

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, June 12, 2012 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Vice Chair Christman called the meeting to order at 6:30 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Vice Chair Laura Christman, Commissioner Joe Poche, Commissioner Peter Savoie, and Commissioner Steve Szymanski.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; David Foster, Deputy City Attorney; and Emily Kropf, Community Development Clerk.

Absent was Commissioner Jim Rubin.

ELECTION OF CHAIR

Vice Chair Christman stated that the loss of Chairman Ira Plotkin is a loss to the City as he was a great citizen, a tremendous critical thinker and an example of what a chairman should be. She added that he will be greatly missed.

Commissioner Szymanski nominated Vice Chair Christman as chair, which was seconded by Commissioner Savoie. The motion passed unanimously.

Commissioner Poche suggested that the Commission postpone the election of a vice chair until both vacancies have been filled.

APPROVAL OF MINUTES

Commissioner Savoie made a motion, which was seconded by Commissioner Szymanski, to accept the May 8, 2012 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Request by Verizon Wireless for a Conditional Use Permit to Locate a Temporary Wireless Community Facility at the Cherry Hills Country Club during the 2012 U.S. Amateur Championship Golf Tournament

Mr. Zuccaro stated that staff is presenting a request by Verizon Wireless for a conditional use permit to install a temporary wireless communication facility at the Cherry Hills Country Club during the 2012 U.S. Amateur Championship Golf Tournament in August of this year. The proposal is to have the facility on-site from August 3rd through August 23rd to provide additional cellular capacity and coverage during the event.

Mr. Zuccaro continued that the proposal includes the installation of a trailer with a telescoping antenna mast and a diesel generator within an existing fenced maintenance yard. The mast will extend to a height of 37 ½ feet and the equipment will be located approximately 340 feet from the nearest property line to the north.

Mr. Zuccaro said that staff has reviewed the requirements of the request and has provided findings for each criteria. Staff recommends approval of the request with two conditions. The first condition is related to the noise level of the electrical generator, which is proposed to operate 24 hours per day once installed. The Municipal Code allows a maximum noise level of 65 decibels (dB) from 7:00 a.m. to 9:00 p.m. and 50 dB at all other times. The applicant has provided a dB level that ranges 66 to 68 dB 23 feet from the generator and a calculation of 45 dB for noise attenuation at the closest shared property line. The calculation does not take into account landscaping or fencing that might provide additional attenuation. For further assurance of compliance, staff recommends that a condition of approval be that the maximum noise level allowed shall not be exceeded while the facility is in operation. Staff plans to visit the site during the event with a noise meter to ensure that the maximum level allowed is not exceeded.

Mr. Zuccaro stated that the second condition is related to the wind loads of the antenna mast. The structural report provided with the application indicates that the mast will need to be lowered if wind speeds exceed 60 miles per hour (mph). To ensure compliance, staff recommends that a condition of approval be that the wind speeds are monitored by the applicant at all times and the mast is lowered if wind speeds exceed 60 mph.

Mr. Zuccaro said that the applicant's representative is present if any of the Commissioners have questions regarding the request.

Chair Christman asked what the applicant would do if the noise level of the generator exceeded the maximum noise level allowed since there is not a way to muffle or lower the noise level of the generator.

Mr. Zuccaro responded that the applicant could construct a baffling structure to attenuate noise. Under extreme circumstances, the City could revoke the Conditional Use Permit and not allow the generator to operate.

Chair Christman said that the easiest solution would be to require the applicant to construct a baffling structure.

Commissioner Savoie stated that the applicant has provided documentation showing that the noise level of the generator is expected to be significantly lower than the maximum level allowed.

Chair Christman replied that it would only be a problem if the documentation was wrong. She asked that a reasonable alternative be found in order to avoid shutting the generator down altogether if an issue were to arise.

Commissioner Poche asked if the slope of the land at the site will help decrease noise further.

Commissioner Savoie responded yes. He asked what the two conditions of approval are.

Mr. Zuccaro replied that the applicant would have to lower the mast if wind speeds exceeded 60 mph and reduce the noise level of the generator if the maximum level allowed was exceeded. If the applicant was unable to lower the noise level, the permit could be revoked. He added that the request is not a requirement for the 2012 U.S. Amateur Championship to take place but is in association with the event.

Commissioner Szymanski asked what an example of 45 dB is.

Mr. Zuccaro responded that the applicant would be able to provide that information.

Commissioner Savoie stated that the condition could be amended to state that if the noise level of the generator exceeds 60 dB, the applicant will be required to construct a baffling structure.

Chair Christman said that the condition could state that the applicant will be required to lower the noise level or shut the generator off.

Commissioner Savoie agreed.

Chair Christman asked if the generator could be shut off the day after the event ends.

Ms. Kelly Harrison, representative for Verizon Wireless, stated that the event takes place from August 13th through August 19th. The applicant has asked for additional time prior to the event in order to prepare the generator and calibrate it. The applicant also requested several days following the event in order to break down the equipment, but the generator does not need to run after the event. Ms. Harrison added that an example of 40 dB is noise at a library or bird calls. 50 dB is a quiet suburb conversation or large electrical transformers at 100 feet.

Mr. Foster asked if the generator needs to be turned on starting on August 3rd.

Ms. Harrison responded that the generator will need to run four to five days prior to the event in order to make sure it is operating correctly.

Chair Christman asked that the applicant coordinate a time with the City to test the noise level of the generator.

Commissioner Poche asked if the applicant is requesting more time than what is needed.

Chair Christman stated that she would prefer if the generator was shut down the day after the event ends.

Ms. Harrison replied that she would coordinate with her construction manager in order to determine when the generator is being delivered, turned on and turned off.

Chair Christman asked if the applicant had any questions for the Commission.

Ms. Harrison responded no.

Commissioner Szymanski asked if the facilities would enhance the cellular service provided for everyone in the area.

Ms. Harrison replied yes.

Chair Christman said that she would entertain a motion.

Commissioner Szymanski made a motion to recommend approval of the request with the conditions that the electrical generator shall not exceed the maximum noise levels outlined in Municipal Code Article XII and the applicant shall monitor wind speeds and the antenna mast shall be lowered if wind speeds exceed 60 mph.

Commissioner Savoie seconded the motion. The motion passed unanimously.

Ordinance Amendments to Municipal Code Sections 16-1-10 and 16-5-10 Defining Short-Term Rental and Providing Limitations on Short-Term Rentals of Single-Family Dwellings

Mr. Zuccaro stated that staff originally presented two versions of the proposed ordinance amendment at the May 8th meeting. One version defined short-term rental as the rental or lease of a single-family dwelling for a period of less than 90 days while the other version defined short-term rental as the rental or lease of a single-family dwelling for a period of less than 30 days. The Commission asked for additional information regarding City Council's intent and the need for the ordinance.

Mr. Zuccaro continued that City Council held two study sessions on the issue of short-term rentals on February 21st and March 20th of this year. The study sessions were held in order to address possible negative impacts of short-term rentals on single-family residential neighborhoods, including uncontrolled parking, excessive traffic, noise and high occupant turnover. The concern expressed by City Council was that the continuous short-term rental of single-family residences was not consistent with the intent of the City's single-family residential zone district. Mr. Zuccaro said that under the City's current ordinances, enforcement prohibiting a non-family use is difficult. For instance, a family could rent a home for a week and host a wedding during that time. This type of activity could take place on a weekly basis.

Mr. Zuccaro stated that City Council asked that the proposed ordinance ban short-term rentals but allow certain exceptions, such as special events and housing swaps. City Council also wanted to define short-term rentals as having a certain period of time, such as 30 days, 90 days or 180 days. Based on the Commission's feedback, a more permissive ordinance has been drafted, which defines a short-term rental as the rental or lease of a single-family dwelling for a period of less than 30 days. The proposed ordinance prohibits any rental that is for a period of less than 30 days other than two exceptions allowed per year for special events. Additional language that has been added to the proposed ordinance in order to clarify its intent states that any type of short-term rental for the purpose of hosting a party, special event, social gathering, wedding or similar use is prohibited.

Mr. Zuccaro said that several emails from residents expressing their concerns regarding short-term rentals have been provided to the Commission. He added that there are several residents in attendance who wish to address the Commission regarding the issue, as well. Staff recommends approval of the ordinance as proposed in Exhibit A.

Chair Christman asked if the rental of a single-family dwelling must be to a single family.

Mr. Zuccaro responded yes. He said that the proposed ordinance would not change the requirement that single-family dwellings can only be rented to individuals who meet the definition of a family, which includes family members and up to three unrelated individuals.

Chair Christman stated that staff might want to refer to the definition of family in the proposed ordinance.

Commissioner Savoie asked if the two exceptions will require conditional use permits.

Mr. Zuccaro replied no. He continued that special events will not require permitting or licensing. Residents would be able to rent their homes on a short-term basis up to two times a year without having to receive approval from the City. City Council discussed a possible conditional use process but felt that it was unnecessary due to the size of the City and the fact that short-term rentals are not a prevalent issue.

Chair Christman asked what the penalty is for violating the proposed ordinance.

Mr. Zuccaro responded that a violation of the Municipal Code can result in daily fines or even jail time.

Commissioner Poche asked how the City would know if a resident was violating the ordinance.

Commissioner Savoie said that a neighbor could notify the City.

Commissioner Poche responded that the resident might be using one of his exceptions.

Mr. Zuccaro stated that if the City could discern that the resident has already used both short-term rental exceptions in a year, he would be subject to a citation.

Chair Christman said that the proposed ordinance does not pertain to exclusive resort types of residences that are owned by companies and used by employees. She added that some individuals might be willing to pay a daily fine if found to be in violation of the ordinance.

Commissioner Savoie said that a resident would not continue to violate the ordinance if jail time was a possible penalty.

Chair Christman replied that a resident would most likely not be placed in jail.

Commissioner Savoie stated that if a company purchased a residence and used it as an exclusive resort, it would be a commercial use.

Chair Christman responded that it would not be unless the City defined it as such.

Deputy City Attorney Foster said that a residence has not been used as an exclusive resort in the City at this time. He added that it seems as though City Council would like the Commission to respond to the issue of short-term rentals specifically.

Chair Christman stated that she would like to note that other cities have been required to allow residences that were purchased and used as exclusive resorts prior to regulation to continue operating. She added that one city that experienced this issue is Colorado Springs.

Commissioner Savoie suggested that the Commission hear the residents in attendance.

Douglas Sawyer, resident of 22 Viking Drive, said that he lives two houses down from a residence that is currently being used as a short-term rental. He continued that there are parties almost every weekend with new occupants. As a result, there are issues regarding traffic, parking and safety. Mr. Sawyer stated that he is not opposed to neighbors hosting parties, but the subject property is no longer being used as a single-family dwelling. He said that the constant flow of new individuals in the neighborhood is a problem, and enforcement should be easy if there are new individuals on the property.

Commissioner Szymanski asked how many times the property has been used as a short-term rental in a year.

Mr. Sawyer responded more than 30 times. He continued that the last advertisement he saw for the property listed it as a destination for bachelor and bachelorette parties.

Steven Halvorsen, resident of 6 Viking Drive, said that he lives next door to the subject property described by Mr. Sawyer. Mr. Halvorsen continued that he has two young daughters, and he is concerned about the number of strangers in the neighborhood as a

result of the events held on the subject property. He added that there have been several cars that have parked on his property during such events.

Commissioner Poche asked if the cars are parked there for longer than 24 hours.

Mr. Halvorsen responded yes.

Chair Christman asked what Mr. Halvorsen thinks a fair means of enforcing the ordinance would be.

Mr. Halvorsen asked if the police could be called to end the event.

Commissioner Poche asked if Mr. Halvorsen has called the police to report the subject property.

Mr. Halvorsen responded yes. He added that the police said that there was nothing that they could do.

Chair Christman stated that the residence had to be rented to a single family.

Mr. Zuccaro replied that the residence could be rented to a single family who hosts the event.

Commissioner Poche asked if the police can stop activity that violates the City's noise ordinance.

Mr. Zuccaro responded that Chapter 7 of the Municipal Code details the decibel levels allowed at different times throughout the day. The police use an ordinance that states that a reasonable noise level cannot be exceeded and will make contact with the offending parties and ask them to turn down any noise that violates the ordinance. The police do not have to end the event though.

Chair Christman stated that the neighbors would have to constantly call the police.

Robin Kenyon, resident of 4905 S. Lafayette Lane, said that she lives in the vicinity of the subject property. She continued that she has two young children who ride their bikes in the neighborhood. Ms. Kenyon stated that no commercial activity is allowed within the residential zone districts. She added that she does not understand how the owner of the subject property is able to operate a business from his residence.

Mr. Zuccaro responded that the City is attempting to distinguish which rentals are intended for commercial use rather than residential use, which is why the issue is difficult to enforce.

Ms. Cathy Tyree, resident of 32 Viking Drive, said that she wishes to support her neighbors and the concerns that they have raised. She added that she is worried about the crime, safety and real estate values in the neighborhood as a result of the events held at the subject property. Ms. Tyree continued that the activity at the subject property does not seem consistent with the intent of the City.

Mr. John Moorhead, resident of 26 Viking Drive, stated that he lives several doors down from the subject property. He continued that the residence is rented on a regular basis for sometimes as short of a period as two nights. The homeowner is running an events center from the property. Mr. Moorhead added that the current rules are ambiguous and are not being enforced.

Chair Christman asked what Mr. Moorhead proposes and why.

Mr. Moorhead responded that there should not be two exceptions per year. He continued that the substantive issue is the purpose of the rental. The homeowner is operating a commercial enterprise in a residential zone district. Mr. Moorhead added that renting for the purpose of hosting an event should be prohibited.

Chair Christman said that what she is hearing from the residents is that the issue is hosting an event for payment. Chair Christman asked if Mr. Sawyer wanted to address the Commission as he raised his hand.

Mr. Sawyer stated that no one wants to stop a wedding. He added that there could be enforcement mechanisms beyond a fine. The police could ask the individuals on the property to vacate prior to the event taking place.

Mr. Moorhead said that enforcement addresses the problem after the fact. He continued that the zone district is intended for single-family residential use.

Deputy City Attorney Foster stated that the issue is not about one specific property. If adopted, the proposed ordinance will be applied throughout the City.

Commissioner Savoie stated that the Commission could ban all rentals for a period of less than 90 days.

Chair Christman replied that the issue would not be resolved if the homeowner was present at the event. She continued that the Commission needs to clarify that third parties using a home for an event is considered a hospitality use. Chair Christman added that the term "exclusively" should be removed from the proposed language and short-term rental of a single-family dwelling should include use for fee or consideration.

Commissioner Szymanski said that the City of Sedona banned short-term rentals, as well as advertising for short-term rentals.

Chair Christman stated that she agrees with banning advertising.

Commissioner Szymanski agreed. He continued that the character of the City should be protected, and this could be considered an extension of the efforts by the Residential Development Standards Committee.

Commissioner Savoie stated that the short-term rental of properties for events is a commercial use. He added that the issue of enforcement would be resolved if all rentals for a period of less than 6 months were prohibited.

Commissioner Poche and Commissioner Szymanski agreed.

Chair Christman said that the police were not comfortable enforcing the single-family dwelling definition when contacted about the subject property.

Deputy City Attorney Foster replied that using a home for an event is not illegal unless done on a continual basis for purposes that do not involve the property owner's family.

Chair Christman said that the Commission has not addressed City Council's concern that residents may want to rent their homes during special events like golf tournaments. She added that the proposed ordinance could be amended to state that City Council can establish designated events in which short-term rentals would be allowed.

Commissioner Savoie suggested that residents could apply for a conditional use permit.

Mr. Zuccaro stated that he has heard of instances in which homes are rented for a period of less than 6 months to individuals who are in town on business. There are also individuals who have homes in other states and rent their homes. The Commission may not want to ban these types of rentals as long as they are not on a continual basis.

Commissioner Savoie stated that rentals for a period of less than 90 days could be considered.

Commissioner Szymanski said that the City of Sedona defined advertising, enterprise, operator, transient and short-term rental in order to address the issue.

Deputy City Attorney Foster stated that the proposed language addresses the issues discussed and can be modified to address any additional concerns.

Chair Christman replied that the definition of commercial use should be discussed. She added that rentals by definition are a commercial use.

Deputy City Attorney Foster said that the proposed ordinance allows for two short-term rentals in a year, which is a simple way to measure.

Commissioner Savoie asked why the City should allow two short-term rentals.

Deputy City Attorney Foster replied that these can be prohibited, as well. He continued that the Commission could require conditional use permits for special events, but a burden would be placed on staff in processing the permits.

Chair Christman asked if the applicant would still have to meet the definition of single family.

Deputy City Attorney Foster responded yes.

Chair Christman stated that the City could charge a fee that is reasonably related to the amount of work required to process the permit.

Commissioner Savoie asked Mr. Zuccaro if the burden would be unreasonable.

Mr. Zuccaro replied that the City would likely hire a consultant to assist with the process for a specific event. If the work was on-going, the City would hire additional staff, which might require an increase in fees.

Commissioner Savoie said that City Council should not define certain events in which homes can be rented on a short-term basis.

Commissioner Szymanski replied that he prefers if City Council identifies specific events.

Mr. Zuccaro stated that the City could use the special exception process or the conditional use permit to allow two exceptions in a year. Public hearings might be required, however.

Commissioner Szymanski stated that the exceptions should be limited to 10 days.

Deputy City Attorney Foster asked if the Commission wants to modify the proposed ordinance and bring it back or recommend the modified ordinance to City Council.

Mr. Zuccaro suggested that the Commission modify the language and recommend the ordinance to City Council as residents are currently being impacted by short-term rentals.

Commissioner Savoie stated that short-term rentals should be limited to a period of less than 10 days, twice a year, with a conditional use permit.

Chair Christman said that the term "exclusively" should be removed from the proposed language. She continued that "hosting" could be changed to "conducting". She stated that the number of exceptions allowed also needs to be added.

Commissioner Szymanski stated that short-term rentals should be defined as a single-family dwelling rented or leased to a family for a period of less than 90 days. He added that there should be no exceptions allowed and advertising for short-term rentals should also be prohibited.

Deputy City Attorney Foster replied that the City could choose to allow an exception if a homeowner applied for a special use permit for a specific event.

Chair Christman suggested that short-term rental be defined as a single-family dwelling unit rented or leased to a family for a period of less than 90 days other than a house exchange for which there is no payment. She continued that the short-term rental of a single-family dwelling shall be prohibited except with a special use permit that shall be obtained before occupancy.

Mr. Zuccaro asked how many times the special use permit can be granted. He continued that the process to grant a conditional use permit can be extensive. The City also has a special exception process and its criteria might be better suited. The applicant would go before the Board of Adjustment and Appeals.

Chair Christman suggested amending the proposed language to read that the short-term rental of a single-family dwelling shall be prohibited except with a special exception that shall be obtained prior to occupancy. In no event, shall one property be allowed to obtain a special exception more than two times in a calendar year. Chair Christman continued that the short-term rental of a single-family dwelling that is exclusively for the purpose of hosting a party, special event, social gathering, wedding or similar use shall be considered a commercial use of the property and is prohibited. She added that she has an issue with social gathering as it would prevent a renter from hosting a dinner party.

Commissioner Savoie replied that it would not prevent the renter from hosting a dinner party as long as the individual did not rent the home for the purpose of hosting the party.

Deputy City Attorney suggested that the Commission prohibit the rental of single-family dwellings that are used for fee for service events. He added that advertising for such use should also be prohibited.

Chair Christman responded that the definition of short-term rental should remain in the language.

Deputy City Attorney Foster replied that he did not know if it was necessary to define short-term rental.

Chair Christman stated that the residents seemed to be concerned about the fact that there were different individuals on the subject property every weekend and not just that events were taking place on a regular basis.

Commissioner Szymanski agreed that the definition of short-term rental should be a single-family dwelling unit rented or leased to a family for a period of less than 90 days.

Commissioner Savoie said that the language should state that the rental of a single-family dwelling for the purpose of hosting a party, special event, social gathering, wedding or similar use shall be prohibited, as well as solicitation or advertising for such use.

Commissioner Szymanski asked if special use permits would still be granted.

Chair Christman said no.

Deputy City Attorney Foster asked if the City should grant exceptions.

Commissioner Szymanski responded no.

Commissioner Savoie agreed.

Commissioner Savoie made a motion to define short-term rental as a single-family dwelling unit rented or leased to a family for a period of less than 90 days, other than a house exchange for which there is no payment. He continued that short-term rental of a single-family dwelling shall be prohibited. Solicitation, advertising or rental of a single-family dwelling for the purpose of holding a party, special event, social gathering, wedding or similar use shall be considered a commercial use of the property and is prohibited.

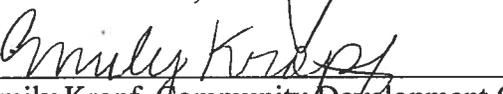
Commission Szymanski seconded the motion. The motion passed unanimously.

ADJOURNMENT

The meeting was adjourned at 8:41 p.m.



Laura Christman, Chair



Emily Kropf, Community Development Clerk