



TOWN OF NEDERLAND PLANNING COMMISSION REGULAR BUSINESS MEETING

NEDERLAND COMMUNITY CENTER
750 Hwy 72 Nederland, CO 80466

June 27, 2018 - 7:00 P.M.

MINUTES

A. CALL TO ORDER

Chair Cornell called the meeting to order at 7:02 pm.

B. ROLL CALL

Present: Chair Roger Cornell, Vice Chair Steven Williams, Commissioners: Lindsey Danforth, Linda Glasser, and Ralph Hunt. Commissioner Duggan arrived after Roll Call and Approval of Minutes.

Absent: Commissioner Stephanie Herring. Trustee James Rawsthorne.

Also in attendance: Town Administrator Karen Gerrity. Town Attorney Nina Petraro. Planning and Building Technician and Planning Commission Clerk Cynthia Bakke.

C. APPROVAL OF MINUTES FROM May 23, 2018

Commissioner Glasser motioned to approve, seconded by Commissioner Danforth with (4) in favor, and abstention by Chair Cornell whom did not attend the last meeting.

D. PUBLIC COMMENT

There was no public comment on non-agenda items.

E. INFORMATION ITEMS

1. Community Development-Planning and Zoning Department Staff report

Gerrity explained Town staff accidentally overlooked the public posting of the Commission's vacancy as done for other boards. This was pointed out prior to Board of Trustees (BOT) review of the Commission's recommendations from the May 23rd meeting. Gerrity said applicant Pamela Miley graciously postponed her application as she thought there was another vacancy to be filled.

Gerrity said her report in the packet included a running list of Zoning code changes. She asked the Commission to consider and email her with any other items to be added to the list.

Gerrity spoke further about food truck vendors whom desire to operate, which is not a specific use included in Sec. 16-32 Use group tables, but is closest to "outdoor sales, eating and drinking or other outdoor commercial activities or establishments" allowed in certain districts via Special Review Use. She said the DDA and the BOT support allowing food truck operations until the further code review. Food trucks must also comply with State and County regulations. Gerrity said the BOT would like review by the DDA and Commission after the summer's trial operations, with the DDA considering

sensible locations for operations. She responded to Chair Cornell's question about owner permission. Bakke went over her staff report portion which is included in the packet.

F. ACTION ITEMS

1. Consideration of Planning Commission new member application for Pamela Miley

Gerrity noted the applicant's confusion about the vacancy to be filled as mentioned earlier. Miley temporarily withdrew her application. She would like to be considered for the next vacancy.

Jim Reis, of Nederland, said he applied previously. [Reis temporarily withdrew his application before the May meeting.] He said he asked Bakke one day after the closing of the posted vacancy. Reis said he desired to serve upon the Commission and waited until after his wife was no longer the Town Administrator. Reis spoke to his previous military experience with 26 years as a Combat Engineer in charge of projects, to include movement of a 490-ton generator from the border of Syria to Iraq. Currently, Reis is in charge of the Rocky Mountain Mission project working with youth to install trails and provide community assistance. He asked to be considered for the current vacancy.

Chair Cornell said Reis can be considered for the next vacancy along with Pamela Miley in order to avoid special favor as Reis' request exceeded the posted deadline. He said the Commission can decide to reaffirm the applicant recommendations made at the May meeting, or they can choose to discuss further. Gerrity provided clarification to Commissioner Duggan who was not present for the earlier explanation about Miley. The Commission did not choose to change their recommendation to the Board.

Pamela Miley, of Nederland, said she spoke with Gerrity who informed her that Chris Perret was recommended at the previous meeting, and thus she was willing to await another opening.

2. Consideration and Continuation of the Public Hearing of Ordinance XXX for Zoning Amendment (Rezoning) of Town parcel at 750 W 5th Street (former Town Shop) from Public (P) zone to Neighborhood Commercial (NC) per Sec. 16-255(1)

Gerrity said the Commission considered the rezoning application for the property on April 25, with a robust discussion and significant public comment. The Public Hearing was continued for Town staff to do further research and consider brownfields mitigation. Gerrity said the 2015 rezoning to Public zone was intentional, with proposed discussion about affordable housing in the zone that didn't occur. She said the necessary brownfields testing entails a lengthy process that could take until Spring. The application was withdrawn until the process is completed.

Chair Cornell opened the Public Comment portion.

Public Comment:

Mary Jarril, of Nederland, she said she lives nearby and spoke about area wildlife to include two deer bucks in the area that day, along with a moose cow and great heron observed in Spring. She said the area is beautiful and one of the few unobstructed views of the valley. Jarril said they are missing an opportunity to get more public comment on the item. Gerrity said the application for rezoning is withdrawn at this time. Jarril said she saw a 'critical wildlife habitat' posting while working in Riverside near the St. Vrain. The designation has 4 criteria and she is willing to do further research. She said the Dyer's neighborhood also serves as a crossing point for elk from

Magnolia and Brainard, along with wildlife drinking from the creek there.

Chris Grauch, of Nederland, said site testing will include questioning of neighbors about dumping, which neighbors can attest has occurred. He asked if the property will be posted when the application is reconsidered. Gerrity affirmed.

Chair Cornell closed the Public Comment portion.

Petraro clarified the item won't be tabled as there is no knowledge of when rezoning will be reconsidered. Gerrity said the application will be withdrawn until the testing is completed.

3. Consideration and Continuation of the Public Hearing of Ordinance XXX regarding Short-Term Rental (STR) Licensing Program and associated regulations.

(This item was continued from the April 25, 2018 and May 23, 2018 meetings)

Gerrity said this has been an ongoing conversation for a few years. She said the topic came up at the Joint BOT-PC-BZA Meeting on October 25, 2017. The Commission further discussed the item starting in January 2018, with recommendations included within the revised draft ordinance. She said this includes definitions, an off-street parking plan, provision for a sales tax license, code compliance for utilities, owner self-inspection, and Good Neighbor practices. Gerrity said this excludes STR in RV's. She said ADU's were previously recommended as ineligible for STR.

Chair Cornell opened up the Public Hearing portion.

Public Comment:

Karina Luscher, of the greater Nederland area, urged the Commission to reconsider the language in the proposed ordinance, which she said wasn't thoroughly vetted. She noted Teresa Crush Warren's letter included in the packet which sums up many important points. She spoke about previous issues with long term rental (LTR) tenants, noting many of the applicants weren't solidly employed, so she offered STR. She said she invested in the home and takes the risks, not the Town, thus it is her right to do what she wants in order to keep her home. She noted 6-292(6) affects those with family cabins and those who've made investments. Luscher said guidelines and licensure is reasonable to ensure the health, safety, and welfare of residents, but didn't feel this provision offered the same to those who've invested in their properties.

Teresa Crush Warren, of Nederland, said her letter is in the packet and mentioned comments she hadn't included. She said all STR from Airbnb pay a Colorado lodging tax, not sales tax. She said her 2 employees are paid a fair wage for cleaning services, and 90% of her [organic] supplies are bought in town, as well as teaching sustainable practices like recycling and composting. She said there is a housing shortage all over Colorado and provided population data. Crush Warren said Airbnb provides many best practices, and she serves as an ambassador for Nederland, telling guests where to hike. She said STR fills a gap that would otherwise require another hotel.

Tom Lawson, of Nederland, said he thinks the proposed ordinance is restrictive to those who may want to do this for financial reasons. He said he didn't think they needed more restrictions and the guest rating system should be sufficient. Lawson asked the Commission to oppose the ordinance.

Chris Perret, of Nederland, signed up to speak, but recused as his application to join the Commission will be before the Board of Trustees for review. He offered his time to the Goho's.

Angela Seavers, of Nederland, said her letter is in the packet. She said she's been an Airbnb host for over 4 years and has hosted many family members of residents. She said regulation is needed to support the economic wellbeing. She said the draft ordinance language would affect property owners who like to spend time in the area by providing STR, as well as residents of the area who donate time and money in the community. Seavers asked them to reconsider the language.

Jesse Seavers, of Nederland, said he'd like them to reconsider the language which is a damper on the community. He said the use provides enriching opportunities for his family and the community. He said his parents bought a property next door and originally stayed in an STR owned by Karina Luscher. He spoke about his experience in the community for his first 12 years being challenged to afford rent. He said he and his wife now have thriving businesses, a daughter and another child on the way. Seavers said his parents would be prevented from STR due to the residency requirements. He added his appreciation of the Commission's work and the intention of the ordinance to stimulate affordable housing, although there are other mechanisms to achieve this goal.

Ray Seavers, of NM, and a Nederland property owner. He said the house in Town will never be his primary residence, but he will reside for about 4 months of the year to be close to family. He said he'd like to be able to provide the STR at his house when not in the Town.

Max Woodfin, of Nederland, said he owns 2 properties, one for his mother's part-time residency. He said the Seavers hosted his whole family, whom he originally met when they all lived in Old Town. He said he's lived in the community for 10 years, works as a psychotherapist and teaches at Naropa, and was in the National Guard unit that fought the Cold Springs Fire. He said he was able to utilize STR, which allowed him to purchase another home to assist his mom. Woodfin asked for the primary residency requirement provision to be stricken.

Travis Brock, of Longmont, he said he's been a Nederland resident for 14 years, but had to relocate, although they have kept the property. He said he's a FT employee at Eldora Ski Resort and he participates in community outreach and supports local businesses. He said he has an issue with the primary residence stipulation. Brock said his home is in the Industrial zone, one of 5 properties in this district. He mentioned Chair Cornell's previous stance about prohibition in the Industrial zone, and noted allowance in this district for marijuana uses, a sexually oriented business, a church, hash oil production, but he cannot offer STR. He noted his home is within 300 feet of Aspen Grove daycare center. He said he appreciates the attention given to the issue as housing is a pivotal challenge for employee recruitment, but STR regulations won't increase long term rentals. Brock said it will likely increase rents to supplement the lost revenue from STR use done currently. Staff confirmed that the revised use table in the DRAFT ordinance allowed STRs in the Industrial Zone.

Lise Anne Libnar, of 78 Navajo Trail, spoke against the provision for primary occupancy. She said she purchased the home in 2017 and stated she was told by Town staff there were no regulations. If required to be the primary residence, she would have to sell the home otherwise. She said STR offers a fantastic local experience, and her home is booked solid with her guests enjoying the recreational opportunities and shopping at the stores. She said an occupancy tax could be established and would support direct reporting from Airbnb which utilized for another Town employee. She said would like to partner with the Town to assist the process.

Mary Jarril, of Nederland, said she agrees with the preceding speakers. She said she'd previously asked whether the Town can legally take away a 'use by right'. She encouraged a catalogue of STR

providers who should be informed about the intended regulations. Re: Sec. 6-294, the notarized affidavit of a year-end summary can be provided by Airbnb. If the Town desires to tell property owners what to include for their STR guests, it should be more positive and include emergency contact information. Jarril objected to the 3-hour response time requirement and having to update STR listings with the license number. Additionally, she felt the section concerning unlawful acts should be deleted, and only address sales tax if using sites that do not automatically offer this service. Lastly, Jarril said Sec. 16-32 notes STR is prohibited in RVs and trailers but should be allowed as LTR housing options i.e. transitional housing.

Ron Mitchell, of Boulder and Nederland property owner, said one LTR tenant blew up a house via hash butane explosion which cost him a lot to repair. He has since provided STR in the renovated home and wouldn't buy another home for LTR. He said LTR tenants must be supervised. He complained about use of the internet to spread misinformation about him. He clarified his misquoted comment concerned his suggestion to provide a cost-analysis prior to establishing regulations, but he wouldn't mind paying associated taxes.

Brian Kaufman, of Nederland, said he feels the intent of the ordinance is that 'whole house rental is bad' in order to favor LTR. He said he's provided LTR for the last 3 years at the home he purchased 20 years ago. He'd now like to spend more time in town, which STR would enable. He said he has had a positive experience with his guests and Airbnb has a robust renter screening. Kaufman said he has been involved in community improvement programs like Saws and Slaws and desires to be a good neighbor and have good neighbors. He said he has had issues with LTR tenants and FT residents though and bad behavior should be targeted specifically.

Suzanne Kaufman, of Nederland, said she appreciates the work on the ordinance and suggested laws that are practical to administer. She said the annual renewal would be cumbersome, which may be easier if renewed every 5 years. She also suggested relaxing the primary residency requirements. Kaufman noted their involvement in the community, and upkeep of the property that she didn't feel was appropriate to ask of their renters. Petraro responded that a yearly renewal offers a way to address any STR's that create enforcement issues.

Wendy Bryan, of Nederland, said there are 660 homes in Town with up to 300 STR sites which is too much to manage, inspect, and enforce. Her concerns relate to different standards for STR than other home-based businesses, i.e. unrelated persons, avg. daily trips, noise, quiet time from 10pm-7am, off-street parking. She said Boulder has residents who claim to be related to bypass residency requirements. She said there should be a maximum of 3 cars for up to 6 guests for STR. Bryan mentioned her responsible use of vacation rentals for her wedding in HI. She said STR should not allow 16 guests in one home and underage people drinking and driving on Town roads. She said STR issues are hard to enforce as they may be gone the next day. Issues she's witnessed: flames shooting out of outdoor firepit, a child crying for 2 hours, street parking limiting plowing operations, slammed car doors, 5 cars with 50+ trips/day, noise. Bryan suggested a lottery system of 75 homes (10% of total homes), licensure and inspection, with remaining STR users able to apply for one of the 25 remaining licenses available every 2, 3 and 4 years.

Darryl Purpose, of Nederland, said he's been a traveler his entire life, and though he was financially able to purchase a home anywhere in the world, he chose Nederland 14 years ago. He mentioned his contribution to the Carousel of Happiness and his song verse posted upon the wall. He still sings this song when he performs. He noted the Town's 3 or 4 world class coffee houses and other positive businesses. Purpose said he's given over \$10k to the Carousel and other non-profits. He said he's had

hundreds of STR groups stay at his house without any issues, although he knows of issues by LTR tenants. Purpose said he's spent over \$100k related to his STR on contractors and those who support his business in the last 2 years.

Bakke made a statement about how she's addressed inquiries to the Town about STR use as a prohibited use, as per Sec. 16-32(b). These calls would have been directed to her and she has clearly indicated as such to questions in the last 1 ½ years or more in addition to explaining the Town does intend to enact regulations. She said she wanted to ensure the Town staff was not maligned as having provided misinformation re: investments made on homes in order to provide STR. Petraro affirmed that STR is not a use by right as was mentioned in several public comments seeing as it is an unlicensed business use in the residential zones and not allowed by zoning at this time. She suggested the Commission forward the draft ordinance for Board review as Town staff is challenged to enforce issues that are associated with homes used for STR.

Commission discussion:

Chair Cornell noted the residency requirement re: summer cabins. Commissioner Glasser said responsible property management is imperative with respect for FT residents as well as STR providers and guests. Vice Chair Williams said the former suggestion to allow up to 2 properties--eliminated to support housing goals--could be reconsidered. Commissioner Danforth said she could support that if so desired and noted people could lie on the affidavit which would be hard to enforce. Vice Chair Williams said Airbnb provides a service to collect and remit sales taxes, but not VRBO and some others. Danforth said those that collect the taxes can also provide data to help with enforcement. She said the lottery concept mentioned in public comment is interesting but could affect investments. Commissioner Duggan said primary residence restriction in Boulder absolutely established more LTR units. He wasn't sure the draft ordinance was ready yet, as community members with multiple homes need to be addressed, which is different than those using their primary residence only. He spoke about City of Boulder's limitations allowed for rental, which is also the case for STR in ADUs. He noted property owners are still able to rent month-to-month is unable to provide STR and noted his positive experiences and demand for LTR. Duggan said STR should be allowed in ADUs. Commissioner Hunt said the 6-month residency requirement feels heavy-handed. He said he wasn't sure corporations purchasing multiple homes for STR are an issue. Hunt said property owners should have more say, and the Town should act responsibly and fairly.

Gerrity said currently there is no allowance for the use with comments from some residents about not enforcing the code, which challenges Town staff. Gerrity said there is a lot of opposition to unregulated STRs.

Darryl Purpose offered advice from the audience that the Airbnb rating system may help curb issues.

Chair Cornell spoke about the notarized affidavit requirement. Petraro said STR providers may be less inclined to lie about sales tax reporting if notarized.

The Commission discussed the primary residency requirement mentioned as an obstacle in the public comments. After much discussion about changing the time required for residency and limiting the # of days a rental can be used, the Commission agreed it could limit STR to one house per entity (i.e. family or business partnership) within the Town of Nederland.

Chair Cornell called for a short break. The meeting was called back to order at 9:12pm.

Chair Cornell said he forgot to allow one minute for those who hadn't signed up to speak.

Public Comment:

Laura King, of Nederland, said she researched the allowance of STR in ADUs in many municipalities and only the Town of Lyons prevents STR in ADUs which did so by establishment of an incentive program after the 2013 Flood by giving a free tap fee. She said it stipulates ADUs must be used for LTR to maintain the free tap fee, but it doesn't prevent the ability for STR in ADUs. Nederland is the only municipality in the state to do so which would be unprecedented and heavy-handed.

Jackie Jones, of Nederland, said she came to Nederland in 2009 and stayed via STR. As a real estate agent, she said a \$400k home would require \$1985/mo. housing payment in order to break even. She said residents may say that fulltime residents will patronize restaurants more often, although this isn't true in her personal experience even with the 2013 rebate program to support local business. She said the residency requirement would not have allowed her to live, work, and volunteer in Town.

Kim Goho, of Nederland, said if the 'ban' is put in place they wouldn't provide STR. She spoke of the flexibility that STR provides homeowners such as herself with an 8-year old child and large dog. She said it won't provide additional LTR rentals and mentioned the kitchen restriction for STRs.

Pam Miley, of Nederland, said they offer STR at the house they reside in. She said they promote local business to their guests. She said guests are usually gone for the day and due to the established house rules return quietly at night. Miley said they don't need the Town to tell them how to govern the use of their home. She said their onsite management allows them to maintain the space and ensure there are no damages which could be reported to Airbnb. She mentioned the existing code can be enforced to deal with nuisances. She said she has experience drafting legislation and feels the best way is to make less restrictive laws first then make more restrictive if necessary.

Lise Anne Libnar, of Nederland, [spoke earlier and granted 30 seconds for additional comment] said the Town could circulate a voluntary survey to indicate income levels to establish an appropriate occupancy tax.

Jeff Wrobel, of Gilpin County and Nederland commercial property owner, said they invested in a property to run a business and would like to offer rental units, which currently offers both LTR and STR. He said the Town is on the right track to limit outside investment properties, but regulations won't limit housing issues. He said STR for commercial property language should be changed. Petraro clarified the current version of the ordinance requires primary residency, although this wasn't intended for commercial property.

Chair Cornell closed the Public Hearing portion.

Gerrity said public comments were centered upon issues with primary residency requirement. Petraro said the language could alternately stipulate one rental residence per entity, which met with Commission support. Petraro noted Boulder's definition of primary residence. She said the Commission could also strike the language in 6-294 pertaining to "duration and frequency" if the Commission isn't going to limit the # of days or months for rentals.

Delete provisions that reference primary residence as it will be addressed via language changes.

Motion to recommend approval of the draft STR ordinance with associated changes to include change of language from 'primary residency requirement' to 'one property allowed for STR by entity' was

made by Chair Cornell, seconded by Commissioner Glasser, with all (6) in favor.

Gerrity said the Board of Trustees review will be held on July 17. Petraro said the official Public Hearing was at the Planning Commission as required per State Statutes.

G. DISCUSSION ITEMS

There were no discussion items.

H. OTHER BUSINESS

Bakke said this is Commissioner Duggan's last meeting. Chair Cornell said Duggan has provided a lot of great feedback and helped to draft regulations. He commended and thanked Duggan.

The Commission further discussed density of STR's that wasn't included in the recommendation for the draft ordinance. Bakke suggested Commissioners could offer comment upon the policy at the July 17 Board review. She said there needs to be public input on this. Gerrity said that previously received letters of opposition will be brought forth in the BOT packet. Williams said the underlying theme was to limit the number.

Cornell said there are concerns about the total number, but a letter could be drafted to the Trustees. Petraro said she wouldn't recommend the Commission draft a letter, as she can bring these concerns forward.

Williams asked for clarification about signing the minutes from the May meeting.

Cornell said he will absent for the July meeting. Bakke said she will also be absent due to family obligations out of state.

I. ADJOURNMENT

Motion to adjourn was made by Commissioner Glasser, seconded by Commissioner Danforth, with all in favor (6). The meeting was adjourned at 9:45 pm.

Approved by the Planning Commission,

Roger Cornell, Chairman, Planning Commission

ATTEST:

Cynthia Bakke, Planning and Building Technician/Clerk
to Planning Commission