



**TOWN OF NEDERLAND
PLANNING COMMISSION
REGULAR BUSINESS MEETING**

**NEDERLAND COMMUNITY CENTER
750 Hwy 72 Nederland, CO 80466**

October 17, 2016 - 6:00 P.M.

MINUTES

A. CALL TO ORDER

Chairman Cornell called the meeting to order at 6:14 pm.

B. ROLL CALL

Present: Chairman Roger Cornell, Vice Chairman Steve Williams. Commissioners Timmy Duggan, Greg Guevara, Stephanie Herring, and Wendy Williams.

Absent: Trustee Stephanie Miller and Commissioner Jesse Seavers.

Also in attendance: Town Administrator Alisha Reis, Planning and Building Technician/Commission Clerk Cynthia Bakke.

C. APPROVAL OF MINUTES FROM September 28, 2016

Chairman Cornell requested the minutes include clarification about the Commission's review of the Preliminary Planned Unit Development by Dan Heine. He requested addition of the following sentence: "After discussion it was understood there was a unanimous position of the Planning Commission regarding the Preliminary Planned Unit Development by Dan Heine as presented was ultimately deemed too dense."

Motion to approve the minutes as amended was made by Commissioner Williams, seconded by Commissioner Guevara, with 6 in favor, 1 abstention.

D. PUBLIC COMMENT

There was no public comment upon non-Agenda items.

E. INFORMATION ITEMS

There were no information items.

F. ACTION ITEMS

1. Consideration of an ordinance regarding Rental Licensing Program and associated regulations

Reis said the rental licensing code was adopted in 1976, and utilized briefly in the

1980's, although it didn't include a rental licensing program and enforcement. She said the rental licensing program as presented has remained largely intact since re-proposal in 2012, and further discussion by the Commission in 2014-2015. At that time, she said the program was stalled due to public opposition against regulation, although the discussion resumed after subsequent public forums on housing yielded habitability concerns from renters and property owners. Reis said SAFEbuilt will provide the rental licensing inspections, a pass-through fee similar to code enforcement with additional budgeting for staffing proposed in the 2017 budget.

Reis clarified that "*short-term rental*" is defined as less than 30 days, with "*long-term rental*" being 30-days and longer according to sales tax classification. She said Trustee Miller forwarded comments regarding long and short term rentals to be included in her absence. Reis asked the Commission to review the presented licensing framework and answer any policy questions that arose during previous discussions, contained in redline format and footnotes within the packet. Chairman Cornell requested a final draft prior to review by the Board of Trustees, along with public outreach for the December 14 meeting to present the draft as a public hearing.

Chairman Cornell asked if the program applies to an entire home or rental of a room. Reis said dwelling units are specifically described and can be added into the rental licensing code definitions. Vice Chairman Williams requested addition of terms to delineate the difference between short and long term, which Reis summarized as "*rental licensing short term – vacation*" and "*rental licensing long term*".

Commission Guevara noted Sec. 16-324(a) "Application for license" which specifies "*every owner who is renting out a living space*" shall apply for a license. Reis referenced Sec. 16-76(3) of the Home Occupation code which specifies home-based businesses may only occupy 50% or less floor space.

Commission Herring cautioned against casting an unreasonably wide net using the example of a friend house-sitting for several months or a work exchange, caretaking or family situation. Vice Chairman Steve Williams noted the different definitions of "care taker" i.e. home healthcare representative versus caretaking property or bartering for trade. Reis said it is still important to ensure habitable space, although the definition for care taking could include "*exchange of services for living space*", which met with Commission approval.

Chairman Cornell noted the difference between a property owner residing in the home versus an owner out of state homeowner. Commissioner W. Williams said the program would provide a safety net for owner and renter, regardless of the homeowner's presence. The Commission was not agreed that a size restriction of the home area for rental would be effective. Reis noted issues that have accompanied rentals of larger units such as noise, trash and parking, as well as rental turnover. Chairman Cornell asked how accessory dwelling units (ADU's) will be handled.

Commission Herring said she'd like to separate out "family" including adult children,

however Reis said this will take thinking on the definition of family. She said the definitions and/or the license required section specifies “rental for 30 days or more”, which could include exceptions for family members and the definition for guests. Reis said in order to ensure future comprehension and administration, the timeframe must be utilized, and definitions which clearly identify unrelated persons.

Commission Duggan read the City of Boulder’s allowance to rent up to 2 unrelated persons without licensing: “A City of Boulder rental license is not required when a dwelling unit occupied by the owner or members of the owner’s family, who rents to no more than 2 people unrelated to the owner’s family.” The Commission supported utilizing that ordinance’s language, although agreed that this should not include rental of a separate dwelling unit, such as an ADU. The Commission considered the stringency of Nederland’s regulation; however Reis commented that Boulder also encompasses a profuse student population.

The Commission discussed parking requirements indicating a need to ensure adequate off-street parking with support for provision of one parking space per bedroom.

Commissioner Herring asked for context on town rental issues. Reis said the primary problem is with habitability, mainly due to homeowners who do not maintain their properties. She noted the absence of market self-regulation for low-quality stock due to the tight rental market. Commissioner W. Williams said this disproportionately affects tenants without a lease or recourse for unacceptable living conditions.

Reis asked the Commission to consider the draft inspection sheet, licensure period, and whether associated fees seem adequate. The Commission discussed the inspection timeframe debating a period of one to four years between inspections and ultimately could not agree. The Commission decided it would be valuable to consider how other municipalities have decided to regulate these specific aspects. Reis indicated code enforcement would be the mechanism for noncompliant property owners.

Commissioner Duggan mentioned the ability of a tenant to report a property that has reverted to an uninhabitable space, although Reis said this would require addition of a retribution clause to protect tenants. Chairman Cornell directed staff to research how other municipalities deal with the issue of property owner retribution.

The Commission discussed setting tenant limits. Reis specified that the number of family members cannot be regulated, whereas adequacy of septic system to serve the household is able to be regulated and limited. Commissioner W. Williams noted that this wouldn’t affect those on public utilities, although the inspection could confirm proper installation of water/sewer utilities adequate for the home’s usage.

Vice Chairman S. Williams requested inclusion of the code section regulating animals to ensure there is no conflict during regulation.

Chairman Cornell asked to change “*he shall be assessed...*” with “*owner shall be*

assessed...”, under the Section 16-326(a).

Commissioner W. Williams asked about the requirement for a Certified Home Inspector. Reis said this can be changed to “by the Town’s contracted inspector”.

Commissioner W. Williams asked for clarification of Sec. 16-328(2) regarding suspension of license for illegal activity upon the property. Reis said this usually applies to drug charges, e.g. a meth lab or illegal marijuana cultivation allowed by the property owner. Commissioner Guevara specified the clause states “*a license may be suspended*”, not will be suspended.

Reis said that Trustee Miller suggested altering Section 328(b) from “*suspension shall last as long as the defects in the application or inspection report remain uncured*” to “*until identified unsafe, unsanitary or hazardous living conditions have been remedied*”, which met with the Commission’s support. Commissioner Guevara said this language should be added to the Section 16-325(b) specifying conditions the property inspection shall confirm.

Reis said the Town will update the International Property Management Code in January 2017, which includes habitability elements.

The Commission supported moving Section 16-82 which regulates rental of rooming units to the beginning of the associated code sections because it indicates the number of unrelated people able to rent a room and the allowable time frame. The Commission supported striking the subsection limiting rentable floor area and including the definitions for “*roomer*” and “*tenant*”.

Reis said that compliance with Article 13 of the Zoning Chapter is not possible being as that article doesn’t exist. Vice Chairman S. Williams said this Article is also referenced within the “license required” section. Chairman Cornell said this may have been intended to be moved to the Zoning Chapter as Article 13.

Reis said Trustee Miller suggested the need to “make it clear a new license is required anytime the property changes ownership”, which the Commission supported addition in the renewal section.

Reis said the Commission can suggest changes regarding the proposed fees, length of licensure period, as well as adding any other relevant information they desire to see. She explained that as proposed the licensing was required annually, with inspections on a 5 year basis. Vice Chairman S. Williams asked how the fee structure arose. Reis explained it is similar to the fee schedule for a business license, although there would be a re-inspection fee if the unit fails. She said there is also a “no-show” fee to ensure compliance for inspection requirements. She said this fee structure, matrix and consequences will be available for the Public Hearing at the December 14 meeting.

Commissioner W. Williams said the section which includes “inspector will have the

ability to hire separate inspectors” could create financial hardships for the property owner, although Commission Guevara stressed that the inspector *has the ability*, but it is not required. Reis said inspectors can require remedy for life safety issues in habitable spaces, although the Commission agreed to strike the requirement for an appliance contractor.

The Commission then considered how to address minor, manageable mold issues below the trigger of an environmental inspection. Commission Duggan said an inspector could note indications of mold and make recommendations for remedy. The Commission supported “recommended” versus required, to provide a mechanism to address less serious issues. Reis said remedy will be required for any serious code violations and/or life safety issues.

Reis noted the abbreviation “SFD” needs to be changed to “SFR” for single family residence. Vice Chairman S. Williams requested inclusion of a “not applicable” column. It was noted that “Pluming” on page 22 should be Plumbing.

Commissioner Guevara asked about the fixed wash basin or lavatory in unit on page 20. Reis said this could be amended to say “presence of” to ensure there is a wash basin within the dwelling unit, even if not within the bathroom itself.

Commissioner W. Williams said proper water/sewer connections and/or well or septic adequate to serve tenants should be assured. Vice Chairman S. Williams said the electrical connection to the building could be included within the “Utility Connections” section. It was specified that shut off valve locations should be included in the Heating and Plumbing section, along with clothes dryers, if applicable.

The Commission further discussed items they’d like to see included within a general category to include mold, specified location of unit shut-off valves, off-street parking requirements, approval of septic regulations noting adequacy for number of bedrooms to ensure not exceeded, a floor plan of the home/unit, location of exterior trash receptacle and/or the tenant’s responsibility regarding trash.

Commission Wendy Williams provided examples of specific inspection items that she felt were incongruent, onerous and/or subjective, to include the prohibition of gas-fired heat in sleeping places which doesn’t align with Nederland’s reality. Vice Chairman Steve Williams noted the list wasn’t intended to be all inclusive, but provided common examples to consider. Reis said she will review and provide clarification with the ability to delete any confusing sections.

Chairman Cornell called for a short break.

G. DISCUSSION ITEMS

1. Discussion about establishment of regulatory framework regarding Short-term rental (STR) / Vacation Rentals by Owner (VRBO)

Reis introduced the item. She said Bakke added to the previous VRBO matrix which

includes a broader pool of municipalities and showing general themes in regulatory framework. She said the information came predominantly from the CAST Study and CML matrices.

Reis referenced the packet AIM which indicated major trends in codes to include the primary definition of "30 days or less" for short term rental. She said the requirement for presence of the property owner or responsible designee onsite or available within certain amount of response time is common, along with a non-transferrable business license, and the consideration of lodging tax collection if desired.

She said there are several STR/VRBO's in the town which have been self-reporting and submitting sales tax, despite the lack of allowance in the code, which could be another separate use code similar to the home occupation code.

Reis said there would be a one-time application (unless property is sold), with an inspection by licensing and/or land use staff to be congruent with code requirements. She specified some conditions for the Commission to consider:

- Life-safety inspection prior to operations
- Short term rental business license
- Similarity to Home Occupations code which specifies nuisances
- How to address conflicts

The Commission discussed the self-regulation ability of STR's, however Bakke said as an unpermitted use, staff is challenged to be proactive about complaints due to the short term nature of guests and hidden nature of operations. Reis added that there has been an uptick in the number of STR's and associated complaints.

Commissioner Wendy Williams said she previously forwarded an email from a 28-year town resident who now has 5 VRBO's surrounding him being managed by an out of state property owner. She said the man reported that theft occurred at one of these properties, which engendered a feeling that the neighborhood has changed to a commercial hotel nature. Williams further enumerated concerns expressed by the resident of a loss of community, safety, revenue for the community, and the depletion of limited housing stock. Chairman Cornell said it is within the purview of the Commission to establish regulation for a commercial use currently unpermitted in residential districts.

Commissioner Herring noted the differing goals between long and short term rentals. The Commission deliberated the owner requirement for home to serve as primary residence being as someone may own more than one home. The Commission further discussed the questions presented in the packet analysis and agreed that much of the forthcoming public hearing will address the owner requirements.

Reis said the Commission can choose to require the property serve as the owner's primary residence such as Boulder has done or there could be a cap if multiple properties are under the same ownership. Chairman Cornell asked the Commission if

they want to include a maximum number of days to limit short term uses within the year. The Commission concluded that the owner/designee requirement would tend to address most concerns regarding short term impacts, as long as there is some way to explain the requirements to the guests. It was also mentioned in discussion that a link to state law for definitions would be helpful to include upon the application.

The Commission was in agreement to pursue a lodging tax; however they indicated desire for associated fees to go to the General Fund, instead of an affordable housing fund. The Commission also discussed setting limits on allowable number of guests, but decided that the owner/designee requirement would better regulate this than a cap.

The Commission discussed concerns regarding a life safety inspection, however the Commission did not agree as a whole regarding need for inspections. Examples of basic life safety: i.e. carbon monoxide and smoke alarms, and electrical wiring safety did not merit as much resistance, especially as Reis mentioned that any business conducted in a brick and mortar building requires life safety inspection, and all home occupation businesses goes through a simple inspection to ensure all requirements are met. Commissioner Duggan noted that City of Boulder's affidavit for short term rentals is not very effective.

As for parking, Reis explained that off-street parking is established for both residences and commercial enterprises, thus the Commission could consider adding a section to indicate the off-street parking requirements, to ensure that adequate parking is provided for the homeowner, and to accommodate short term guests. Reis said other nuisance issues can be addressed by the existing nuisance code.

Questions arose about whether short term rental is allowed within mixed use buildings by code allowance. Reis said there is no multifamily use allowed in the General Commercial zoning district unless via Special Review Use. Reis said she will review for code alignment.

Commissioner Guevara mentioned the owner-occupied designation of primary residence being set at 180 days. He mentioned use of summer cabin units which could be listed as a primary residence, which he said he's seen done in the case of parents wanting to send a child to another school. Commissioner Guevara said this may alternately incentivize short term rentals for those who can utilize loopholes. Commissioner W. Williams agreed, however she stipulated that there should be a longer period allowed for away time being as some residents spend half the year in warmer climates, with some renting their home during their absence. Reis said the timeframe of the rental will determine whether it requires short or long term rental regulation.

The Commission discussed presenting both long and short term licensing frameworks, but ultimately opted to present the long term rental licensing program and the draft ordinance on December 14 to allow for public outreach. Short term/vacation rental by owner will likely be set for the January meeting, said Reis.

The Commission also determined it would be easier to address the administrative streamline for multifamily uses versus accessory dwelling units (ADU) due to need for code alignment by the latter. Reis said she will draft an ordinance for the administrative streamline for multifamily units containing 4 or less units, with the Commission tasked to determine the preferred unit limit.

H. OTHER BUSINESS

Reis said Board of Trustees will hold the public hearing to consider adoption to 2012 Building Codes on October 18.

Chairman Cornell asked if the Commission wants to cap recreational marijuana retailers being as medical marijuana dispensaries are capped at 7. Commission Wendy Williams noted that the market appears to be self-regulating. Chairman Cornell said the Commission should consider a cap for retailers or cultivation, after discussing the matter with BOT Liaison Stephanie Miller.

Reis said there will be an expert in downtown development in Nederland on October 24 starting at 6 pm to discuss how to maximize underutilized areas in downtowns. She said the sponsorship for the presentation is by Downtown, Colorado, Inc, which works with all Downtown Development Authorities (DDA's), and the presenter has worked on similar projects.

I. ADJOURNMENT

Motion to adjourn was made by Commissioner W. Williams, seconded by Vice Chairman Steven Williams, with all in favor. Meeting adjourned at 8:58 pm.

Approved by the Planning Commission,



Roger Cornell, Chairman, Planning Commission

ATTEST:



Cynthia Bakke, Planning and Building Technician