

Minutes of INC Zoning and Planning Committee July 25, 2015 meeting

The INC ZAP (Zoning and Planning Committee) met on July 25, 2015 from 9:30 am to 11:30 am at 1201 Williams meeting room. Senior CPD planner Abe Barge attended the meeting.

The Committee discussed the following topics: 1) Councilwoman Susman and Abe Barge discussed planning for short-term rentals; 2) Michael Henry and Greg Kerwin discussed SLAPP lawsuits.

Short-term rentals

Councilwoman Mary Beth Susman and CPD planner Abe Barge discussed the City's current planning for regulation of short-term rentals (STRs) in Denver, including a draft "zoning & licensing approach" from April 2015.

CW Susman is arranging a planning meeting with the seven new council members on sharing economy issues. Going forward the Council neighborhoods and planning committee (now called "PLAN" rather than "NAP" will cover these issues. It meets Wednesdays at 10:30 am.

Abe Barge explained the work on short-term rentals has proceeded slowly with discussions underway for approximately 17 months. CPD anticipates presenting a formal proposal in late 2015. He reminded committee members that the zoning code does not use the term "short-term rental." The term "household living" does not fit because those are arranged on a month to month basis. Currently short-term rentals are not allowed in residential districts in Denver. They are allowed in mixed use or commercial zone districts if the owner meets the requirements for lodging, like a B&B.

Denver has looked at a range of options: From Colorado Springs, which allows STRs and encourages respect for neighbors and payment of taxes, to Portland and San Francisco which impose many requirements, but see limited compliance with such rules. Denver is seeking a middle-ground approach.

Denver's current goal is to bring STRs within a new regulatory framework to assist the City with enforcement of problems and to allow owners a legal way to engage in STRs. The limitations may include only allowing a primary resident to rent his or her home, rather than an absentee landlord. The City recognizes there may be issues with defining who is a primary resident. But the City likely would not require the primary landlord to be present during the STR. The City expects to tax STRs like hotel rooms so hotels are renting space on an even playing field. The City would make zoning changes to allow an accessory use of the home by right, and would also require the owner to obtain a business license and pay taxes. The owner would need to provide contact information to assist with enforcement problems, meet safety and insurance requirements, and keep a registry of guests.

Denver is delaying decisions on STRs until after the November 2015 election and after the lodging tax sunsets in 2015. It wants to avoid confusion with a separate proposal to have voters approve a tax to fund work on the new National Western Center. But the City Council will continue discussing the issue in the meantime.

One committee member noted that rentals in Hawaii seem to work well where a contact name for the owner must be posted in case there are complaints about the renters.

Several member noted concerns that allowing STRs conflicts with the Mayor's emphasis on affordable housing, but reducing one source of rental housing. CW Susman responded that if the owner is the primary resident renting out a room occasionally, that may not be reducing affordable units. Others disagreed and noted such a room could be used for affordable long-term rentals.

One also noted that with the current low fines, an owner makes more money ignoring BOA orders to cease STRs than complying with them. He predicted that fewer than 10% of owners will comply with new STR registration requirements and noted how difficult it is for residents to get a City inspector to investigate a problem with an STR.

Another committee member predicted it will be difficult to evaluate who is a primary resident, including a corporate owner, and that the City does not have enough investigators to enforce this. Neighbors do not like being put in the position of having to complain regularly. Another person pointed out that the federal government uses many short-term rentals for employees.

Michael Henry pointed to the problems with not having a permanent director of the neighborhood inspection department for the past 1-1/2 years.

One person who currently rents out his Park Hill home for STRs through VRBO advocated streamlined City requirements to encourage compliance. He described his positive experiences with renters, and the value of renting out his house for some additional income while his children are in college.

Another committee member noted the problems with having only two City noise inspectors, who work only Monday through Friday and cannot investigate weekend problems. He also recommended that STR licenses be posted in a conspicuous place on a home so neighbors understand whom to contact. Barge noted that Austin, TX requires licenses be posted in an on-line listing.

Another member encouraged the City to educate owners about their obligations as good neighbors.

Participants noted the lack of data on the volume of complaints about STRs because police records may not indicate whether the person causing noise or other trouble was a short-term renter. CW Susman noted 11 formal complaints to date about specific STR locations. Others noted the complexity of filing a BOA complaint. Several people noted that BOA lacks enforcement authority. Barge noted the value of having NIS track STR complaints better.

One member noted the value of accessory dwelling units (ADUs) to increase the supply of affordable housing. CW Susman said she hopes the question of ADUs comes up when CPD works on updating Blueprint Denver.

Margie Valdez advocated requiring STR owners to file their business applications in person at the City offices rather than on-line, to ensure accountability. She would like to require Airbnb and VRBO listings to show a City license number on their website: CW Susman noted that website STR listings normally do not disclose the exact address, so the City needs its own STR registry.

One member noted that Airbnb makes it difficult even for a renter to actually speak with the owner. Airbnb directs such communications to occur by email rather than telephone, partly to protect the fee Airbnb charges the owner.

The STR discussion ended at about 10:55 am.

SLAPP lawsuits

Michael Henry and Greg Kerwin discussed SLAPP lawsuits—an acronym for: “Strategic Lawsuit Against Public Participation.”

Michael noted extensive discussions at past ZAP meetings with DU Law Professor George Pring, who was an expert on SLAPP suits. He explained the importance of not letting RNOs and INC be intimidated by such lawsuits.

He explained that relatively few SLAPP lawsuits have been filed in recent years, but one recent one was filed against Margie Valdez by a restaurant owner in retaliation for her noise complaints to the City. That owner is trying to interfere with Margie’s continued opposition to its proposed new dance cabaret license. These SLAPP lawsuits can be costly to defend even if they are ultimately dismissed.

Michael explained a helpful Colorado Supreme Court case from 1984 called “POME” for “Protect our Mountain Environment.” This case confirms the First Amendment right of citizens to petition their government without facing retaliatory lawsuits. The POME case was groundbreaking case that CHUN supported.

Other committee members noted that one RNO was disbanded after a lawsuit was threatened against it, and that the cost of having to defend such claims can be large.

Greg Kerwin briefly discussed the First Amendment principle behind the POME case. He explained that often it costs individuals and neighborhood groups a great deal of money to hire a lawyer to defend such SLAPP claims and they may not ever get their money back, even if they win the case. He noted that the City of Denver had recently asserted a claim for \$19,000 in attorney’s fees against the individual citizens who filed the Buckley Annex zoning lawsuit. This was a type of SLAPP claim by the City. He explained that the trial judge ultimately denied that claim but also refused to hold this violated the plaintiffs’ POME rights, so the plaintiffs are asking the Court of Appeals to examine whether the City’s attorney’s fee claim violated the plaintiffs’ POME rights.

One member asked whether the scope of coverage under INC's current insurance policy can be broadened to include INC-member RNOs if they are sued in a SLAPP lawsuit.

Committee members asked Margie how they can assist and she suggested they could attend the August 4 license hearing for 100% Agave, the restaurant that filed the SLAPP lawsuit.

Members briefly discussed their experience with good neighbor agreements with restaurants and bars.

Margie Valdez reminded members that the Citizens' Academy will begin in the fall of 2015 with three sessions. If residents like these programs, more will be planned. She also noted that there will be training on liquor license and marijuana hearings in January 2016. She also explained that the City's GIS system currently does not show dance cabarets on its public database.

One member noted an upcoming program on July 30 with Dr. Paul Connett of St. Lawrence University to discuss issues concerning the Denver Zoo's plan to incinerate solid waste. Katie Fisher noted the Parks and Recreation committee will be bringing the zoo issue to the INC delegates and that the issue is much more complex than people originally realized.

The meeting ended at 11:30 am. The next ZAP meeting will be on Saturday, August 22, 2015 at the meeting room at 1201 Williams Street, 19th floor.

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