erosion and slippage could create issues with the integrity of her foundation. Ms. Brogan stated the Hillside Low Density Zone described the manner in which new construction should be handled and felt the cross-cutting of the No Build Zone would not be in compliance with the Code. Ms. Brogan commented the Hillside Low Density Residential Zoning was put in place to protect the topography of the area, the vegetation, and the wildlife corridors and felt putting two houses on the property would force Mr. McGee to remove most of the vegetation and would block any kind of wildlife crossing. She also stated the Code also stated there was no guarantee of maximum density and development must be designed to fit in with the surrounding area and provide the qualities which Low Density Zoning was meant to protect. Ms. Brogan reiterated her concerns about potential damage to her property due to drainage and the lessening property values. She felt it was going to be expensive to put in the driveway and wall in the No Build Zone.

Chairman Delwiche stated the property was actually zoned as Low Density Residential, correcting the statement it was zoned Hillside Low Density Residential, which had very different requirements. Ms. Brogan responded she still felt the principal of her concerns were the same.

Howard Morrison, 302 Sutherland Place, stated he was in agreement with his neighbors regarding the subdivision. As a former member of the Planning Commission for eight years, he was involved in the platting of much of Crystal Hills. As an attorney, he felt the City was establishing a precedent where anyone who had a lot with enough square footage could subdivide for no reason other than it met the minimum requirements and he did not agree with the notion the Planning Commission must approve it because of the language in the Code. Mr. Morrison stated he was concerned there would be two small homes built on the proposed lots which were not in keeping with the average house and lot size of the neighborhood and felt there was only room for one house to be built at the location.

Commissioner Wolfe inquired if Mr. Morrison had reviewed the language of the Subdivision Regulations for the City of Manitou Springs and if the language was such the City would likely lose a lawsuit for denial. Mr. Morrison stated he had not reviewed the regulations, but there was likely some kind of precedence set somewhere around the country regarding this question.

Commissioner Wolfe commented the language was important and provided an example of how “may” and “shall” had very different meanings.

Kathy Nimms, 9 Sandra Lane, stated she often took walks in the neighborhood and had frequently seen water coming down the hill and into other properties and was concerned about drainage. She was also concerned about the driveway being surfaced and commented rock in the area was solid and difficult to break through; she had experienced difficulty setting the foundation on her own home. Ms. Nimms would need to blast out the driveway in order to pour the concrete and she was concerned about blasting occurring in close proximity to her home and dislodging a boulder above her property.

Commissioner Storm commented the boulder looked like it was going to come down one of these days.

Louise Adler, 14 Sandra Lane, stated she wanted to support her neighbors and felt the Minor Subdivision should be denied because of the water issue, the neighborhood issue, and the drainage issue.

David Frito, 38180 Spring Canyon Drive, Murrieta Hot Springs, CA, stated he built the house at 18 Sutherland Road and could not believe the City was considering allowing two homes to be built on the subject property. Mr. Frito commented he felt the Codes pertaining to Hillside Low Density Zoning would protect the neighborhood. Chairman Delwiche stopped Mr. Frito to explain the subdivision was proposed in a Low Density Residential Zone, not a Hillside Low Density Residential Zone. Mr. Frito apologized and stated he was in support of the neighbors and there should only be one house built at the location.

Carey Merritt, 3 Oak Ridge Road, stated as a neighbor to the subject property she was also concerned about blasting and potential damage to her property as the hillside surrounding her property was quite precarious.

Hearing no further comment from the public, the Public Hearing was closed.

Chairman Delwiche recalled Planning Commission denial of a request for a Minor Subdivision five years prior which was overturned on an Appeal based on the language of the Subdivision Code.

Commissioner Wolfe inquired if she could see the Subdivision Code to get a sense of how discretionary the language was. Ms. Anthony inquired which section Commissioner Wolfe would like to see other than what was in the staff report because the standards in the report came directly out of the Code. Commissioner Wolfe inquired if what was in the staff report was all there was in the Code. Ms. Anthony responded the full Code was not in the staff report and suggested a recess be called if the Commission desired to see the full Minor Subdivision section.

Commissioner Wolfe stated she did not see language in the staff report saying the Commission shall or may approve a Subdivision. She could not vote on the item, or would abstain, because she felt uncomfortable not knowing whether the Commission had to approve application simply because it met the requirements or whether the City would face a lawsuit for denying approval. Mr. Burkholder responded the definition of a Minor Subdivision was a subdivision of land into less than five (5) lots and the process required the Commission approve the request. Commissioner Wolfe stated she was looking for language which directly stated when the requirements for a Minor Subdivision were met, the Commission or City must approve the request and wanted to know if the language contained the key words shall or may.

Vice Chair Vrobel inquired if there was consensus to take a recess to look over the full Minor Subdivision code section. The other Commissioners affirmed the consensus.

Chairman Delwiche called a recess at 7:25pm in order obtain printed copies of the Municipal Code pertaining to Minor Subdivisions. The meeting was called back to order at 7:39pm.

Ms. Anthony stated the Code indicated the Commission could impose conditions on subdivisions, but there had to be justification for that and if the Minor Subdivision and Waiver met the Code requirements, since there was no criteria for denial, the Commission was required to approve the request. Ms. Anthony stated denial would need to be based on rational reasoning and asked the Commission to state what exactly it was uncomfortable with in regard to the Code. Ms. Anthony also noted the Commission had options in terms of approving or denying one or both requests and approving with conditions, such as addressing the drainage issues. Ms. Anthony stated the Commission could also table or postpone the item for the applicant to provide more information on the property and the request.

Commissioner Wolfe stated due to the wording of the Code she felt the Commission had the discretion to either approve or deny requests for Minor Subdivisions so long as there was a rational basis for the denial. From the staff report, she was led to believe the Commission was mandated to approve subdivision requests, but did not believe this to be the case after having looked over the Code in its entirety.

Commissioner Latimer inquired if Mr. McGee would speak on the matter of drainage. Mr. McGee responded any vacant lot would have drainage issues and building a house would help to alleviate and manage the drainage. Mr. McGee stated part of Pikes Peak Regional Building Department requirements for building a house were to manage drainage on the property, otherwise the site plans would not pass Zoning in Manitou Springs or at Pikes Peak Regional Building Department.

Commissioner Latimer inquired if Mr. McGee could speak on the issues pertaining to drilling and blasting the rock for a driveway. Mr. McGee responded he did not think he would have to blast or use dynamite and had never had to do so on any other property he had built. Mr. McGee stated he was currently building a house on some of the hardest rock he had ever encountered which did not require any blasting and could not foresee a scenario in which he would need to do so at 17 Sandra Lane.

Commissioner Storm inquired if the options were to allow the Subdivision Waiver for the driveway or choose not to allow it. Chairman Delwiche replied motions for each item should be separate.

Commissioner Wolfe stated although the Code was not written as well as it could be, it appeared to her it provided the Commission with discretion to determine whether or not to approve a Minor Subdivision and she did not feel it was appropriate to approve the request for the reasons provided by the neighbors. She felt the subdivision would be detrimental to the neighborhood in terms of property values.

Vice Chair Vrobel stated she did not think the proposal would affect the property values in the area because she felt the lot sizes would be congruous with the neighborhood whether they were subdivided or not. She commented she felt Mr. McGee had a right to decide to make the lot into two lots as the owner of the property. Vice Chair Vrobel stated she would prefer to see Mr. McGee decide to go with one lot, but felt if he wanted to make it into two lots he should be able to do so. She commented property values were good in Manitou Springs and would continue to be desirable.

Commissioner Wolfe inquired about safety concerns mentioned by the neighbors in regards to the cul-de-sac and traffic. Vice Chair Vrobel responded she did not think the addition of two houses to the neighborhood would have much of a traffic impact and stated she was not thrilled about the Subdivision Waiver to put in a driveway due to drainage concerns and commented she did not think there would be an impact on the children being able to safely play in the cul-de-sac.

Commissioner Storm commented the lot was there regardless of whether the Commission allowed it to be subdivided into two lots or not.

Commissioner Casey stated the McGees had a long history of good work in Manitou Springs and felt the drainage issues would be resolved. However, he agreed with Howard Morrison regarding setting a precedent and would be in favor of denying the requests.

Commissioner Wolfe expressed concern regarding setting a precedent where any lot which met the minimum requirement for a subdivision must be approved and expressed desire for consistency.

Chairman Delwiche stated he was torn and had been burned in the past for the denial of a previous subdivision request and thought the City was going to come up with criteria, but never got around to updating the Code.

Vice Chair Vrobel commented she felt the subdivision the Commission had denied five years prior, which was later overturned, had more reasons for denial than this request.

Chairman Delwiche stated he did not feel the Commission would be setting a precedent.

Commissioner Wolfe stated she disagreed with the City Attorney's assessment the Commission must approve subdivisions which met the minimum requirements and had the Code said "the Commission shall approve" in the language she would be in agreement, but the wording used was "the Commission may approve", which implied discretion. Ms. Anthony commented if the Commission was going to deny, they needed a solid reason which would hold up in court. In regard to precedence, she noted there was a subdivision approved in 1989 on lots right next to the subject property which resulted in a lot smaller than either of the lots proposed by Mr. McGee. Ms. Anthony stated she felt the information in the report showed the proposed lot sizes were consistent with other lot sizes in the neighborhood and warned the Commission against basing a denial on lot size.

Commissioner Wolfe remarked it was dependent on how an area was defined that would determine the average lot size in said neighborhood.

MNS 1701 –

MOTION:

Commissioner Latimer moved to approve MNS 1701.

SECOND:

Vice Chair Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion failed, 3-4. Commissioner Wolfe, Commissioner Casey, Commissioner Burris, and Commissioner Storm voted against the motion.

MOTION:

Commissioner Wolfe moved to deny approval MNS 1701 pursuant to 16.10.050 Subsection A of the Municipal Code which states the Commission may approve as requested, approve with conditions, deny or table, in whole or in part the Minor Subdivision plat. The reason for denial being the immediate surrounding properties had larger lot sizes and there were also concerns, as expressed by neighbors, regarding erosion impacts and water/drainage issues.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 4-3. Commissioner Latimer, Vice Chair Vrobel, and Chairman Delwiche voted against the motion.

SW 1701 –

MOTION:

Vice Chair Vrobel moved to deny approval of SW 1701 as with the denial of the subdivision, the waiver was not necessary.

SECOND:

Commissioner Storm seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

ITEM 23. MaCUP 1703 – Major Conditional Use Permit (Outdoor Vending/Mobile Food Commissary) – 306 Manitou Avenue – Julius Grant Howell, Applicant

Wade Burkholder, Planning Director, presented the staff report dated May 5, 2017.

Commissioner Casey inquired if the Conditional Use Permit was required for the addition of the smoker. Mr. Burkholder responded it was required because the smoker was mobile which made the proposed use a mobile food vendor.

Commissioner Casey inquired what was inside the building. Mr. Burkholder responded there were warming ovens, a refrigerator, security systems, and racks of supplies, napkins, utensils, and various other storage items.

Commissioner Casey inquired if there were drains or sewers in the building. Mr. Burkholder responded the building did not have water so there were no drains or sewers at the location.

Commissioner Casey inquired if it was common to have a restroom so far away. Mr. Burkholder responded the Health Department had stated as long as there was a public restroom available for the use of the business it would be fine.

Commissioner Storm inquired if Jack's Liquor was open at 8:00 am. Mr. Burkholder responded he was not sure of their hours of operation. Julius Grant Howell, Applicant, stated Jack's Liquor would be opening at 8:00 am during the tourist season and 9:00 am until then. Chairman Delwiche informed Mr. Howell he would be asked to the podium shortly and to hold his comments until then.

Commissioner Wolfe inquired what a grey water system was. Mr. Burkholder responded it was used water which went into a storage tank. Vice Chair Vrobel commented black water was sewage, grey water was water which was used for washing your hands, bathing, and the like.

Commissioner Wolfe inquired which City streetscapes would be used to determine the appropriateness of on-site tables and seating. Vice Chair Vrobel responded there were outdoor tables and seating at the Stagecoach Inn Restaurant, the Manitou Brewery, and the Creekside Restaurant.

Chairman Delwiche stated he was confused about the live music aspect and inquired if the Commission was approving a Conditional Use which included the music would not be amplified. Mr. Burkholder responded, under the conditions, the business would be allowed to have live, unamplified music so long as it was in compliance with the noise ordinance for the City.

Chairman Delwiche inquired if the condition implied there could be an event with an unamplified concert with five-hundred (500) attendees as an example. Mr. Burkholder responded it was not the intent of the condition; there could be music, but it would not be amplified. Mr. Burkholder further stated the intent was to have a guitar player and the Commission would just be approving unamplified music only in compliance with the noise ordinance.

Chairman Delwiche stated there was definitely adequate parking for food, but as a music venue with many in attendance, there could be parking issues. Ms. Anthony stated such an event would cause a problem with the Conditional Use. Mr. Burkholder commented the condition and space were not intended to have an event.

Commissioner Latimer inquired about obtaining a liquor license and how likely it was for the business to obtain one. Mr. Burkholder responded it was a fairly strenuous process and thought the City Clerk did a thorough job of making sure establishments met the State and Federal requirements.

Commissioner Latimer inquired if, in order to serve alcohol, there would have to be a closed off area on the premises to do so. Mr. Burkholder responded it would have to be in a roped off area at the minimum and commented he was not sure of the requirements considering there was a liquor store on the same lot.

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

Julius Grant Howell, 7445 Wynwood Terrace, Colorado Springs, stated, in regard to music, he only wanted to have local, acoustic musicians play, unamplified, and keeping noise to a minimum to abide by quiet hours. Mr. Howell stated he would not be having music every night, but felt it was a good opportunity to showcase local musicians and provide a service to the community, which he felt was lacking in small outdoor venues. Mr. Howell stated, in regard to parking, his business would offer discounts to pedestrian customers to encourage foot traffic and ease parking needs and felt there was ample parking for everything. He had noticed Subway had a lot of City employee traffic during the lunch rush and he had discussed possible parking issues with the restaurant owner. He stated he did not see the possibility of a five hundred (500) person event at the location due to parking, the smoker, and the fact there were three businesses operating on the lot. Mr. Howell commented if his business were ever to have an event, of any kind, they would utilize the appropriate City channels, procedures, and permits while abiding by the City noise ordinance. His intent was to fall in line and commented his family was new to the area, having moved from Texas. He commented how much he loved living in the area and stated Manitou Springs was where he wanted to be. Mr. Howell explained the greywater systems available with portable sinks containing a pump

and water heater. The water would be pumped from a clean water tank, heated before use, then into the sink which meant there would be hot water in the building. The Code specified the grey water tank must be fifteen percent (15%) larger compared to the clean water tank and stated he had a five gallon (5 gal) tank for clean water and a seven gallon (7gal) tank for grey water. Mr. Howell stated this system would only be used to wash hands and there would be no serving of the water for drinking or washing of dishes and utensils using the system, as this would take place at the commissary. The grey water tank, when full, would also be dumped at the commissary. Mr. Howell also stated they would be required to have three to four gallons (3-4 gal) of water for every hour of operation and commented he wanted to eventually obtain a 130-gallon water unit. Mr. Howell stated he had two health permits, one for the smoker and one for the commissary and would be doing a majority of the cooking at the commissary and bringing it to the location to sell and to be stored in the warming ovens. He had no intention of serving hard liquor, but would serve beer and wine. Mr. Howell stated he did not want patrons to come to his establishment with the intention of becoming intoxicated, but to enjoy the atmosphere. He already had a fenced-in area for alcohol consumption and dining.

Commissioner Latimer inquired if Mr. Howell had asked to use the restrooms at Subway. Mr. Howell stated he did not think there was a chance to use those facilities because the owner perceived his operation as competition. The owner of Subway had contacted his corporate office; he understood the Subway owner feeling this way, but felt his establishment offered something completely different which would not interfere with Subway's business. Mr. Howell had told the owner of the Subway he would not serve sandwiches, chips, salad, or fountain drinks and expressed his intent to work with and maintain a symbiotic relationship with the other occupants of the lot. Mr. Howell stated he was not real hopeful the Subway owner would allow his patrons to use their facilities, but he would ask.

Commissioner Casey inquired what Mr. Howell's relationship was to Jack's Liquor and if he had bought land or was renting from him. Mr. Howell responded Jack's was his landlord and owned the lot containing Subway, Jack's Liquor, and Peak BBQ.

Commissioner Wolfe inquired if the grey water was re-used in any way. Mr. Howell responded it would not be.

Hearing no further comment from, or questions for, the applicant, Chairman Delwiche opened the Public Hearing. Hearing no comment from the public, the Public Hearing was closed.

MOTION:

Vice Chair Vrobel moved to approve MaCUP 1703 for Conditional Use as an Outdoor Vending/Mobile Food Commissary and to forward a recommendation for approval to City Council with the following conditions:

1. Submittal of a site plan depicting current parking conditions of the entire parcel within ninety (90) days of approval of MaCUP 1703 by City Council.
2. The Applicant must obtain/maintain a valid Manitou Springs' business license and collect/remit sales taxes.
3. Non-amplified music only shall be permitted in conformance with the City of Manitou Springs noise ordinance; amplification of music or musical instruments is not permitted.

4. The sale or consumption of alcohol at this location must be approved by Manitou Springs City Clerk and City Council via additional liquor licensing applications.
5. A minimum of one trash receptacle and one recycling receptacle shall be provided on the subject lot screened from public right of way via landscaping or other creative positioning.
6. Peak BBQ shall utilize biodegradable containers, napkins, utensils, and other products to encourage recycling and green sustainability principles of the City.
7. The on-site tables and seating shall be compatible in appearance with other City streetscape furnishings and shall be maintained in a clean, safe, and usable condition.
8. Installation of native landscaping plants along the perimeter of the parking area shall occur within thirty (30) days of final approval of MaCUP 1703 by City Council.
9. Peak BBQ shall submit a written statement to the City regarding the emptying and filling of grey water tanks prior to the City Council meeting where this MaCUP is heard.
10. Fire Department requirements for fire extinguishers, fire blankets, flue caps, and spark arrestors must remain in place at all times.
11. Peak BBQ shall install ample signage directing customers to the location of restroom facilities.

And the following findings:

- A. That the value and qualities of the neighborhood surrounding the conditional use will not be injured and the proposed use, under the conditions imposed, has no impact on the character of the community and is compatible in function and design with surrounding land uses.
- B. That the conditional use is consistent with the intent and purpose of the Zoning Code to promote public health, safety, and general welfare.
- C. That the conditional use is consistent with Plan Manitou.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

Commissioner Casey expressed concern regarding the bathrooms and recommended signage as a condition of the permit to direct customers to the right place.

Vice Chair Vrobel stated she would amend her motion to add Condition #12 requiring directional signage for customer restrooms.

VOTE:

Motion passed, 7-0.

V. OTHER BUSINESS

ITEM 24. Recommendation to City Council Regarding Code Amendments to Regulate Sexually-Oriented Businesses

Michelle Anthony, Senior Planner, presented the staff report dated May 8, 2017. She reported on a conversation with Police Chief Joe Ribeiro regarding negative secondary impacts in relation to restrictions on the times of operations and asked for his opinion whether or not it would be a burden on the Police Department to have Sexually-Oriented Businesses in operation during late night hours. Ms. Anthony stated his response was it did not make a difference which hours Sexually-Oriented Businesses operated and commented when the Police Department executed a sting operation on a local “massage” parlor this was done during the daytime. Ms. Anthony stated Police Chief Ribeiro told her he did not have data which would back-up the need to restrict operations during late night hours and also that it would be a burden on the Police force no matter what time of day or night the businesses operated.

Commissioner Wolfe stated she was confused by the Police Department’s statement because she had read a document in which the Police Department was asking for more money and staff during evening hours on Fridays, Saturdays, and Sundays because that was when they were stretched the thinnest. Ms. Anthony responded her information was it was no more of a burden during the nighttime hours than it would be during the day for the Police Department.

Commissioner Wolfe asked when the Police Department was the busiest and if they had more calls on Friday as opposed to Wednesday. Ms. Anthony responded she was sure they did.

Commissioner Wolfe asked if the Police Department had to respond to more calls on a Friday night at 10:00pm compared to a Friday night at 6:00pm. Ms. Anthony responded she did not know that information. Commissioner Wolfe commented she felt the Commission needed that information in order to make a recommendation to City Council on hours of operation which made sense. Her understanding, through Commission discussions with the City Attorney regarding the ordinance, was the Commission could restrict hours if there was a rational basis, one of which was if Police were overly busy during certain hours and did not want to add onto that burden.

Commissioner Wolfe indicated Ms. Anthony must have asked the Police Chief if they anticipated responding to a Sexually-Oriented Business more frequently at midnight than at 2:00 in the afternoon. Ms. Anthony responded that was not the question she had asked of the Police Chief and clarified she had asked the Police Chief if they would be stretched beyond capacity having to deal with Sexually-Oriented Businesses later in the evenings, when they might have more calls for service. Ms. Anthony stated the Police Chief’s response was it did not make any difference whether it was 2:00 in the morning or 10:00 in the morning. Commissioner Wolfe stated that seemed untrue. Ms. Anthony responded what she understood from the Police Chief was he did not agree there would only be issues in the later night hours. Ms. Anthony stated if someone was running a prostitution ring, they were doing it all day long, not just in the late night hours. Commissioner Wolfe stated she understood the response from Police Chief Ribeiro. Ms. Anthony stated this was why the Police Chief was unable to provide data that might support restriction of hours. Commissioner Wolfe stated she thought the Police Department was just assuming there would not be many calls which they would have to respond to at any particular time and they could just do an investigation, as in Ms. Anthony’s example, with the massage parlor.

Commissioner Storm stated the assumption was not dissimilar to Commissioner Wolfe assuming there would be more calls. Commissioner Wolfe responded it was not a matter of more or less, but the Police Department was saying they might have to respond to more calls with Sexually-Oriented Businesses, but not necessarily more at night or right away. Commissioner Wolfe stated there could just be a general investigation and the Police Department could handle that whenever they wanted.

Vice Chair Vrobel commented she felt it depended on the type of Sexually-Oriented Business, noting a bookstore and a club were very different.

Ms. Anthony continued reviewing the current draft requirements and noted there would be no alcohol or liquor service allowed; the City Attorney felt this was a good way to help reduce the potential for negative secondary impacts. Ms. Anthony commented, at this point, the Commission needed to make some sort of recommendation on hours of operation with the realization these discussions were going to occur all over again in City Council.

Commissioner Casey inquired if the Commission was in consensus on 2:00 am to 10:00 am as hours Sexually-Oriented Businesses could not operate. Chairman Delwiche and Vice Chair Vrobel responded in agreement.

Chairman Delwiche inquired about Sexually-Oriented Businesses proximity to parks and asked why the trading post was not off limits in the separation distance analysis, since this was next to Garden of the Gods. Ms. Anthony responded it was not located near a Manitou Springs' park and she would need to talk to the City Attorney whether or not the City of Manitou Springs could use buildings and parks which were not under their jurisdiction. Chairman Delwiche stated he just wanted to be sure there would still be at least one place available to Sexually-Oriented Businesses.

Commissioner Latimer inquired about signage and wanted to be sure these businesses couldn't have flashing signs, billboards, and digital signage. Commissioner Wolfe stated the signage would be subject to the sign code.

Commissioner Wolfe inquired if the only new aspect added to the map was not allowing Sexually-Oriented Businesses to operate on Manitou Avenue. Ms. Anthony confirmed this and indicated she had fixed some of the language to make it more clear Sexually-Oriented Businesses would not be able to locate in certain areas.

MOTION:

Commissioner Storm moved to forward the Planning Commission's recommended ordinance regulating sexually-oriented businesses in the City of Manitou Springs to City Council for consideration.

SECOND:

Commissioner Latimer seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

NON- AGENDA ITEM FOR DISCUSSION

Chairman Delwiche stated he felt the Commission should revisit the Minor Subdivision code to come up with criteria for approval or denial in order to avoid situations like this meeting so the Planning Commission's decision would be less likely to be overturned.

Commissioner Wolfe inquired if the Commission would need to ask the City Attorney to give the Commission copies of neighboring municipalities to compare different options. Mr. Burkholder responded staff often tried to do as much code preparation as they could, but were sometimes overruled by the attorney.

Commissioner Wolfe asked if staff could pull some ordinances from similarly sized communities in Colorado to review. Mr. Burkholder responded yes.

Commissioner Casey inquired who the City Engineer was. Ms. Anthony responded the City did not have an Engineer on staff.

Commissioner Wolfe inquired if the City independently contracted an engineer. Ms. Anthony stated the City was in the process of contracting with a new Engineering firm.

Commissioner Wolfe inquired if the contract was an exclusive deal where the contracted company would be the only company used for a given year. Mr. Burkholder responded the City was currently contracting with two different firms, so in the event one firm was too busy the City could rely on the other Contract Engineer.

VI. ADJOURNMENT

Hearing no further business before the Commission, Chairman Delwiche adjourned the meeting at 8:48 pm.

Minutes prepared by Dylan Becker, Planner I