



**CITY OF MANITOU SPRINGS
PLANNING COMMISSION
REGULAR MEETING MINUTES
APRIL 11, 2018**



I. CALL TO ORDER and APPROVAL OF AGENDA

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 6:06 pm and declared a quorum present. The following Commission members attended:

PRESENT: Chair ALAN DELWICHE
Vice Chair JEANNE VROBEL
Commissioner GLORIA LATIMER
Commissioner LORI BURRIS
Commissioner JULIE WOLFE (6:08 p.m.)
Alternate Commissioner BRYANT “TIP” RAGAN

ABSENT: Commissioner MIKE CASEY (excused)
Commissioner JULIA SIMMONS (excused)

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

GUESTS: Robert Todd, City Council Liaison
Katheryn Sellars, City Attorney’s Office (attended via conference call)

II. APPROVAL OF MINUTES

ITEM 1. March 14, 2018

MOTION:

Commissioner Latimer moved to approve the March 14, 2018 Regular Meeting Minutes of the City Planning Commission, as presented.

SECOND:

Vice Chair Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 4-0. Commissioner Ragan abstained as he was not present for the March 14, 2018 Regular Meeting of the City Planning Commission.

At this time, Commissioner Wolfe took her seat at the dais.

III. NOTICE OF COUNCIL ACTION

ITEM 2. ORD - Ordinance Clarifying the Hotel/Motel Definition in the Zoning Code. The date for First Reading at City Council has not been determined.

ITEM 3. ORD - Ordinance Providing for Processing Both Bed & Breakfasts and Vacation Rentals Per Chapter 18.89 in the Zoning Code. The date for First Reading at City Council has not been determined.

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

IV. UNFINISHED BUSINESS

ITEM 4. RE 1754 – Rezone (Commercial to High Density Residential – Public Hearing) – 110 El Paso Boulevard – Cristine Gritz, Applicant

Michelle Anthony, Senior Planner, presented the Staff Memorandum dated April 6, 2018. Ms. Anthony stated the applicant was requesting a six month (6 mo.) postponement of the request, until the October 10, 2018 Regular Meeting of the City Planning Commission in order to determine the best course of action regarding the property.

MOTION:

Commissioner Ragan moved to postpone RE 1754 until the October 10, 2018 Regular Meeting of the City Planning Commission.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

V. NEW BUSINESS

ITEM 5. V 1802 – Variance (Lot Size/Density) – 454 El Paso Boulevard – Shawn and Lisa Conary, Applicants

Michelle Anthony, Senior Planner, presented the Staff Report dated April 6, 2018.

Commissioner Burris inquired if these units would become a part of the vacation rental operation. Wade Burkholder stated the unit was intended to be utilized at a vacation rental at some point, but it was currently leased under a long-term rental.

Commission Wolfe stated, regarding the first finding pertaining to hardship, she did not feel the explanation provided by Staff adequately expressed what hardship the Applicants would face should the request not be granted and inquired if any hardship had been found which applied to the law the Commission was supposed to uphold. Ms. Anthony responded this finding was a hard one to make, but felt the Commission could look at it from the standpoint there was otherwise no opportunity to utilize the already existing square footage without likely causing a lack thereof on another property and it was ultimately up to the Commission to determine whether or not that amounted to a hardship.

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

Shawn Canary, 480 Bear Creek Road, Colorado Springs introduced himself.

Lisa Canary, 480 Bear Creek Road, Colorado Springs, stated Ms. Anthony had done a good job in summing up the details in the report and she was basically requesting the property be allowed to maintain the manner in which it had been operated for the past fourteen years (14 yrs.). Ms. Canary stated she and her husband had put in a lot of work and performed many improvements on the property and wanted to continue to make the property a desirable place to be.

Commissioner Latimer inquired if the ceiling height had been adjusted in the unit which had a very low ceiling, because, as she recalled from the Applicant's prior request before the Commission, this had been the case. Ms. Canary responded the ceiling had not been altered and commented an individual of normal height could easily stand in the space and would only be difficult for a taller individual of six foot, two inches (6' 2") to comfortably stand in the unit. Ms. Canary stated, at this time, the intention was to utilize the space for long-term rental, but wanted to keep the vacation rental option open should this change in the future.

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

Dale Latty, 511 High Street, stated the Housing Advisory Board was looking for ways to increase affordable housing in the City and the Board was working to put forward an accessory dwelling unit ordinance this year which would apply in a situation like this one. Mr. Latty stated the ordinance would essentially allow for an interior expansion without expansion to the exterior, a separate addition to an existing structure, or an entirely separate dwelling unit and looked forward to Code work which would further ease these types of situations.

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

Commissioner Burris commented the Applicants had invited her in to the home while walking by one day and the home looked beautiful. Commissioner Burris stated she felt the Applicants had done a wonderful job with the property.

Vice Chair Vrobel inquired if the Commission could approve the request for a variance while not allowing the unit to become a vacation rental. Ms. Anthony responded the Commission had already approved the unit for vacation rental under the Minor Conditional Use Permit which stated the unit could be converted to this use in the future. Ms. Anthony stated if the Commission wanted to do so, they would need to base it on something solid and legal.

Commissioner Wolfe inquired if the Commission could condition the variance to bar the unit from being used as a vacation rental. Mr. Burkholder stated the Commission would have to modify the existing Conditional Use. Ms. Anthony commented she did not think the Commission could condition the variance in a way that it applied to the Minor Conditional Use Permit.

Vice Chair Vrobel inquired if the only option the Commission had was to either approve or deny the request. Ms. Anthony stated the use of the unit as a vacation rental was a separate issue. Mr. Burkholder stated the question was whether or not the unit was permissible. Ms. Anthony inquired if the unit was permissible for long-term lodging, what made it not permissible for use as a vacation rental and stated this was something the Commission should think about regarding the request.

Commissioner Ragan stated he felt comfortable approving the request because the Commission had already approved the Minor Conditional Use Permit and felt the benefits to the community outweighed any negative impacts of allowing the unit to be used for short-term rental.

Vice Chair Vrobel stated her biggest concern was what would happen when the current property owners sold the property in the future. Commissioner Ragan stated he did not think Minor Conditional Use Permits ran with the land. Ms. Anthony commented Minor Conditional Use Permits did run with the land and transferred to the new owners should the property be sold, unless otherwise stated in the approval. Vice Chair Vrobel commented her concern was having three (3) vacation rentals on one property in a residential neighborhood and felt this was not the original intent of the Code.

Chairman Delwiche inquired if the Commission had only approved two (2) of the units for vacation rental and left the option for the third unit, should it be verified as a legal unit, to operate as a vacation rental, as well. Ms. Anthony confirmed. Vice Chair Vrobel commented when the Commission had approved the Minor Conditional Use Permit, she had thought it was highly unlikely the third unit would be verified as a legal unit and she had been wrong in thinking so.

Commissioner Wolfe stated her concern was the Commission's response to finding an undue hardship and setting a precedent in which anyone who had an illegally operated or non-compliant rental could get approved because the Commission had decided, since it had been operating for some time, it should just be approved. Ms. Anthony stated the Commission would be approving a very specific request and set of circumstances which only applied to this property and did not feel the Commission would be setting a precedent.

Commissioner Ragan stated he felt the request was unique enough that he was not real concerned about setting a precedent, but understood and would agree with Commissioner Wolfe if this was not the case.

MOTION:

Commissioner Latimer moved to approve V 1802 to allow a lot size/density variance for three (3) dwelling units on this 12,838 ft² lot at 454 El Paso Boulevard with the condition that the property owners comply with all other approval conditions from MiCUP 1704 and the following findings:

1. That the representations in the application are valid and the application has met the criteria established in Section 18.32.010* of the Zoning Code;
2. That the reasons set forth in the application justifies the granting of the variance and the variance is for the minimum that will make possible the reasonable use of the land;
3. That the granting of the variance will be in harmony with the general purpose and intent of Plan Manitou and the Zoning regulations and would not be injurious to the neighborhood or otherwise detrimental to the public welfare.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

ITEM 6. MiCUP 1801 – Minor Conditional Use (Vacation Rental) – 312 Clarksley Road – Jeffrey Warren, Applicant

Michelle Anthony, Senior Planner, presented the Staff Memorandum dated April 6, 2018. Ms. Anthony stated the applicant was requesting a two month (2 mo.) postponement of the request, until the June 13, 2018 Regular Meeting of the City Planning Commission as they would be out of the country and unable to attend a meeting until this date.

MOTION:

Vice Chair Vrobel moved to postpone MiCUP 1801 until the June 13, 2018 Regular Meeting of the City Planning Commission.

SECOND:

Commissioner Ragan seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

VI. OTHER BUSINESS

ITEM 7. Wayfinding Signage Discussion – Kristin Cypher, C+B Design

Michelle Anthony, Senior Planner, stated she had a conversation with Ms. Cypher and it was determined she would send the Commission information by email to receive feedback. Ms. Anthony stated she may attend the next meeting, but after discussing the matter with Ms. Cypher they both felt it made more sense time-wise to do the work electronically. Ms. Anthony stated the Commission should expect something from Ms. Cypher in the next week.

ITEM 8. Recommendation to City Council Regarding Code Amendments to Regulate Sexually-Oriented Businesses (SOBs)

Michelle Anthony, Senior Planner, presented the Staff Memorandum dated April 6, 2018 and went over a spreadsheet the Planning Department had created regarding the Code changes.

Commissioner Wolfe inquired if there was a difference in what was written in the blue column versus the green column in regard to landscaping on the spreadsheet, as they appeared to essentially say the same thing and asked if there could be better distinction between the two. Commissioner Wolfe also inquired, if the City was considering regulations that applied only to sexually oriented businesses, if this could open the City up to potential lawsuits. Ms. Anthony responded the City Attorney stated an argument could be made that the buffering and screening confined activity to the property and helped prevent spillover to adjacent properties. Ms. Anthony commented as long as the City tied this to the adverse secondary impacts, it was supported.

Commissioner Wolfe inquired if the City could do this even though they did not look at other adverse secondary impacts of other businesses in the Commercial Zones. Ms. Anthony responded there were no

adverse secondary impacts of the same type as what had been adjudicated for sexually oriented businesses and used an example of a retail store which did not have the same adverse secondary impacts.

Commissioner Wolfe inquired if a liquor store did not have adverse secondary impacts, just as sexually oriented businesses did. Ms. Anthony responded liquor stores had the potential for adverse secondary impacts, but nowhere near as much as the potential impacts of a sexually oriented business.

Commissioner Wolfe inquired if the City Attorney had any concerns about how vague it sounded to use the wording "to the extent feasible", as it seemed rather discretionary and could potentially open the City up to lawsuits. Ms. Anthony responded the final wording needed to be worked out and the City Attorney was working on doing just that. Ms. Anthony stated what she was trying to convey there, was if there was only five feet (5 ft.) between the property line and the building, the owner would not be able to do the same thing as someone who had twenty-five feet (25 ft.) between the building and the property line. Ms. Anthony commented she did not think the City could outright require sexually oriented businesses to install a five to ten foot (5 - 10 ft.) wide, at whatever height, berm and questioned whether something like this could even be implemented given the space it would require.

Commissioner Wolfe inquired if the City could impose a requirement that seventy-five percent (75%) of the total lot coverage be landscaped. Ms. Anthony responded, in regard to general landscaping, this would be applied to every property in the Commercial district, whereas now it only applied to Major Developments where the existing landscape and lighting requirements were located in the Code. Ms. Anthony stated new land use changes in the Commercial Zone would also be required to install physical berms and there would also be additional landscape requirements through a Code amendment.

At this time, Ms. Anthony continued her presentation regarding the Code change spreadsheet.

Commissioner Wolfe inquired, in regard to the Sign Code changes proposed in the spreadsheet, if there were any court cases in the county in which a municipality had prohibited signs depicting sexual activities which had held up in court or if this was something the City would be testing out. Ms. Anthony responded it would be helpful to have the City Attorney weigh in and address the issue and, at this point, he had only generally covered the ways in which the City could, or could not, regulate sign content for sexually oriented businesses. Ms. Anthony commented, however, the City currently had an ordinance in place regarding obscenity which was a rather universal restriction imposed by other municipalities, as well as, the City of Manitou Springs.

Ms. Anthony stated the City Attorney was more comfortable with imposing general restrictions which applied to all of the Commercial district as opposed to just sexually oriented businesses, because it was much less likely to result in a legal challenge.

Vice Chair Vrobel inquired if the City could simply say no human silhouettes were to be permitted for display. Commissioner Wolfe commented this was a First Amendment issue which was why the City could be sued regarding sign content restrictions which only applied to sexually oriented businesses. Ms. Anthony responded if the City imposed a no depiction of body parts regulation, there could be no faces or any other body parts which could be displayed, and was the reason why Staff had tied this to specific parts of the existing Code and specific acts which had been imposed on the interior of buildings regarding obscenity. Ms. Anthony stated she felt the City Attorney was fairly comfortable with this method.

Commissioner Latimer inquired if the Staff Recommendations from the spreadsheet would be included in the Code. Ms. Anthony responded the sections from the spreadsheet would be added to the proposed

ordinance and, if approved, would add sections to the Sign and Zoning Code. Commissioner Latimer stated the Commission needed to work on defining obscene signage or displays for the Definitions section. Ms. Anthony stated there was already a definition for obscene under the current Sign Code.

Commissioner Wolfe inquired how the Commission was permitted to restrict the building color of sexually oriented businesses but not for other commercial properties. Kathryn Sellars, City Attorney's Office, responded there was case law which stated it was legal to do so, but it was not without risk as the City could still be sued, however, it was safer since there was other case law to back it up.

Commissioner Wolfe inquired if case law stated whether municipalities were permitted to impose building color restrictions on commercial properties or if municipalities were permitted to impose building color restrictions on sexually oriented businesses. Ms. Sellars responded the City could impose building color restrictions just on sexually oriented businesses as this was supported by case law.

Commissioner Wolfe inquired, regarding sexually oriented business signage, if it was acceptable for the City to impose a regulation there be no signage above the roofline, whether they had the space or not to do so, when other commercial properties were afforded this right. Ms. Sellars responded she had a little bit of concern regarding this and the City would need to be able to tie it to the adverse secondary impacts for it to be solid. Ms. Anthony responded the City Attorney had not provided comment on this specifically, which was why she thought it was okay. Commissioner Wolfe stated she felt it was too risky to amend the Code on this issue and asked if any of the other Commissioners had thoughts on how to tie this to the adverse secondary impacts.

Commissioner Wolfe inquired, regarding maximum building height, if the City could impose restrictions on allowing additional stepped building height for sexually oriented businesses but not for other commercial properties. Ms. Sellars responded the provision would need to be tied to the adverse secondary impacts and was aware of some general case law involving those impacts and lowering property values which may be useful. Ms. Sellars stated the City could make the argument that the taller the building was, the more visible it was and, therefore, seen by more people which adversely impacted surrounding property values. Ms. Anthony stated she felt this was reasonable.

Commissioner Wolfe commented the City could pass the law and be a great test case for other municipalities.

Commissioner Ragan inquired, regarding the language on Page Three (pg. 3) of the ordinance pertaining to the specified sexual activities definition, whether it was necessary to include the terms "normal or perverted" because he felt there could be potential issues due to the wide range in which people define those terms. Commissioner Wolfe stated she agreed. Ms. Sellars responded she saw no issue with the removal of those words. Chairman Delwiche stated he did not see any value in keeping them in the proposed ordinance.

Commissioner Ragan inquired, regarding Page Seven (pg. 7) of the ordinance pertaining to hours of operation, if there needed to be clarification in terms of whether 2:00 a.m. referred to the morning of the next day or the end of the previous night. Commissioner Latimer commented she recalled the Commission had discussed imposing a Sunday closure for sexually oriented businesses. Commissioner Wolfe commented she also thought the Commission had discussed imposing the same hours of operation as those which were imposed on the retail marijuana operations. Commissioner Ragan stated he felt the language was ambiguous and needed to be worded more clearly.

Commissioner Ragan stated, regarding Page Nine (pg. 9), Section Two, Letter D, Number Two of the proposed ordinance pertaining to the separation distance requirements, he felt it was better to use the wording “house of worship” as opposed to “church” because at some point there may be a temple, synagogue, mosque, etc. which operated in the City and it seemed unfair to assume that everyone was a Christian. Ms. Anthony inquired if the wording would say “house of religious worship” as a means of preventing residents from claiming their own house as a house of worship simply because they worship or pray in it was amenable to the City Attorney. Ms. Sellars responded she was amenable to the change of wording. Commissioner Ragan commented he felt it was better to use the wording “church, synagogue, mosque, temple, or any similar place of worship”. Ms. Sellars stated she felt this wording was actually better than “house of religious worship”.

Commissioner Latimer inquired, regarding Page Four (pg. 4), Number Eight pertaining to issuance or denial, if there was anything missing as it seemed to end abruptly following the word “or” at the end. Ms. Anthony responded it was complete and was the end of the section.

Commissioner Latimer stated, regarding Page Five (pg. 5), Number Four pertaining to suspension and revocation, if it was beneficial to include legal substances such as alcohol and marijuana usage on the premises as grounds for suspension or revocation. Ms. Anthony responded alcohol was dealt with under another section of the proposed ordinance and, at this point, the City did not allow marijuana clubs to operate which meant the use was currently prohibited anyway.

Commissioner Wolfe inquired if the Code would allow patrons of sexually oriented businesses to consume alcohol on the premises. Ms. Anthony responded patrons would be prohibited, or not permitted, to consume alcohol on the premises and this provision was found on Page Seven (pg. 7), Letter F pertaining to general regulations.

Chairman Delwiche inquired if this would also be beneficial to include in the suspension and revocation section as well. Ms. Anthony stated she was amenable to including this in the suspension and revocation section of the proposed ordinance and would also include marijuana usage in the wording.

Commissioner Latimer stated, in regard to Page Seven (pg. 7) pertaining to age restrictions, she could see the age of admission to a sexually oriented business was restricted to at least eighteen (18) years of age, but did not see anywhere how this was to be enforced and inquired if it would be beneficial to include that no one be admitted without legal identification issued by a state or federal government. Ms. Sellars responded the Commission could state so in the proposed ordinance, but the obligation really fell on the operators to ensure the legal age of their patrons.

Commissioner Ragan inquired if there was a difference between being admitted to the establishment versus purchasing something from the establishment because a legal guardian could bring a five (5) year old into a liquor store, they just were not allowed to purchase anything. Ms. Anthony responded the intent was no one under the age of eighteen (18) was to be permitted admission or entrance into the establishment for any purpose.

Commissioner Ragan inquired if this could be construed as an unfair treatment since it was permissible in liquor stores. Commissioner Wolfe commented if any commercial property had more restrictions imposed on it than another commercial property, the City was open to a lawsuit over the distinction. Ms. Anthony responded the difference was that to consume alcohol, action must be taken in the form of physically grabbing a bottle, putting it to one’s lips, and drinking, whereas, with a sexually oriented business, a minor could consume whatever was being offered visually without having taken any action to do so.

Commissioner Ragan stated the only types of operations he could think of which may be similar were gambling establishments because they did not permit admission or entrance into their establishments for persons under twenty-one (21) years of age. Commissioner Ragan commented the idea there being that by simply entering a gambling establishment there was potential to be corrupted by its physical view.

Commissioner Wolfe inquired if the Code stated you could not bring a minor into a gambling establishment. Commissioner Ragan stated if you looked at the Code for Cripple Creek, it stated so. Commissioner Wolfe commented she felt more comfortable with the situation knowing this because it meant the City was likely protected should there be a lawsuit. Ms. Sellars responded the City simply needed to make sure no one under the age of eighteen (18) was admitted to a sexually oriented business and agreed with Ms. Anthony regarding persons being exposed simply by entering into the establishment.

Commissioner Latimer, referring to where sexually oriented businesses may be located, stated the retail marijuana ordinance contained language which stated “compatibility with existing publicly owned land or building” and inquired if this would be beneficial to include in the proposed ordinance. Ms. Anthony responded the language was too vague, there was too much discretion involved, and it was difficult to determine who was responsible for enforcement, therefore, it was not recommended or advised by the City Attorney.

Chairman Delwiche inquired, in regard to Page Nine (pg. 9) pertaining to where sexually oriented businesses may be located, if the Commission could change the wording “not within any building or structure that contains a residential or lodging unit” to “not on any property that contains residential or lodging units”. Ms. Anthony noted the request.

Commissioner Latimer inquired how the Commission felt regarding restricting the hours of operation for sexually oriented businesses to not permit their operation on Sundays. Commissioner Wolfe commented she felt if the City had the right to restrict the hours of operation for retail marijuana establishments, the City should be permitted to similarly restrict the hours of sexually oriented businesses and inquired if the Commission could do so without legal issues. Ms. Anthony responded retail marijuana stores were not federally protected due to the fact they were technically illegal at the federal level, and was only legal at the state level, which meant the City was basically able to impose regulations regarding hours of operation with much more leniency. Ms. Anthony stated if the Commission wanted to discuss regulating the hours of operation for sexually oriented businesses it could certainly do so, but to tie it to the retail marijuana operations was uncertain at best.

Commissioner Ragan stated other types of businesses had restrictions on their hours of operations, like the 11:00 pm closure for restaurants, and inquired if the Mate Factor’s ability to operate 24/7 was a special permission granted to them by the City. Ms. Anthony responded it was not.

Chairman Delwiche commented he did not feel comfortable restricting the hours of sexually oriented businesses so they could not operate on Sundays and commented he hated the Sunday restrictions on liquor stores when they were in effect. Ms. Sellars stated sexually oriented businesses were unique and could not be compared to any other type of use and the hours of operation stated in the proposed ordinance were selected because there was case law which backed up these hours as reasonable. Ms. Anthony stated if the Commission was interested in proposing stricter hours than this, it should be discussed with City Council. Commissioner Wolfe stated she was opposed to restricting the hours any further than what had been recommended in the proposed ordinance. Commissioner Burris stated if the City was going to be inclusive,

there were other religions which did not hold their day of worship on Sunday and it seemed unfair to impose the Sunday restrictions simply because this was the Christian day of worship.

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

Ron Batzel, 456 Winter Street, stated it was his opinion that sexually oriented businesses would be detrimental to property values and tourism, and inquired if the proposed ordinance would open up all of the Commercial Zone to these types of operations. Ms. Anthony responded there had been a lot of discussion regarding location restrictions for these types of businesses and the City had to look at those restrictions and the impact they had on availability in order to ensure there were at least one or two (1 – 2) properties in the Commercial Zone in which this type of business could potentially locate for the ordinance to hold any legal muster. Ms. Anthony stated due to the myriad of location restrictions proposed in the ordinance, the two (2) locations which remained available in the Commercial Zone were a couple of parcels on Higginbotham Flats off of Highway 24 and a parcel near the Garden of the Gods Trading Post on Beckers Lane.

Mr. Batzel inquired if the current recommendation for potential locations for sexually oriented businesses was the two (2) locations just outlined by Ms. Anthony. Ms. Anthony responded this was the current recommendation of the Planning Commission. Chairman Delwiche responded the recommendation would be an either/or recommendation for either of the properties or just one of the properties. Mr. Batzel commented he was concerned with the closure of the Manitou and Pikes Peak Cog Railway and the dwindling business opportunities for the Iron Springs Chateau which could potentially lead to a sexually oriented business opening at one of these locations near his house. Chairman Delwiche responded the entire Ruxton Avenue corridor was not being considered for potential locations.

Jay Rohrer, 208 Ruxton Avenue, stated City Council's perspective on why the ordinance was once again before the Planning Commission was because there were some on City Council who did not feel Higginbotham Flats was an appropriate location for these types of businesses because of the traffic on Highway 24 and the area was seen as one of the western gateways into town. Mr. Rohrer stated there were also some on City Council who suggested hiding these businesses in plain sight, so to speak, within the Commercial Zone and felt the likelihood of a sexually oriented business locating in the City was fairly small.

Commissioner Wolfe inquired where Mr. Rohrer saw the best location for these businesses and why. Mr. Rohrer stated there was no good solution at the end of the day for a community which did not have an industrial area in which a business like this could locate with minimal public pushback. Mr. Rohrer stated his personal position was to hide sexually oriented businesses in plain sight within the Commercial Zone and commented, as an example, the former 7-11 building on Manitou Avenue would be a great potential location.

Commissioner Wolfe stated she thought this was the original recommendation the Planning Commission had sent to City Council which was rejected. Mr. Rohrer responded he honestly did not recall this and only recalled the last recommendation from the Commission which proposed Higginbotham Flats.

Dale Latty, 511 High Street, stated, in regard to the wording of Alternative #2 for where sexually oriented businesses shall be located, he wanted to point out if the Commission were to include "not within any building or structure that contains a residential or lodging unit" under the list of properties included in the five-hundred foot (500 ft.) separation distance, it would likely eliminate Higginbotham Flats as a potential location where these types of businesses may operate. Mr. Latty commented he felt it was an inevitability

that a business like this would open in the City at some point in the future and stated he had heard through an acquaintance at Bethesda which owns one of the lots on Higginbotham Flats that the lot was currently under lease with an option to purchase as of the last six weeks.

Commissioner Wolfe inquired if Mr. Latty had locations in mind where a sexually oriented business could potentially operate. Mr. Latty stated he knew of four (4), but did not want to state where they were at this time because of perceived real estate implications and he would discuss the matter with Planning Staff at a future time. Mr. Latty stated he would like to see the Commission table the ordinance until other locations came to the surface.

John Graham, 9 Dudley Road, stated the Save the Flats group had found over the years that Higginbotham Flats was a useful space for staging for emergencies, such as for wild fires or flooding, and felt this was the best use of the land for the City. Mr. Graham stated he felt the City should pursue an intergovernmental agreement with El Paso County and the City of Colorado Springs in which they would bear the burden for the City of Manitou Springs by allowing sexually oriented businesses interested in operating in Manitou Springs to operate in their municipalities in exchange for real estate, thereby saving the City of Manitou Springs from this burden. Mr. Graham stated he recalled the City Attorney had pursued this a few years ago, but was unable to get very far in the matter and felt the City should again pursue this option.

Michael Maio, 3 Dudley Road, stated he was a resident of the Agate Hill Historic District and he had issue with utilizing Higginbotham Flats as a potential location for these businesses. Mr. Maio stated his first objection was a portion of the flats was already zoned as either Parks or Open Space and the Parks Trails and Open Space Master Plan directly listed this area for a future park. Mr. Maio stated he felt the area would be unwelcoming to families and children should a sexually oriented business open near the proposed park.

Mr. Maio stated his second objection was if a sexually oriented business were to open in close proximity to the Agate Hill residential and historic neighborhood, it would expose the residents and children to an unhealthy environment and would make the neighborhood less desirable which could negatively impact property values.

Mr. Maio stated his third objection was that sexually oriented businesses attracted more deviant behaviors as they were often associated with and attracted crime, prostitution, and more. Mr. Maio felt allowing a sexually oriented business to operate in such a visible location would deter visitors and damage the City's reputation. Mr. Maio urged the Commission to remove Higginbotham Flats from the potential locations in which such a business could operate.

Commissioner Wolfe inquired how Mr. Maio felt about a sexually oriented business operating in the vacant 7-11 building on Manitou Avenue. Mr. Maio responded he felt if the City went the route of hiding these businesses in plain sight, it would need to be in a less visible and more obscure location and had some concern about traffic volumes.

Commissioner Wolfe commented she was more concerned about traffic accidents with people pulling in and off the highway to patronize a sexually oriented business on Higginbotham Flats and inquired if Mr. Maio would be opposed to a sexually oriented business operating on Manitou Avenue. Mr. Maio stated he would find this location less objectionable than Higginbotham Flats because the site was a gem and felt the impact would be less if a sexually oriented business were to open on the avenue at a location like the vacant 7-11 building.

Evelyn Waggoner, 328 Manitou Avenue, stated she owned the Green Willow which was across the street from the former 7-11 and she was absolutely opposed to allowing a sexually oriented business to operate at the location. Ms. Waggoner stated a sexually oriented business operating at that location would ruin her business and her property was already in one of the historic districts which currently restricted the possibilities for the use of the property. Ms. Waggoner commented she did not feel like the area surrounding her property was very commercial as there were numerous townhomes and other residences in extremely close proximity.

Commissioner Wolfe inquired if Ms. Waggoner preferred Higginbotham Flats as a location for a sexually oriented business. Ms. Waggoner responded she did not like the idea of locating this type of business on Higginbotham Flats and felt the area near the Garden of the Gods Trading Post was the most suitable location. Ms. Waggoner also stated she felt it was a good idea to increase the separation distances to one-thousand feet (1,000 ft.), similar to the federal regulations regarding retail/medical marijuana and schools. Ms. Anthony responded the location of the former 7-11 was off the table under the current proposal because it was already within five-hundred feet (500 ft.) of the High School.

Mimi Anderson, 328 Manitou Avenue, stated she was the manager at the Green Willow and inquired if the Commission had considered the medical ramifications of pornography on children. Ms. Anderson stated she wanted the City of Manitou Springs to rise above the level of allowing these types of businesses to operate in the City and inquired why the City could not simply outlaw the operation of these businesses. Commissioner Wolfe commented the City could not do so because it would open the City to lawsuits pertaining to First Amendment protections. Ms. Anderson responded she felt it was worth the risk to protect the City's children and felt the community was above allowing these types of businesses to operate.

Ms. Anderson stated she had a plethora of information regarding the impacts of pornography on children and would be happy to supply the information to the Commission should they desire it. Ms. Anderson commented allowing these types of business to operate in the City would bring in prostitution and other adverse secondary impacts.

Dinah Mann, 110 Capitol Hill Avenue, stated she was a member of the Save the Flats Board and she was opposed to allowing sexually oriented businesses to operate on Higginbotham Flats. Ms. Mann stated she was not necessarily opposed to sexually oriented businesses, but opposed the Higginbotham Flats location because of open space usage, park usage, and the fact the area was seen as a gateway to the City. Ms. Mann stated there were also things the City could do to reduce those negative secondary impacts and she was currently researching the topic.

John Shada, 103 Cave Avenue, stated his suggestion to the Commission was to select a piece of property which was very unlikely to be developed for this use and the City should re-double their effort to work out an intergovernmental agreement with neighboring municipalities to regulate sexually oriented businesses. Mr. Shada also felt that Higginbotham Flats should not be considered as a possible location.

Mr. Shada stated he had recalled in the past that the City of Colorado Springs and El Paso County were not interested in an intergovernmental agreement, but he had spoken off the record with the City Attorney in the past and he had shown interest in the subject. Mr. Shada commented the City Attorney had also told him during these discussions he was not aware of any other municipality which had handled the matter in this way and felt it was a novel idea. Mr. Shada stated he did not feel the intergovernmental agreement would come about from Staff making a few phone calls and urged the Commission to involve the Pikes Peak Area of Certified Governments as this was the best route possible and this is exactly what this group was designed to do.

Mr. Shada stated the intergovernmental agreement should mainly be reached with El Paso County where the surrounding municipalities, including Colorado Springs, and in such a way these municipalities may direct prospective sexually oriented business operators to certain zone designations within the county. Mr. Shada commented this may be a better way to keep these types of businesses out of Manitou Springs.

Robert Todd, 20 Manitou Terrace, stated the City Council decision to send the ordinance back to the Planning Department and Planning Commission was due to the fact they did not want Higginbotham Flats to be a potential location for a sexually oriented business and felt there were other locations which would better suit this type of enterprise.

Mr. Todd stated he had done some research over the previous few days regarding what was trending on social media about the City and sexually oriented businesses and presented hard copies of the comments made by residents and local business owners to the Commissioners.

Mr. Todd stated, regarding site selection and Higginbotham Flats, the proposed ordinance stated there must be a five-hundred foot (500 ft.) separation distance from open space and parks and there was an item in the Parks Open Space and Trails Masterplan which intended to put both a park and designate open space at this location.

Mr. Todd stated, in regard to Page Two (pg. 2) number eleven (#11) of the comments made by residents on social media, the storage units on Higginbotham Flats had many conditions imposed upon them and the City seemed unable to enforce those conditions. Mr. Todd stated there was good reason for concern as to whether the City would even be able to enforce any conditions imposed on sexually oriented businesses.

Mr. Todd stated he was also in agreement with Mr. Shada regarding an intergovernmental agreement with El Paso County and surrounding municipalities and, contrary to Mr. Rohrer's opinion, felt the sexually oriented business industry was interested in the City. Mr. Todd stated he was aware the price of Higginbotham Flats had tripled since this item first came up last September and felt the odds of a sexually oriented business coming to operate in Manitou Springs was pretty good.

Mr. Todd suggested deliberate time be taken to outline the schedule going forward and to include any stakeholders in the invitations.

Tom Borrelli, 136 Cave Avenue, urged the Commission to limit the square footage of the property sexually oriented businesses may operate within as this may be a means to limit these operations to book and toy stores.

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

Chairman Delwiche stated he liked the idea of the intergovernmental agreement, but did not feel it was very feasible or would take an enormous effort to get through and felt most comfortable supporting option two to limit the location of where sexually oriented businesses may operate as the parcel located at the end of Beckers Lane, near the Garden of the Gods trading post, as it was the least intrusive.

Commissioner Latimer stated she felt the Commission was faced with a no-win scenario in regard to sexually oriented businesses and liked the idea of an intergovernmental, but felt it was unlikely to actually occur. Ms. Latimer stated the whole discussion regarding sexually oriented businesses came out of a desire

to avoid being sued, not that anyone really wanted these types of businesses in town. Commissioner Latimer commented the City would be in jeopardy without anything in place.

Vice Chair Vrobel stated she agreed with Commissioner Latimer's points and felt this was a tough situation for the City to be in as most people do not want a sexually oriented business in the community. Vice Chair Vrobel stated she felt it was worth exploring the intergovernmental agreement option and taking some time to do so.

Commissioner Ragan stated he generally agreed with the other Commissioner's comments and stated this had actually been an ongoing discussion for the last two (2) years and there had been a few moratoria regarding these types of operations. Commissioner Ragan stated he felt this was a no-win situation and understood the public's fight against allowing these types of operations.

Commissioner Ragan also stated he felt it was worth pursuing the intergovernmental agreement, but there needed to be something in place in the meantime to ensure things did not get out of hand and the City was not found in an undesirable situation. Commissioner Ragan stated he also wanted to point out the City of Colorado Springs already had ordinances in place and there were already sexually oriented businesses in operation in their jurisdiction and had doubts the City of Colorado Springs would simply agree to the arrangement just to protect the City of Manitou Springs. Commissioner Ragan commented the City would need to offer something in return and the City needed to have real expectations for the outcome of those discussions.

Commissioner Wolfe stated she did not feel Higginbotham Flats was an ideal location for a sexually oriented business and was in support of Alternative Location #2 near the Garden of the Gods Trading Post at the end of Beckers Lane.

Commissioner Burris stated she was in agreement with the other Commissioners.

Chairman Delwiche stated a First Amendment lawsuit over sexually oriented businesses would be devastating to the City and would open the floodgates for these types of businesses in the community.

Commissioner Latimer inquired if Ms. Anthony could explain the intergovernmental agreement process and how this would work, or not work. Ms. Anthony responded she had contacted both the City of Colorado Springs and El Paso County and there had been no interest from either party, but felt the effort was worth pursuing further. Ms. Anthony stated she also wanted the City Attorney to look it over and advise City Council because, in previous conversations, he had indicated he was not sure an intergovernmental agreement would pass muster. Ms. Sellars responded the intergovernmental agreement route was an untested theory and the obligation for each local government to allow at least one sexually oriented business to operate was independent of one another. Ms. Sellars stated there was doubt an intergovernmental agreement would work because of this and the City would be venturing into unknown territory. Ms. Anthony stated her concern was the sexually oriented business industry, because the intergovernmental agreement was uncharted territory and there was no case law, and they would not want other communities to follow suit. Ms. Anthony commented the industry would challenge the agreement as a whole and the City would then be involved in an expensive legal battle which had nothing to do with them actually wanting to locate here.

Vice Chair Vrobel inquired if the Commission could forward a recommendation to allow City Council to select a second location. Ms. Anthony responded forwarding a recommendation without a location was not

appropriate, but the Commission could select one location and leave the other location up to the discretion of City Council.

Ms. Anthony stated there would likely be similar discussions in City Council Session as those which were heard at this meeting and, without taking some sort of action on this matter and without the moratorium in place, a sexually oriented businesses operator only needed to apply for a business license and the City would be forced to allow them to operate in any zone, even residential zones as was permitted under Federal Law and there would not be anything anyone could do about it. Ms. Anthony commented it was a hard pill to swallow, but Staff was not trying to open the City up to these types of operations, but to control and protect it as much as possible.

Commissioner Ragan stated a similar situation had arisen in the City regarding retail marijuana in which the City had decided to permit two (2) retail shops to operate and Colorado Springs had decided not to allow any and nearly fifteen (15) sprung up in the no-man's land between the two municipalities. Commissioner Ragan commented he was thankful the City had regulated it in the way they did because Colorado Springs was still paying for their mistakes.

MOTION:

Commissioner Ragan moved to forward a recommendation to City Council for approval of Alternative Location #2 at the end of Beckers Lane with the language updates set forth in the proposed ordinance and the City Planning Commission encouraged City Council to explore other options regarding the issue such as an intergovernmental agreement with El Paso County and the City of Colorado Springs.

SECOND:

Commissioner Latimer seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

VII. ADJOURNMENT

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

Minutes Prepared by Dylan Becker, Planner I