

WOODLAND PARK PLANNING COMMISSION
SPECIAL MEETING MINUTES for June 21, 2022
Council Chambers, 220 W South Avenue, Woodland Park

This meeting was a hybrid meeting with in-person and virtual attendance. The Zoom meeting link was in the calendar on the City website front page. Public input was very important to the Planning Commission. Comments were encouraged in writing in advance of the meeting to be submitted by mail to the Planning Department at PO Box 9007, Woodland Park, CO, 80866 or email to kschminke@city-woodlandpark.org.

1. CALL TO ORDER & ROLL:

Commissioner Brown called the special meeting to order at 6:30 pm.

Present on Zoom	Commissioner Hartsfield
Present	Commissioner Lee Brown
Present	Commissioner Carrol Harvey
Present	Commissioner Kenneth Kennedy
Absent	Commissioner Larry Larsen
Present	Commissioner Shawn Nielsen

Staff Present: Planning Director Karen Schminke and Planner 1 David Burgess

Since Chair Hartsfield was not attending in-person, Vice-chair Brown served as acting Chair for the meeting.

2. PLEDGE OF ALLEGIANCE

3. APPROVE MINUTES: None.

4. PUBLIC HEARINGS

A. Continued from June 9, 2022: PUD/SPR2022-01: a request by N.E.S. Inc. (Applicant) on behalf of New Life Holding Corporation (Owner) and its affiliated operating nonprofit corporate entities, Andrew Wommack Ministries, Inc. (AWMI) and Charis Bible Colleges, Inc., to consider a PUD Amendment to 1) revise the dimensional standards to allow a height increase from 35-feet to 45-feet maximum for the student housing and 2) remove a past Condition of Approval that the temporary student housing be privatized through either a lease agreement or some other arrangement so that it can be separately taxed. The subject property is located at 800 Gospel Truth Way with a legal description of Lot 1, The Sanctuary, Woodland Park, Colorado and is zoned Planned Unit Development (PUD) for the purpose of developing a Planned Business Development (PBD). **(QJ)**

[Note: An associated Site Plan Review (SPR) application is concurrently under review and is not subject to public hearing.]

Vice-chair Brown noted that this matter is scheduled for a first reading by the City Council on July 21, 2022 and a public hearing on August 4, 2022. After a technical delay, Director Schminke presented the staff report reviewing the property location, project history, site plan, and architectural renderings for the proposed student housing.

As part of the project history Director Schminke explained the original PUD/PBD Final Development Plan (Ordinance No. 1162) and the Preliminary Plat from 2012 established the allowed uses, overall development layout, and dimensional standards for the uses. The PUD/PBD was amended to allow a parking garage in 2015. The original PUD/PBD allowed uses table includes student housing as does the amended PUD/PBD. Allowed uses are subject to administrative staff reviews (additional public hearings are not required) for Zoning Development Permits (ZDPs) and construction permitting. In this situation, the applicant is requesting an amendment to the PUD/PBD, thus a public hearing is required. She also reviewed the current approved dimensional standards for the student housing.

Next Director Schminke restated the applicant's two requests and then reviewed how the public notice requirements for the hearing had been met. She then noted the referral and review comments process, highlighting the concerns received from Northeast Teller County Fire Department as well as their recommendation for disapproval of the requested changes. The written public comment received was also noted with two written public comments included in the initial June 15th staff report, and a third written comment sent to the Planning Commission on June 21st.

Director Schminke then reviewed the applicant's first request in detail. The presentation included an overview of the City Municipal Code definition of height, and a comparison of how PUDs allow for flexibility compared to the typical maximum heights of 30' in residential zones and 35' in commercial zones. She noted the building height ranges (25' for an existing building to 60' for the proposed administration building; student housing at 3-story with a maximum height of 35'; and the parking garage and college building at 54' high) for the current PUD/PBD. For comparison, Our Lady of the Woods Catholic Church in the Central Business District and Trail Ridge Apartments in the Multi-Family Urban zone, both at 45' high, had received height variances through the Board of Adjustment. The Planning Commission and City Council establish building height in the PUD zone.

She then showed elevations for the north student housing on The Sanctuary campus with the buildings proposed to be set into a hillside that slopes to the north and east. Due to the sloping terrain, the front of the buildings appear to be 2-story with the back being 3-story. She also noted the existing mature forested area between the housing site and Trout Creek Road will help mitigate any visual impact from an increased building height.

Regarding approval criteria, Ms. Schminke noted that PUD/PBD standards had been met in 2012 when the PUD/PBD zone for The Sanctuary was established. Related to this request, the majority of the criteria listed in the City Code are not applicable, the proposal was found to comply with the Dimensional Standards criteria (§18.30.110) and Landscaping (§18.30.130).

For the first request, Staff recommended approval based on the findings contained in the staff report and as presented at public hearing, subject to the condition:

- 1) The tables on the cover sheet (Site Data, Land Use, and Parking) are revised so the information is presented in a format that is consistent with past approvals and the temporary student housing is listed in two parts to clarify the number of units and bedrooms being constructed in this phase and the number of units/bedrooms for a future phase.

Director Schminke then presented the second request, the removal of Condition of Approval #14, which states: "14. The applicant agrees that the housing on the development will be temporary student housing, not permanent housing, and the student housing will be privatized through either a lease arrangement or some other arrangement so that it can be separately taxed."

She explained the history of how this condition came to be by reviewing the minutes of the April 12, 2012 Planning Commission and the June 7, 2012 City Council meetings, in which the applicant did not object to Condition #14. City Council approved the rezoning of the property to PUD, the PUD/PBD final development plan with all 14 conditions, Ordinance No. 1162, Series 2012 to operate the Charis Bible College with religious/educational center, student housing, administrative building, and associated uses.

She then provided an overview of Planning Commission authority under Colorado land use and zoning law and the Federal law known as the Religious Land Use and Institutionalized Persons Act (RLUIPA). Regarding approval criteria, Ms. Schminke noted that PUD/PBD standards had been met in 2012 when the PUD/PBD zone for The Sanctuary was established. Related to this request, there are no standards to review, the criteria listed in the City Code are not applicable, and tax status is not within the City's land use controls or legal jurisdiction.

Director Schminke concluded her presentation by recommending the Planning Commission make a recommendation solely on Request #1. For Request #2, Staff recommends that the Planning Commission recommend that the City Council is the proper body to weigh in on this modification, including a consideration of the application of RLUIPA.

Director Schminke asked for questions from the Planning Commissioners. They asked for additional information from NETCo Fire Department Chief, Tyler Lambert, who was in attendance. Chief Lambert explained the 45' maximum height brings NETCo into an aerial response requiring four personnel. ISO (Insurance Services Office) would require three more personnel at \$88,000 each per year to cover the equipment necessary for the added structure height. NETCo is 98% funded by property taxes. Any increase in the number of residents also increases the personnel and equipment requirements of the Fire District. If Charis Bible College had their own private fire protection and security, that would possibly affect what NETCo would respond by agreement or MOU, but is ultimately up to the ISO as they rate the fire department and the property insurance premiums. ISO Ratings affect everyone in the area, as do increased response times because NETCo cooperates in mutual aid with GMF, Divide & Florissant volunteer fire districts. As for a Payment In Lieu of Taxes (PILT) agreement, Lambert estimated a PILT based on Charis Bible College itself of

\$80,000 a year, and for the proposed \$20,000,000 student housing, the estimated PILT would be about \$30,000/year.

The Planning Commission then had a short discussion on a number of points. Chair Hartsfield noted he felt a 40' variance would be adequate and the height variance would apply to all student housing on the property. The definition of "temporary student housing," both for the length of the (student) occupation and the type of building that the housing would consist of compared to "permanent student housing" was discussed. Commissioner Harvey noted that if Condition #14 stood and the student housing was privatized, Teller County would decide how to classify the student housing to be taxed.

Commissioner Brown invited the applicant to give their presentation.

Jon Romero with NES representing the Applicant, thanked the Planning Commission, and acknowledged proper notice of the meeting. He presented slides that introduced the Project Team, site location, project background including zoning, original 2012 PUD site plan which included student housing & parking requirement, and this proposal of 66 housing units (242 bedrooms) on 8 acres, a 45' building height, and 101 parking spaces (instead of 99 required). The 45' height allowance would carry over to all student housing. He noted that meetings were held with NETCo about access the 3rd floor. He feels that the application is consistent with past approvals, the traffic studies have been provided previously, wildfire mitigation studies were completed, and early meetings with NETCo addressed access to the proposed buildings.

Mr. Romero then turned the presentation over to Andrew Nussbaum of Nussbaum Speir Gleason, (address: 2 Cascade Avenue, Colorado Springs, Colorado, 80903) who presented the applicant's request to remove Condition #14. He stated that in their perspective, "This condition of approval is not seen as a condition that is consistent within the bounds of the Zoning and Subdivision Code for Criteria for Approval or other ordinances as identified in section 18.30-Planned Unit Development (PUD) District." He explained the history, quoted Condition 14, and noted the condition violates the law by considering Charis' religious character and tax-exempt status because:

- 1) Condition 14 has no place in the PUD process (Section 18.30). The original 13 conditions addressed the PUD itself, but tax revenue, the religious character of Charis, and the public benefit of the Ministry are non-relevant. Tax exemption appears in the finance section, which includes religious organizations such as Charis.
- 2) This would require Charis, a religious school, to privatize student housing. Condition 14 forces Charis "to give up these essentially religious qualities to a for-profit business that does not share Charis' religious identity or mission."
- 3) Charis and the Ministry are religious not-for-profit institutions exempt from property tax under the Colorado Constitution and state statute and Woodland Park City Code.

He then went on to explain three reasons why Charis actually did not agree to Condition 14 in 2012:

- 1) Condition 14 is legally unenforceable because it is against Colorado law (religious schools are exempt from property taxes).
- 2) Mr. Bozeman was a contractor and not a lawyer and received legal advice from the City Attorney that was incorrect about possibility and precedent. In 2012, the ministry agreed to look at possibilities, not to waive its rights. He explained RLUIPA and the First Amendment. In short, Condition 14 violates Charis' right to religious freedom. Charis is being substantially damaged as a result of the City's actions.
- 3) Finally, he concluded that Charis, a tax-exempt entity, and the ministry's impact on the City is not relevant to land use approval according to the Supreme Court of the United States and the Colorado Supreme Court.

He ended his prepared remarks and welcomed questions.

Commissioner Nielsen asked if there are any additional plans to help with some of Charis' growth, fire, and safety. Mr. Nussbaum said there is some dispute in terms of the data on the number of calls from Charis' records, but has no comment on mitigation efforts.

Commissioner Kennedy asked about the first half of Condition 14 which states the housing shall be temporary student housing, not permanent student housing. What does temporary mean and what is Nussbaum's view of it? Mr. Nussbaum said their focus has been primarily on the privatization and taxation piece. While not committing the Ministry to a definition, he believes it's along the lines of typical student housing for a college where it would be for a semester.

Commissioner Kennedy agreed, and asked if there were objections to the definition of normal student housing as opposed to other types of housing. Mr. Nussbaum would not commit the Ministry to any particular reading of "temporary" but that would be his reading of it.

Commissioner Harvey noted that Mr. Bozeman was not the head of construction; he was listed as the Operations Officer for Charis. She recalled that it was not the Planning Commission's original idea to privatize housing, they were more concerned with definitions of the types and uses of the proposed housing, and noted nearly every military base in the US now privatizes housing. She went on to provide recollection of the original entitlement process, saying that in October 2011, Mr. Bozeman gave the Planning Commissioners a tour of the beautiful property, and they talked about the concerns of wildfire mitigation, being a good neighbor to the Westwood Lakes (Teller County) residents where their water was coming from, and the Ministry's initiative to loop the water service to the hospital. It was Mr. Bozeman's suggestion to mitigate the loss of property tax, not to the City, but to the other taxing districts, that it might be possible to privatize the student housing. In October 2011, Mr. Gary Erickson, a Colorado Springs developer, briefed the Planning Commission saying that Mr. Wommack changed his mind about the student housing and that he wanted to privatize it. The recommendation from Mr. Erickson was a consortium would form their own

corporation and they would be responsible for this small set-aside for student housing in order for that piece of property to then pay property taxes under some land-zoning designation the county and state would figure out. She brought this up to share the history of the discussions with the Planning Commission, which was then passed on to the City Council.

Mr. Nussbaum responded that military bases are not an analogous scenario. He said that no private company can supply the kind of services the Ministry could within the student housing; therefore it's not workable or feasible. He read the Planning Commission minutes differently; noting the Ministry "considered" privatization in 2012. The Planning Commission required this condition of approval. Commissioner Harvey clarified that Mr. Bozeman recommended privatization. The Colorado Springs Indy quoted Mr. Wommack as wanting to be a good neighbor and agreed to privatization. Mr. Nussbaum said their position is clear and they disagree.

Commissioner Hartsfield commented that if Condition 14 is not appropriate, the concern he sees is if the Ministry has a proposal to mitigate the impact on the community. Mr. Nussbaum answered that the impact and benefit of the Ministry is totally irrelevant to the land use question presented tonight. The Commission is empowered to make land use decisions and both the Supreme Court and the Colorado Supreme Court have made clear that the public benefit or lack thereof of a not-for-profit entity has no relevance to land use. He gave the example that if the YMCA wants to build a new gym in Colorado Springs, they are tax-exempt and under law, they can't be asked how many fire calls they are going to get, it's not something that the City Council can consider. The Ministry is going to produce \$6.3 million in sales and use tax over the next decade. The City can determine how to administer its financial situation, including the fire district, but it's not relevant to the land use question. Commissioner Harvey disagreed, stating that fire protection and safety is related to land use. Mr. Nussbaum said the Colorado Legislature and the Colorado Constitution took away any Planning Commission power to consider tax revenue, and would be happy to show these provisions. How the City budgets its tax revenue is up to the City, but forcing a religious ministry to forego its religious character is not a relevant or lawful way to achieve that end. Commissioner Harvey added that the Planning Commission is not asking anyone to give up their religious beliefs in order to cover the fire service, but the ability of the fire district is impacted by a very large parcel of land with a very large number of people existing there.

Commissioners Brown, Kennedy, and Hartsfield clarified the reasoning behind the proposed 45' maximum is the three stories and the uncertainty of the topography. The applicant assumed that the original application asked for a 35' building height because of the 2012 code and at that time, there were no buildings on the property, so they probably thought that 35' would be workable for max height. Now architects generally assume 14' per story. Ms. Schminke said that heights are established at time of PUD designation. The plan does not break down the type of housing, just maximum heights and floor square footage. The vision plan was discussed and noted the visions have changed for both this and the Sturman Property.

Commissioner Brown called a 10-minute recess at 8:30 PM.

Commissioner Brown called the meeting back to order at 8:40 PM and opened the Public Comment period.

Public commenters who spoke in support of the PUD amendments were:

Yong Uhlig, 924 Stone Park Lane, Woodland Park
Gene Harris, 1642 Columbine Village Drive, Woodland Park
Maria Carpenter, 2238 Big Pines Avenue Lot 19, Woodland Park
Brenda Giaimo, 505 Forest Edge Road, Woodland Park
Karen Sherrill, 924 Stone Park Lane, Woodland Park
Aaron Helstrom, 4744 CR 33, Woodland Park
Althea Devenish, 808 Stone Park Lane, Woodland Park
Joe Swearengin, 116 W. Midland Avenue, Woodland Park
Tim Northrup, 120 Golden Court, Woodland Park
Osa Graves, 500 Forest Edge Circle, Woodland Park
Charles Graves, 500 Forest Edge Circle, Woodland Park
Kyle Garen, 784 Westwood Trace, Woodland Park
John Davis, 240 Eagle Pines Drive, Woodland Park
Patience Solane, 920 Stone Park Lane Apt. 301, Woodland Park
Virginia Torrinello, 1217 Stone Ridge Drive, Woodland Park
Jody Akers, 904 Stone Park Lane #306, Woodland Park
Linnea Mellinger, 232 Illini Drive, Woodland Park
Jill Stabenum, 175 Piney Point Lane, Woodland Park
Tanya Frey, 808 Stone Park Lane, Woodland Park
Shannon Lillard, 1135 Spring Valley Drive, Divide
Elias Stabenow, 175 Piney Point Lane, Woodland Park

Those speaking in support requested approval of both applicant requests. They expressed support for the height increase to 45' as it was a good option, the additional height would not be noticeable, and views would not be destroyed.

Regarding Condition #14, they supported removal of the condition since an error had been made in establishing it in 2012. The Commission was encouraged to follow the law regarding tax exemption and privatization will not work for this organization. It was also noted, no other college has to pay taxes to the town.

Some concern for the Fire Department was expressed, but there was a greater concern that the Planning Commission was overstepping. The mutual support between the Divide and NETco Fire departments was mentioned. Comments also encouraged that other tax system changes be sought to fund the fire department.

Other comments encouraged the Planning Commission to plan more homes.

Additionally, comments were presented regarding Andrew Wommack's good character and his desire to "take care of the community within his rights." There was also testimony as to the benefit of Charis' teaching how to love community

and country. Positive impacts of having the Charis students live and shop in Woodland Park were noted, including their contribution to the community through volunteer work.

Public commenters who spoke not in support of the PUD amendments were:

Steve Storry, 88 Broken Wheel Place, Divide
Susan Geiger, 256 County Road 781, Woodland Park
Mac McVicker, 13719 Hedi Road, Woodland Park
Joe Fury, 565 Pembroke Drive, Woodland Park, via Zoom
Chris Amos, (possible address 2110 Lee Circle Road)

Comments included opposition to both requests and the original agreement should stand; concerns that the height change would apply to all housing, which would be significant in the southern units according to the topography on the USGS map for the area.

There were also concerns expressed that the college is seen as having an undue impact on the community and they encourage the college to agree to payment in lieu of taxes (PILT). It was also suggested Charis have its own fire and police services.

The applicant's representative, Jon Romero, then made the rebuttal. He said the USGS map is inaccurate, and that the south housing site is lower than and quite far away from Hwy 24. The north housing site is over 3,000 feet away from Trout Creek Road. The total acreage for the proposed student housing is approximately eight acres of the 146-acre tract.

The City Attorney, Nina Williams, provided some additional information to the Planning Commission explaining that the City is unwilling to concede at this point that there is a legal issue under RLUIPA and the First Amendment because any such argument has statute of limitations concerns. The applicant has asserted these claims regarding RLUIPA, which are outside the normal parameters of Planning Commission control and the authority under Title 18 of the Municipal Code. She recommended that City Council is the proper body to consider this particular modification, including a potential consideration under RLUIPA, as this topic is not to be considered under land use, approval, and regulations or Planning Commission's jurisdiction; and there is no "authority" to decide a tax exemption issue.

Commissioner Harvey clarified with the City Attorney that the statute of limitations has expired under RLUIPA and First Amendment claims. Commissioner Brown added that whether it has expired or not, the taxation issue does not fall under Planning Commission purview.

The Commission decided to discuss one request at a time. Because this is a PUD, dimensional standards deviation requests are heard by both the Planning Commission and City Council.

For the height variance, a discussion was held about the necessary maximum height and if that height would apply to any student housing proposed. Director Schminke clarified that the restriction would be applied to the two proposed

housing areas shown on the PUD/PBD plans. If the location of the future phase were changed, that would come back to the Planning Commission. Mr. Romero added that the 45' height would allow the gables to meet the architecture guidelines of Woodland Park and AWMI, and would apply to all phases of student housing.

MOTION: Commissioner Kennedy moved, and Commissioner Nielsen seconded, that the Planning Commission recommend approval of an amendment to The Sanctuary's PUD/PBD Final Development Plan to change the dimensional standard for the Student Housing building height from a maximum height of 35 feet (3-story) to a maximum height of 45 feet (3-story) based on the findings contained in the staff report and as presented at public hearing, subject to the condition that:

1. The tables on the cover sheet (Site Data, Land Use, and Parking) are revised so the information is presented in a format that is consistent with past approvals and the temporary student housing is listed in two parts to clarify the number of units and bedrooms being constructed in this phase and the number of units/bedrooms for a future phase.

YES: Brown, Harvey, Kennedy and Nielsen. NO: Hartsfield.

Motion PASSES 4-1.

Chair Brown then opened Commission discussion on the second request. The taxation issue is not in the Planning Commission's purview, but there was discussion about the definition of temporary student housing as opposed to permanent housing. Mr. Nussbaum clarified that the applicant's request is to remove Condition #14 in its entirety, but he believes the intention is for the housing to be student housing.

MOTION: Commissioner Harvey moved, and Commissioner Hartsfield seconded, the Planning Commission recommends to City Council that the housing on the development should remain temporary student housing, not permanent housing, but that as it relates to the student housing being "privatized through either a lease arrangement or some other arrangement so that it can be separately taxed," and acting in part on the advice of the City Attorney, that the City Council is the proper body to assess this part of the requested modification, including consideration of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) claims alleged by the applicant.

Further discussion was held; Commissioner Harvey said City Council should revisit PILT for the fire district. The City Attorney reminded the Commission that procedurally the Commission has to talk about the motion, amend the motion, or vote on the motion.

YES: Kennedy, Nielsen, Hartsfield, and Brown. NO: Harvey.

Motion PASSES 4-1.

5. REPORTS: No reports.

No meeting is scheduled for Thursday, June 23, 2022. The next Planning Commission Meeting is scheduled for July 14, 2022.

6. **ADJOURN:** The meeting was adjourned at 10:42 pm.

Approved this 11 day of AUGUST, 2022 by


Ken Hartsfield, Chair