

**PLANNING COMMISSION  
MINUTES  
MAY 14, 2024  
LOWER LEVEL – LIBRARY COMMUNITY ROOM  
702 E. FRONT AVENUE**

**COMMISSIONERS PRESENT:**

Tom Messina, Chairman  
Mark Coppess  
Lynn Fleming  
Sarah McCracken  
Phil Ward  
Peter Luttropp

**STAFF MEMBERS PRESENT:**

Hilary Patterson, Community Planning Director  
Sean Holm, Senior Planner  
Randy Adams, City Attorney  
Traci Clark, Administrative Assistant

**Commissioners Absent:**

Jon Ingalls, Vice-Chair

**CALL TO ORDER:**

The meeting was called to order by Chairman Messina at 5:30 p.m.

**APPROVAL OF MINUTES:**

Motion by Commissioner Ward, seconded by Commissioner Coppess, to approve the minutes of the Planning Commission meeting on April 9, 2024. Motion approved.

**PUBLIC COMMENTS:**

None.

**STAFF COMMENTS:**

Hilary Patterson, Community Planning Director, provided the following comments:

- June 11, Planning and Zoning will have 3 public hearings - a Planned Unit Development, a Special Use Permit, and a Combination Planned Unit Development Amendment and Subdivision request. You also have a request this evening to continue the public hearing for the 9-Lot Subdivision by Mr. Kaufman.

**COMMISSION COMMENTS:**

None.

**PUBLIC HEARINGS: \*\*\*ITEMS BELOW ARE CONSIDERED TO BE ACTION ITEMS.**

1. Applicant: Todd Kaufman (*Continued from April 9, 2024*)  
Location: 2810 N. 17<sup>th</sup> Street  
Request: A Proposed 9-Lot Subdivision  
QUASI-JUDICIAL, (S-1-24)

***The applicant requested this item be continued to July 9, 2024. The Commission was asked to vote to continue this hearing.***

**Motion by Commissioner Coppess, seconded by Commissioner Fleming, to continue the hearing for item S-1-24 to the Planning and Zoning Commission meeting on July 9, 2024. Motion approved.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Coppess	Voted	Aye
Commissioner McCracken	Voted	Aye
Commissioner Luttrupp	Voted	Aye
Commissioner Ward	Voted	Aye
Chairman Messina	Voted	Aye

Motion to approve carried by a 6 to 0 vote.

2. Applicant: Thomas Hungerford (*Neighborhood Sponsor*)  
Location: Nettleton Gulch Road and 17<sup>th</sup> Street  
Request: Proposed SUP restricting 16.64-acres to single family designation  
QUASI-JUDICIAL, (SP-1-24)

**Presented by: Sean Holm, Senior Planner**

Mr. Holm, Senior Planner, provided the following statements:

Thomas Hungerford, neighborhood sponsor, is requesting approval of a single family detached only designation in an R-12 zoning district. If approved, the special use permit request would limit future construction to single family detached residential homes and accessory uses in the subject area.

Mr. Holm provided background information and shared information about prior requests of a similar nature.

He noted that Special Use Permit applications for a single family detached only designation are a rare occurrence in the city. To date, there has been two (2) requests for this specific action: Pinegrove Park (1994) and Ft. Grounds (2013-14). While both of these requests were ultimately approved, there was a difference in the threshold to qualify. Prior to 2013, city code required the neighborhood sponsor to prove there was both 75% of the subject area as well as 75% of the owners in agreement to sign on as "parties to the request". This changed to 66% for both hurdles, in 2013, when City Council approved ordinance 3474. The minimum requirement for one-and-a-half acres (1.5 ac) as a whole remains the same.

The applicant as the neighborhood representative has noted that the Special Use Permit will preserve the Best/Nettleton Gulch area as a transitional space between the rural undeveloped recreational land of Canfield Mountain and the more densely populated, amenity-rich urban fabric of downtown Coeur d'Alene.

The Zoning Code defines residential activities and types of structures as detached housing:

*One dwelling unit, freestanding and structurally separated from any other dwelling unit or building, except for an accessory building located on a lot or building site which is unoccupied by any other dwelling unit or main building.*

*Single-family detached housing: One dwelling unit occupied by a "family" as defined in this title, including manufactured structures and designated manufactured homes as defined in this chapter.*

**The R-12 zoning district** is intended as a residential area that permits a mix of housing types at a density not greater than twelve (12) units per gross acre. In this district a special use permit, as prescribed in chapter 17.09, article III of this title, may be requested by neighborhood sponsor to restrict development for a specific area in single-family detached housing. To constitute neighborhood sponsor, sixty six percent (66%) of the people who own at least sixty six percent (66%) of the property involved must be party to the request. The area of the request must be at least one and one-half (1<sup>1/2</sup>) gross acres bounded by streets, alleys, rear lot lines or another recognized boundary. Side lot lines may be used for the boundary only if it is also the rear lot line of the adjacent property.

Mr. Holm also noted that all parcels within the subject are currently large enough to qualify for a duplex in R-12.

Commissioner Fleming asked about the two homeowners that removed their names from the request and does that change the numbers on this request of the percentage allowed of homeowners involved.

Mr. Holm explained that they own a sliver of a parcel that is partially in the city limits and mostly in the county. They indicated they were not contacted by Mr. Hungerford. The original application came in with 38 parcels but it was really 38 1/8, the city removed the 1/8 of a parcel. The homeowners in support of the request meet the requirement.

Commissioner Coppess asked Mr. Holm to clarify the meaning of the red blocks on the drawing on the screen. He asked if each individual property owner opposed the request or was it that they did not respond to the request to support the Special Use Permit.

Mr. Holm replied that he can only say by hearsay. He has only heard from the applicant that he made his best attempt to contact everyone, but not everyone was a local owner.

Commissioner McCracken asked how do you verify the signatures that the came in with the application. After tonight, does the city verify the signatures since the count is really close on the one threshold.

Mr. Holm stated the city does have the signatures on file. It was brought to a notary and was based upon the tax record. We have not gone to each individual to verify their signatures.

Mr. Adams, City Attorney, commented that the ordinance is silent. His opinion would be that if someone opposes this and wants to bring forward evidence that a parcel was not properly signed or signed on to it, that would be their burden. This would not be the city's responsibility to verify each signature. The names have been notarized and we can accept this.

Mr. Holm noted that there are three required findings for a special use permit, findings B1 through B3.

Finding B1 is if this proposal (is) (is not) in conformance with the Comprehensive Plan. Mr. Holm presented information about the subject property being within the existing city limits. The City's Future Land Use Map designates this area as **Compact Neighborhood** place type. He shared the Comprehensive Plan maps for transportation, including the existing and planned bicycle network, walking network, transit network. He also shared the Goals and Objectives that staff found applicable to the request.

Finding B2 is if the design and planning of the site (is) (is not) compatible with the location, setting, and existing uses on adjacent properties. Mr. Holm shared details about the properties within the boundaries of the request.

Commissioner Coppess asked about the broader picture regarding the Comprehensive Plan and the designation of the area as a Compact Neighborhood place type. There must have been a reason to designate this area to allow for a variety of housing types. He was wondering if that was done for a specific purpose or done in the broader context to ensure that there is adequate housing available for a full spectrum of people living in the area with different needs and price points. Can the macro picture support changing this compact neighborhood into a single family detached only neighborhood. Probably the answer is yes. At some point, once people realize what is going on and how effective this is in other areas that have similar challenges of not wanting to increase the amount of multifamily residential units in a neighborhood, they will also request this single family detached only designation. His concern is how do we get to a point where we have maxed out our single family detached housing for the comprehensive plan and does the plan provide those details.

Mr. Holm answered the Comprehensive Plan is a guiding document for the 20-year growth horizon. None of the language says it has to happen within any certain time frame, as far as land use decisions. The future land use map does provide what the citizens of Coeur d'Alene have agreed to as to what the future growth pattern and appropriate land uses. The Zoning Code does allow the request for single family detached family only designation. We are taking that code piece and applying it the Comprehensive Plan. Staff is presenting what the Comp Plan envisioned and the request of the neighborhood.

Commissioner McCracken stated that when the Comp Plan was revisited, there were some estimates from KMPO with regard to population growth and there was a board game that she played where the community was trying to fit the population of the growth within the boundaries of the city and what that could look like. There was a pretty decent mix to be able to see that happening.

Ms. Patterson replied that looking over 20 years the population is projected to be over 85,000. Through the Comprehensive Plan process we had thousands of community members help to the mapping that growth Commissioner McCracken was talking about. The community members used planning tiles that correlated to the density or number of dwelling units per acre. That is how the place types came to be. But it is hard to go parcel by parcel. The map was great. It was based on the actual city limits and the Area of City Impact but you cannot drill it all the way down. It just helps provide guidance.

Commissioner Luttrupp stated that the process was helpful for identifying the neighborhoods and that the code allows for neighborhoods to request limiting density and housing types if they want to. Hence this is why this request is before us tonight.

Mr. Holm stated the goal of development is to have a mix of land uses throughout the city with housing and employment while preserving the qualities that make Coeur d'Alene a great place to live. This is a two-sided statement. The Planning Commission must consider what comes before you. There is a balance there. You must consider is the timing correct, is the neighborhood coming before you tonight and the record that is before the Planning Commission. Are each one of you comfortable with approving or denying a request. This evening's request is brought forward by neighbors who have self-identified based upon the subject area that he has laid out on the map. The question before you is should this be

family only detached.

Commissioner Fleming stated the other challenge is there are some duplexes within the boundaries. She asked if they were to be demolished, would they be restricted to only building a single family dwelling.

Mr. Holm replied, yes. What you asked is covered in the non-conforming section of the code. In the city of Coeur d'Alene, if the building is destroyed or damaged by more than 50%, then it does have to be rebuilt to the current standard. Each single family lot could have a home and an ADU (Accessory Dwelling Unit). When this section of the code was written, allowing for single family detached only designation through a Special Use Permit, it did not anticipate ADU's. But he has had long conversations with Mr. Adams determining what would the limit be, what is the allowance in case the questions come up. There is the potential for duplexes to be built on every lot within the boundaries now because of the large lot sizes. Some of the properties are large enough to have two single family homes. The R-12 zoning does limit any R-12 parcel to a maximum of two units without subdivision. If there is 11,000 square feet, there could be two single family homes. If it is under that, they could have a single family home with an ADU.

Commissioner McCracken asked if there could be a subdivision allowed on the larger lots.

Mr. Holm replied yes, it would still come before the Planning and Zoning Commission and would have to meet all the requirements.

Finding B3 is if the location, design, and size of the proposal are such that the development (will) (will not) be adequately served by existing streets, public facilities and services.

All of the City departments sent in their comments and there were no issues with any of the departments or city staff in providing facilities or services.

Mr. Holm noted the action alternatives this evening. The Planning and Zoning Commission must consider this special use permit request, which would limit future construction to single family detached residential homes and accessory uses in the subject area, and make appropriate findings to: approve, deny or deny without prejudice.

Mr. Holm, concluded his presentation.

Commissioner Ward asked about the parcel east of the property that is in the county and what zone is it under.

Mr. Holm stated he is not certain.

Commissioner Ward asked if the properties to the east wanted to become part of the city and have a single-family only designation, how would that work.

Ms. Patterson replied that to be annexed into the city from the county and to be single family only they would want to do the R-1 or R-3 zoning.

Commissioner Ward stated continuing with the darker green areas beyond *(he pointed to the photos that Mr. Holm still had up on the screen)*.

Mr. Holm replied, yes. The area is a PUD (Planned Unit Development) and those are single family homes.

Commissioner Ward asked how much further east the City limits can go, probably not much because of Canfield Mountain.

Mr. Holm stated the Area of City Impact does go out a way. As the land gets steeper it becomes more difficult to service that piece of property with city water pressure, etc.

Commissioner Ward commented the road way system in there does not look very substantial. 15<sup>th</sup> St. is pretty well developed and progressing from South to North, but once you get to 17<sup>th</sup> Street it all tapers off and reverts back to more rural type of development.

Mr. Holm stated, that is true. Nettleton Gulch is not near as busy as 15<sup>th</sup> Street but that is the access to the East.

Commissioner Ward stated there is a huge shortage of housing in the community. He thinks it's important to consider the higher development potential because it's R-12 in an area that is really rural at this point. He said the commission should consider development potential, how do we control that, how do we ensure that the larger lots with single family homes remain to the east, and if we are going to increase any densities are we going to bring it closer to 15<sup>th</sup> Street. He sees that 17<sup>th</sup> Street almost comes to a transition point where the commission might consider more intense housing, but he does not see it going much further east with single family only type of development, despite the zoning.

Commissioner Coppess asked Mr. Holm regarding findings B3 if the commission will hear from anyone else from the City in terms of supportability of changing from single family dwelling exclusively.

Mr. Holm replied that there were not representatives from the different departments.

Commissioner Coppess asked for staff to confirm that the departments were ok transitioning to single family dwelling structure for this area. Is that supportable from the city stand point from all public services, water, drainage, safety, traffic, etc.

Mr. Holm replied yes, those are the comments we received back from the departments and are put in the staff report. It can be met for future development as single family.

Chairman Messina asked since this is a Special Use Permit for single family detached only under the R-12 how that would affect the 17 uses that are allowed by right as a principal use, accessory use or through a special use permit. This particular hearing tonight is just for single family homes. Are we doing a condition tying this into single family only and nothing else.

Mr. Holm replied that he was correct. The request tonight is for single family detached with ADUs allowed.

Commissioner McCracken asked if they wanted to get rezoned to a lower density, would that be another option.

Mr. Holm replied with his personal opinion that you cannot tie in other ownerships to that rezone if they do not want to go along with it. This is not a rezone that really affects densities, setbacks, heights, etc. A lot of the elements remain the same, it's the structure type that changes and then the duplex and the square footage per unit of 3500 per duplex that would go away. It is just 5500 square feet per single family home for lot size.

Commissioner Fleming commented that she was a commissioner in Hayden and they had developed co-housing and they took the acreages and used the acreages from multiple single family cottage style homes around a central park space. The city of Coeur d'Alene does not have this here. She hopes this will happen in the future here in Coeur d'Alene. She would prefer that the designation allow for other housing types so some of these folks with these large parcels can have shared green space, cottage homes for grandma or starter homes. This was done up in Hayden so people didn't have to spend a lot of money for that parcel of land but still got open green space and the natural environment. This is not slamming the door on everyone with a picket fence on a 5500 square foot lot. There are people here who don't want to join this, because they want to do more with their land than just this. There is more demand for people to live here. She is more supportive of alternative forms of housing in the City, which is needed desperately. People are not going to be happy when they are told when they can't put a duplex on their

own property.

Commissioner Luttrupp stated this is one thing only that precludes duplexes, this is the single change. This is just the density.

Ms. Patterson would like to clarify this designation would not allow the co-housing and would not allow twin homes. This is single family detached only. It might be helpful, depending on how this will go tonight if the Commission is supportive or if the neighborhood sponsor wants to share if the request includes ADUs as an allowed accessory use. The code is unclear, but we have allowed them in the Fort Grounds. The City Attorney has indicated that it would be helpful to determine if ADUs are permitted as a condition, if it goes forward.

Mr. Adams stated he believes because the code is unclear and the request says single family detached only, that it doesn't clearly note ADUs can also be built. You can add a condition to the Special Use Permit to allow ADU's, but absent that condition it would be his opinion that only single family dwellings would be allowed with this Special Use Permit.

Commissioner Coppess asked if the commission does add a condition, would it have to go back through the hurdles and process of meeting at least 66% approval by all of those within the zone to be qualified as an approval to come before the commission.

Mr. Adams replied he does not know. He would have to look that up in the code.

Commissioner McCracken asked if the density will stay the same as long as they meet the requirements, for example 12 units per 1 acre.

Ms. Patterson replied that is correct. Density, lots size, setbacks, etc. would still apply.

Mr. Holm stated this was at some point a difference of opinions between the prior legal department head and now. With the Fort Grounds, they did not make any special condition to allow for ADUs. It was whether or not an ADU was considered an accessory use as allowed by the R-12 zoning. He asked if this means that homeowners would not be allowed to have a garage because that is an accessory use as well.

Mr. Adams replied, but that is not a dwelling unit.

Chairman Messina stated that this request is for single family detached homes, but doesn't specify ADUs at this time.

Ms. Patterson stated it would be helpful at this time if the applicant who is the neighborhood sponsor to clarify what they discussed as a neighborhood and if everyone expected single family detached with an ADU. This would help to clarify that intent, or if they thought no, this is a single family detached with no ADU units.

Chairman Messina asked if there is any conflict of interest on this particular item with any of the commissioners.

Chairman Messina opened the public hearing and swore in the applicant and the public as a group.

**Public testimony open.**

Mr. Hungerford, the neighborhood sponsor, introduced himself. He stated when he started this process, he looked at what the code said, he spoke with several people regarding the code, the principle uses listed in R-12, and the accessory uses. There are 17 different uses that can be requested as part of the special use. With that he was told and he was under the impression the whole time that accessory uses

would be allowed. The only thing that the homeowners would be doing is having the single family detached only designation and ADU would still be allowed. This will be a touching point with a lot of the other neighbors. He felt he had done his research and it was going to be allowed under this restriction.

Chairman Messina stated that his impression was to be allowed single family homes with ADUs somewhere on the property.

Mr. Hungerford replied, yes. He spoke with several different people and asked if that was allowed so they have a home or if they build a home then an ADU would still going to be allowed. He discussed this with staff members Sean Holm, and Tami Stroud.

Commissioner Coppess stated to Mr. Hungerford that some people may have different perspectives on that specific topic within your zone and are they part of the 67%.

Mr. Hungerford replied, yes. He spoke with every single person of the 37 except for Mr. Kaufman who owns the large property and 1 duplex owner who lives in California. He sent him a letter and never heard back from him. He was in person with all of the other folks.

Commissioner Coppess clarified all of the green zone folks were all on board with the ADU's.

Mr. Hungerford replied, yes. The four red zones with the duplexes, he personally met with each owner except with the one out of California. He let them know that this is the down side for you. If you do this and this happens. They were gracious to allow time to think about it and have him get back to them, and that is when they decided they did not want to be part of it. He took his time to talk to a lot of people about all of this.

Chairman Messina once again read the single family designation clarification, and wants to know if the commission needs to make a condition with the ADU would be allowed.

Ms. Patterson stated that the testimony that Mr. Holm and Mr. Hungerford provided is correct regarding the ADU's. Planning Department has been telling people and they have been under the impression since the previous legal services director that ADU's are allowed under the single family only special use permit designation. When she discussed this with Mr. Adams this evening, it didn't look as clear as that in the code. The commission has that option to add that as a condition just to make that crystal clear so in the future there is no ambiguity for anyone who is developing on their property.

Mr. Adams clarified that the Commission should add the ADU as a condition because it is unclear. He does not know what do about the percentages. He would go forward with the percentages as they have been presented if someone does objects, we can revisit it. A single family detached house is a permitted use. An ADU is not the same thing.

Mr. Hungerford replied, we have all been under the impression about the ADU's. This may change where people are at on this if ADUs are not allowed. He had a copy of code and showed it to the people when he met with the neighbors and showing what was allowed.

Chairman Messina stated again the commission will put the ADU in as a condition with the findings.

Mr. Adams replied this would be his recommendation because the ordinance is not entirely clear.

Commissioner Luttrupp stated since the applicant and some of the staff told the neighbors that ADU were permitted we will put this as a condition during the findings.

Mr. Hungerford continued with his presentation. He stated that he spoke with his neighbors and they want to keep the characteristics of the neighborhood. Nettleton Gulch does not have HOA. They have no rules. They care about one another. The best avenue for everyone was to just be single family homes to keep



with the infrastructure and natural boundaries by the city streets. He spent a lot of time talking with all the neighbors in detail. There is also compatible growth. He states they are a community that is connected and involved and engaged, and they want to preserve what they have.

Chairman Messina stated this request involves over 16 acres and there are 37 pieces of property that could be designated all single family. The R-12 zoning allows a single family home on 5500 square feet of land, is the intention to build out all of those parcels and more.

Mr. Hungerford replied no. There needs to be housing, we are not saying that we are stopping owners from changing what they can do on their property. We are trying to prevent overcrowding where the infrastructure can't handle all the new houses. The roads cannot handle all the that.

Shannon Sardell, as co-presenter with the applicant, introduced herself. She stated this meets the conformance to the comprehensive plan, well informed citizenry. These maps show single family housing is consistent with the surrounding location and the soft transition to more rural residential to the east. Single family residential will not put undue stress on services. You can see there are no sidewalks. The overlay proposal would not create impacts with vehicular access and traffic. Forest land is on the edge. We feel this will provide the recreational opportunities such as hiking Canfield Mountain. The neighborhood is one of structural transition between the urban core of Coeur d'Alene and the rural amenities beyond it. We want to seek development solutions like additional dwelling units or ADU's. ADU's are not a new concept as they have been around the 20<sup>th</sup> century and provide additional varied housing types typically smaller in square footage. This would be allowed and we would support this in our proposed overlay. This is more modest housing type and it is more important with the progression towards economic success for young people or as part of the downsizing processing for aging community members. This neighborhood was established in the 50 and 60's and is on the edge of a rural community of the city. The roads do not conform to the 2024 designs standards and the landscape is mature. The single family homes with ADU will not put undue stress. Nettleton Gulch Road is a shared roadway with the bicycle network despite its current heavy use with cars, trucks, trailers and service vehicles heading up to the mountain. Other roadways within this neighborhood do not meet this standard and there are very few sidewalks. The overlay proposal will allow for modest population increases but will not create additional traffic or safety concerns between them. This neighborhood is a significant gateway to the closest rural outdoor mountain experiences on USDA Forest Service Lands for the city. This forest land and the parking area which multiple trail heads are available as advertised in tourist information, outdoor guides and searchable trail enthusiasts including GPS. We feel that the Special Use Permit will preserve the existing neighborhood identity, ensure a high quality of life for its residents, and provide a safe and efficient bike and walking mountain area for its residents.

Chairman Messina asked if this gets approved and someone has enough square footage on a property to put 2 or 3 single family homes do they have to put in new streets, sewer, water, etc.

Mr. Patterson replied if they wanted to subdivide the property, yes. They would have to do that. As Mr. Holm indicated you are only allowed 2 single family homes if the lot is 11,000 sq feet.

Commissioner Coppess asked regarding the findings of fact would it be appropriate to add a new finding A-9 to note this proposal was evaluated for this ownership and property to include conditions of allowing accessory dwelling units on all property. Some wording of that affect in the findings of fact, referring to the staff report, or do we need to say that as described by Mr. Hungerford.

Mr. Adams stated that would be appropriate to put that into the findings and it could be based on the staff report, the presentation by the applicant which has been sworn testimony or anyone else who has testified.

Amber Hicks, stated she agrees with what has been presented tonight. She is a homeowner who lives in the subject project. She had rented on 15<sup>th</sup> Street in a townhome. The draw of her home now was the single family residence. She states there are a shortage of homes in the community; there are a shortage

of single family residences. She didn't have issues finding rentals. She had a hard time finding affordable homes to buy. She feels this is not restricting the homeowners but preserving what they have. The maps that have been shown show plenty of green parcels and how few duplex properties are currently existing in this area. She would like to point out Gilbert and Haycraft Streets dead end. Most of the roads are very narrow. 17<sup>th</sup> Street cannot have sidewalks put on it. These are all uncontrolled intersections. She was told by the City Engineer that the neighborhood cannot get sidewalks because the road is too narrow and turns to a single lane. If we continue to allow this compact designation with infill into the lots, it will ramp up a lot more traffic with no safe sidewalk for people to walk on, and cause more safety hazardous for the children that live in the neighborhood.

Chairman Messina asked Mr. Adams regarding the percentage of how the application with the signatures got approved. Are those people that live in the neighborhood.

Mr. Adams replied, yes, the people live in the designated boundary.

Chairman Messina stated if anyone is speaking outside of that general area is opposed to this, they are not part of the tally of getting approval correct.

Mr. Adams replied correct.

Commissioner Coppess would also like to clarify there are two difference qualifiers, one is ownership and the other is people dwelling on the property.

Mr. Holm stated there are three measurement hurdles for this Special Use Permit request. The first is the overall size of properties greater than 1.5 acres. The second is the number of owners. The third represents the property size.

Mike Buzga does not live in the subdivision. He lives right off of Nettleton Gulch and has lived here for 5 years. There are a lot of apartments going up in the city. This proposal is positive because it does not limit housing. It just preserves the neighborhood and makes it more compatible. He wanted to be somewhat rural. We have great neighborhood. Some have referred to this area as an aging neighborhood. Sometimes people think those need to be torn down and rebuilt. Nobody has mentioned we have lots of animals and how the increase of multi-family units changes the neighborhood. It's not compatible and adds more threat to the community. Everyone chose to live here because the way it looks now.

Chairman Messina asked staff if there was going to be an influx of single family homes being built tomorrow; there is a process that will have to happen.

Ms. Patterson stated that is correct. This is different than a zone change, subdivision or a PUD. There is not an intention to develop right now.

Chairman Messina stated that Mr. Hungerford received enough signatures to preserve the neighborhood as single family home. What some would want to do with their property down the road, that would be up to them.

Ms. Patterson replied that is correct.

Todd Kaufman is opposed; he states he was not notified regarding this hearing. He has the largest piece of property in this development. He is going to speak about twin homes. To drive this home, single family residents are the same as twin homes. He has a problem here tonight regarding this hearing. He first heard about this meeting on Friday from Jeramie (Terzulli). He asked if there wasn't a requirement for certified mail notices.

Chairman Messina asked staff to clarify the noticing requirement.

Ms. Patterson stated there is a requirement for noticing. The city receives all of the mailing labels from the title

company. The mailing list is based on the address of record that come from the county. The city is not required to do them certified.

Mr. Kaufman stated he would like to see that list from the title company because he has done the exact same thing lots of times and he never got any notice. Therefore, his attorney Susan is not here tonight. He tried to twin homes on his property. He sat and listened to Mr. Hungerford say that he could put ten houses in this development. This is all about traffic. He can also put 10 single family residents on his piece of property with ADU's as well. He was trying to get 18 twin homes. There would be 18 doors. He had green space, he had a private road that the city did not have to take care of, but you commissioners turned me down twice. His subdivision application is currently in front of this commission. He has vested rights here. His application is to put in a subdivision for 9 duplex lots. This (Special Use Permit) request is spot zoning. This does not change traffic. He can still build single family residences on each lot. Which if there are 10 lots and an ADU in the back yard, he can have 20 rentals if he wants to. He has spent a lot of money chasing this. You commissioners keep kicking the can down the road and Mr. Hungerford's smoke and mirrors of what he is trying to show everyone is going to stop traffic if we have single family residences. This will not change any traffic. He will still build on this lot. He is trying to follow the letter of the law and that is why he is back to duplexes, but now you're trying to change duplexes. He had less density than what he can do now with single family is a 5500 square foot lot, he can put an ADU on it. On a duplex lot he had to have 7000 square feet. This is not going to change anything.

Commissioner Luttrupp stated to Mr. Kaufman that he has had his project for a couple of years. Would Mr. Kaufman be grandfathered in.

Ms. Patterson replied, no. This would affect Mr. Kaufman's property.

Chairman Messina stated if this gets approved as single family homes not duplex.

Mr. Adams states there is not a vested right to build anything in particular at this point.

Mr. Kaufman spoke up and said he disagreed; the application has already been started.

Jeramie Terzulli is neutral. He is Todd Kaufman's representative for the previous applications that have been put before the commission. All of the questions that have come up are the same questions that we have had because this code section is very thin. It looks like it was just stuck in there in the R-12. As far as the application requirements, if he was to bring an application for a zone change or annexation, he would have to hire a surveyor. He has to have a metes and bounds descriptions. There is a much higher bar for that. The applicant was able to just go to the assessor's office and just get records. It seems a little flimsy to be honest. The SUP is being referred to by the applicant's representative as an overlay zone. Title 67 of Idaho State Statute Chapter 65 Local Land Use Planning Act, Section B, states that the governing board shall establish government (that is you the commission) clear and objective standards for the overlay zoning district while ensuring that the application of those standards does not constitute a regulatory taking pursuant to Idaho or Federal Law. He believes the overlay district does entitle no fewer than 5 property owners to request a regulatory taking analysis by the City based on the fact that they are down zoning the property. This was brought up during some of the questions that if more than 50% of the structures are demolished, they will not be able to rebuilt as duplex. Therefore, they are devaluing their properties. He reached out to his insurance agency. He said some special underwriters would have to go onto some of those duplex owners right now to ensure against that. There is going to be some weird caveats if they ever have an insurance claim on those properties. He did reach out to his preferred lender stating that lending options on those non-conforming uses are limited. If property owners are wanting to sell those, they have shrunk those pool of buyers on those to people that want to pay cash and are willing to deal with the fact that they could not build a duplex structure on there if it was to be destroyed. All four of those property owners are entitled to a takings analysis to be provided by the City if they choose. Mr. Kaufman should also be provided that as well by the City. Food for thought, State Statutes do offer very clear direction. You can't approve this if it does constitute a regulatory taking. He would encourage the commission to consult with the city attorney to check the validity of what he has said.

Mr. Adams stated that any property owner can request a taking analysis. He has not received a formal request for one.

Commissioner Fleming asked if the commission can grandfather in the current duplexes as long as they remain as duplexes.

Mr. Adams stated the existing duplex now. They are grandfathered by the ordinance, unless there is a destruction event that exceeds a certain amount. There are also limitations on what structural change can be made and so forth.

Chairman Messina stated they are grandfathered in as duplex because they are duplex presently, but if they are 50% or more destroyed, they have to come back as single family homes. He asked if the commission can do a condition for the duplex saying their exempt being single family homes if they are destroyed more than 50%.

Mr. Adams replied, no, because you cannot change the ordinance, because of the non-conforming uses.

Commissioner Luttrupp asked Mr. Adams if the duplexes are non-conforming.

Mr. Adams replied it will be.

Commissioner Luttrupp stated that the commission has had two cases where the commission has modified the non-conforming saying that if the building is damaged or burnt down, they can rebuild what the building currently is. One was a store and one was a single family resident that was infringing on the water front. We did take action. One was damaged, torn down and rebuilt.

Kyle Holmes stated he has lived in Coeur d'Alene for over forty years. He is pro-development. It is a benefit to us. As Amber and others have hit on tonight, the character of the community is the one thing is what we want to establish. There are tract homes in Post Falls right now with no mature trees. There have been statements made in the past that the homes in this neighborhood are houses reaching their age of uselessness, which could not be farther from the truth. The level of disrespect that comes with that statement towards our neighborhood is humorous. If we all wanted to live in a tract home, we would sell and pay over \$500,000.00 for a house that is a 1/3 that is a size of what we currently live in. We have a beautiful walking neighborhood with big mature trees. He has wonderful neighbors that took care of his wife when he was deployed 4 years ago.

Megan Johns stated she is in favor and is a larger land owner. The special use permit is a reflection of the neighborhood desires both rejecting proposals like Todd Kaufman and to all so it preserves the neighborhood. She was aware that the ADU was allowed this is neighborhood driven request.

Al Mesbah stated that Mr. Kaufman needs to do a lot more work because he is changing our neighborhood. He is not against development. It is how much development. They are trying to protect they neighborhood with this request. The roads are very narrow and cannot handle all the extra housing that could possibly go in with the high density.

A citizen who would not provide his name or sign his name on this sheet stated he was walking by the library and ran into rich dad that lives in the neighborhood. He happened to come in and listen. He has spent a lot of time around attorneys. You are supposed to give notice to the public and due process. You are now adding ADU's to this program. This was not noticed. This needs to be stepped back. This needs to be refiled and re-noticed to everyone. He objects to not giving everyone notice of what was actually happening at this meeting to the public. Maybe we can have a chat with this fine city attorney (*he points to Mr. Adams*). He has spent 25 years in this neighborhood just because he has to go visit rich dad. Maybe over 100 people that go up Nettleton Gulch on Friday riding, drinking and motorcycling or doing whatever they are doing are trying to get back through. It's sketchy traffic. Now you are trying to add ADU's to a spot which obviously you are

developing, but is your surveying and engineering being done to add ADU's. Like this great guy from the city who brought up concerns. This has to be changed immediately. First thing you did here is change the whole process tonight, which requires you to send it back to the people to notice. Let's follow the rules, giving people notice of due process to come here for those hearings. Good luck with this guy (*he points to Mr. Adams again*).

Commissioner Luttrupp stated he has great confidence with the City Attorney and the city management. He thanked the citizen for providing free legal advice. The commission can add conditions. Those are not in the agenda. They are things that come up from the meeting and that is the purpose of the meeting.

Joe Archambault lives in Best Hills Meadows. He is the President of the HOA. He stated he has no problem with single family homes. These folks have a beautiful neighborhood. The lack of affordable housing is the problem. The medium home prices in Coeur d'Alene is about \$850,000.00 and not many people can afford that.

Edwin Ronningen lives outside of the area on Stiner since 1988. With the Kaufman Estates coming, there might be an addition of 9 twin homes or 18 units. There might be 36 vehicles traversing Stiner every day. There are multiple dumps trucks coming and going. There are young families with small children that play in the front yards. He is afraid for their safety. He is worried about the extra traffic this might bring. His house was built in 1970. It is still very useful and he raised his family there.

Mr. Adams asked for a short recess. The commission took a recess and then resumed the hearing.

**Public testimony closed.**

Chairman Messina closed the hearing and stated that the internal boundaries of the homeowners were not notified. The hearing for item SP-1-24 will be renoticed and the hearing will be conducted on July 9, 2024. The notices will have the additional wording to include ADU (Accessory Dwelling Unit).

3.     Applicant:     City of Coeur d'Alene  
       Request:     Amendments to the Coeur d'Alene Municipal Code § 17.09.340 allowing for members of the public to testify during an appeal hearing of a decision of the Design Review Commission (ITEM 0-1-24).

**Presented by: Hilary Patterson, Community Planning Director**

Ms. Patterson, Community Planning Director, provided the following statements:

The Planning and Zoning Commission is being asked to make a recommendation on an amendment to the Zoning Ordinance, specifically Municipal Code § 17.09.340, regarding the Appeal of a Decision of the Design Review Commission, to allow public testimony at the appeal hearing.

At the April 16, 2024, meeting, the City Council requested an amendment to the City's Municipal Code (M.C.) § 17.09.340 to allow members of the public to also have the right to testify in an appeal hearing of a design review commission decision. The current code limits participation in the appeal hearing to the appellant and applicant, and their representatives, and City Staff. Both City Code and the State Statutes task the Planning and Zoning Commission with making recommendations to the City Council on zoning code amendments and holding a public hearing.

Ms. Patterson stated that Commissioner Ward had requested information about the current appeal hearing for an appeal of a Design Review Commission decision. She explained that she sent out documents to the full commission from the 2008 ordinance that showed the original intent was to limit the testimony to the appellant, the applicant and staff and hold it as a hearing based on the evidence from the original hearing and not as a "de novo" hearing where new information could be received. The city hired a consultant to assist

with developing the procedures that were adopted in 2008.

The amendment allows for members of the public to testify at an appeal hearing on a Design Review Commission decision. It also clarifies other items related to time limits for speakers, that no testimony shall be taken on matters which cannot be modified by the Commission including, but not limited to, Zoning Code requirements, FAR, building height, density, use, parking or traffic impacts, and the timeframe for Council Action.

This item will be going to City Council next Tuesday for action. The Joan Woodard appeal of the Marriott hotel's design has been scheduled for June 4, 2024.

The Planning and Zoning Commission is being asked to make a recommendation to the City Council on the proposed amendment to the Zoning Ordinance to allow public testimony during an appeal hearing of a Decision of the Design Review Commission.

Ms. Patterson, concluded her presentation.

### **Commission Discussion:**

Commissioner Fleming asked on the initial DRC presentation how long does the appellant get to speak.

Ms. Patterson stated the code did not specify. She indicated that staff provides guidance for the appeal hearing and how long the appellant and applicant will have. Typically, the City attorney introduces the item, followed by the appellant, then the applicant presents, and the appellant has a rebuttal before the hearing is closed.

Chairman Messina asked if this will not change what the public can say or not say as far as what is relevant to the Design Review Commissioner criteria that they should only address. He said the commission can't stop them from talking about anything else. He noted for the appeal hearing, the city council can only take in what is relevant to the design review Criteria, even if the public testifies.

Ms. Patterson replied that is correct. There is no new evidence to be presented in the appeal hearing under the current code or under the proposed amendment. The code states testimony it not supposed to be on anything that is not specific to design review commission.

Chairman Messina stated it is hard to limit anyone's comments whether its relevant or not relevant.

Commissioner McCracken asked what if someone appeals one of Planning and Zoning Commission's decisions. Is the appeal process the same or different?

Ms. Patterson stated that the appeal hearings for commission and staff decisions currently do not allow the public to speak, or at least the code doesn't specify the public testimony. The only two appeal hearings in the code that allow public testimony are the Rathdrum Prairie Aquifer section of the code that is relating to someone how is operating a facility over the aquifer and if an administrative decision that it is not appropriate. They can appeal that decision and an appeal that it would go to a hearing officer with public testimony. There is a section of the city code administrative section Rule of Procedures, (M.C. § 1.11.10) seems to imply that the public can testify, but she does not know if that was specific to public hearings or appeal hearings.

Commissioner McCracken asked if this would be the only appeal hearing that would have a different appeal procedure that specifies public testimony,

Mr. Adams stated this is the only one where it specifically says who can testify or speak at an appeal. In a public hearing, Council has generally allowed the public to speak.

Commissioner McCracken asked, wouldn't it be better to match it to the others, where they are silent on who can testify.

Mr. Adams replied maybe, but we drafted this amendment on the direction of City Council and the Mayor.

Commissioner McCracken asked for clarification on the other appeal hearings that don't state the public may testify. Would it be assumed that the public can't testify in those hearings because they are not stated in the ordinance.

Mr. Adams stated it is the opposite. It would be assumed that any public hearing the public could speak unless it specifically states otherwise.

Commissioner Fleming commented that during the DRC, the public does make comments. We give the DRC the responsibility to address the public concern and we should close it. To then have a second chance for the public to testify in an appeal hearing puts shade on the DRC. You have given them the right and the responsibility to see and promote the vision to the city and they should take it on board like this commission does. We don't always win and you should not get a second chance at it. It on the record. You have made response. The DRC has made the decision to close the issue and move on. This is just drawing the process out and it is costing the applicant money now. This denotes the DRC and shades them. It's made to look like we don't respect the DRC to do this all over again with other people that don't do this all the time. The DRC is built with people that do this all the time. They are experienced and knowledgeable. They are there to serve that purpose. Now you're handing it on to people who don't do it all the time.

Chairman Messina asked is this only for the Design Review appeal process. He assumes that the City Council had access to the DRC meeting minutes and they could read all the public comments that were made at that time. He is all for public comments. He has to agree with Commissioner Fleming on this matter. The council had the opportunity to read all the public comments and some of the comments were not relevant at all regarding the design and they will hear those things again. He feels the DRC did their job and listened to all the public testimony at that time and made the correct decision.

Commissioner Ward stated he understands that the City Council will let anyone speak at any public forum generally. But an appeal hearing from the DRC is different and it is not just that someone says it, what they are reviewing is different. The current code states that the City Council reviews the DRC decision and shall be based on the record developed before the Commission with no new evidence being submitted. The public wants to add input if they don't like it. He feels the change is not effective. He said he really does not care if the Council wants to make the change. An appeal on a DRC decision needs to be focused on specific design criteria and if something was done incorrectly Some appeals to the City Council are different. That is what the Commission is talking about. He said that most zoning hearings that he has been involved in, they get to have a brand-new hearing when they get to an appeal to the county commission or city council. This is not the case with the DRC. This is based on the record and the record can be read. The only change that he had read in the ordinance is being proposed is now we include the words and members of the public may participate in the appeal. The reason for the appeal is the same. Does it make the City Council review any better? No. They are still supposed to be ruling based upon the record of the DRC. Just like Chairman Messina stated, a lot of the public will speak and it will be irrelevant to the decision. He has been involved in planning for over 50 years now. he thinks about all the lawyers and the delay just for the Marriott. This might have the developer pay a high interest rate and a lot more money and not be able to stay on schedule so the revenue they may have gained will be a loss. We are now changing the criteria and this is a problem, because this appeal is in the process and a liability for the City. This is a very bad precedent to set.

Commissioner McCracken stated that the appeal hearing item is tabled. She does not like changing the rules while the item is tabled. When they appealed, the rule was clear. The timing is funny on this one.

Mr. Adams stated this is a legal question that has been addressed. There is Idaho Supreme Court precedent that says you can change procedural matters that do not affect the substantive rights of a party and they

would apply. To allow other people to testify does not affect the substantive right of the party. There are just more people talking. If we were to change the standard of the appeal where now you can bring new evidence, etc. That would be changing the substantive right on the appeal. We are just changing who can talk and that is a procedural matter. He does not see that a problem with the amendment.

Commissioner McCracken stated during the meeting they made a motion to allow public comment and were not allowed to do so. The intent was the same.

Commissioner Fleming stated there is a lag time and now the appellant can build their forces to show up in the audience and rig it. She disagrees with the timing of this change. The appellant has an independent thought and they present it to the DRC at that meeting. It should not occur. She feels the appellant may have a problem, but know the DRC role is being torn apart, and sending it out to a dog fight. She feels there should not be a change and it should remain as is.

Commissioner Luttrupp stated the DRC is appointed by the Council and the Council is elected. There is a difference. He agreed that the DRC are very knowledgeable; he would put the City's DRC against anyone in the country. They are great. The local government is great and the public commentary is a great tool to have. He supports the change because Council is recommending it.

Chairman Messina states the public testimony was part of the DRC record and the City Council can read it and to open up to the appeal hearing to have additional public comment, he agrees with Commissioner Fleming, is like changing the rules mid-stream. This is directly related to the DRC and no other appeal process.

Commissioner McCracken stated she doesn't mind public comment if City Council wants to hear it, but she does not like changing the rule for an open hearing while it's tabled. It's not the right process. If is read striking the sentence "although the hearing is open to the member of the public no general comment will be taken", if that sentence is just stricken from the record, then it's the same as the other appeal procedures. This would allow the Council to listen to the public.

Commissioner Fleming stated that is like you are reopening the DRC and you are negating the DRC's role. It is fair game. They had their chance in front of the DRC, and the public does not need to go in front of the council.

Commissioner Ward stated if the council wants this, it's not his job to say you should not do this. But he thinks it should be limited to only apply to future hearing and nothing that is pending. The code change itself the council has asked for it, he would send it forward, with the caveat that he has mentioned.

#### **Public testimony open.**

Suzanne Knutson, introduced herself she was at the City Council meeting when the request was made and there were people at the meeting that would have liked to speak. She does not know a lot of the DRC. She believes the appeal process is due process. She does not know if it is a public hearing, she knows they are held at noon in the middle of the day, where a lot of people cannot attend because a lot of people work. She does not think people within 300 feet are notified of that Design Review. She could be wrong, she doesn't know.

Chairman Messina stated he is a member of the DRC and has been for a number of years. The DRC is limited in its scope. The discussions are based on the limited guidelines. The Marriott hearing with the DRC was a 3-hour meeting and there was a lot of public comment. Many of the comments that we heard had no relevance on what the DRC look at on design review. They had made that announcement to focus comments on the design review criteria. The DRC does not stop anyone from speaking but many of the comments had no relevance to the guidelines or design of the building.

Ms. Patterson stated the DRC is a public hearing. It was noticed in the press; mailings were sent out



within 300 feet and the property was also posted. The appeal hearings are not required to be noticed, but we have been doing that to make sure everyone in the public has been notified as well.

Ms. Knudson continued and stated that things that are important to the public were traffic and parking because they are not part of the design review.

Chairman Messina stated that is correct. Those two items have nothing to do with the design review and that is not going to change in the appeal.

Ms. Knudson replied she was wondering if the design review process might actually need to change and not the appeal process.

Chairman Messina replied that can certainly be addressed as a question later on.

Ms. Knudson's question is in 2018 she sat her with 125 other citizens who were not in favor of River's Edge going in off of Seltice and the Planning Commission did not vote on that. It was sent it to City Council. The public did not have an opportunity to appeal anything when that happen. We hear all the time that zoning and codes need to change, etc. Maybe people that are upset about the Marriott didn't live here during the time when the zoning change happened years ago. Now the parking and things have grown rapidly here since that happened. The appeal process is good along with public comment.

Al Mesbah stated that letting the citizens speak and may be disruptive., You are the local government. The decisions should be made at the lowest level of government. The process needs to change. We are here because we love Coeur d'Alene. Make is easier for all the citizens. You are serving the people.

Fred McLaren lives in Parkside. When he looks out of his condo, he will see the roof top of the Marriott. He will lose at least ½ million dollars on his condo. Nothing was addressed regarding the alley, traffic, garbage, cars exiting onto 7<sup>th</sup> and 6<sup>th</sup>. He feels that the DRC just does whatever they want. The role should be broader, think about the neighborhood not just one area.

#### **Public testimony closed.**

#### **Commission Discussion:**

Commissioner Coppess commented about the role of staff and when they comment on a project such as water, safety, traffic, qualified engineers is whether it meets them or not. The DRC has the ability to look at a project and say here is what we are focused on but outside of the scope of those things, he wonders how does the public gets to the point where they are able to interface with the policy makers and express their interests in a manner that informs the public servants in that purview.

Ms. Patterson stated there may be some confusion from the public about their opportunities to participate in the process. We have the public hearings. There is the DRC hearing, Planning and Zoning hearing and City Council hearings. However, the public has concerns might be the code itself and they would be better served to get involved with code changes and updates to the comprehensive plan. This is where we want the community involved to help provide input for how should the community grow, where should development happen, etc. The comprehensive plan includes the goals and the objectives so it helps guide future codes amendments. For things like the Downtown, a lot of the concerns like the Marriott, is not the design review process itself. They may not like that you can go 200 feet tall, you can have the intensity of the development in certain areas. They are concerned with traffic and the traffic is not something to do with the design review commission. Staff had a requirement for the Marriott project to do a traffic study. The traffic study showed that the traffic from that project would be less then what was even modeled by Kootenai Metropolitan Planning Organization. This information can't be shared during the hearing per se because this is not part of the purview of the DRC. Staff has been tasked by council to work on reevaluating the downtown development standard and design review guidelines. This commission will be asked to participate along with the DRC and Historic Preservation Commission to provide input and help evaluate if we should look at height, tower

spacing, setbacks, materials, etc. There is probably a disconnect where the public does not feel they are getting their voices heard. The Downtown development standards exist and the guidelines exist so the developers have the right to build.

Chairman Messina stated this was done many years ago. The Maybe they need to be reevaluated.

Mr. Adams stated the Design Review Commission is not required by state law. It was created by City Council. The design criteria and standards were adopted by City Council. It was all a creature of council's imagination. They can change it if they like it.

Chairman Messina stated the City Council can also dissolve it as well.

Commissioner Luttrupp stated that the Design Review Commissioner is very unique and was generated by public input. It should be recognized that it is a great operation, it might have some faults, but there is nothing like it.

Commissioner McCracken would like to make a motion to modify the ordinance to use the language from the administrative appeal process instead and that the change to the process not apply to the tabled appeal hearing. The hearing should be completed using the process that is in place right now.

Mr. Adams commented that this would be a recommendation. But the City Council may not go along with this recommendation.

Commissioner Luttrupp asked if this is just the approval of what is before us, with the addition of something else.

Commissioner McCracken stated her motion would be to recommend approval of what is before us with the hearing verbiage being consistent to what a Planning Commission appeal would be, as far as allowing the Council to take public comment if they wish. This would make the appeal hearings procedures equally consistent in their verbiage so the hearings are consistently written.

Commissioner Luttrupp replied he does not understand fully the addition, so he will not be supportive of the motion.

Commissioner McCracken asked Mr. Adams to pull the existing code for appeals of the Planning and Zoning Commission's decisions up on the screen.

Staff pulled up the appealing hearing code 17.09.715 B, which reads *City Council Action: The city council shall hold a public hearing. In its review of an administrative appeal, the council shall consider the purpose the intent, as well as the language, of the pertinent provisions, and shall affirm with conditions, modify or reverse the determination or interpretation within forty (40) days of the hearing (Ord. 1691 §1(part). 1982)*

Ms. Patterson noted it does not mention who, if anyone, can testify at the public hearing.

Commissioner Fleming stated the code is too broad. It does not talk about an appellant.

Commissioner McCracken stated the Council has the ability to determine who can testify in an appeal hearing, at their discretion. She thinks the codes should be consistent, rather than creating more inconsistency.

Ms. Patterson clarified the section on the screen is this the language that applies for any decision by the Planning Commission or staff that gets appealed.

Commissioner McCracken replied that is correct. Keeping with appeal decisions regardless of type,

needs to be consistent. The hearing is tabled with a date of June 4.

Ms. Patterson stated the Commission's recommendation will go before City Council May 21. If the recommendation says you are supportive of this with this change but you recommend it would apply hearings after this one and allow this one to take place with the current code provisions, you need to make that clear in your motion.

Commissioner Fleming stated this feels like we are tailoring the code to shut out the Marriott, and this is bothering her. She feels it is very targeted.

Chairman Messina understands changing this code but, again this is mid-stream and he cannot support this motion. He will vote against this.

Commissioner Luttrupp stated he is not in favor of striking this proposed language. The council, in their wisdom, wants to do this. It's in the code that their recommendation has to be considered by us. He would like to follow the Council's wishes and desires; they are the ones that pay the price for poor and good decisions. He trusts them.

Commissioner Coppess stated he is challenged with understanding the purpose behind this specific effort and validity of what Council does with it. This is just a recommendation. They can take it or not take it. His concern is this is a broader issue in terms of how the public interfaces with the commissioners and the Mayor and Council, and how they are able to use the public's ideas to better represent and govern. In this case it might be the Marriott. In another case, it might be Kaufman's Estates. Whatever those things are, he doesn't know that whatever they vote tonight will have any effect on that purpose. He is going to say nay, just because he doesn't have anything with any valid purpose or utility that is going to go forward.

Chairman Messina stated that changing the code for public input is a great thing, but at this moment in time, he agrees with Commissioner Coppess. Since this was brought up at City Council because of an item of appeal and there was no public input under the guidelines. City Council had a discussion and they decided to change in the process midstream on this particular appeal. He thinks public input is great, but it should not apply to this particular appeal. It is fine and dandy if they want to change code, but not at this point in time.

**Motion by Commissioner McCracken to approve ordinance bill #19-1005 with replacing section C with the following statement *"City Council Action, the city council shall hold a public hearing. In its review of an administrative appeal, the council shall consider the purpose the intent, as well as the language, of the pertinent provisions, and shall affirm with conditions, modify or reverse the determination or interpretation within forty (40) days of the hearing"* seconded by Commissioner Luttrupp for discussion purposes, to recommend to approve 0-1-24 with amendments. Motion failed.**

ROLL CALL:

Commissioner Fleming	Voted	No
Commissioner Coppess	Voted	No
Commissioner McCracken	Voted	No
Commissioner Luttrupp	Voted	No
Commissioner Ward	Voted	No
Chairman Messina	Voted	No

Motion failed by a 6 to 0 vote.

Mr. Adams stated the Commission will need to make another motion since this motion failed. There needs to be a motion to approve as it is written, approve with another change. State law reads you have to make a recommendation.

Ms. Patterson stated you can also recommend no change to the ordinance; you just need to make a

recommendation.

Mr. Adams stated you can also have with substitute motions or continuing motions until you get one that passes.

**Motion by Commissioner Luttropp to adopt of the ordinance as originally written, seconded by Commissioner Ward, 0-1-24 amendments. Motion failed.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Coppess	Voted	No
Commissioner McCracken	Voted	No
Commissioner Luttropp	Voted	Aye
Commissioner Ward	Voted	Aye
Chairman Messina	Voted	No

Motion tied by a 3 to 3 vote.

**Motion by Chairman Messina, to not recommend this change to Municipal Code § 17.09.340, seconded by Commissioner Fleming, to 0-1-24 amendments. Motion failed.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Coppess	Voted	No
Commissioner McCracken	Voted	No
Commissioner Luttropp	Voted	No
Commissioner Ward	Voted	Aye
Chairman Messina	Voted	Aye

Motion tied by a 3 to 3 vote.

**Motion by Commissioner Ward, to approve the ordinance as written, but that the changes would not apply to any current pending appeal, seconded by Chairman Messina, approve 0-1-24. Motion carried.**

ROLL CALL:

Commissioner Fleming	Voted	Aye
Commissioner Coppess	Voted	No
Commissioner McCracken	Voted	No
Commissioner Luttropp	Voted	Aye
Commissioner Ward	Voted	Aye
Chairman Messina	Voted	Aye

Motion to approve carried by a 4 to 2 vote.

Commissioner Luttropp commented that Chairman did a very good job with tonight's meeting.

Charman Messina thanked Commissioner Luttropp and all of the Commission for their great input and he relies on it very heavily.

**ADJOURNMENT:**

Motion by Commissioner Fleming, seconded by Commissioner McCracken, to adjourn. Motion carried.

The meeting was adjourned at 8:50 p.m.

Prepared by Traci Clark, Administrative Assistant

DRAFT