The Moab Planning Commission held its regular meeting on the above date in the Council Chambers at the Moab City Center, located at 217 East Center Street.

**Regular Meeting—Call to Order and Attendance:**
Planning Commission Chair Allison Brown called the meeting to order at 6:01 pm. In attendance were Planning Commission Members Brian Ballard, Marianne Beenel, Kya Marienfeld, and Cory Shurtleff. Also, in attendance were Planning Director Nora Shepard, City Attorney Chris McAnany, and City Recorder Sommar Johnson. Five members of the press and public were present. An audio recording is archived at: [https://www.utah.gov/pmn/files/507375.mp3](https://www.utah.gov/pmn/files/507375.mp3) and a video recording is archived at:

**Citizens to be Heard:**
Joe Kingsley stated the topic on the agenda tonight was very serious. He understands the pressure from the citizens, and he wanted to make sure the Commission knew it was very serious both emotionally and for the future. He stated around 1994 the County issued a series of Planning Commission rules to restrict housing and within six months the economic stream of Grand County dropped fifty percent. He said it took over five years to get back where they were at the time. He indicated we are still suffering from those rules. He gave Zacharia Levine credit for trying to soften the blow of some of those rules which are still in effect. He stated he was before the Commission now to be careful. He said he has told everybody that it is very easy to turn off an economic stream, but it is extremely difficult to get back where you were if you find out you made a mistake. Mr. Kingsley indicated he has no vested interest; he does not have any overnight rentals and he doesn’t have any clients, but he wanted to share with the Commission some of the bruises that he has so they don’t fall into the same thing. He stated we have a problem and he recognizes that and we have to find solutions but be careful. He stated the economy of the United States is approximately three years overdue in an adjustment. He stated locally if that happens at the same time and they take an extreme position it will be a double whammy to this community. He stated it will be extremely difficult to overcome. Mr. Kingsley stated he knows the Commission wants to solve the problem but be creative, think outside the box but be careful because you are dealing with a very slippery slope that is very hard to recover from.

**Workshop on Overnight Accommodations and Land Use – Continued Discussion of Overnight Accommodations and Land Use**
Planning Director Shepard provided an overview of where the Commission stands with the status of overnight accommodations. She stated the workshop would entail a discussion of where they are in the process, where they are headed, how to deal with existing overnight accommodations, discussion of the overlay zone second draft, and the next steps in the process.

Planning Director Shepard stated that based on Planning Commission discussions as well as general input from the City Council the current consensus is to now allow any new overnight accommodations in any zoning district at this time. She stated the next step was to find a way for existing overnight accommodations to continue without making them nonconforming uses. It was her understanding that City Council does not want to create nonconforming uses. She indicated that business licenses will continue to be required for all overnight accommodations and have to be kept up in order for people to rent nightly but not use them as a regulatory tool. She indicated that the business license allows for inspections by the building, fire, and health
departments but it is more of a license than a land use tool. She also stated that the overlays need to be refined before they are applied to allow new overnight accommodations. She stated she does not feel they are ready yet and she thinks they need more work.

Planning Director Shepard stated that she has been thinking a lot about overnight accommodations and the goal is to keep it as simple as possible. She provided the Commission with the nonconforming uses section of the Moab Municipal Code. She indicated the concern with nonconforming uses is the possibility of monthly rental properties kicking tenants out for a couple nights to keep their overnight use active. She stated that would be an unintended consequence of making existing overnight accommodations nonconforming.

Commissioner Brown asked if she was living in a unit and she has a business license would she have to rent it out at all to keep her business license. Planning Director Shepard clarified that having a business license for overnight rentals has some consequences. She stated you are required to collect and report TRT taxes and it affects your property tax rate. She also stated that if you have not rented it nightly in over a year the use has been discontinued. Commissioner Brown stated that was her question: If she continues to update her license is she still required to maintain the use? Planning Director Shepard confirmed that she must maintain the use. City Attorney Chris McAnany clarified that under state law a nonconforming use is defined as something that is in existence. He stated that if you are only an overnight accommodation on paper and you are not engaged in you would not be able to claim that you are a legal nonconforming use.

Commissioner Brown stated that the use was the big issue for the Commission. Planning Director Shepard stated that nonconforming uses can be pretty prickly. She said they can get pretty complicated and people don’t usually understand them.

Planning Director Shepard moved on to overlay districts and explained that the County Planning Commission recommended to the County Council that they adopt three different overlay zones for their various areas and are recommending they apply those overlay zones to all the existing nightly rental properties that were legal at the time. She explained that was how the County was dealing with their existing uses by applying and mapping them. She said they don’t plan to allow any new overnight accommodations at this time. She said this overlay would only apply to existing uses. She stated eventually when they feel they have the standards developed then the overlay could be applied to other areas based upon a legislative action. Planning Director Shepard indicated that was the County’s approach and the Planning Commission could choose that option as well. She stated the Commission could adopt an existing overnight accommodation overlay which would be much simpler than an overlay like the County’s with specific standards. She stated they could adopt an overlay that says existing overnight accommodation overlay and what that would do is the base zoning would remain the same and the overlay would indicate the existing overnight accommodations, which would be mapped, would continue to be legal. She said it would not be an overlay with a bunch of standards but an overlay identifying the existing overnight accommodation properties and allowing them to move forward.

Planning Director Shepard explained another option which doesn’t deal with an overlay at all. She said it removes the overnight accommodations as a permitted use in the C2, C3, C4, RC and SAR zones and include new language in each of those zone districts that includes the allowance for existing overnight accommodations to continue as legal uses. She said it would still be property-specific, but it would be mentioned in the zone language itself for those zones and refer to a map. She explained that those were options to discuss in figuring out how to deal with the
existing overnight accommodation uses.

Planning Director Shepard indicated that we now have a database for every overnight accommodation business. She stated we have their addresses and all their contact information, and we can map those now because we have a database. She stated she has gone through all of the business licenses and a majority of them are in city limits.

Commissioner Brown requested that the Commission discuss existing overnight accommodations prior to discussing overlay zones. She stated that she understood the process for the overlay zones but wanted to discuss the best, easiest and most fair way to deal with the existing overnight accommodations.

Planning Director Shepard stated if they got to the actual overlay language tonight, she would like to talk about if they are okay, what additional standards the Commission thinks are important, do we even need them or do we want to put language in each of the zones. She indicated those are some things for the Commission to think about. She said after whatever happens by the end of the year, certainly they will need to follow up with a bunch of additional zone changes and modifications to the code that will really be a fun exercise to try and express what we are looking for.

Planning Director Shepard said the next steps were the public hearing scheduled for their next meeting on June 27. She stated the City Council has a public hearing scheduled on July 9 and the end of the temporary land use regulations expire on August 12, which is a little more than a week later than the County ordinance.

Commissioner Brown questioned the purpose of the public hearing scheduled for June 27. Planning Director Shepard said it was for the existing language that was drafted by Landmark on overlay districts and it is on how we allow existing overnight uses. She stated there were lots of nuts and bolts to figure out. Commissioner Brown understood from Council that they were not implementing any overlay districts at this point and Planning Director Shepard concurred, unless the Commission would like to do an overlay light that deals with the overnight accommodations in those zones. She indicated that it would be a different kind of overlay that would be pretty simple without all kinds of standards.

Commissioner Marienfeld stated that in order for them to be able to recommend something to Council at their following meeting they would need the public hearing to have public notice of what the specific code change recommendations were. Commissioner Brown questioned whether the June 27 meeting has anything to do with taking overnight accommodations out of our current code. Planning Director Shepard confirmed that the public notice has removed overnight accommodations as permitted uses in all zones.

Planning Director Shepard stated the main concern she has heard was not to take away or make it difficult for those projects that are nightly rental and allow those uses to continue and make it as easy as possible for those property owners. She indicated there was concern that we don’t want to shut down nightly rentals forever because they generate tax revenue and they are really important because we are a tourist town so eventually, we will want to look at allowing them on new parcels.

Commissioner Brown asked if there was some middle ground between having a business license for an overnight accommodation and living someplace that is currently zoned for that and purchasing some kind of retainment. Planning Director Shepard indicated that she could
recommend that, but it is not something that the staff recommends because that is a business function and a function of licensing not a zoning thing. She said it is not something staff is comfortable with at this time, but it is not impossible to do.

Commissioner Marienfeld asked working within state law how much wiggle room do local municipalities have working to redefine what a nonconforming use is at their level? She feels this may be the best way to address existing overnight accommodations. City Attorney McAnany stated that state code does have provisions to give local governments some leeway into how they define a nonconforming use. He said there is a statutory definition of what it is but there is also some flexibility that you can build into your ordinances as to when it comes into being, when it is deemed abandoned and some authority to structure the definition. He said that is one area where they have a certain amount of discretion. Planning Director Shepard asked if you can have different standards of nonconforming use for different situations? City Attorney McAnany indicated we conceivably could but as a matter of equity he would argue against it. He indicated that he is cognizant that by tinkering with definitions of the burden is placed on staff and we have historically had some really close questions in determining if something is an expansion of a nonconforming use. He stated interpretation questions are difficult at times and consume a lot of staff resources and his recommendation is, in this effort, to try not to treat existing overnight accommodation uses as nonconforming uses because of the headaches they bring. He said there are headaches for owners of nonconforming uses as well; it can be difficult to get financing, insurance can be problematic, and a whole host of collateral consequences and it can discourage investment in maintaining those properties. He said as a policy question, the Commission may want to avoid creating that burden and find other tools to try and constrain the growth of new overnight accommodations.

Commissioner Marienfeld indicated they are not getting rid of existing overnight accommodations and she feels there has been some confusion about that publicly or some intentional obfuscation of what the City and County are trying to do and a lot of fear mongering about it where our TRT revenue from hotels is not going anywhere and if a room costs more because there are less available then there will be that higher percentage of TRT revenue going to the City and the County. She said trying to capture those truly existing or vested overnight accommodations without allowing something that currently is not a room for rent to be a room for rent in the future just because it is in a certain zone. She thinks that what the City Council seemed very clear about at the joint meeting and figuring out a way to do that. She thinks at this point everything that has been proposed is an either/or. She asked if they were to adopt an existing OA overlay, what would happen to the place at Entrada that is currently not an overnight rental on August 12. Planning Director Shepard stated it would be included in overlay and they would have the option to do overnight accommodations if they wish. Commissioner Brown asked if that carried over through sales or change of hands and Planning Director Shepard affirmed that was the case. Commissioner Brown stated there is a possibility that new overnight accommodations could come online if a number of people who are currently living in these places decide to sell or turn them into overnight accommodations and we are okay with it and it is the most fair thing we can do and she hopes there is no disinformation out there that they are going to take that right way from anybody we just need to figure out how to do it best. Planning Director Shepard asked if that was the consensus of the Commission and the Commission confirmed their consensus. City Attorney McAnany said the traditional approach to how you deal with the expansion of a use that you want to control or regulate is to start looking at map amendments and looking at what land is available for development and what are the appropriate uses that should be allowed in those areas because in a lot of ways what has already been developed, that ship has sailed.
Commissioner Marienfeld stated that if City Council adopted an existing OA overlay that would capture only existing projects then the language with respect to expansion and abatement is going to be critical too.

Commissioner Brown asked City Attorney McAnany if the easiest and best way would be an overlay. City Attorney McAnany indicated that he was not comfortable making that judgement. He stated he has counseled everyone to respect existing property rights, go toward simplicity as much as you can, and don’t create disincentives for arbitrary reasons.

Planning Director Shepard clarified that there are other commercial uses allowed in the zones and removing overnight accommodations is not a taking. She stated a taking as it is defined is taking away all beneficial use and there are lots of other uses allowed in those zones that can provide economic value. City Attorney McAnany clarified that the purpose of this effort is because there is an excess of one particular use that has crowded out other necessary uses in the community like housing for people that live here and what zoning tools can you use to restore that balance while still respecting that property owners may still want to do something with their property and have development rights that go with it.

Commissioner Ballard asked if he owned property in the C-3 zone if he would be allowed to have overnight rentals on it. Planning Director Shepard said for now, he could not have overnight accommodations. Commissioner Ballard questioned why we are trying to restrict overnight accommodations. Planning Director Shepard explained that there is a sense that overnight accommodations are considered the highest and best use for pieces of property and in any of the zones lodging has become the most valuable use from a financial standpoint. Commissioner Ballard asked if we are trying to tell people what they can do with their property because we know so much about it. Planning Director Shepard explained that is what zoning does. Commissioner Ballard stated that if he is a home builder and wants to build a hundred homes, but it is the City Council’s opinion that he is overdoing it and he decides to build them then it is his responsibility. He said if he takes a loss or he does something foolish in building the homes then he takes the hit, but it reflects in a good way because it drives the market down. Commissioner Ballard indicated that he does not feel like it is their responsibility as a Commission or as the City Council to play like they are in charge and they are the ones to give this direction to everybody because they know so much. Commissioner Brow and Commissioner Marienfeld stated that is their job as the Commission. City Attorney McAnany explained that lodging uses can crowd out other uses that may be necessary and beneficial for the community. He explained that zoning allows where uses are appropriate and to select or limit uses if they are starting to become detrimental. Commissioner Ballard feels that supply and demand is what is going to take care of it.

Commissioner Brown explained that is the job of the Commission to decide what belongs where and if the City Council has determined that we don’t need any more overnight accommodations in the City of Moab for right now, then it is our job as the land use authority to make that happen and that means removing things out of the code.

Planning Director Shepard stated that the hope is that we can put standards in place for all commercial zones where lodging would normally be that would allow new lodging to come in under circumstances where they have to provide mixed use or scale or those kinds of things. She stated this was not permanent where we don’t want new overnight accommodations in town, it is that right now we have a lot coming up that have been approved, that are vested, and we need to take a pause and write regulations for what we want when we allow new overnight accommodations. Commissioner Ballard gave an example about transportation stating he talked
with motel owners and made the suggestion that if every room paid one dollar a day for transit then they would be paying for the new bus service to go back and forth through town. He stated instead of restricting it completely we could have a bit of leverage. Commissioner Marienfeld stated she understood where Commissioner Ballard was coming from in that he would like to sit back and let the market do its job but the reality is in a place like Moab with our geographic restrictions and the economic drivers here, the nexus study indicated that hotel progress directly affect the ability of anyone to undertake anything else that is not an overnight accommodation. She stated if the economy does go bust that we don’t want a town where every business which is a hotel is going to shudder when that goes down. She stated the faucet has been running so hard and so fast that we almost don’t have any land left to build anything else and she thinks that is why the moratorium happened and everyone has overwhelmingly said that we need a pause. Commissioner Marienfeld said it would be great if the community members who own commercial property who currently could build overnight rentals chose, even though it wasn’t the most lucrative use on their property to do something other than an overnight accommodation but that does not happen and their job as land use regulators is to look at that and say people’s hearts and minds are not going to get us where we need to be as a community and it is time to do something about it.

Planning Director Shepard stated that the state legislature is relooking at our tax code and eventually it will impact local government and one of the things they are talking about doing fairly seriously is removing the TRT tax as an option. She indicated they were looking toward the future and going toward a more service based taxation system. She stated we have depended on TRT and there is a real question as to whether that is really going to be our savior long term. She said it is something to keep in mind that the whole tax paradigm in the state is shifting.

Commissioner Brown asked about the other options in the document. Planning Director explained that the County Planning Commission recommended an overnight accommodation overlay be created and applied only to existing accommodations so no new overnight accommodations. She said it would be applied via a map and it is there short-term solution for addressing the existing accommodations. She explained that their long-term goal is to further refine that overlay zone so that it better addresses getting what everyone wants out of overnight accommodations and applying it elsewhere eventually. Commissioner Brown clarified that the option chosen by the County does not protect those people living long term in what could be an overnight rental who may at some point want to turn it in to an overnight rental. Commissioner Brown feels the biggest issue is not figuring out a way to protect those that are using as overnight rentals. She feels the biggest issue is to protect those who could use their property as overnight rentals. She feels the one issue that they need to figure out is how to protect the use for those properties that are being used long-term so that at some point they can use it as an overnight rental. Planning Director Shepard agreed and explained if someone owns one of these units and their retirement plan is to overnight rent it and they depend on that income then we don’t want to take away that option. Commissioner Brown feels that seems to be the one and only thing they need to take care of.

Commissioners discussed the different options laid out in the plan by Landmark Design. Commissioner Brown suggested stopping discussion on options one and four for now and talk about two and three. She asked Planning Director Shepard which would be the best and easiest for the Commission and property owners. Planning Director Shepard chose option two because it was clear and in one place that if you have an existing overnight rental, it is mapped, and the overlay is applied then it is legal. She explained that option three does the same thing but it does it within the existing zones themselves. Commissioner Ballard asked which option represents status quo. Planning Director Shepard explained that none of the represent status quo and the
intent that she has heard from the Council is that short-term we are not going to allow any new overnight accommodations to be built. Commissioner Ballard inquired if any of the options allow new growth. Commissioner Becnel questioned if an overlay was adopted that covered a 40-unit complex but only ten units were being used for overnight accommodations if the overlay would apply to only the ten units or the entire complex. Commissioner Marienfeld said none of the existing mechanisms to recommend would make sense and not just make it a cluster. Commissioner Marienfeld and Brown stated it would apply to the entire development. Commissioner Marienfeld further explained that if a condo or house in the C-2, C-3 or C-4 that had the moratorium not happened then those would still be allowed. Commissioner Becnel explained for the sake of fairness you would look at similar areas built around the same time for the same intended use and zone those similarly but when you get into other areas on the long list that we don’t have on a map then it becomes a slippery slope of fairness. Planning Director Shepard stated she hoped to have a map prior to the public hearing because she has all the addresses. Commissioner Brown and Marienfeld stated they liked the code changes. Commissioner Brown thinks an overlay feels like a conditional use and code changes are clearer law and what was decided and that is why she likes option three. She asked if disregarding the overlays would have an impact down the road when they decided to allow overnight accommodations. Commissioner Marienfeld stated she felt it would be better to go with option three where it is in the code. She explained if in the future there are areas where overnight accommodations were not built then it could be stricken from the code instead of amending the entire overlay area. Planning Director Shepard explained that if there are areas that are missed then the overlay could be applied to those areas through a zone change or they could amend the map and the references. Commissioner Brown believes that option three is more transparent than any other way because it is in the code. Planning Director Shepard agreed that if it is going to be that way then it should be in the zone. Commissioner Becnel sees an overlay as a useful tool to get what we need as a community when you take the economic resource of overnight accommodations and you incorporate them into things like low-income housing and mixed use to get more business space and it becomes a powerful tool. She stated the way she envisions an overlay is something that describes the language of getting a commodity and the old zoning might be the most appropriate thing to choose for existing overnight accommodations. Commissioner Brown believes if we could put what we need in the code right now to retain existing overnight rentals and restrict those that can’t build then the overlays can come in when we are at the point that we want to put in new overnight accommodations. Commissioner Marienfeld suggested keeping the overlay for future developments. She believes that would be a lot clearer for the public. She explained that the overlay is for the future and code changes are for existing overnight accommodations.

Commissioner Brown asked if there were any downsides to option three aside from having to rewrite the code. Planning Director Shepard explained it was not hard and in some respects it is easier. City Attorney McAnany stated the real challenge is what you want to express as the forward-looking requirements for new overnight accommodations. Commissioner Brown stated they have time to do that but what the need to get done before the end of the moratorium is deal with the existing overnight accommodations and if option three works then she hopes that is the way we can go.

Planning Director Shepard asked if they wanted to go over the language for overnight accommodations that Landmark put together. Commissioner Brown clarified the question asking if the Commission wanted to talk about the proposed overlay that may come in to effect at some future point. Commissioner Brown wanted to be very clear to the public and everything they put out there that these overlays may happen at some point and we are trying to make these something that Moab and the community would like to see. She explained it is not something...
they are going to implement before the moratorium ends and it is not something that is going to be applied at any future date that the Commission can predict. City Attorney McAnany stated another observation they may want to share with members of the public is that we have the SAR zone and RC zone which have to varying degrees very detailed design standards that are already going in the same direction as what Landmark is proposing. He explained they are already on the books now and we have some form-based requirements, detailed landscaping, density, etc. It was also stated that some of those design standards apply because of changes made to large-scale developments over 30,000 square feet. City Attorney McAnany explained that these are incremental changes they are not revolutionary. Planning Director Shepard said they are evolutionary not revolutionary. He explained we have already been moving in this direction on the north area and those rules are already in place. Commissioner Brown further clarified that we are protecting those that already have overnight accommodation uses and that we are not building any new ones right now. Commissioner Shurtleff explained it was a surprisingly important afterthought.

Commissioners moved their discussion to the potential overlays for new overnight accommodations. Commissioner Becnel asked where the overlays are and whether they are following existing zones that our city has been creating for the past 30 years or are the arbitrarily outlining certain districts. Commissioner Brown stated she would love to see a very large land use map and look at the zones that are considered downtown and what is north of town and see what or if these overlays should be applied there or expanded or not. Commissioners discussed creating a map to decide where the overlays should be applied. Planning Director Shepard explained that was a policy decision and Landmark may not do the follow-up work, it may be done in house. She also explained they could not do the overlay and change the zones to put in the criteria. Commissioner Brown said they could apply the ideas developed by Landmark to incorporate into the overlays. Commissioner Becnel indicated she would like included in a future overlay mixed use, multi-modal transportation, human scale, walkable and safe. Commissioner Brown feels they should make a distinction about what they would like to see in the city center and what should happen up north. Commissioner Marienfeld stated she does not think the downtown center is an appropriate place to apply a new overnight accommodation zone. She has focused more on the north and south corridor. Planning Director Shepard explained there may be instances where they need to focus on redevelopment in the downtown area. Commissioner Brown said she would like the Commission to look through the ideas that Landmark presented to them and make lists of what they think are good and bad in downtown and in the north and refine those ideas and discuss what they want to add, modify or delete entirely. She stated there are some ideas that are very subjective and questioned who would be making those determinations. Planning Director Shepard agreed and said we need to make the language so people can understand it and it is enforceable. City Attorney McAnany suggested taking a look at the existing requirements and perhaps refine the criteria. He said we should try to be as specific as we can in the code. Commissioner Brown stated she would like the Commission to come back with very specific things they want in the downtown and very specific things they want to see in the north corridor.

**Future Agenda Items:**
Planning Director Shepard stated the Abbey Subdivision will be coming before the Commission.

Commission Chair Brown allowed Mr. Kingsley to provide an update on the transportation committee. He stated they are making headway in the railroad study. He said UDOT has funded $6o thousand dollars to study the feasibility of having a commuter train between Salt Lake and Moab. He said the Moab Giant facility is willing to voluntarily supply their site as a train terminal because it benefits them and they have all the amenities a train station would need. He
said the only thing they know will be a pushback is the economic feasibility. He indicated the other things they are working on is the shuttle in Arches and it is problematic because the Park Service is not really on board with it. He urged the Commission to check out the shuttle system in Springdale. He said one of the things that is growing really fast is electric scooters and electric bikes. He said he personally likes free rides which is an electric golf card that is modified to look like a taxi that provides guaranteed free rides to a destination within six minutes. He said the advantage is it keeps the traffic off the road. He indicated they are looking at out of the box transportation ideas. He stated they want to modify the parking garage and have it be the shuttle bus hub with the top floor having restrooms and restaurants as a center hub for transportation. Commissioner Becnel asked about the location for train stations and shuttle stops. Mr. Kingsley said the easiest one is taking advantage of the Moab Giants facility. He said the UMTRA site could provide some flexibility as well and Grand County wants it at the airport. He said it could facilitate that area being a transportation hub. He said the problem is making sure we have good, reliable shuttle service. Mr. Kingsley said one of the things he is working on in the affordable housing department is that he is a tiny homes and two things are preventing tiny homes is that they don’t meet Utah building codes so they have to be a recreational vehicle and when you get three or more tiny homes together you have to have an HOA for yourself and your neighbors. He said in his opinion the thing that is most damaging is they lose quality of life. He said if you have three or more tiny homes then you need to have fairly strict rules to maintain quality of life.

**Adjournment:**
Commission Chair Brown adjourned the meeting at 7:44 PM.