



Nederland Planning Commission

MINUTES

Wednesday, July 24, 2013 ~ 7:00 pm
Nederland Community Center
750 Highway 72 North

1) Call to Order

Chairman Larsen called the meeting to order at 7:03 p.m.

2) Roll Call

Present: Chairman Larsen, Vice-Chairman Roger Cornell and Commissioners Lisa Mayhew, Steve Williams, and Betty Porter.

Also present: Town Administrator Alisha Reis, Deputy Town Clerk Cynthia Bakke.

Absent: Commissioner Mikki Osterloo and Trustee Liaison Kevin Mueller.

3) Approval of minutes from June 26, 2013

A Motion to approve the minutes as written was made by Commissioner Cornell, seconded by Commissioner Porter, 3 in Favor, with Commissioner Mayhew abstaining from the vote due to absence from the last meeting.

4) Public Comment

There were no Public Comments not pertaining to Agenda items.

5) Information Items

Reis reminded the Planning Commission that on August 7, at 6pm there will be a work session for incorporation of public review comments on the Comprehensive Plan.

6) Action Items

1. Peter Fiori, 6 Sundown Trail, spoke about his Special Review Use Application for mixed uses at 55 Indian Peaks Drive. Fiori said he desires to move his business, Sweetwave Audio, to Nederland and add a public assembly space to hold indoor musical performances. He has submitted a Special Review Use application for Mixed Uses, as this space is proposed to contain offices, sound studios, serve as a

warehouse for audio equipment and a 400-person capacity concert venue.

Cornell noted that the public notice didn't specify what is intended, and requested that Fiori elaborate on his proposal for the benefit of public comprehension. Fiori said that he would like to hold one music show every four to six weeks, at most. He would like to establish a premier place for music that is not a bar, with ample dance space. He clarified that all performances would be held inside the building and be under the decibel level allowed per Nederland Municipal Code. He also specified that the bar would not have regular hours, but be open only in conjunction with performances. As he has professionally soundproofed many buildings, he is confident he can limit sound leakage from the site. He stated that he has zero intention of antagonizing his neighbors, as he resides in the same neighborhood.

Fiori gave a background of his business, Sweetwave Audio, currently located in Louisville, which provides audio production for concerts (generally at other sites), in addition to equipment sales, rentals, installations, recording, audio system design, and production management services. He has eight full-time and 15 contract employees. He will be relocating his business 55 Indian Peaks, allowing on-site equipment storage, offices, recording studios, as well as the proposed indoor venue

Reis provided a summary of the application. Fiori's audio business operation is a use-by-right, allowed within the General Commercial zoning of this property. The venue space proposal created the need for a Mixed Uses Special Review Use. The most recent prior usage was Len Cole's excavation company, which included storage of heavy equipment. Fiori intends to renovate the currently occupied residence upstairs into offices, with the lower portion converted into sound studios, as well as an indoor performance space. Proper noticing was adhered to, with public notice issued per Code. This application has met the five elements of criteria required prior to hearing by the Planning Commission. Areas of concern that were noted by staff review were the traffic flow through the site, potential increased traffic to the Indian Peaks neighborhood, and parking requirements. A memo was provided at the meeting containing the review and recommendations by Mark Weritz, the Geotechnical Engineer and hydrologist on staff, who reviews the ground conditions of any new development. Weritz indicated he

would like to see a grading and drainage plan associated with the property.

Fiori highlighted the idea of sustainability involved in bringing music culture to Nederland, without the complaints associated with outdoor venues, as well as repurposing the building. Wedding receptions could be accommodated with the addition of a commercial kitchen. He said he would also like to stream concerts online, and will include alternate transit into the parking plan, so that the venue is bike-friendly, with shuttle/RTD service coordination.

Commissioner Williams inquired about analysis from Public Works pertaining to the application. The building is already serviced with sewer and water, though noted concerns were in consideration of drainage at the site, Reis replied. There is a small "lake" in front of the building paralleling Indian Peaks Drive, which Fiori said he has discussed with Public Works. Reis also noted that the Nederland Fire Protection District will require a flow test prior to occupancy.

Commissioner Cornell offered a history of the building, mainly focusing on Len Cole's excavation company and the origin of General Commercial zoning adjacent to the Mountain Residential neighborhood. Much of this information is contained in the Town property file. As part of a Town agreement with Cole, the property was zoned General Commercial in April 2001. There was no development agreement related to the property; however, neighbors remember an arrangement to limit hours of operation to appease neighbors apprehensive about noisy, heavy equipment operations.

Cornell indicated that potential issues could arise from a public venue with a 400-seat capacity serving alcohol. He noted the similarity with the Boulder Theater, another music venue adjacent to a residential area. He said it is possible to come to a compromise if everyone involved are considerate neighbors. He cited the evening performances at the elementary school, which also have a high turnout of people.

Chairman Larsen asked about parking, as the driveway on Indian Peaks offers the only access, aside from a gated west-side easement coming across the property from the highway. Larsen inquired about the expected traffic impact and if Fiori would use the

easement access or just the main entrance. Fiori stated that he would like to open this access road, however would need permission from Boulder County and the Town of Nederland. This is comparable to the emergency exit gate at the back of the Community Center, Larsen said.

Larsen opened the floor to public comment.

Ted Cook, 95 Ute Way, stated that the building at 55 Indian Peaks borders his backyard. There was initial concern expressed by neighbors when this property originally converted to commercial use, he said. He reported that Cole did a great job keeping to stated hours, establishing a low-impact use. Cook conveyed his appreciation to Fiori for having consideration of the surrounding neighbors. He said that while the music itself will be contained, he is concerned about what happens with issues outside of Fiori's control, like large numbers of alcohol-fueled people, smoking, wanting to hike in the surrounding forest after a concert or subsequently driving, and the expected cost to Town for extra security.

Sandy Cook, 95 Ute Way, stated that she works early in the morning. She expressed her desire to continue to hear birds and see wildlife in her yard, saying this will cease once there is live music. She agreed that Cole was considerate and left as many trees between their properties as possible. She is concerned about mitigation if the highway easement is accessed, and perceived lower property values due to the venue. She also mentioned concerns for light pollution from the parking lot, which is currently unlit. She urged Fiori against having a bar inside the building, which abuts her property line, saying that if she desired this, she would have bought property next to Pioneer Inn. She thanked Fiori for hearing her comments.

Lisa Navarre, of 26 Tejas Lane, asserted that there are many young children in this neighborhood, as well as her husband getting up for work at 4 am. She stated concerns regarding a concert venue and any problems which may arise. Navarre asked how issues would be fixed once a permit is given. She said a concert venue is not appropriate for this neighborhood.

Tammy Forrest, of 70 Navajo Trail, echoed sentiments presented by other neighbors. She foresees no issues with Sweetwave Audio, and

appreciates that Fiori is taking the noise level into consideration. She expressed trepidation about aspects not under Fiori's control. She responded to an earlier comment that though this exists in other places, such as the Boulder Theater, people have bought their homes with that understanding.

John Varsos, 95 Sundown Trail, said he doesn't agree with the concert idea in neighborhood. He asked if there will be overflow parking onto Indian Peaks Drive. He cited concerns and potential risks about the post-show noise level, of people ingesting alcohol and/or drugs, and possibly igniting a fire. He said Fiori has conveyed his desire to host concerts every four to six weeks; however, it looks like it could be anytime. He expressed disbelief that a tin building will keep sound contained, and urged the Planning Commission to vote the application down.

Mark Patterson, 275 Indian Peaks Drive, said his family lives down the road from the proposed venue. He wanted to ensure the performances remain indoors. He underscored the importance and appreciation of the quiet, peaceful nature of neighborhood. In response to the earlier comment by Cornell, Patterson noted that any school functions conclude by 7pm. He said whether it's ten or 400 gathered, it only takes one person to create an incident that could affect everyone. He expressed concern about impressionable adolescents in the neighborhood who may want to linger after events. He inquired about what recourse they have as neighbors if any problems emerge.

Sarah Hodge, 15584 Indiana Gulch Road, Ward, said she is in favor of the proposed venue. Hodge commented about the convenience of local performances not in a bar environment.

Cheryl Fanelli, 184 Highway 72, expressed her approval of the proposed venue. She noted that you can hear music from almost anywhere in town, and that not everything can be controlled. It should be part of the process to hear and deal with concerns by neighbors, she said.

Sopa Harmon, 136 Crestwood, Greater Nederland, asked about the possibility of holding concerts during the day, if noise and hours are prominent concerns.

John Varsos, asked whether the operating times of Cole's business were established and was it possible to translate them to the next occupant. Commissioner Porter underscored the trouble with establishing conditions based on hours of operation, not wanting an expectation established for the next owner of building. As the proposed venue is clearly the controversial element under discussion, Porter inquired if a Special Events permit could be pulled for every concert to establish set hours of operation.

Larsen observed that the General Commercial zoning of the property means it can be sold and converted into a 6,000+ square foot bar, offering large events as a use-by-right without recourse.

Cornell said the Planning Commission could require a special event permit to control events, establishing specific hours of operation. He inquired how after-hours lighting would be addressed. Reis said that there are security recommendations for lighting, but all outdoor lighting must be downcast, and can be specified within the Agreement conditions. The Planning Commission established that lighting must be kept within these guidelines, and in conjunction with performances and safe ingress/egress of patrons. Fiori said he will have security motion sensors as well. Cornell agreed with Fiori that there is sufficient parking with incorporation of buses and shuttles, and doesn't anticipate overflow onto Indian Peaks.

Cornell asked if there will be an outside deck or smoking area where post-concert discussions can ensue that would affect neighbors. Fiori spoke about a sheltered area on the north side of the building, which is intended for smoking. After discussion factoring in neighbor concerns, the Planning Commission established that they would recommend limiting the outdoor smoking to this northern area.

Cornell remarked that 400 people doubles the size of all bars on a Friday night, which can give rise to issues out of Fiori's control as cited by neighbors. The Planning Commission recommended that Fiori provide for security and crowd control, with traffic directed onto the highway, upon event conclusion.

Fiori said a crowd of 380-400 people would be ideal from a management standpoint. The septic will need to be upgraded, and will be done to encompass a capacity of 540 people. Four security

guards will be on duty at a time, allocating one guard per 100 people.

Reis detailed the application process: if approved by the Planning Commission, it will be presented before the Board of Trustees, followed by the building permitting process. This will require sign-off of parking and lighting design elements, ensuring sufficient restrooms, appropriate movement within building, as well as a drainage plan. This is all encompassed within the building process, with conditions to be monitored by staff. Discussion ensued regarding rezoning of this property, however, Fiori maintained that he bought the lot for the zoning specifically.

Fiori asked to address all the public input.

Fiori said that he will keep within Nederland Municipal Code specifying levels for amplification. He would additionally like to offer acoustic performances, which are generally earlier shows. Fiori agreed that the security issues presented are valid. He proposed that this venue will bring taxes and revenue that could support another police officer.

Fiori asserted that he disagrees with the Commission dictating hours of operation, as most bands will want to play until close. He maintained that he is giving due consideration to his neighbors. He noted that he hears music from the downtown bars from his home on 6 Sundown Trail.

Discussion centered on concerns with post-show gatherings, creating noise for neighbors.

Kim Patterson, 275 Indian Peaks Drive, asked Fiori how he can control these scenarios even with the best intentions possible. Fiori responded that he will ensure security directs patrons off the property once the show concludes. He said he would eliminate loitering as he is also protecting his own investment of equipment.

Reis referenced conditions thus far noted from the discussion. The Planning Commission will recommend that all performances are held inside utilizing private security, with efforts to move patrons off-site toward highway at the conclusion of events. Venue lighting for parking is to be in accordance with Nederland Municipal Code, in conjunction with performances only, with reasonable efforts to

maintain darkness in off-hours. Smoking will be confined to the north side and monitored for noise. This Agreement is not transferable in case of property sale. As the applicant is also a Trustee, Reis said Fiori will recuse himself from voting at the Board of Trustees meeting.

Reis also spoke of sections of the final Agreement that will address violations, which allow for remedy. If violation or termination occurs it will be brought before the Planning Commission, then the Board of Trustees for redress with provisions set forth in the final Agreement.

Cornell moves that the Commission recommends approval of the Special Review Use application for mixed uses at 55 Indian Peaks Drive with conditions of the Draft SRU Agreement and those read by Town Administrator, seconded by Mayhew, with 5 in favor, 0 opposed. Motion carries. With conditional approval from the Planning Commission, this application will be presented before the Board of Trustees on August 6, 2013.

7) Discussion Items

Reis reports that policy recommendations from the Mayor's Task Force on Marijuana have gone through review processes by Town staff and the Town Attorney.

Amendment 64 requires licensing in place before October 2013.

Reis put forth zoning aspects and asked if the Planning Commission has further concerns. Town Attorney Carmen Beery noted within a memorandum that co-location of medical and retail marijuana establishments in the same building will establish a minimum age of 21 for sale of products.

Reis said there will be a thorough review and update regarding home-occupation to address home cultivation as put forth in Amendment 64, which allows adults 21 and over to cultivate up to 6 plants, and if serving as a caregiver, will be allowed to grow substantially more, if no sales are conducted. Home occupations would allow cultivation, though not retail sales.

Trustee Fiori, who led the Mayor's Task Force, offered a history of national marijuana prohibition and subsequent statutory changes in recent years to accommodate medical marijuana per Amendment 20 as of November 2000; and most recently, with Amendment 64, allowing for recreational sale, possession, and growing operations. Amendment 64 was passed as of November 6, 2012, followed by HB13 13-17, which creates the regulatory framework governing Amendment 64.

Larsen inquired how this will be affected by cannabis's federally illegal status. Fiori replied that there will be an imminent showdown, as already being seen in California. He said there have been no statements thus far issued regarding how this will be handled at the federal level. The Task Force would promote boutique gardening instead of a large grow operation, in light of this disparity.

Williams asked if the Town is putting itself into liability by adopting allowances for marijuana-based businesses. Fiori responded that on the federal level, the Drug Enforcement Agency could target anyone, as Amendments 20 and 64 are in conflict with the Federal Controlled Substances Act. This Act is the federal drug policy under which the manufacture, importation, possession, use and distribution of certain substances is regulated.

Discussion continued regarding ethical considerations of staff permitting businesses with federal liability. Colorado has been regulating differently than other states, and continued to allow operations, despite forced closures in other states. The Task Force desires to fly low under the radar due to the present federal reality. They do not want signage or public displays. They also didn't want to limit the number of licenses as with medical marijuana. As considerable revenue is derived from growing equipment sales, the Task Force is very concerned about federal exposure, Fiori said.

Cornell inquired about towns that have opted out via moratorium or prohibition. Fiori reported that thirteen towns have put a moratorium on recreational marijuana, with Colorado Springs as the largest. The towns that had large majorities of voter approval are moving forward. Larsen reminded the Commission that they will discuss dual-use and zoning, as Town is not opting out.

The Mayor's Task Force Recommendations by district(s) include: use by right in the General Commercial, Central Business District and

Neighborhood zones for retail stores. Per Zoning Administrator Reis, she suggested Special Review Use in the Neighborhood Commercial district. Fiori disagreed with this designation, saying that retail establishments in the NC are intended to be low profile with subtle signage, light and odor containment.

Discussion ensued regarding the differences between a testing facility, a cultivation facility, and marijuana product manufacturing facilities. Reis read the definitions, differentiating between a testing facility, which is a licensed entity that provides analysis and certification to ensure safety and potency, akin to an assay office for cannabis. This differs from a cultivation facility, which is an entity licensed to cultivate, prepare, and package marijuana to be sold to retail marijuana stores, marijuana product manufacturing facilities, which create edible products, but not to consumers. Similarly, marijuana product manufacturing facilities can sell to other manufacturing facilities or retail stores, but not to consumers, who will only be able to purchase from retail stores.

Larsen inquired about the sales room allowed within cultivation facilities. Fiori responded that retailers will want to test a product to ensure quality and consistency prior to purchasing a large amount. This would be a separate room, which is the only way that products could be tried before committing to buy. Larsen inquired how to avoid abuse of this situation. Fiori replied that the person testing out the product must have a sales license, but products would not be available for public consumption. Fiori inquired if wholesalers can offer samples. Reis suggested we inquire how other communities address this issue as well as confirming the gift/sample idea to product test with Beery.

The Planning Commission would recommend a Special Review Use in the Neighborhood Commercial for cultivation, production and testing with General Commercial and Industrial zones allowing use by right. The Planning Commission would also like to suggest Special Review Use in the Central Business District. Reis has spoken with owners within this district, and noted concerns with cultivation odor in this area, but no other issues were reported. She also noted that use table will be reformed at a later date to include these differing uses which are not currently specified.

Discussion continued in the realm of licensed home occupations. The Task Force would like this be coordinated with code requirements. As

Sec. 16-76 specifies, no more than one-half the floor area may be used for the business, however this may be excessive for a home-based business. Fiori warned that determining percentage allowed by floor space might discount those in smaller homes, if the Planning Commission is intending to reduce the allowance. Reis suggested that the home occupation code review be addressed at a later time and perhaps have a separate review.

Fiori said Task Force has made recommendations, to include Special Review Use for neighborhood cultivation facilities. Determinations may be made as to the different districts with consideration of home size. As cultivation is already happening, we would like to ensure that preexisting operations are safe, Fiori said. The Task Force can provide assistance to SAFEbuilt who performs building inspections.

Reis asked Commission members if they have other concerns regarding the manner of operation or signage that the Task Force put forward. Reis advised there are some first amendment considerations about signs, though some communities have rejected suggestions of a leaf or green cross to indicate recreational marijuana operations. The Planning Commission would recommend subtle, if any signage, in an attempt to balance the industry with raising a family.

There are currently 4 remaining medical marijuana-related stores. For the first 9 months only medical marijuana facilities may apply for recreational licenses.

The recommendations made by the Planning Commission will be inserted within the draft ordinance, to be introduced at the August 6 Board of Trustees meeting and intended for adoption as of August 20, 2013.

2. Discussion of proposed "Clubs" use addition to Sec. 16-32 (c) Use Group Table

Reis read the definition of clubs in the Nederland Municipal Code. Despite the inclusion of the definition, it was never added to use group chart. Resident Cheryl Fanelli had been before the Planning Commission in June, requesting allowance for her cannabis-based club proposal. Reis and Beery understand there is a public consumption prohibition, and therefore this type of use is not allowable in town.

Larsen said he would like to be clear about goals for this meeting. They are discussing whether to add club use, not Fanelli's business, which is outside of the scope of this meeting.

Fanelli claimed that Beery doesn't know what she is talking about regarding consumption of marijuana and reiterated that her attorney has offered to educate everyone. She also made the distinction that her proposed cannabis club is for monetary gain.

Fanelli clarified that as her business idea is not a retail marijuana establishment, and therefore, she is not prohibited. She says her proposed business is not considered to be on-site consumption, as she is not selling any marijuana products.

If the Planning Commission wants to amend the club definition to remove "not principally for monetary gain" they are able to do so, however Reis's understanding is that there is currently no consumption allowed on site in businesses, which are in general open to the public, whether by membership or not. Fanelli asked for the last portion of the definition to be omitted. This way the definition can encompass her business idea, as she is for monetary gain.

Porter said she thinks that portion of the definition may be arbitrary. After some discussion, Larsen suggests more research be done into how other towns define club use, and whether monetary gain has relevance on the designation. Larsen said he is concerned about consequences, and would like further research on this issue.

Cornell asserted it is illegal to smoke cannabis in a public place. Reis stated that the Town's position is that anywhere that the public can gain access would still require life-safety inspections. Fanelli said that there are cannabis-based clubs in operation already in Colorado, however staff research has found conflicting information regarding whether some of these clubs are actually operating or already closed.

Fiori remarked that to get around alcohol laws within Utah, people must join private membership clubs, and then can pay membership fees at a bar. He also stated that he'd like to see the ability to

separate cannabis usage away from alcohol in such an environment.

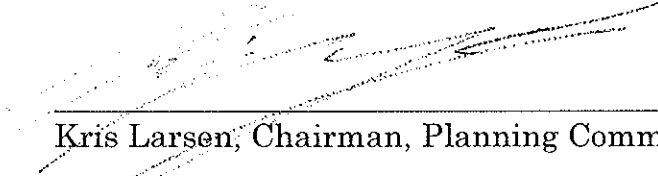
8) Other Business

There is no other business.

9) Adjournment

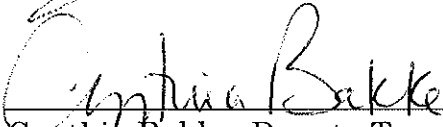
A motion to adjourn was made by Commissioner Cornell, seconded by Commissioner Porter, and was unanimously approved at 11:34 p.m.

Approved by the Planning Commission,



Kris Larsen, Chairman, Planning Commission

ATTEST:



Cynthia Bakke, Deputy Town Clerk