



**CITY OF MANITOU SPRINGS  
PLANNING COMMISSION  
REGULAR MEETING MINUTES  
October 10, 2018**



**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 JULIE WOLFE  
Commissioner LORI BURRIS  
Commissioner MIKE CASEY  
Commissioner JULIA SIMMONS

**ABSENT:** Commissioner GLORIA LATIMER (excused)

**STAFF:** Barbara Cole, Interim Planning Director  
Michelle Anthony, Senior Planner  
Dylan Becker, Planner I

**GUESTS:** Robert Todd, City Council Liaison

**II. APPROVAL OF MINUTES**

**ITEM 1.** August 8, 2018

**MOTION:**

Commissioner Wolfe moved to approve the Regular Meeting Minutes of the August 8, 2018 Planning Commission Meeting, as presented.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 3-0. Commissioner Burris, Commissioner Casey, and Commissioner Simmons abstained as they was not present for the August 8, 2018 Regular Meeting of the City Planning Commission.

**III. NOTICE OF COUNCIL ACTION**

**ITEM 2. MJR 1801** – Major Development (Hotel) – 114 Manitou Avenue – Nicholas Pirkl, Design2Function, on behalf of Avik Amin, Owner. The Planning Commission recommendation was considered at the September 4, 2018 City Council Meeting and approved by City Council by a vote of 5-2.

**ITEM 3. RE 1754** – Rezone (Commercial to High Density Residential – Public Hearing) – 110 El Paso Boulevard – Cristine Gritz, Applicant. The Planning Commission recommendation was scheduled for First Reading on September 4, 2018 and was approved by a vote of 7-0. Second Reading is scheduled to be heard by City Council at the October 16, 2018 City Council Meeting.

**ITEM 4. SW 1801** – Subdivision Waiver (Encroachment into No Build Area) – 2 Keithley Place – Jerry Peterson, Architectural Concepts, on behalf of Elizabeth Crawford, Owner. The Planning Commission recommendation is scheduled to be heard by City Council for First Reading at the October 16, 2018 City Council Meeting. Second Reading is scheduled to be heard by City Council at the November 5, 2018 City Council Meeting.

*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**

There was no Unfinished Business to Discuss.

#### **V. NEW BUSINESS**

**ITEM 5. MNS 1801** – Minor Subdivision (Replat) – 708 Manitou Avenue – Kyle Fenner on behalf of Manitou Springs Metropolitan District, Applicant

Michelle Anthony, Senior Planner, presented the Staff Report dated October 4, 2018.

Commissioner Casey inquired the definition of a tract. Ms. Anthony responded a tract was generally defined as an area of land reserved for future subdivision and conveyance.

Barb Cole, Interim Planning Director, commented the problem with creating a tract in any subdivision was they created more restrictive setback requirements because tracts were considered lots. Ms. Cole stated the setback requirements increased when using a tract as opposed to an easement and this meant there was less land which could be potentially developed.

Commissioner Wolfe inquired if this was the reason Staff had been opposed to the creation of tracts on this subdivision request, in preference of easements. Ms. Anthony responded Staff did not feel a tract was necessary, as an easement would accomplish the same goal without further restricting the buildable area of the lot. Ms. Anthony commented the City utilized tracts for things like open space and parks dedications and the City had not requested a tract be created in relation to this request. Ms. Cole commented detention ponds were also often placed in tracts.

Commissioner Casey inquired if an easement was a no-build zone. Ms. Anthony responded an easement was not necessarily a no-build area and the City often allowed sidewalks, retaining walls, driveways, and landscaping to encroach into easements. Ms. Anthony commented the City would not allow a building to be placed on an easement and there were certain things which would be permitted to encroach into an easement which would not be permitted on a tract.

Commissioner Casey stated that, by definition, an easement was meant to allow access. Ms. Cole responded it depended on the type of easement as there were access easements, utility easements, and drainage

easements to name a few. Ms. Cole stated easements could be stacked on top of one another and were typically utilized for one or more purposes.

Chairman Delwiche stated, regarding Condition Number One, he had recalled the Commission had given Land Dedication credit to a past Applicant for dedication of a no-build area which was widely rejected by City Council as inappropriate. Ms. Anthony responded the City had accepted these types of dedications in the past, but the City was not required to accept the least developable portion of a property and, if there was a more sensitive area on the property which needed protection, the City had often tried to pursue this through the Land Dedications.

Chairman Delwiche inquired if the sensitive land in this request was protected anyway, as this was already a no-build area due to the steep slope. Ms. Anthony responded an applicant could always ask for a Subdivision Waiver to encroach into the no-build area which meant it was not protected simply because the slope was greater than thirty percent (30%).

Commissioner Wolfe inquired if the purpose of the dedication was to provide additional land to the City for preservation and public enjoyment. Ms. Anthony responded this was accurate and two (2) of the dedication categories were parks and open space.

Commissioner Wolfe stated this was interesting because a parking lot was not something many people would consider to be open space. Ms. Anthony responded the Creek Walk Trail fell under the purview of the Parks and Recreation Advisory Board and the Open Space Advisory Committee and the bank located near Fountain Creek regarding this property was identified as a sensitive area which the City would like to protect, preserve, and potentially utilize in the future for public enjoyment.

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

Kyle Fenner, 7190 Nautique Circle, Larkspur, introduced herself and stated this replat process had been initiated this past July under the administrative review process. Ms. Fenner stated in late September of this year, it was determined by one of the Interim Planning Directors the request should go to a Public Hearing and felt this was a huge about face from Staff. Ms. Fenner stated she would have prepared the request and application much differently had she known it would be before the City Planning Commission and felt this decision had caused more confusion and miscommunication to occur.

Ms. Fenner stated the mailed notifications to the neighbors had been mailed out on September 28, 2018 and she had received referral comments on October 3 and 4, 2018. Ms. Fenner stated the packet had then gone out on October 5, 2018 which left her little time to prepare and to make comments and changes to the request based on the comments received.

Ms. Fenner stated the reason this replat had come about was a need for the Metropolitan District to realign the building as shown in the preliminary site plan she had prepared for this meeting and intended to distribute to the Commissioners as a means to work the trail around this adjusted building alignment.

Ms. Fenner stated she also felt a ten foot (10 ft.) wide trail easement on the lot amounted to a significant amount of land and the lot only measured forty-three thousand square feet (43,000 ft<sup>2</sup>).

Ms. Fenner stated, regarding the required dedications, she was unclear on how the Open Space Dedication was calculated and wondered why, when the requirement was four percent (4%) for lots under fifty thousand square feet (50,000 ft<sup>2</sup>) and nine percent (9%) for lots which were larger, the Metropolitan District was

asked to donate land totaling this nine percent (9%) regarding this request when the lot only measured forty-three thousand square feet (43,000 ft<sup>2</sup>).

Ms. Fenner stated, regarding the easement or tract debate, the reason the Metropolitan District had decided to utilize tracts was because they could be counted towards the land dedication requirements whereas easements could not be counted towards the requirements.

Ms. Fenner stated, regarding the trail dedication and the replat, the Metropolitan District had dedicated a seven foot (7 ft.) wide area along the northern boundary of the property for the Creek Walk Trail and the Metropolitan District did not care whether this was considered an easement or a tract as long as they were given credit for the dedication in terms of the Open Space requirements.

Ms. Fenner stated there was not much open space on a parking lot of this size and, in most cases, there was a buy down or fees in lieu regarding these types of situations because the dedication was essentially not meaningful. Ms. Fenner stated because the dedication was located where it was located and the turn in was well protected, this was a good location for the spur trail to the creek bank and the Metropolitan District had no issues with a seven-foot (7 ft.) easement along the northern boundary of the property.

Ms. Fenner stated the map the Commissioners currently had depicted the trail as being dedicated, but this was never the long-term intent of the Metropolitan District and was only done as a means to determine how this dedication related to the proposed building. Ms. Fenner stated that, in doing so, they had discovered that the proposed building would encroach into the easement by roughly six inches (6 in.) and they would like to shift the easement over to accommodate the corner of the building. Ms. Fenner stated this amounted to twenty-three square feet (23 ft.<sup>2</sup>) of land.

At this time, Ms. Fenner distributed a rendering of a preliminary site plan depicting the intentions of the Metropolitan District regarding the property.

Ms. Fenner stated she was not a surveyor, but she and the Metropolitan District had discovered some technical errors, in looking over the original replat the previous year which they would like to correct in this replat. Ms. Fenner stressed the site plan she had just distributed was a very preliminary drawing and the final alignment and configuration of the improvements were not set in stone.

Ms. Fenner stated the preliminary site plan had been created in the previous seventy-two hours (72 hrs.) in response to the Staff Report, but still felt the site plan was indicative of the Metropolitan District's intent. Ms. Fenner stated there may be some minimal alterations to the site plan, but this would be presented to the Commission for approval.

Ms. Fenner stated the seven foot (7 ft.) easement along the northern boundary remained unchanged in the preliminary site plan, but the five foot (5 ft.) utility easement along the west property boundary on the original replat ran the length of the property boundary only because the building alignment had not been determined. Ms. Fenner stated, regarding the proposed replat, instead of hugging the southwest corner of the utility easement, they would like to install a five foot (5 ft.) sidewalk that ran the length of the easement to allow access to Fountain Creek from that side of the lot as well. Ms. Fenner stated they would then like to shift the utility easement up onto the slope adjacent to the sidewalk. Ms. Fenner stated there would also be stairs located on this side of the bridge to allow pedestrian access to Manitou Avenue.

Ms. Fenner drew the attention of the Commission to the blue cross hatched area with two (2) blue rectangles located within the cross hatching and stated just above this area was a stairway which would allow pass through access from the Manitou Avenue level to a spur of the Creek Walk Trail.

Ms. Fenner stated any land not used by the building and Creek Walk Trail to the south and southeast of the building was intended to be dedicated.

Ms. Fenner stated the north end of the trail easement from Lovers Lane would be six feet (6 ft.) wide because this was all that remained with the building and no-build area binding it on either side, but as soon as was possible, they would like to widen the easement to eight feet (8 ft.) wide. Ms. Fenner stated this was necessary due to the constraints of the land and the building with the minimum turning radii and most narrow design possible regarding the parking structure.

Ms. Fenner stated she had received feedback from Kevin Shanks at THK Associates and Mr. Shanks had suggested the trail not be used by mounted cyclists, especially entering off of Lovers Lane and popping out onto a busy sidewalk on Manitou Avenue as this was a train wreck waiting to occur given the narrower entrance. Ms. Fenner stated narrow entryways tended to discourage mounted cyclists from entering and the intent was to put up signage directing cyclists to dismount.

Ms. Fenner stated, in conclusion, she hoped the Commission was amenable to the minor encroachment of the building into the easement and no-build area and, in turn, the Metropolitan District would guarantee the stabilization of the slope in the no-build area with a flat surface for pedestrian traffic.

Ms. Fenner stated she felt there were a lot of issues which needed to be addressed and would like to postpone the request in order to better coordinate with Planning Staff and the Manitou Springs Metropolitan District to come back to the Planning Commission with a more unified request.

Commissioner Casey inquired what the official job title for Ms. Fenner was regarding the Metropolitan District. Ms. Fenner responded she was an Entitlement Specialist, but had previously worked in the Planning Department for Elbert County.

Commissioner Wolfe inquired, regarding the corridor narrowing and widening between six feet and eight feet (6 – 8 ft.), if this would be in compliance with Americans with Disabilities Act requirements. Ms. Fenner responded there was a difference of opinion regarding this matter between Planning Department Staff and the Metropolitan District. Ms. Fenner stated all of her research had indicated it would not be an issue at six feet (6 ft.) wide, but was unsure of the comment made by Staff in the Staff Report which referred to “Americans with Disabilities Act related” items. Ms. Fenner stated as far as she understood the Americans with Disabilities Act regulations, this replat met the requirements set forth.

Ms. Fenner stated the only place where the Americans with Disabilities Act requirements were not met was the location where the trail was not accessible because the location ended in a flight of stairs and it was recommended by THK Associates not to make the trail accessible at this location in order to keep mounted cyclists off if it.

Ms. Cole stated the Creek Walk Master Plan had been completed and the City had received a grant from the Colorado Springs Health Foundation to begin construction. Ms. Cole stated due the fact the grant had come from a health organization and the fact the Creek Walk Trail was considered a regional trail, the requirements for the Americans with Disabilities Act were eight feet (8ft.), as opposed to six feet (6 ft.).

Ms. Cole stated the Creek Walk Trail Master Plan and implementation was likely to cost in the neighborhood of ten to twelve millions dollars (\$10,000,000 - \$12,000,000) when completed and the City was ready to go after grant money from Great Outdoors Colorado in January. Ms. Cole stated she felt the City had a good chance at receiving this money because it would be the connection between the Midland Trail and Ute Trail.

Commissioner Wolfe inquired, given the Americans with Disabilities Act requirements, how it was possible for the Commission to allow for these stairs to be constructed, as she did not feel it was compliant with the regulations. Ms. Cole responded she felt the THK representative could better answer this question.

Ms. Fenner stated she wanted to address the Commission.

Ms. Fenner stated this was a spur of the Creek Walk Trail and not the Creek Walk Trail proper itself, which was located on the north end of the property. Ms. Fenner stated the Manitou Springs Metropolitan District did not own the land adjacent to the spur and there was no other option available than to put stairs at that location. Ms. Fenner stated if this spur was made to be compliant with the eight foot (8 ft.) requirement, it would require easements from neighboring properties.

Ms. Fenner stated the Metropolitan District had dedicated nine percent (9%) of the lot to the City, when the regulations only required four percent (4%) be dedicated and had agreed to install and extend the sidewalk the length of the property to allow better access. Ms. Fenner stated the Metropolitan District was doing the best it was capable of given the constraints and size of the lot.

Ms. Cole stated she wanted to clarify that, on the basis of the Creek Walk Trail Master Plan Community Meeting held on September 6, 2018, the consensus was to ensure the trail alignment met everyone's interests and the result of the meeting was the Creek Walk Trail alignment did shift some. Ms. Cole stated one of the shifts occurred on the segment where the trail comes out onto Manitou Avenue behind the Chamber of Commerce.

Ms. Cole stated another outcome of that meeting was the public's clear interest in a system of trails stemming from the Creek Walk Trail and there were some locations where the Americans with Disabilities Act requirements were six feet (6 ft.). Ms. Cole stated things had become slightly more complicated following the community meeting as there were now soft trails as well as the main trail.

Ms. Anthony stated she wanted to clarify the four percent (4%) versus nine percent (9%) contention regarding the dedication requirements and stated the required dedication was actually nine percent (9%). Ms. Anthony stated the requirements under the Code are a five percent (5%) for Open Space and four percent (4%) for Parks, totaling in a nine percent (9%) dedication required.

Ms. Fenner inquired if this was still the case on a lot totaling less than fifty-thousand square feet (50,000 ft<sup>2</sup>.) and further stated the dedication was currently at nine percent (9%) total counting the trail and the dedications on either side of the trail which did not encroach into the no-build area. Ms. Anthony responded some of these areas in question were only two foot (2 ft.) areas and it was worth looking into and determining how much encroachment into the no-build area would be required to make the trail spur the full eight feet (8 ft.) wide.

Ms. Fenner stated the Metropolitan District intended to donate the rest of the land to the east of the trail. Ms. Anthony commented this was the no-build area. Ms. Cole stated the City needed to run this by the

Public Services Department to determine if the City would be interested in owning it as the City typically did not want to own anything the Public Services Department could not maintain.

Ms. Fenner stated she was amenable to the suggestion, but wanted to ensure the Metropolitan District was credited for the dedication regardless. Ms. Anthony stated there was no way in which to give Open Space dedication credit for an easement.

Ms. Fenner responded the Metropolitan District would then prefer to keep the trail dedication as a tract and not an easement. Ms. Cole stated if the Metropolitan District wanted to utilize a tract rather than an easement, they would be required to meet the additional setback requirements.

Ms. Fenner stated she would like to be much more on the same page with Staff before coming before the Commission the next time.

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

Michael Maio, 3 Dudley Road, stated he was the Chair of the Open Space Advisory Committee and an advocate of the Creek Walk Trail.

Mr. Maio stated, aside from the misspelling of the dedication, he had an issue with some of the distances recorded on the plats. Mr. Maio stated one of the distances, shown represented on the existing plat as the westerly boundary of Tract A showed a measured distance of eighteen and fifty-one hundredths feet (18.51 ft.) and, on the proposed replat, the same boundary measured a distance of only six feet (6 ft.), which he felt was a rather significant discrepancy. Mr. Maio stated this was actually not even possible as the easement itself was described as a six-foot (6 ft.) easement and felt there needed to be a correction to be consistent with the recorded plat.

Mr. Maio stated he also took exception to the title guarantees because the proposed plat relied on a guarantee which needed to be updated for the purpose of determining whether there were any encumbrances which may affect the proposed plat.

Mr. Maio stated he did not take any issue regarding the seven foot (7 ft.) utility and access easement located along the north property boundary, as it was consistent with the requirements of the Creek Walk Master Plan. Mr. Maio stated there did, however, seem to be a problem regarding an absent extension of the Creek Walk Trail extending from Lovers Lane all the way up to the northerly right of way of Manitou Avenue as was proposed in the Creek Walk Master Plan. Mr. Maio stated no distances were given on the proposed replat, but was able to determine the trail easement was partially platted, but it terminated at the pedestrian and vehicle bridge.

Mr. Maio stated it was his understanding that City Staff had proposed the full easement be granted regarding this spur as a condition to any future development of the site, but suggested an alternative which would be to extend the easement all the way to Manitou Avenue and across the pedestrian bridge. Mr. Maio stated this would be beneficial to the City in the event the pedestrian bridge or other improvements were never constructed or in the event the Creek Walk Trail was completed in this area prior to the construction of the parking structure.

Natalie Johnson, 22 Taos Place, stated she had spoken with Randy Hodges, Metropolitan District Board Chair, and Kyle Fenner, Project Manager, and her impression was they both wanted to make the Creek

Walk Trail issues work. Ms. Johnson commented she was excited to move forward and wanted to emphasize the trail connection from Lovers Lane to Manitou Avenue was an important connection for the City as it would connect to the library, the elementary school, the downtown district, and the Intemann Trail.

Ms. Johnson stated it was also important to keep in mind when thinking about Americans with Disabilities Act compliance, these improvements also pertained to people with strollers and children on little bicycles with training wheels. Ms. Johnson stated the trail design followed an eight – eighty (8 - 80) model which meant it was designed for use by anyone between the ages of eight (8) and eighty (80).

Shannon McElvaney, 1005 Crystal Park Road, stated the City needed to be more multi-modal in its thinking regarding trails and parking areas and felt any parking structure proposed at any location in town should have bicycle parking and access, as well as for cars and pedestrians. Mr. McElvaney commented the feedback he had received from people in the surrounding area was the desire for a trail that connected the Midland Trail to Manitou Springs, and the Creek Walk Trail represented this desired connection to regional trails. Mr. McElvaney also emphasized the need for a safe place for these people to park and lock up their bicycles while they explored the town and felt this could be accommodated by a parking structure such as the one intended to be constructed at the Wichita Lot.

Mr. McElvaney also expressed concerns regarding the storm water management and environmental issues created by water runoff on the lot and the possibility of sparking ire in the town if any of the trees and vegetation surrounding the creek were removed or damaged as a result of the construction and daily use of the parking structure. Mr. McElvaney suggested the use of low-impact development in the remaining undeveloped portions of the lot to help mitigate these impacts.

Commissioner Wolfe inquired if Mr. McElvaney was a proponent of permitting bicycles on the Creek Walk Trail and also inquired if there was any intention to allow motorized or electric bicycles as well. Mr. McElvaney responded he was a proponent for allowing bicycles on Creek Walk Trail and also felt bicyclists would be mindful and compliant with signage asking them to dismount.

Coreen Toll, 457 Crystal Hills Boulevard, stated she was the coordinator of the Sustainable Environment Work Group and was also a member of the Housing Advisory Board and the Urban Renewal Authority. Ms. Toll stated an important value of the community was to protect Fountain Creek and the City's entire watershed. Ms. Toll stated she felt the City was at a pivotal moment in deciding where to go in terms of future development of the City and inquired whether the City's residents valued protecting the environment and watershed or whether they valued parking more.

Ms. Toll stated she felt the City needed to be good stewards of repurposing the development of existing lands in the City and there needed to be a comprehensive view regarding the matter. Ms. Toll stated she felt Plan Manitou emphasized the importance of sustainability and the utilization of sustainable concepts which were integrated into infrastructure and in order to help combat the impacts of climate change. Ms. Toll stated the development of this lot would likely harm the riparian creek, degrade the natural habitat, and add more polluting vehicles to the center of the downtown area during a period when not only the City desired reducing its greenhouse gas emissions, but so did the international community.

Ms. Toll stated there had been recent report and various other studies which suggested that by the year 2040, the world would be in a crisis if it was not able get a handle on greenhouse gases.

Ms. Toll stated she would like the Commission to deny the request or postpone the request for several reasons, one of which being there needed to be a site specific research assessment to determine whether or not this is the right development for the community and our values.

Ms. Toll stated another reason was that the Planning for Hazards Master Plan had not been completed yet and part of the purpose of this master plan was to propose new regulations to help mitigate and prevent hazards as much as possible.

Ms. Toll stated the use of Hiawatha Gardens had not yet been determined and it had been proposed this property be utilized as a transit hub and potential parking garage. Ms. Toll stated she felt there was only need for one (1) parking garage in town and felt this was a much more suitable location to encourage walking into town or riding the shuttle to reduce congestion in the downtown area.

Ms. Toll stated the proposed plan did not promote multi-modal transportation which was another goal of Plan Manitou and felt if the City needed an expanded parking area, it should promote the goals of Plan Manitou in terms of transportation.

Ms. Toll stated there were also many details which needed to be ironed out regarding this proposal and felt the Commission needed to be presented with a more uniformed request prior to making a decision.

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

Commissioner Wolfe inquired if there was any consideration for requiring charging stations for electric vehicles in the future parking structure. Ms. Anthony responded this would be a potential topic of discussion once a development plan had been submitted, but not at this point in time. Commissioner Wolfe commented she understood because there was no guarantee at this point there would be a garage built on this site. Ms. Anthony responded this was correct and there should not be any comment regarding the parking structure as the City had not received a formal application or submittal of development plans.

Ms. Cole commented at this point, the Commission was only looking at the two-dimensional, horizontal land and what the footprint would be for whatever ends up being constructed at this location.

Commissioner Casey inquired if this was the first time Ms. Anthony had reviewed the documents presented by the Applicant. Ms. Anthony responded she had not reviewed the documents presented by the Applicant at this meeting and had not been involved in writing the Staff Report for this request. Ms. Anthony stated she was just familiarizing herself with the documents this evening. Ms. Fenner commented she had sent the documents to Michael Davenport, Interim Planning Director, a few days prior and he had been the main point of contact regarding the request.

Vice Chair Vrobel inquired if anyone had any qualms should the request be postponed. Ms. Anthony responded she did not feel there was any issue in doing so.

Ms. Cole stated she would also like some direction from the Planning Commission.

Commissioner Wolfe stated she was not in favor of the stairs without exploring alternative options and she had concerns regarding the expansion of the definition of dedicated lands, as she did not feel a utility easement should be counted towards the dedication requirements. Commissioner Wolfe commented she was worried about setting a precedent in permitting this.

Commissioner Wolfe stated she was in favor of extending the trail easement all the way to Manitou Avenue as this would ensure access should any changes be made to the development plans yet to be submitted and was also in favor of making the space more accessible/usable for bicyclists. Commissioner Wolfe stated she was also interested to see what ideas the Applicants came up with regarding the water run-off generated from the development of this site and also wanted to see how the Planning for Hazards Master Plan would impact, inform, and affect those decisions.

Commissioner Casey inquired, regarding Commissioner Wolfe's comment on the easement from Lovers Lane to Manitou Avenue, if she was in favor of extending the easement the full length. Commissioner Wolfe responded she was in favor of the suggestion as a means of ensuring access at that location should any changes be made to the development plans.

Commissioner Casey inquired who owned the property and land east of the Wichita Lot. Ms. Anthony responded it was owned by the Stagecoach Inn.

Commissioner Casey stated, regarding the trees located on the banks of Fountain Creek, he had concerns about their removal as they were likely the only thing stabilizing the bank.

Chairman Delwiche stated he felt it was most important for the Commission to honor the Creek Walk Master Plan and also felt it was important to ensure access from Lovers Lane all the way to Manitou Avenue.

Commissioner Wolfe commented it was important to guarantee that access to Manitou Avenue for the Creek Walk Trail as the nearest access prior to this was near the Chamber of Commerce, which she felt was too far away from the downtown area. Chairman Delwiche commented there were other potential locations for the trail to access Manitou Avenue such as near City Hall.

Vice Chair Vrobel stated she felt it was important the Commission considered who would be using the Creek Walk Trail and reemphasized that children and the elderly would need to be able to access and use the trail. Vice Chair Vrobel stated she felt it was important the trail was wide and easy to use for any age group.

**MOTION:**

Commissioner Wolfe moved to postpone MNS 1801 for a Minor Subdivision Replat to create Metro Parking Subdivision Filing No. 2 until the November 14, 2018 Regular Meeting of the Planning Commission.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion passed, 6-0.

**VI. OTHER BUSINESS**

**ITEM 6.** Discussion Regarding Residential Lodging Ordinance

- ITEM 7.** Discussion Regarding Definitions of Dwelling Unit and Kitchen Systems
- ITEM 8.** Discussion Regarding Camping within City Limits and Camping Adjacent to Streams
- ITEM 9.** Discussion Regarding Code Revisions for Public Notice

Barb Cole, Interim Planning Director, presented a document which contained questions she had for the Planning Commission regarding the Short-Term Rental Ordinance which Staff would be drafting for the upcoming meeting next month. Ms. Cole stated it was in the best interest of the City to call these rental operations “short-term rentals” because the term “residential lodging” was somewhat confusing and not intuitive because it referred to something else entirely. Ms. Cole stated it was best to call these operations what they were.

Ms. Cole inquired if it was the intention of the Commission to ensure that all short-term rental operations in existing residences were covered under the ordinance and inquired if the Commissioners felt any short-term rental was inherently different from a motel, hotel, or other lodging facility which had management on site. The Commissioners unanimously responded in agreement there was a marked difference between the two.

Ms. Cole inquired if the Commissioners wished to include vacation rentals in existing residences located in the Commercial Zone in the regulations. Commissioner Casey responded not all of the Commissioners agreed on this subject. Ms. Cole responded she had specifically referenced “in existing residences” and stated, as a code drafter, she needed to know the difference in the impact of a short-term rental in the Commercial Zone versus the impact of a hotel/motel with a kitchen. Chairman Delwiche responded a hotel/motel always had an on-site manager and felt the original intent of the regulations when they were first discussed was to promote mixed-use properties in the Commercial Zone. Chairman Delwiche further stated the Commission’s intent was not to have the Downtown and Commercial Zones overrun with short-term rentals in preference for longer-term residents who actually lived in these areas and were a part of the fabric of the community there. Chairman Delwiche stated he felt without any restrictions, such as the separation distances, these areas would likely be over taken by short-term rental operations.

Ms. Cole inquired if the Commission was concerned about short-term rental operations in residential districts or short-term rental operations in any residential dwelling unit. Commissioner Wolfe stated she recalled the original discussions was the regulations would apply to the entire City and all Zoning designations.

Ms. Cole stated one thing the ordinance would need was strong definitions which did not contain any rules, as rules were subject to change. Commissioner Wolfe inquired if the rules would be contained in a different section. Ms. Cole confirmed and stated the City desperately needed a good definition for Bed and Breakfasts because these operations provided short-term lodging and food services.

Vice Chair Vrobel stated most Bed and Breakfast operations were small and contained less than five (5) units which meant they were not required to have a health inspection. Ms. Cole stated whether or not these operations were required to have health inspections, they still typically served food and operated differently than a typical vacation rental.

Ms. Cole inquired if the Commission was amenable to re-including a definition for Bed and Breakfast in the new ordinance. Commissioner Wolfe commented it seemed like Staff needed to know if the definition should be re-included and also whether or not Bed and Breakfasts should be included as part of the short-

term rental regulations or should be under their own unique set of regulations and processes. Ms. Cole stated Staff would like some direction from the Commission regarding this matter.

Michelle Anthony, Senior Planner, stated the original intent and discussion regarding short-term rentals, it was determined the impacts of Bed and Breakfasts were very similar to the impacts of vacation rental operations.

Chairman Delwiche stated he saw no issue with defining Bed and Breakfasts and felt it was in the City's best interest to process and regulate them under the same regulations as vacation rental operations, including the five-hundred foot (500 ft.) separation distances.

Commissioner Wolfe inquired if Bed and Breakfasts had been included on the Short-Term Rental Map. Ms. Anthony responded the map presented did include Bed and Breakfasts in order to show the Commission what the impacts of adding Bed and Breakfasts to the Short-Term Rental Regulations.

Ms. Cole stated her suggestion was to define Bed and Breakfast as having no more than six (6) guest rooms and to also include Bed and Breakfasts under the same regulations as other short-term rentals. Ms. Cole also stated she did not think it was a good idea for vacation rentals to be permitted to put up signage because of the impacts it would cause to residential neighborhoods, but felt signage was important for Bed and Breakfasts as this type of operation typically had signage. Vice Chair Vrobel commented her former Bed and Breakfast had a small sign with small lettering because the operation was located in a residential neighborhood.

Vice Chair Vrobel stated she did feel it was important to have some sort of small signage for parking regardless of the short-term rental type in order to prevent parking foul ups.

Commissioner Casey inquired if Bed and Breakfast operations currently required a Conditional Use Permit. Ms. Anthony responded Bed and Breakfasts were currently processed under the Major Conditional Use Permit, but under the revisions it would fall under the Minor Conditional Use Permit and would be subject to all of those regulations and restrictions.

Commissioner Wolfe inquired if the signage issues could be resolved in the Sign Code as opposed to the proposed Short-Term Rental Ordinance. Ms. Cole responded the signage issues would be resolved through revisions to the Sign Code.

Ms. Cole stated she felt Bed and Breakfasts had a different impact on neighborhoods than vacation rental operations did. Commissioner Casey stated he agreed.

Ms. Cole stated the revisions also updated the definition of hotel and motel to include verbiage which stated units must be accessible from common corridors, walks, or balconies without passing through another accommodation unit or dwelling unit. Ms. Cole stated it should be even further defined by a provision which stated hotel and motel operations must have a main office which provided check-in/check-out services, provide twenty-four hour (24 hr.) customer service, daily housekeeping, linen, telephone, and other similar services.

Ms. Cole stated it would also be helpful to include wording in the hotel and motel definition which encouraged and promoted mixed uses such as the ability for hotels and motels to also include event space, public restaurants, and other ancillary uses.

Commissioner Wolfe stated not all units in a hotel or motel required daily housekeeping and inquired, if the Commission were to adopt this language, if a hotel or motel only performed housekeeping after a guest had stayed in a room whether they would be covered as they technically did not meet this definition. Ms. Cole responded the Commission could simply remove the word “daily” and replace it with “regular” or “frequent”.

Ms. Cole stated the definition for Short-Term Rental would remain virtually unchanged, but would remove the term “converted” from “converted multi-family dwelling”. Ms. Cole stated the Ordinance would also provide a definition for a kitchen-equipped short-term rental which maid out the requirements as they pertained to health, safety, and welfare such as a sink suitable for dishwashing with hot and cold running water and a refrigerator.

Ms. Cole inquired if the Commission felt there should be any other physical attributes which should be included in this definition that was not a rule. Commissioner Wolfe responded the kitchen-equipped short-term rental definition should specify the sink must be separate from the lavatory sink. Ms. Anthony responded she had proposed some language which was similar to this in the Ordinance. Commissioner Wolfe suggested adding the words “located in the kitchen” to the definition. Ms. Cole and Ms. Anthony agreed.

Commissioner Simmons inquired if it was a state requirement for Bed and breakfasts to have a commercial kitchen if they were going to be preparing food. Ms. Anthony responded this only applied if the operation had more than five (5) bedrooms or units otherwise there were no Health Department regulations.

Ms. Cole stated she felt the definition for Multi-Use Inns was well done and comprehensive, but wanted to emphasize that these types of operations had a significantly different impact than short-term rental operations.

Ms. Cole suggested short-term rental operations be required to post their Business License Number and their Conditional Use Permit Number near the door so guests can physically see the place they booked is legitimate and legal. Ms. Cole stated this would also be beneficial for the Code Enforcement Officer when he received complaints to easily identify whether or not a given operation was operating above board in terms of the City’s regulations and requirements.

Chairman Delwiche stated he was unsure if this was necessary as the Code Enforcement Officer could simply carry a list of legal operations which he was aware existed because it had been presented to the Commission on several occasions. Ms. Anthony commented she had incorporated some language which would require the operators to list their Business License Number and Conditional Use Permit Number on their notice posted inside the actual rental regarding the emergency evacuation procedures and other required information.

Ms. Cole stated it was in the best interest of the City to define the terms family and dwelling unit and inquired if the Commission preferred to add these definitions to the Short-Term Rental Ordinance or to include it in a more general section of the Code.

Vice Chair Vrobel asked for clarification as to why the City needed to define or better define these terms. Ms. Cole responded the definition of family was no longer a group of related individuals and, to be safe, most municipal codes defined it as  $x$  number of people living together or had tied the definition to the Housing Code in terms of what was required per person and per habitable room.

Vice Chair Vrobel stated she was confused because she had thought Ms. Anthony had previously mentioned removing the term family from the definition of dwelling unit. Commissioner Wolfe stated she did not feel the term family should be used at all and inquired why it was needed. Ms. Cole responded it was needed because the City also needed to better regulate what were termed group homes which were currently permitted under the Code.

Commissioner Simmons inquired what a group home was. Ms. Cole stated a group home was a group of unrelated individuals living together such as in a senior citizen or assisted living facility.

Vice Chair Vrobel inquired if this could be resolved by simply limiting the number of people. Ms. Cole responded defining family was a way to get a regulating group homes and preventing them from operating out of ill-equipped residences.

Vice Chair Vrobel stated it seemed to her the Commission could just limit the number of people regardless of relation, age, or anything else. Ms. Cole responded she would draft some definitions for family, dwelling unit, and kitchen to present to the Commission for discussion.

Ms. Cole stated when she had first started in her position as the Interim Planning Director for the City, there was an instance in which a property owner had wanted to expand and update a basement kitchen located in his home for missionaries who would be staying with him which was initially approved by the former Planning Director. Ms. Cole stated this had triggered the neighbors to consider this project as the creation of a second dwelling unit in a zone which only permitted single-family residences and this ultimately went all the way to the City Attorney who determined the updating and expansion of the kitchen did constitute a second dwelling unit. Ms. Cole stated situations like this could be avoided by clearly defining family, dwelling unit, and kitchens.

Ms. Anthony commented there had also been instances where single-family residences become de-facto duplexes and it was also much more common these days to see new residences constructed with what was essentially a second kitchen in their downstairs recreation areas. Ms. Anthony stated it had been becoming more of an issue recently in terms of determining when a second unit had been created or not.

Ms. Cole stated it was further needed due to the fact the Housing Advisory Board was drafting an Accessory Dwelling Unit Ordinance and wanted to also warn the Commission of what may be coming down the line. Ms. Cole stated due to the rising cost of housing in Colorado, the Commission was likely to be confronted with partial or fractional ownership of properties, such as time shares, and it would be key to have solid definitions in place when that occurs.

Vice Chair Vrobel stated perhaps it was a good thing to address so the City was not caught with its pants down trying to regulate things after the fact. Commissioner Wolfe commented she agreed and felt like the City was often too late in addressing things. Vice Chair Vrobel commented it would be nice to get ahead of the curve.

Chairman Delwiche inquired why the City cared how a family was defined. Ms. Cole stated the idea was to get away from defining family as a group of related individuals. Vice Chair Vrobel suggested using the term occupants instead. Ms. Cole stated regardless of what you called them, the definition needed to allow unrelated people to live together and families to live together while not permitting the occupancy in the dwelling unit to be greater than what was permitted under the International Housing Code.

Commissioner Wolfe stated she did not understand the need to define family as nothing Ms. Cole and Ms. Anthony had just stated even mentioned the word family. Ms. Anthony stated she felt this warranted more discussion and examples and these definitions did not need to be rolled into the Short-Term Rental Ordinance as they could be incorporated elsewhere in the Code at a later time. Vice Chair Vrobel commented she wanted to continue moving forward with the Short-Term Rental Ordinance without the definitions and deal with these definitions and fractional ownership through a different ordinance.

Ms. Anthony commented she would like to put a chart which measured a request against what was required to determine how well the request matched with the regulations somewhere in the Code so it was easy to access for Staff, as well as the public.

Ms. Anthony stated one of the only remaining lingering issues was how short-term rental operations were counted towards the two percent (2%) maximum threshold and she had provided the Commission with an evaluation of the different ways in which they can be counted on page four (pg. 4) of the Staff Memorandum. Ms. Anthony stated the current threshold was based on 2016 data and was currently set at fifty-nine (59) short-term rental operations. Ms. Anthony stated under the current counting method, which counted properties as opposed to units, there were forty-three (43) short-term rental operations, however, if calculating the number based on units, the number stood at sixty-four (64) short-term rental operations, which exceeded the threshold restriction of two percent (2%).

Chairman Delwiche stated he felt it would cause a lot of work to change the way short-term rentals were counted and advocated sticking to the current method of counting. Chairman Delwiche commented there were not many eligible properties left at this point and he felt the Commission had achieved its goal of not allowing neighborhoods to be overrun by vacation rentals. Ms. Anthony commented the change would not impact the current separation distances.

Ms. Anthony stated it was the responsibility of the Planning Department to perform Code interpretation and, if the Commission desired to change how Staff was interpreting the Code, it would require a Code Amendment and not just direction to Staff. Ms. Anthony stated if the Commission wanted Staff to change how the number was counted, it would require a Code Amendment to do so and there would be an additional Code Amendment to raise the percentage of the maximum threshold in order to bring the number into compliance. The Commissioners agreed this would be pointless.

Ms. Anthony stated she had received numerous complaints over the years regarding people allowing other people to camp on their property and there was an instance recently involving someone wanting to camp on a vacant piece of property they owned. Ms. Anthony stated she had spoken to the City Attorney, Jeff Parker, who informed her that since camping was not listed as a permitted use in any residential zone, camping was not a permitted whether the person owned the property or not. Ms. Anthony stated she was suggesting a Code Amendment to make this clearer and less open to interpretation.

Chairman Delwiche inquired if people living in trailers and motor homes were considered camping. Ms. Anthony responded it would be considered camping. Ms. Cole stated this did not include those within legally operating park homes.

Chairman Delwiche inquired about the trailer park off of El Paso Boulevard. Ms. Anthony responded it appears the owner of the property had added or allowed several tiny houses and motor homes to be placed in the floodplain and had done so without permitting.

Commissioner Burris inquired about the recreational vehicle park near the liquor store on Manitou Avenue, as she had noticed at least three (3) tiny homes go up there as well. Ms. Anthony responded this was a newer owner and Staff had told him not to expand without going through the Conditional Use Permit process.

Commissioner Wolfe inquired if there was any money in the budget to hire an additional Code Enforcement Officer to handle the enforcement of all of these laws. Ms. Anthony commented the City had one and a good one at that. Vice Chair Vrobel commented it was more than the City used to have.

Hearing no further questions for, or comment from, Staff, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the Chairman Delwiche closed the Public Hearing.

**VII. ADJOURNMENT**

Hearing no further business before the Commission, Chairman Delwiche adjourned the meeting at 8:23 pm.

*Minutes Prepared by Dylan Becker, Planner I*