



Town of Avon Planning & Zoning Commission Draft Meeting Minutes for July 6, 2010

Avon Town Council Chambers
Meetings are open to the public
Avon Municipal Building / One Lake Street

REGULAR MEETING

I. **Call to Order** (5:00pm)

The meeting was called to order by Vice Chairman Green at approximately 5:05

II. **Roll Call**

All Commissioners were present with the exception of Goulding, Prince, and Anderson.

III. **Additions and Amendments to the Agenda**

There were no additions or amendments to the agenda.

IV. **Conflicts of Interest**

There were no conflicts of interest to disclose.

V. **Consent Agenda**

- Approval of the June 15, 2010 Meeting Minutes

Action: Commissioner Patterson moved to approve the amended minutes. Commissioner Roubos seconded the motion and it passed 4-0.

VI. **ZONING (PUBLIC HEARING)**

Avon Development Code Public Hearing

Property Location: N/A

Applicant / Owner: Town of Avon

Description: A public hearing to review of the Draft Avon Development Code. The new code revision includes the consolidation of *Subdivision* and *Zoning* regulations, currently found Titles 16 and 17 of the Avon Municipal Code, respectively, into a unified development code.

Discussion: Matt Gennett presented an overview of the memo and brief description of each item of the memo.

Commissioner Green asked for clarification of the current height measurement methods and the new standards proposed. He specifically wanted to hear more about the appearance of height measurement. Matt Gennett described the appearance of height and showed illustrations.

Commissioner Roubos questioned the change in natural grade requirements in the new code. Matt Gennett responded by illustrating design tests that were performed.

Commissioner Green questioned if the retaining walls below a structure would be calculated in the appearance of height of the structure measurement. Matt Gennett responded that the code as drafted doesn't clearly indicate that, but staff would be willing to modify the code to make sure this item is addressed in the draft code.

Commissioner Green asked that staff overview each item in the memo.

Matt Gennett discussed each individual item outlined in the memo.

Commissioner Struve questioned item 7. He questioned how we can keep coast to coast duplexes from being developed. He felt an intent statement should be addressed to limit the coast to coast nature of residence designs.

Commissioner Struve questioned if the driveway standards could be modified to ensure that heated driveways will not be able to exceed maximum grades. Justin Hildreth addressed this issue by directing the Commission to Attachment C. He discussed the caveat to waive standards for lots platted before the adoption of this code update.

Commissioner Patterson commented on the Development Bonus section. He wanted clarification on whether or not a development bonus needs to be applied for with the principal application. Staff responded affirmatively.

Commissioner Patterson questioned if a menu has been provided for an applicant to help direct them towards proper public benefits. He stated that he would like the public benefits to be less shaped by the politics du jour. Eric Heil stated that the pre-application process would help guide developers on which public benefits would be best.

Commissioner Struve stated that his concern was that a development bonus would go to certain communities where political figures reside. Eric Heil stated that the proximity criteria would apply, which require the public benefits to have a proximity to where the development is occurring.

Commissioner Patterson questioned why pedestrian enhancements and streetscape enhancements have different maximum distance requirements. Eric Heil responded that the 2,500 feet is within the acceptable range for people to consider walking instead of driving.

Commissioner Green questioned the outdoor dining parking requirements. He requested that the parking requirements be modified to ensure that parking be provided for outdoor seating areas that are greater than 25% of the interior dining area(s).

Commissioner Green questioned the parking requirement for ALFs. He stated that additional parking may be required for doctors, nurses, etc. He questioned how that would be addressed by the new code. Sally Vecchio stated that the code implies that there is no parking for the residents or visitors. Commissioner Green stated that there is a need for more parking than what the code is requiring.

Commissioner Green disagreed with the proposed definitions for solar devices. He felt the definitions should be more closely linked to the industry preferred terms. He feels the terms should be building mounted and ground mounted solar collection systems. Commissioner Struve suggested that the definitions include both active solar and solar used to heating living spaces and water.

Commissioner Green suggested that the definition of caretaker unit reference kitchen facilities instead of cooking facilities.

Commissioner Green questioned coast to coast designs and felt that the town should embark upon a legislative action. Eric Heil stated that a rational intent would need to be adopted to address to limit coast to coast designs.

The Public Hearing and Comment portion was opened.

The Public Hearing and Comment portion was closed due to a lack of input.

Commissioner Struve wanted the Commission to get to the point where approve of the new code with conditions was possible.

Commissioner Roubos had no additional comments.

Commissioner Patterson had no additional comments.

Commissioner Green discussed the landscape design standards. He outlined a typo. He also discussed lawn grasses as an awarded point section. He stated that we should be promoting

natural grasses. Commissioner Struve suggested that it be stricken from the code. Commissioner Green suggested that the code promote drought tolerant plantings. Eric Heil stated that xeriscaping should be added as a bonus. Both Commissioners Green and Struve agreed with that suggestion.

Commissioner Green questioned the criteria for review by the director for a reduction in perimeter landscaping. Sally Vecchio stated the director could reduce the requirement if the neighboring property had sufficient perimeter landscaping or the combination of perimeter landscaping between the two properties was sufficient.

Commissioner Green suggested that a criteria be added to the landscape islands to state that at maturity the plantings do not negatively affect drainage. He also suggested that the intent of the Landscape strips be clarified.

Commissioner Green questioned where the sidewalk standards were located. He felt this should be cross referenced in the TC landscaping section.

Commissioner Green suggested adding a single course of straw bale on the inside of the fence. Commissioner Struve suggested approved alternative methods.

Commissioner Green suggested that timeframes be added to the temporary irrigation. Eric Heil suggested that a 2 year timeframe be added.

Commissioner Green suggested that mechanical equipment also have the ability to be screened by architectural elements.

Commissioner Roubos suggested that the section reserved for Green Building Standards be stricken.

A break was taken for staff to formulate a list of conditions.

Commissioner Patterson further discussed the development bonus and the impact of political wills. He also discussed the civic facilities and how these facilities could benefit individual properties.

Action: Commissioner Roubos moved to approve Resolution 10-03 with the recommended findings in the Staff Memo and the following conditions:

1. Add a Building Height Diagram to illustrate appearance of height. The definition shall include retaining walls that are part of the base foundation of a structure.
2. The PZC believes there is a public need for limiting the maximum length along a street of a duplex structure. Staff shall propose a maximum width to the Town Council.
3. The parking requirement for outdoor seating area be revised to exempt parking requirements for the first 25% of the area.
4. Revise the parking requirement for group homes to require appropriate levels of parking.
5. The definition of solar arrays and solar collection systems should be revised to use the terms, "ground mounted solar devices" and "building mounted solar devices".
6. The definition of Caretaker Unit shall refer to kitchen facilities instead of cooking facilities.
7. Section 7.28.050(ii)(A)(2) should be revised to ensure grammatical correctness.
8. Table 7.28-7 be revised to eliminate points for lawn grass and add bonus for xeriscaping.
9. Clarify the intent of Section 7.28.050(A)(iv)(D)(1)(IV), the section concerning separation of pedestrians in landscape strips and islands.

10. Add a cross reference within Town Center District Parking Lot Landscaping to Section 7.28.040.
11. Remove the phrase “for coniferous trees” from Section 7.28.050(a)(4)(i)(D)(1)(II)
12. Revise Section 7.28.050(a)(4)(i)(D)(3)(I) to add straw bale or equivalent requirement.
13. Revise Section 7.28.050(a)(4)(iv)(E) to establish maximum timeframe for temporary irrigation.
14. Revise Section 7.28.050(b) to add language to provide for architectural features for screening.
15. Strike reference to the section “Reserved” for Green Building techniques.
16. Correct typo, “Court Dive” on page 147 of the redline strikethrough revision.
17. Research Wildridge PUD definition of building heights as it relates to the wind energy systems.
18. Revise Section 7.20.100(d)(1)(iii) to include the CIP.

Commissioner Patterson seconded the motion. It passed 4-0.

VII. Other Business

- The Gates?
- Western Sage Lot 8

VIII. Adjourn

The meeting was adjourned at 7:50.

MEMORANDUM

TO: Avon Planning and Zoning Commission
CC: Sally Vecchio, Community Development Director
FROM: Eric Heil, Town Attorney
DATE: July 15, 2010
SUBJECT: Ordinance No. 10-12 Prohibiting Medical Marijuana

Summary: Ordinance No. 10-12 amends the Avon Municipal Code to (1) prohibit business licenses for a "Medical Marijuana Business," (2) prohibit the use of land for a Medical Marijuana Business, and (3) de-criminalize the possession of medical marijuana by medical marijuana patients. The Town Council passed this ordinance on first reading on July 13, 2010 and has scheduled a public hearing and second reading by Town Council on July 27, 2010.

Procedure: Ordinance No. 10-12 includes in part amendments to Title 17 Zoning of the Avon Municipal Code; therefore, Ordinance No. 10-12 has been referred to the Planning and Zoning Commission for a recommendation.

Background: Town Council enacted a 200 day moratorium on issuing any permits or licenses for medical marijuana dispensaries by the passage of Ordinance No. 10-01. The moratorium imposed by Ordinance No. 10-01 expires on August 8, 2010. The Colorado Medical Marijuana Code was adopted in the last legislative session and became effective on July 1, 2010. The Colorado Medical Marijuana Code imposes a moratorium by the state on issuing licenses for Medical Marijuana Centers and Medical Marijuana-Infused Products Manufacturers until July 1, 2011. The Town Council previously provided direction to prepare an ordinance prohibiting medical marijuana businesses in the Town of Avon in response to the adoption of the Colorado Medical Marijuana Code. The Colorado Medical Marijuana Code includes a "local option" provision whereby a majority of the local governing body may vote to prohibit medical marijuana businesses.

Legal Analysis: This ordinance defines Medical Marijuana Business broadly to encompass the definitions of "Medical Marijuana Center," "Medical Marijuana Infused Products Manufacturer," and "Optional Premises" as defined in the Colorado Medical Marijuana Code as well as include any use of property for cultivation, manufacture, storage, distribution, acquisition or sale of marijuana, whether for profit or not-for-profit. Ordinance No. 10-12 prohibits the issuance of a business licenses for medical marijuana related business and prohibits the use of land for a medical marijuana related business. Amendments to Chapter 9.16 provide that compliance with state licensing requirements is an affirmative defense for possession and use of medical marijuana by medical marijuana patients.

Requested Action: Take action to provide a recommendation on the zoning code text amendments in Ordinance No. 10-12 **AN ORDINANCE AMENDING THE AVON MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA BUSINESS USE OF PROPERTY AND PERMIT MEDICAL MARIJUANA POSSESSION AND USE BY MEDICAL MARIJUANA PATIENTS**

Thanks, Eric

**TOWN OF AVON, COLORADO
ORDINANCE 10-12
SERIES OF 2010**

**AN ORDINANCE AMENDING THE AVON MUNICIPAL CODE
TO PROHIBIT MEDICAL MARIJUANA BUSINESS USE OF PROPERTY AND
PERMIT MEDICAL MARIJUANA POSSESSION AND USE BY MEDICAL
MARIJUANA PATIENTS**

WHEREAS, the Town of Avon (“Town”) is a home rule authority municipal corporation and body politic organized under the laws of the State of Colorado and possessing the maximum powers, authority and privileges to which it is entitled under Colorado law; and

WHEREAS, Colorado Revised Statute §12-43.3-106 provides that the majority of the members of a governing board for a municipality may vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufactures’ licenses; and

WHEREAS, the Town Council finds that the regulation of land use is a matter of local concern; and

WHEREAS, the Town Council initiated an amendment to the text of the Town of Avon zoning code in accordance with Section 17.28.020 of the Avon Municipal Code; and

WHEREAS, the Planning and Zoning Commission of the Town of Avon held a public hearing on July 20, 2010, after posting notice of such hearing in accordance with the requirements of the Avon Municipal Code, and considered all comments provided before taking action to make a recommendation to the Town Council; and

WHEREAS, it is the Town Council’s opinion that the health, safety and welfare of the citizens of the Town of Avon would be enhanced and promoted by the adoption of this ordinance; and

WHEREAS, the majority of the members of the Avon Town Council have voted to approve this Ordinance; and

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply with the requirements of the Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this ordinance;

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Amendment to Chapter 5.04 Business Registration. Section 5.04.025 Lawful Business – Denial – Revocation - Appeal of the Avon Municipal Code is hereby enacted to read as follows:

“5.04.025 Lawful Business – Denial – Revocation - Appeal.

The Town Clerk shall reject any business registration, reject a business registration annual update or revoke a business registration if the business or use of the property which the business occupies is not in compliance with all applicable laws, including local, state and federal laws. The business owner (“Appellant”) may appeal the decision of the Town Clerk to the Town Council. The Appellant shall file a written appeal with the Town Clerk within thirty (30) days after the date of transmittal of a written decision of the Town Clerk, or designee, to deny or revoke a business registration. The failure to file a written appeal within thirty (30) days after the date of transmittal of the Town Clerk’s decision shall bar any further consideration of the application, shall bar any appeal to the Town Council, and shall bar any judicial review by a Colorado court. The written appeal shall state the reasons for the appeal. An appeal which is filed timely shall be considered and acted upon by the Town Council within forty-five (45) days after the date of receipt. The Town shall provide at least three (3) days prior notice to the Appellant stating the date, time and location where the Town Council will consider the appeal. The decision of the Town Council shall be in writing.”

Section 3. Amendment to Chapter 5.04 Business Registration. Section 5.04.045 Medical Marijuana Business Prohibited of the Avon Municipal Code is hereby enacted to read as follows:

“5.04.045 Medical Marijuana Business Prohibited.

Medical Marijuana Business, as defined in Section 17.08.517 of this Code and as may be amended or re-codified, is prohibited and unlawful in the Town of Avon.”

Section 4. Amendment to Chapter 9.16 Offenses Against Public Peace. Section 9.16.070 of **Chapter 9.16 Offenses Against Public Peace.** of the Avon Municipal Code is amended by repealing and re-enacting Section 9.16.070 in its entirety to read as follows:

“It is unlawful for any person to possess, use or attempt to obtain or procure cannabis. Notwithstanding the foregoing, it shall not be unlawful and it shall be an affirmative defense to criminal prosecution under this section for a medical marijuana patient to possess, use, and obtain medical marijuana, when such medical marijuana patient is fully and currently compliant with all state laws,

regulations, and licensing requirements concerning medical marijuana patients provided that such possession is not displayed publicly or in a manner which can be seen by the general public, that such use does not occur on property owned or possessed by the Town, and that such use does not occur upon property without permission of the property owner.”

Section 5. Amendment to Chapter 17.08 Definitions. Chapter 17.08 Definitions of the Avon Municipal Code is amended by enacting the following language:

“**17.08.517 Medical Marijuana Business.** *Medical Marijuana Business* means the use of a property, or portion thereof, for the cultivation, manufacture, storage, distribution, acquisition or sale of marijuana, including the use of property for Medical Marijuana Centers, manufacturing of Medical Marijuana-Infused Products, or Optional Premises, as such terms are defined by Colorado Revised Statute §12-43.3-104, as may be amended, regardless of whether any such use described herein is for profit or not for profit.”

Section 6. Amendment to Chapter 17.12 Administrative Provisions. Section 17.12.050 **Interpretation – conflict with other laws.** of the Avon Municipal Code is amended by enacting the following language:

“(d) Any use of property which violates local, state or federal law is prohibited.”

Section 7. Amendment to Chapter 17.16 Zone Districts and Official Maps. Chapter 17.16 **Zone Districts and Official Map.** of the Avon Municipal Code is amended by enacting the following language:

“**17.16.025 Medical Marijuana Business Prohibited.**

Medical Marijuana Business is a prohibited use in all zone districts.”

Section 8. Codification Amendments. The codifier of the Town’s Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 9. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division,

subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 10. Effective Date. This Ordinance shall take effect seven days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 11. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 12. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 13. Publication by Posting. The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the Town Clerk during normal business hours.

[signature page follows]

INTRODUCED, APPROVED, PASSED ON FIRST READING, ORDERED POSTED AND REFERRED TO PUBLIC HEARING and setting such public hearing for July 13, 2010 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado, on July 27, 2010.

Ronald C. Wolfe, Mayor

Published by posting in at least three public places in Town and posting at the office of the Town Clerk at least seven days prior to final action by the Town Council.

ATTEST:

APPROVED AS TO FORM:

Patty McKenny, Town Clerk

Eric Heil, Town Attorney

INTRODUCED, FINALLY APPROVED, AND PASSED ON SECOND READING, AND ORDERED PUBLISHED BY POSTING on July 27, 2010.

Ronald C. Wolfe, Mayor

Published by posting by title in at least three public places in Town and posting by title at the office of the Town Clerk.

ATTEST:

Patty McKenny, Town Clerk