Fruita Planning Commission

Tuesday, August 9, 2016

A. CALL TO ORDER

Chair Doug Van Etten called the meeting to order at 7:00 pm. Members in attendance were: Janet Brazfield, Doug Van Etten, Keith Schaefer, Dave Karisny, and Heidi Jo Elder. Richard Hoctor was excused absent.

There were about 35 people from the public in attendance.

B. PLEDGE OF ALLEGIANCE

Doug Van Etten led the Pledge of Allegiance.

C. AMENDMENTS TO THE AGENDA

None.

D. APPROVAL OF THE AGENDA

Keith Schaefer- I move to approve the agenda

Dave Karisny- I second.

Doug Van Etten- We have a motion and a second for approval of the agenda as written.

6 yes votes; motion passes

E. WITHDRAWN ITEMS

None.

F. CONTINUED ITEMS

Doug Van Etten read the application as follows and put on the record that this application is continued tentatively until September 13, 2016 Planning Commission meeting

Application #:	2016 -22
Project Name:	Chapter 7, Zoning, Uses and General Requirements
Application:	Land Use Code Amendment
Representative:	Dahna Raugh, City of Fruita
Request:	This is a request to amend Chapter 7 of the Fruita Land Use Code.

G. CONSENT ITEMS

Doug Van Etten read the following items on the Consent Agenda as follows:

Application #:	2016-18
Applicant:	Brian Young
Application Name:	Orchard House
Application Type:	Conditional Use Permit
Location:	164 N. Orchard Avenue
Zone:	Community Residential
Description:	This is a request for approval of a Conditional Use Permit for a Vacation Rental by Owner (Bed And Breakfast). The Fruita Land Use Code requires a Conditional Use Permit to operate a Bed and Breakfast in a Community Residential zone.

Application #:	2016-23
Application Name:	Sign Code Amendment
Application Type:	Land Use Code Amendment
Applicant:	City of Fruita
Description:	A request to amend Chapter 41 of the Fruita Land Use Code regarding Signs.

APPROVAL OF MINUTES

July 12, 2016 Planning Commission meeting

Janet Brazfield- I move that we approve the consent agenda as presented.

Mel Mulder-Second.

6 yes votes; motion passes.

H. HEARING ITEMS

Doug Van Etten read the application as follows:

Application #:	2016-19
Application Name:	US Tractor
Application Type:	Site Design Review
Applicant:	Nick Nipple
Location:	1984 Highway 6 & 50
Zone:	General Commercial

Description: This is a request for approval of a Site Design Review application for retail sales and service of agricultural equipment along with a request for Adjustments of the Design Standards of Chapter 11 of the Fruita Land Use Code.

Scott Van Horn (representative for US Tractor) - Scott handed out information packets with pictures to the Planning Commissioners. We are a John Deere dealer and we currently have 5 locations in Colorado and we would like to have a location in Fruita. The pictures that are in the packet are of our building in Montrose which we are proposing to build here; it will be exactly the same.

Dahna Raugh- This is a request for a Site Design Review and typically Staff reviews and approves these types of applications. But this one is required to come to the Planning Commission for recommendation to City Council for a final decision because they have asked for adjustments. The adjustments are specific to the Design Standards contained in chapter 11 of the Land Use Code. No other section of the Land Use Code, just chapter 11. Chapter 11 of the Land Use Code has more requirements than simply placement and height of the building, it goes into more detail like how do pedestrians come onto the site, how do cars come onto the site, landscaping information, the architecture on the outside of the building and how it effects the public areas. With this particular application, Staff was good with all of it, with one exception. In the packets that you were given for this meeting you will see the building elevations. Chapter 11 of the Land Use Code requires, basically, the finished material on the outside of the building be just about anything but metal. It can be all kinds of things but specifically says metal cannot be used as the primary finished building material. The roof is fine as metal as long as it is not reflective. But the walls are required to be something other than all metal. Metal can be used as an accent material. You can see in the building elevations, it is pretty much an all metal building. The only parts that aren't metal are the windows and the stone along the front of the building. There are some other exceptions that they have requested that Staff absolutely supports. The first, our Code tries to bring the building close to the street as much as possible to give the street a little more visual interest. It also requires that when the building is pushed back from the street that there be a lot more pedestrian amenities. In this case it is a large tractor sales and repair shop. The building is pulled way off the street (Highway 6 & 50). There are no pedestrian accommodations. It didn't seem appropriate to have big sidewalks connecting the building to a high speed traffic highway. They did provide the required amount of landscaping between the building and the street. Again, Staff is in full support of those exceptions. But looking at the building architecture and the fairly plain walls and mostly all metal building, nearby is Fruita Storage which is, I think all metal, and people keep pointing that out to me and yes it does not look very good which is why we have design standards. In 2002, the building that is currently being used as the Cowboy Church and was previously the Twin Crossings furniture store, proposed an all metal building. And back in 2002 the city made them put stucco and other decorative things on the front so that it looked a little bit better than an all metal building. Certainly these things are much more important the closer you get to the city. True Value Hardware Store was required to do something other than an all metal building. Peterbuilt is another example of a building that is more than all metal. The further out to the edges of the city you get the less important it is but it is still

important. So looking at what the city has required of others, Staff believes that the Land Use Code would support metal as a primary finished material but not for the majority of the building. So what Staff is recommending is approval of the project as submitted as long as all the issues identified in the Staff Report and all the review comments are adequately resolved, and I believe the only point that the city Staff and the applicant can't come to agree on is the exterior of the building, the metal. So that is the major question for the Planning Commission, should the adjustments be permitted to allow the building to be constructed as proposed or should no adjustments or some lesser form of adjustments be approved. If all review comments and issues identified in the Staff Report are adequately resolved before a building permit is issued, Staff believes that all of the requirements of the Land Use Code and other City requirements have been met or can be met. We have received no public comments on this application at this time.

Dave Karisny mentioned that the Staff Report says that at least 50% of the building material not be metal. And Dahna said a little less than half can still be metal.

Heidi Jo Elder- Can it be anything other than metal?

Dahna Raugh- It highlights building materials in the Land Use Code, so yes almost anything other than metal.

Doug Van Etten- Does it have to be all sides of the building?

Dahna said the architecture wrap around all sides of the building to respect all property owners around it and not just the part facing the traveling public. Certainly it becomes more important in some areas than others when there is a lot of traffic around the building.

Mel Mulder mentioned there is a duplex in the city that is all metal and wondered why they could have all metal and this building cannot. Dahna said that the design standards of Chapter 11 apply to the Downtown Mixed-Use, General Commercial, and Community Mixed-Use zones.

Keith Schaefer wondered where the city Staff was in the negotiations with the applicants and if the city was going to deny it in its entirety.

Dahna said that is the reason the city Staff is presenting this project to the Planning Commission, is for a recommendation to City Council on whether to grant the applicants the exception for the finished building material.

Keith wanted to know if there had been any compromise between the applicant and the city.

Dahna said that everything in the Planning Commissioners packets show where the city and the applicant are with their discussion on this issue and where the compromise is. City Staff believes that the Land Use Code and the rules and regulations would support almost half the building being metal but not the entire building. Dahna also mentioned that in the applicants' supplemental project narrative, it highlights some additional landscaping or other additions that could try to accommodate the city's concerns. But know where has the Staff and the applicant come to an agreement on the amount of metal finished surfaced material on the building. That is the main issue in front of the Planning Commission tonight.

Janet Brazfield highlighted some of the buildings around town that had to address this certain requirement (building material). She could understand how the back end of the building could be metal just in case of future expansion or something like that but said that if the city is going to make others does it based on the cities rules and regulations then that should apply to all others. The reason the city has a Land Use Code is for reasons like this.

PUBLIC COMMENTS:

Bud Naven 1954 Highway 6 & 50- Was wondering about the traffic concerns this project may produce. How will the City be approaching this concern.

Dahna and the City Staff have been working in conjunction with the Colorado Department of Transportation (CDOT) with traffic on Highway 6 & 50. Highway 6 & 50 is controlled by the Colorado Department of Transportation and not the City of Fruita. The applicants have done a traffic study but Staff is unaware that the traffic study warrants any improvements along Highway 6 & 50.

Bill Saltou 1994 ½ Highway 6 & 50- Emphasized how bad the traffic issue is along Highway 6 & 50 near 20 Road. Wanted to know if the City of Fruita is going to widen the road and put in a traffic light at 20 Road intersections? Bill also had some concerns about the lighting and noise that this new business will create. Does not want to have lights shining into his house and does not want them making noise at all hours of the day.

Dahna mentioned again that the Highway (Highway 6 & 50) is maintained by CDOT. And mentioned again that the traffic study that was submitted shows no upgrades to the road or intersection at 20 Road. Said that there will be more commercial development along 6 & 50 before major improvements will be needed/done. Dahna said that Staff would address the lighting plan and if the light trespasses onto other properties, if it does, this issue will be addressed.

Richard Valdez 1994 Highway 6 & 50- Is concerned with the traffic, noise and lighting this new business will produce.

Joanna Foss 1976 Highway 6 & 50- Very concerned with the traffic that will be generated with this new business. She wanted the applicants to be aware that they have an irrigation line running through the subject property. She does not want that to be messed with and doesn't not want them to build on top of it.

PLANNING COMMISSION COMMENTS:

Dave Karisny made it clear as to why the Planning Commission is hearing this item tonight and highlighted the process of this project. The Planning Commission will make a recommendation to City Council for a final decision based on what is being addressed at this meeting regarding the exceptions requested by the applicant. Dave agrees that Highway 6 & 50 is a busy road and there will be improvements in the future (Highway 6 & 50 control plan can be viewed at CDOT online or in the Planning office).

Dave also talked/highlighted items that have been submitted by the applicants and what the site plan looks like. Dave understands this type of business and understands that there are certain people that will come to this business. Dave told about other buildings that had to comply with the city's rules and regulations and agrees that this business should do at least 3 sides less than 50% metal.

Heidi Jo Elder asked to the applicants if they could do other types of building materials like wood or rock or brick or stucco.

Scott Van Horn said that is not cost effective to do the whole building in any of those building materials, mentioned that some of the buildings near the subject property were ugly and that their new building would look much better.

Heidi suggested that the show room area be stucco and the shop portion be left metal due to the use of the shop and maybe future expansion.

Scott Van Horn is open to that suggestion.

Doug Van Etten- I think the point about having a Code so that there are standards, the newer code is in place to create a higher standard. I think that to tell us that Fruita has ugly buildings so now we don't mind coming in here and being an ugly building, doesn't sound like a real nice way to ask for a welcome to the community. Fruita would love to have the business but Fruita has also established a new/higher set of standards. The only

way to deal with this project is the same way we dealt with other projects otherwise, why have a code with standards.

Doug highlighted points made in the applicants Supplemental Narrative. Doug also agrees with the Planning Director's decision on 50% or a little less than 50% of the building be something other than metal.

Mel Mulder knows that the traffic on Highway 6 & 50 and 20 Road is very bad but also emphasized that the highway is owned/maintained/controlled by CDOT. Mel understands the reason the Planning Commission is meeting is due to the exceptions that are being asked for by the applicant. However, other issues do matter. Mel agrees that the city code should be applied to this project.

Janet Brazfield agrees with her fellow Planning Commissioners.

Keith Schaefer believes that middle ground should be negotiated and that asking the applicant do have different siding than proposed due to the size of the building should have some exceptions.

Janet Brazfield- I would recommend approval of US Tractor Site Design Review with adjustments with the condition that all review comments and planning comment issues identified are adequately resolved before a planning clearance for a building permit is issued.

Mel Mulder- Second.

Dave Karisny- Is there any direction on what the sides of the building would look like?

Janet Brazfield- I'm going with Staff's recommendation and Planning commission comments.

5 Yes Votes; 1 No Vote; Motion passes.

Keith Schaefer voted no because he disagrees with a cookie cutter type of standard. He thinks this building is way too big to have to stucco the entire thing. Keith Schaefer is recommending a code change for this issue.

Doug Van Etten read the application as follows:

Application #:	2016-11
Applicant:	Travis and Ellen Robinson
Application Name:	Robinson Rental
Application Type:	Conditional Use Permit
Location:	1424 Niblick Way
Zone:	Adobe Falls PUD
Description:	This is a request for approval of a Conditional Use Permit for a Vacation Rental by Owner (Bed And Breakfast). The Fruita Land Use Code requires a Conditional Use Permit to operate a Bed and Breakfast in this PUD zone.

Travis Robinson- I just have a few comments for you guys. This is a request for a B & B in a residential area. We came to the City (Staff) and found out we needed a C.U.P. (Conditional Use permit) in May (2016), we also reached out to the developer and the HOA to tell them this is our plan and please let us know if you have any concerns, we would be happy to address them. The next time I heard from anyone about this was when we received a letter in the mail from Rich Livingston saying that this (B&B) violates section 5 of our covenants, it violates specifically the residential use only no commercial use covenant, which is very broad. My wife and I are excited to have people stay with us, it is not actually a Bed & Breakfast, it is our home that we are sharing. We are very involved in the community. I serve on the Tourism Board, I now realize that is the easy Board. My wife brought the Fruita Monassori, to Fruita. I served on the Fruita Area Chamber of Commerce for a number of years. We own a business in downtown Fruita as well. We are heavily involved in the community, the AirBnB concept I think is great for the community. It brings additional tax dollars to the City. That is how I learned about the CUP, I went to Henry and said that we have done this a few times during the Fat Tire Festival; we think it is really cool how do I pay lodging tax because I think it is a competitor to our hotels. So fast forward ahead, my wife was approached a couple times and told by our neighbors that what you are doing is illegal and you need to stop. We have done our homework in advance to know, currently, Colorado common law states that short term rentals are residential use. The courts in Telluride held this last year and it was reaffirmed in San Miguel county last October. That is what you guys have in front of you, it is just a lawyer blog, someone's opinion but it summarizes what was found last year. That is why I think the letter we received and the neighborhood meetings that were held without us, all they did is whip up a bunch of opposition without ever giving us a chance to talk with them. At the end of the day, using this as a short term rental is in line with our covenants, it is a residential use. We think we have met all the criteria of the CUP. Even though Staff recommended to deny, we would ask that you recommend to approve because our HOA has

a mechanism to stop this and that is, go in and amend the covenants to prohibit short term rentals. That is what the HOA in Telluride is going to do (referring to one of the handouts) to this homeowner when they have their opportunity. So we would like you to approve this and we would like to ask our neighbors to work with us, because we have built a home that we love, that lifted the property values of everyone else in the neighborhood. We built a home to raise our kids in, I am from Fruita, and we plan to be here for a very long time. We simply want to have the right to invite guests into our home if we choose.

Mel Mulder- Do you have record of that conversation you had with the HOA?

Travis Robinson- It was a phone call. But it was around May 8th. It was the weekend after I spoke to Henry and learned that we needed to go through the permitting process. You know you have approved so many of these applications, so my understanding is that this is a pretty simple process. This is a residential use, and unless they amend the bylaws to prohibit short term rentals we want to be able to use it in this fashion.

Dahna Raugh- This is a request for a Conditional Use Permit for a Bed and Breakfast or Vacation Rental by Owner. I am going to go through individual supplemental zoning standards that apply to these land uses and the individual Conditional Use Permit approval criteria, because I know we have another Vacation Rental issue after this hearing item as well so I think it helps both groups. So the first requirement, where the applicable zoning district allows a Bed & Breakfast uses as a conditional use and pretty much every residential land use category in the Land Use Code requires a Conditional Use Permit. It must be a residential dwelling unit that contains no more than 4 guest bedrooms where overnight lodging with or without meals is provided for compensation, so in this case the application meets that requirement. It is a residential house with 4 bedrooms, but they are not using all 4. So that has been met. The second requirement is the kitchen and dining facilities may serve only the residents and guests and shall not be operated or used for any commercial activity other than what is necessary for the Bed & Breakfast, the applicants have stated that they don't intend to use the kitchen facilities for anything but themselves and their guests. The third, the Bed & Breakfast use shall not change the residential character of the dwelling if located in a residential zone or area. The applicants have indicated they have no intention of changing the character of the dwelling unit to anything other than the residential dwelling unit that it is. The forth, in residential zones there shall be no advertising, display or other indication of the Bed & Breakfast other than a sign that complies with the provisions of the Sign Code. The applicants have stated in their narrative that they will not be doing any advertising on the property. The fifth, a minimum of one parking space per guest bedroom and resident bedroom shall be required, and screening of the parking may also be required. There is definitely at least one car parking space per each guest and resident bedroom. Staff is not recommending any screening, it is basically a big driveway and a big garage. The sixth, the Bed & Breakfast facilities shall comply with all building codes adopted by the City. This house as build in 2014, it received a Certificate of Occupancy and Staff has no reason to believe that it doesn't continue to meet the building codes. We understand that the Building Department (Mesa County Building Department) and the Fire Marshall (Lower Valley Fire Department) that Bed & Breakfasts and Vacation Rentals are held to the same standards of any

other house, nothing special in terms of commercial building code. The seventh requirement, it shall be the responsibility of the applicant to demonstrate that the relevant subdivisions declarations, covenants, conditions and restrictions allow for a Bed & Breakfast use and associated signage. It is the applicant's responsibility to demonstrate that the covenants allow this use, with the letters we have received from the neighborhood and the letter from a Lawyer, I think what the applicant has demonstrated is that this is a very debatable issue. Certainly the residences in the neighborhood that we have heard from think that this is not permitted and certainly the applicant thinks it is permitted. What we have proven is that there is an argument, there is no proof that the HOA and the covenants allow this. It is because of that, and that alone, that Staff is recommending that this application be denied because this one criterion (Supplemental Zoning Standard #7) has not been met. The eighth, where a Bed & Breakfast use is subject to a Conditional Use Permit approval any existing or proposed use in addition to the dwelling unit (like a home occupation or an accessory dwelling unit) is considered part of the Conditional Use review. Staff is not aware of any other conditional type uses on this particular piece of property. There are also four criteria for Conditional Use Permits of any type that have to be considered and should be met for every Conditional Use Permit application. The first, the proposed use shall be consistent with the purposes and provisions of the Land Use Code, the zoning which it is located, and also the City's Master Plan. The Land Use Code is one of the primary documents used to implement the City's Master Plan, and if all the approval criteria for conditional use permits and all the Supplemental Zoning Standards can be met then this application will certainly meet the Master Plan and the Land Use Code and the zoning in which it is located. But again it doesn't meet that one Supplemental Zoning Standard that states that it is the applicants responsibility to demonstrate that there is no issue with the Covenants. So that approval criteria for Conditional Use Permits has not been met. The second, the proposed use shall be compatible with existing and allowed uses surrounding or effected by the proposed use. Staff believes that the proposed Vacation Rental is compatible with everything that is around it as the applicant has stated and as I think everybody knows the City of Fruita has granted many Conditional Use Permits in many different neighborhoods and only once has one been denied and it was for the same issue, it violated the covenants. We don't know of any significant problems in any of the neighborhoods, we do believe these are for the most part very compatible with just about every residential neighborhood in the city. That approval criterion has been met. The third, the proposed use shall not materially endanger the public health and safety, we don't believe using the house as a vacation rental will be a problem for public health and safety. The last approval criteria, public services and facilities should be available and adequate to serve the proposed use, of course it is a house and we don't expect any utility or other service demands to be above and beyond what we would normally find in any other house. This approval criterion has been met. Again, this application for a Vacation Rental meets all the approval criteria except that it looks like it violates the covenants or at least it looks very debatable. So that approval criteria has not been met and therefore, the very first approval criteria for Conditional Use Permits has not been met, it doesn't comply with the Land Use Code. Staff has received a lot of written public comment, all the public comments we received are included in your packets tonight.

PUBLIC COMMENTS:

Denise Hoctor 1332 Niblick Way- Denise explained why she and her husband chose to move to Fruita and why they chose to move into a neighborhood with strict covenants. They chose Adobe Falls because they didn't want to be in a neighborhood where people were doing business out of their homes and didn't want strangers in the neighborhood all the time. They chose Fruita for safety and community.

Judith Thornberg 1354 Niblick Way- There were no covenants where she used to live, she read the covenants in Adobe Falls and interpreted them and understood them that there would be no auto repair places close, and no Bed & Breakfasts. There are 2 empty lots next to her and the Robinsons and she could see that if the Robinsons are allowed to use their home as a Bed & Breakfast, then the lots next door will be Bed & Breakfasts.

Mike Milholland 1466 Niblick Way- Travis and Ellen are great people but the main point is the majority, if not all, of the neighborhood is against this application.

Clarence Ehrlich 1406 Kiva Drive- The whole neighborhood is not in favor of this application. Everyone has invested a lot into their homes in this subdivision. In his opinion, the covenants do not allow for this type of use. He feels that if this use is to be allowed, that would set a statement and open the door for more uses just like this. Feels the covenants should protect the homeowners. He doesn't want any friction in the neighborhood.

*Someone talked but I couldn't make out what they were saying.

Rich Livingston- The attorney for the Adobe Falls homeowners association. The existing owners, all of them except the applicant, have executed a petition in opposition. They didn't do that lightly, we had an extensive discussion and talked about all of the applicable issues. And if you read the petition it says "the undersigned, with due respect for individual property rights." All of the owners in Adobe Falls were sincere about that point but as they had their discussions back and forth, over this application, questions came up relative to compatibility of uses. Staff has indicated that they conclude that this is compatible with the existing use. But if you look at the advertisement that is on the internet for this particular property, what it says is brand new casita on golf course. And if you look at the photograph that accompanies the application you can see that they show the home, the casita is behind the home. When you talk about compatible uses and a more traditional Bed & Breakfast, you're not talking about a separate structure that is going to have people coming and going. There is numerous materials online that talks about access by way of lock box and no contact with anybody at the facility. A couple of the residences have testified tonight about their reasoning for coming to Adobe Falls and one of the nice features of a community that we are able to enjoy here in Fruita, is that we are out of the major urban corridors.

Rich Livingston went on to discuss the requirements of the Staff Report and how he interprets how this application does not meet any of the rules and regulations. Strongly recommends denial of this CUP application.

Keith Schaefer- So the developer can change the covenants if they needed to?

Rich Livingston- In theory, yes they can.

Mel Mulder- Are you hired by the HOA for this issue?

Rich Livingston- I am.

Mel Mulder- If the petitioner is to pursue this further, to the courts, would you be representing the HOA?

Rich Livingston- Yes I would be.

Mel Mulder- I think this is an issue for our attorney too.

Janet Elliot 1306 Niblick Way- Janet Elliot was the person the Mr. Robinson reached out to about this particular use at their house, Janet said she was busy and couldn't really understand the questions Mr. Robinson was trying to ask. She feels like the Robinsons did not do their homework and have not approached anyone in the neighborhood.

Ellen Robinson- Ellen addressed some of the comments made by Mr. Livingston. The Robinsons were not invited to the meeting that was held when everyone signed the petition to oppose the application. Ellen knocked on all the doors in the neighborhood and talked with most people in their home. She mentioned that they live on a public golf course with a public trail the surrounds the subdivision and made a point that the neighborhood is fully accessible to the public.

PLANNING COMMISSION COMMENTS:

Janet Brazfield- Mrs. Brazfield talked about the definition of 'residential uses' in covenants based on the laws in Colorado. And says, if you are renting to the public at your home for compensation, this makes it different then residential uses. Agrees with Supplemental Zoning Regulation #7 in the Staff Report.

Mel Mulder- The recommendation of denial to City Council is in order. And believes Mr. Livingston is prepared to go to court with the applicants.

Keith Schaefer- Mr. Schaefer feels that the Conditional Use Permits do nothing for the neighborhood. And feels that this specific C.U.P. application is not an appropriate use in this area.

Dave Karisny- Mr. Karisny talked about how the City of Fruita created a process of controlling the Vacation Rental by Owners back when the code was amended. He discussed how VRBO's have been heard in the past and that most are not in HOA controlled neighborhoods and that it is okay for the Planning Commission to hear what the neighborhood had to say when considering the recommendation to the City Council with their decisions. The intent was to hear what the neighborhood has to say about the applications and not to turn neighbors against one another. With the neighborhoods comments and actions for denial of the application, Mr. Karisny feels the application should be recommended for denial based on the neighborhoods comments.

Heidi Jo Elder- Mrs. Elder agrees with Staff's decision for denial. The applicant has not proven that it is not in violation of the covenants. She thinks that if the Robinsons can prove and talk to the other homeowners and get that changed then bring the application back to Planning Commission and she would be all for the VRBO. But at this moment, she is recommending denial.

Doug Van Etten- Mr. Van Etten is in favor of the C.U.P. application due to the fact that it is the Robinsons private property and they should be allowed to use it in this way and that they should have full use of their property under the law. He thinks all homeowners in the neighborhood would want to use their property in the ways that they want to. The language in the covenants is arguable.

Keith Schaefer- I recommend that we deny this C.U.P. because the representative has not demonstrated that the proposed Bed & Breakfast would not be in violation of the subdivision covenants as required by the Supplemental Zoning Standards of the Land Use Code.

Heidi Jo Elder- Second.

5 Yes votes; 1 No vote. Motion passes.

Doug Van Etten read the application as follows:

Application #:	2016-17
Applicant:	Danny Gene Mitchell Jr.
Application Name:	Mineral House
Application Type:	Conditional Use Permit
Location:	626 Mineral Court
Zone:	Community Residential
Description:	This is a request for approval of a Conditional Use Permit for a Vacation Rental by Owner (Bed And Breakfast). The Fruita Land Use Code requires a Conditional Use Permit to operate a Bed and Breakfast in a Community Residential zone.

Danny Gene Mitchell Jr. - I own the property at 626 Mineral Court, I want to thank you for your time. We would like to provide housing as a vacation rental for events, bike events in Fruita. We had an opportunity to rent out to some missionaries but we couldn't do so because we hadn't been through this process yet. So that is another reason we wanted to apply for the Conditional Use Permit. We have been to the homeowners association and the HOA distributed letter and emails to the whole neighborhood and did not receive any negative comments.

Dahna Raugh- As far as Staff can tell, this Conditional Use Permit meets all requirements as stated in the last presentation with the Robinson Rental. When Staff was completing the writing the Staff Report, we received a letter in opposition of this request and before the meeting Staff also received three more letters in opposition which you have in front of you. We actually received a letter from the HOA in support of this application that there is no problem with the covenants. Unfortunately, the neighbors do have concerns. That concludes my presentation.

Janet Brazfield- This letter from the HOA states that the board has been working with the other neighbors will add an amendment to the bylaws and covenants. Now in order to do that, it would require the majority of the homeowners. Has that amendment been done? Otherwise it wouldn't meet the supplemental zoning criteria that requires the applicants to show it doesn't violate the covenants.

Dahna Raugh- The city is certainly not asking the Planning Commission or the City Council to sit up here and act as lawyers, reading the covenants and deciding what you think the covenants say. None of us are lawyers. The issue is, does it meet the requirements of the Land Use Code. The applicants need to demonstrate that the relevant subdivisions declarations, covenants, conditions and restrictions allow for a Bed & Breakfast use and associated signage. The letter from the president of the HOA (in the planning commission packets) states "Thank you for presenting your request at the annual meeting in April of 2015. At the meeting there did not seem to be no anyone against it. An email was sent out to homeowners and there has not been any comment. Thus, the

HOA board of Stone Mountain Estates does not have a problem with you making your house at 626 Mineral Court available for short term rental." Now I do see that it does say "the board with your help working with them will add an amendment to the bylaws and covenants, they trust that the property owners will keep them abreast of the progress of obtaining the documents… the board would like a record only copy of Fruita city approvals." So to me this says the HOA is in support. So it was Staff's opinion that the requirement that it is the responsibility of the applicant to demonstrate that there is no violation, this letter shows that there is no violation. Like I said, right when we were finishing up the reports to go out the Planning Commissioners, we received letters from the neighborhood with concerns. And we have received some letters before tonight's meeting.

Janet Brazfield- My question was, have the covenants been amended in order to allow this?

PUBLIC COMMENT:

Cynthia Mabes (owns 652 Mineral Court)- Her concern is about the safety of the cul-de-sac and the continuing in and out of new people in the neighborhood. There are a lot of kids that live on the cul-de-sac and the safety of the kids is a major concern.

REBUTTAL:

Sabrina Mitchell (the applicants wife) - Wondered if there is any wording in the advertisement that may be a concern to the neighbors. Sabrina wants to make this right with the neighbors and to add some wording in rules for the rentals that could address the concerns of the neighborhood.

PLANNING COMMISSION COMMENTS:

Janet Brazfield- Have (the applicants) made the amendment to the covenants yet?

Sabrina Mitchell- No they have not, the HOA is waiting for documents from the City of Fruita in order to make their decision on the amendment.

Janet Brazfield- Stated that it should be the HOA to change the covenants before they give to okay to the homeowner, and not the other way around.

Dahna Raugh- What is the amendment exactly? Is it an amendment to say it is okay? I think we might be making an assumption that this is a problem and there is some sort of an amendment that needs to happen. But there is no indication as to what type of amendment there will be. To let a Bed & Breakfast be a permitted use or an amendment that actually talks about how a Bed & Breakfast will be operated if it is permitted. Do you guys (applicant and wife) actually know what the amendment is for?

Danny Gene Mitchell Jr. - It is rentals less than 30 days.

Janet Brazfield- So your subdivision only allows rentals 30 days or more?

Danny Gene Mitchell Jr. – Yes.

Keith Schaefer- Based on that, this wouldn't qualify would it?

Janet Brazfield- Exactly, unless it is amended to allow it for less than 30 days.

Mel Mulder- Agrees with Janet. Based on the information we have in the application, this is a legal application and should be recommended for approval.

Keith Schaefer- I think it is important for the people in the audience to understand that this is a Conditional Use Permit, and if they violate any of the conditions it can be pulled. Having said that and based on the information we have, we can move to approve subject to Mrs. Brazfield's comments about the need for the amendment to the subdivisions covenants.

Dave Karisny- Dave made clear what exactly the amendment would actually be, the amendment would be to allow for rentals that are less than 30 days. Mr. Karisny encouraged the applicant to continue the application until a further date when they can get the amendment made or more clarity on the amendment in the subdivision.

Heidi Jo Elder- Mrs. Elder believes that the applicant has proven that the HOA is in support of the short term rental and that with the letter from the HOA in support, this does not violate the covenants.

Janet Brazfield- Mr. Chair, I recommend to not approve the Conditional Use Permit due to not meeting all of the approval criteria for the City of Fruita Code as far as the applicant has stated the HOA allows for rentals over 30 days and not less than 30 days.

Keith Schaefer- I second.

Dave Karisny- If we vote in favor of that motion, we agree to deny the application.

Doug Van Etten- Do we want to deny it or ask the applicant to continue this application to a later meeting to give the applicants and the HOA a chance to address the concerns of the covenants?

Dahna Raugh- The Planning Commission would need approval from the applicant to continue this project to a later time.

Janet Brazfield- Would the applicant be willing to continue this project until a later date?

Danny Gene Mitchell Jr. – Yes.

Janet Brazfield- I would amend my motion to continue this application until a later date to give the applicant time to amend the subdivisions covenants and to talk to their neighbors.

Keith Schaefer- Second

Dahna Raugh- I want to confirm when they want to continue this project until.

Danny Gene Mitchell Jr. – Agrees to continue this application until the October 11, 2016 meeting.

Janet Brazfield- Continue the application to the October 11th meeting and the applicants can ask for a continuance again if that is not enough time.

Danny Gene Mitchell Jr. – Agree.

**The motion is to continue this project until the October 11, 2016 Planning Commission meeting.

6 Yes votes; motion passes to continue the application.

I. COMMUNITY DEVELOPMENT ACTIVITY REPORT

Dahna Raugh talked about some of the applications that were previously heard by the Planning Commission, the Sacred Heart Church rezone in particular. She told the Planning Commission that they withdrew their application and that the Planning Commission may hear the application again in the future.

Dahna mentioned the survey that was email to the Planning Commissioners about old sewer lagoon property.

Dahna Raugh talked about how busy the Planning Department is getting about. She also wants to figure out a time when Planning Staff and the Planning Commissioners can get together to have a discussion about how the planning process works. It will be after a Planning Commission meeting within next month or the month after.

There was a long discussion about the review of the application process. Keith Schaefer has some issues with how the Planning Commission doesn't get to review Site Design Review applications like the Dairy Queen, but the Planning Commission hears all these VRBO's and CUP applications where there is no benefit to the neighborhood and only the homeowner. Dave Karisny encouraged Keith to bring this issue up with the City Council when we (the planning commission) have a joint meeting with City Council to discuss the city's land use application processes.

J. VISITORS AND GUESTS

Whitney Rink was a guest in the audience but she had no comments at this point, she just wants to see what is going on in the City and how everything works in Fruita government

K. PLANNING COMMISSIONER TRAINING

The Planning Commissioner training was decided to be postponed until a meeting with a smaller agenda. It was made clear that this training would be Fruita specific. The training would be more focused on how planning is done in Fruita and the rules and regulations that we follow (Land Use Code and Master Plans).

Adjournment at 9:39pm

Respectfully submitted,

Henry Hemphill
City of Fruita Planning Technician