

CITY COUNCIL MINUTES

CITY OF WHEAT RIDGE, COLORADO

March 24, 2008

Mayor DiTullio called the Regular City Council Meeting to order at 7:00 p.m. Council Members present: Karen Adams, Karen Berry, Dean Gokey, Tracy Langworthy, Lena Rotola, Wanda Sang, Mike Stites, and Terry Womble. Also present: City Clerk, Michael Snow; City Manager, Randy Young; City Attorney, Gerald Dahl; Director of Community Development, Kenneth Johnstone; Police Chief, Dan Brennan; Director of Public Works, Tim Paranto; staff; and interested citizens.

APPROVAL OF MINUTES OF February 25, 2008

Motion by Mrs. Sang for approval of the Minutes of February 25, 2008; seconded by Mr. Stites; carried 8-0.

PROCLAMATIONS AND CEREMONIES

Commendation for the Police Department - City Clerk Michael Snow read a letter of commendation to the Police Department written by Mayor Jerry DiTullio. Mrs. Wheat Ridge, Karen Thaler, presented Chief Brennan the letter, who spoke of his department's quality service.

CITIZENS' RIGHT TO SPEAK

Nancy Snow spoke on the matter of Consent Agenda Item 1.I. Her comments were that the Consent Agenda hides items and limits citizens' understanding of those items. This item in particular is for money to be spent in persuading voters to support several bond issues and a Charter change proposed for the November ballot. Mrs. Snow further asked Council to pull the item and have an open discussion on it separately.

Mrs. Snow spoke also on the matter of the retail property at the Southwest corner of 38th & Wadsworth and expressed concern that there was no follow through on actions approved by previous Councils. The property referred to was previously rezoned such that the Retail Car Lot was to move to the South side of the property, leaving the corner available for the City to attract new development. Since the Car Lot owner never moved and is now selling the remainder of the property, Mrs. Snow's question to Council was whether the City has any kind of agreement still standing such that the corner of the property should be made vacant and available to the City, or can it just be rezoned again and the City never gets anything from it.

Item 1. CONSENT AGENDA

- A. RESOLUTION 14-2008 – A RESOLUTION AMENDING THE FISCAL YEAR 2008 GENERAL FUND BUDGET TO REFLECT THE APPROVAL OF A SUPPLEMENTAL BUDGET APPROPRIATION TO SPONSOR A TABLE FOR ELECTED OFFICIALS AT THE JEFFERSON CENTER FOR MENTAL HEALTH ANNIVERSARY GALA IN APRIL, 2008 FOR \$1,200.
- B. RESOLUTION 16-2008 - A RESOLUTION AMENDING THE FISCAL YEAR 2008 GENERAL FUND BUDGET TO REFLECT THE APPROVAL OF A SUPPLEMENTAL BUDGET APPROPRIATION TO PURCHASE TWO (2) TACTICAL VESTS FOR THE WHEAT RIDGE POLICE DEPARTMENT SWAT TEAM IN THE AMOUNT OF \$5,850.00.
- C. RESOLUTIONS 11-2008 AND 12-2008 - RESOLUTIONS APPROVING CONTRACTS WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR DESIGN OVERSIGHT OF THE STATE HIGHWAY 58/CABELA DRIVE INTERCHANGE AND THE INTERSTATE 70/32ND AVENUE INTERCHANGE PROJECT.
- D. RESOLUTION 13-2008 – A RESOLUTION AMENDING THE FISCAL YEAR 2008 GENERAL FUND BUDGET TO REFLECT THE APPROVAL OF A SUPPLEMENTAL BUDGET APPROPRIATION FOR THE RECLASSIFICATION OF AN ADMINISTRATIVE ASSISTANT POSITION TO AN ADMINISTRATIVE ASSISTANT TO THE MAYOR AND CITY COUNCIL IN THE AMOUNT OF \$2,894.
- E. Approval of an Easement Agreement By and Between Coors Brewing Company and the City of Wheat Ridge for the Purposes of Construction, Installation and Maintenance of an Underground Storm Water Pipeline at The Cabela Drive and State Highway 58 Interchange.
- F. Award RFB-08-08, 2008 Traffic Signal Equipment Replacement Project to Various Vendors at a Total Cost of \$79,466.00.
- G. Award RFB-08-12, Purchase and Installation of Lighting, Equipment, and Hydraulic Systems for 2008 International Single Axle Cab & Chassis at a Total Cost of \$43,585.01.
- H. Approve Renewal Option for RFP-07-20 Interim Connections Newsletter to Welch Creative Group in the Total Amount of \$45,000.

- I. RESOLUTION 15-2008 – A RESOLUTION AMENDING THE FISCAL YEAR 2008 GENERAL FUND BUDGET TO REFLECT THE APPROVAL OF A SUPPLEMENTAL BUDGET APPROPRIATION FOR A PUBLIC INFRASTRUCTURE FUNDING INFORMATION PROGRAM IN THE AMOUNT OF \$48,200.

Consent Agenda was introduced and read by Mr. Stites.

Motion by Mr. Stites for approval of Consent Agenda Items A, B, C, D, E, F, G, H and I; seconded by Mrs. Sang.

Mr. Gokey asked to pull Item 1.I. from the Consent Agenda, which was approved by Mr. Stites.

Original Motion by Mr. Stites, omitting Item 1.I. carried 8-0.

Motion by Mr. Gokey to approve Item 1.I.; seconded by Mrs. Sang; No discussion followed; carried 8-0.

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

Item 2. COUNCIL BILL 04-2008 – SECOND READING OF AN ORDINANCE FOR A CHANGE OF ZONING CONDITIONS ON PROPERTY ZONED PLANNED COMMERCIAL DEVELOPMENT AND FOR APPROVAL OF AN AMENDED OUTLINE DEVELOPMENT PLAN AT 7495 W. 29TH AVENUE (CASE NO. WZ- 08-01/PHARO FOR M&E FINANCIAL - WADSWORTH EXCHANGE).

Council Bill 04-2008 was introduced on second reading by Mrs. Sang, who read the Executive Summary. City Clerk Michael Snow assigned Ordinance No. 1409.

Mayor DiTullio opened the Public Hearing.

Mayor DiTullio advised the audience of the applicant's contact with the City staff and subsequent contact and conversations arranged between the applicant and up to 2 members of the City Council at a time before the application was filed with the City of Wheat Ridge.

Mr. Dahl advised the Council and audience of the legal implications of Council member contact with interested parties outside of a quasi judicial matter and advised Council Members to disclose to the audience any such contact.

The following disclosures of contact with citizens or the applicant were given by Council Members:

Mrs. Berry spoke with the applicant on the phone and with citizens who called her home, but shared with them only her process for hearing input, not of any substance in the case.

Mr. Womble met with Mr. Miller about eight months ago, prior to the application and, more recently, with Diane Robb, who called his home, but did not discuss any substance in the case.

Mrs. Rotola spoke with Mr. Miller months ago, prior to the application. Mrs. Rotola also disclosed that she did discuss matters of the case with a member of the Planning Commission at the Mayor's Roundtable, which took place on March 8, 2008.

Mr. Gokey met with Mr. Miller prior to the application.

Mrs. Adams met with Mr. Miller prior to the application.

Mrs. Langworthy spoke with Mr. Miller prior to the application being submitted and spoke with a citizen who was in opposition to the application after the application was submitted. Mrs. Langworthy indicated her discussions on the matter were in her efforts for fact-finding, since she was not on Council at the time of the prior application.

Mr. Dahl recommended to Council to consider tonight both the rezoning application and the historical designation application together.

Mrs. Adams asked a question of Mr. Dahl as to whether a Council Member who has proposed unrelated business dealings with the applicant is subject to a conflict of interest on this agenda item.

Meredith Reckert presented the Staff report and submitted the Comprehensive Plan, Zoning Ordinance, Case File and Packet materials to be entered into public record. Ms. Reckert also submitted into record a certified letter sent to property owners in the area giving notice to the historical designation application and public hearing.

Mr. Dahl reported on the court's findings in the lawsuit against the prior rezoning by the City Council, such that the City's designation stands.

Mr. Johnstone distributed to Council the minutes of the recent Planning Commission Hearing at which the discussion of this case took place. Mr. Johnstone also provided Council an additional suggested Motion (option D) taking into account the Staff's recommendation to require an additional 29' setback on the Wadsworth frontage (included in this packet).

Mayor DiTullio administered the Oath to all speakers.

Andrew Miller, applicant, spoke to Council in favor of his application. He indicated his efforts over the past year to market the property under the current zoning restrictions. Mr. Miller reported that potential interested parties indicated one of two things: many wanted a corner site on the property, which is not possible under the current zoning; and others indicated they were uncomfortable with a retail site in what was a former mortuary.

Michael Scarafiotti, Wheat Ridge resident, spoke in favor of the applicant's request. Mr. Scarafiotti indicated his interest to relocate his business, 3 Sons Restaurant, to the site, given that Council approves this application.

The following citizens were present and spoke on the matter of this ordinance and the application for historic designation:

Jeff Wodell, Diane Robb, Chris Leatherwood, Robert Swanson, Sylvia Angell, John McMillin, Valerie Horan, Katie Snyder, Charlotte Whetsel, Don Edelen, Claudia Worth, David Cole and Barbara St. John.

Their comments *in favor* of the ordinance included, but were not limited to: Michael Scarafiotti's restaurants are of high quality and should be welcomed in the City; Wheat Ridge is in dire need of new development; this is a good example of what Wheat Ridge can be; home owners who live next to empty property cannot reasonably expect that the property can never change; why is there only historic designation interest when there's a threat of it being demolished, which is an anti-development measure rather than one of historic preservation; a non-profit tenant of the home cannot be expected to perform the necessary repairs needed to the interior of the home.

Their comments *in opposition* to the ordinance included, but were not limited to: This is one of the very few historic landmarks left in the city showing what it was while at the same time showing what it could be; 3 Sons Restaurant can be there with the historic home without detriment to its success; bringing a good restaurant or retail store at the expense of a historic building is a mistake; every person that signed up is in opposition to the application, but one; Council Members should remember they are representatives of their constituents, not private interests such as the applicant; the applicant was asked to make a commitment to keeping the home in the last zoning application and is now going against the agreement of that Council decision; speaker Sylvia Angell is considering moving to the Multiple Sclerosis Adult Day Enrichment Center to the

Olinger Home and finds it to be a very viable location and building; another Olinger Mortuary building in Denver is a historic building and is occupied by a trendy and very popular restaurant; one Olinger granddaughter spoke of her desire for the historic preservation of the home, the Olinger family did so much for the citizens of the area, supported the youth and military and gave away all that they had; the building is perfect for a library; there is a mortuary across the street, yet there is no objection to it being there or issue to potential retail value; it could be that it is the state of the economy that is the reason the home has not sold or been rented under the current zoning; tearing down the building is not a guarantee the development will be a success; the owner purchased the property knowing it was not a commercial property and is now going back on the Council's designation in their last application; the home can be used for commercial space, a library or the City could even use it for additional office space; Mr. Miller bought the property years ago and is now expecting the City to make it possible for him to turn a profit; the City made an agreement and should stand by that agreement; there are now at least two non-profits interested in the home; there was a church interested in the building and was told by the owners they didn't want a church there; Council needs to be focused on the best interest of all; development of popular neighborhoods in the area were successful *because* of its historic character; its size and location on the property is not a deterrent to its further development; the corner has a very attractive appeal along with City Hall and Crown Hill in the vicinity and should be taken advantage for its proximity.

Katie Snyder submitted legal protest petition signatures.

Mayor DiTullio called for a break at 8:55pm; to resume at 9:07pm.

Mr. Dahl was asked by Mayor DiTullio to explain the rights of the applicant to re-apply for a subsequent zoning change.

Mr. Dahl deemed the protest submitted by Mrs. Snyder is sufficient and, therefore the zoning application may only be approved by a super-majority vote, constituted by at least 75%, or 6 (of 8) Council votes. Further, Mr. Dahl informed Council that amendments to the case still require only a simple majority, or 5 votes.

Mr. Dahl was asked to explain the requirements in the City's code (26-906) for historic designation.

Ms. Reckert confirmed the date of the construction of the current home to be 1914; the farm home that is no longer there was constructed in 1896. She also spoke to the current conditions inside the home and the absence of any of the original interior finishing.

Mr. Miller was asked about maintenance costs to the property and indicated it cost his company approximately \$8,000 monthly to maintain it currently. Mr.

Miller was also asked about maintenance and repairs he has done in the past year in earnest of attracting a viable tenant and informed Council he invested considerable amount of money to bring the roof back to the condition it was in when he purchased the property.

Wendell Ayers, Principal Civil Engineer for the applicant, answered questions from Council regarding the design of the detention pond along the east side of the property, and also explained why the property owner tore down the pergola after the previous zoning case.

Claudia Worth spoke again, upon request from Council, on the historical significance of the home. Mrs. Worth also asked for the Historic Designation Application to be entered as public record (attached to this packet).

Mr. Scarafiotti answered a Council question as to why he is interested in opening his restaurant at this location, indicating he is interested in the future development of the property which gives it new interest to potential shoppers and patrons and is deterred by the existence of the old home.

Ms. Reckert answered questions as to how much square footage of retail is obtained in the proposed plan with the removal of the old home, indicating there would not be any significant addition of usable space.

Mr. Miller indicated that many different types of retailers want only a corner site. Mr. Miller also indicated he would be willing to incorporate something that would honor the Olinger family heritage, upon Council's request, but would not be willing to forego demolition until all development plans are approved and new construction is assured.

Mayor DiTullio closed the Public Hearing.

Motion by Mrs. Sang to approve Council Bill 04-2008, Ordinance 1409, Case No. WZ-08-01, A Request for Approval of a Change in Zoning Conditions on Property Zoned Planned Commercial Development and for Approval of an Amended Outline Development Plan for Property Located at 7495 W. 29th Avenue for the following reasons:

1. The property was rezoned to Planned Commercial Development pursuant to Case No. WZ-05-10.
2. Retention of the existing structures on the property has proved to be prohibitory to development of the rest of the property.
3. No changes are proposed to the uses and development standards approved pursuant to the Case No. WZ-05-10.
4. The criteria used to evaluate a change in zoning conditions support the request.

5. The proposed site design and architectural elevations are consistent with the Commercial/Industrial Design Standards in the *Architectural and Site Design Manual*.
6. With modifications recommended by Staff, all requirements of an Outline Development Plan have been met which will allow administrative approval of the Final Development Plans (FDPs) for the property.

With the following conditions incorporated into the plan set prior to recording:

1. For consistency with the intent and requirement of expedited ODP/FDP process, the Site plan (Sheet 2) be expanded to illustrate existing adjacent development conditions.
2. A left hand turn lane be provided along the W. 29th Avenue frontage. The required right-of-way dedication will be assessed at the time of FDP and plat.
3. On all graphic sheets, modify the sidewalk along Wadsworth to be 10' in width and located behind the 20' ROW dedications. An additional 29-foot ROW reservation area shall be identified on all ODP site plan documents to the east of the 20-foot ROW dedications.
4. A note shall be added to the ODP stating that, to the extent any future governmental action to acquire all or part of the 29-foot reservation area were to take the site out of compliance with City requirement for minimum landscaping or parking, the property shall be considered legally conforming in regards to those requirements, provide that the amount of parking reduction does not exceed 25 percent of the minimum parking requirement unless a greater reduction has been reviewed and approved by the Community Development Director.
5. When developing FDPs for the site, the applicant shall be allowed to install landscaping and parking in the reservation area, but shall make effort to reduce the amount of parking located within the 29-foot reservation area.
6. The architectural elevations and isometric perspectives be incorporated into the plan set and all sheets be renumbered accordingly.
7. The proposed materials and colors be added to the architectural elevations.

Seconded by Mrs. Adams and Mrs. Rotola; carried 6-2 with Mrs. Langworthy and Mr. Womble voting No.

Motion by Mrs. Sang to instruct staff to not bring forth a Historic Designation action item to Council; seconded by Mrs. Rotola; carried 7-1 with Mr. Womble voting No.

Mayor DiTullio called for a break at 10:20pm; to resume at 10:27pm.

Item 3. COUNCIL BILL 05-2008 – SECOND READING OF AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS TO EXPAND USE OF THE ADMINISTRATIVE ENFORCEMENT PROCEDURES AND TO AUTHORIZE CERTAIN CITY EMPLOYEES TO ENFORCE THE SAME.

Council Bill 05-2008 was introduced on second reading by Mrs. Langworthy who read the Executive Summary. City Clerk Michael Snow assigned Ordinance No. 1410.

Mayor DiTullio opened the Public Hearing.

Claudia Worth spoke to Council regarding citizens who are getting violations by means of people climbing on and peering over people's backyard fences. Mrs. Worth asked whether this Ordinance gives all city employees the ability to issue violations.

In answering Mrs. Worth's questions, Mr. Johnstone pointed out that the existing code already gives code violation issuance powers to whomever the City deems the duty of code enforcement. Mr. Johnstone further explained that the ordinance makes it possible for the administrative hearing process to be applied to more sections of the code than the Administrative Model Process does today.

Mayor DiTullio closed the Public Hearing.

Motion by Mrs. Langworthy to approve Council Bill No. 05-2008, Ordinance 1410, on second reading and that it take effect 15 days after final publication; seconded by Mr. Womble; carried 8-0.

Item 4. COUNCIL BILL 06-2008 – SECOND READING OF AN ORDINANCE AMENDING SECTION 26-803 OF THE WHEAT RIDGE CODE OF LAWS PERTAINING TO FLOODPLAIN CONTROL.

Council Bill 06-2008 was introduced on second reading by Ms. Berry who read the Executive Summary. City Clerk Michael Snow assigned Ordinance No. 1411.

Mayor DiTullio opened the Public Hearing.

Mark Weisberg provided the Staff Summary.

No citizens were present to speak on this Item.

Mr. Johnstone informed Council that the Planning Commission did hear the item at their last public hearing.

Mayor DiTullio closed the Public Hearing.

Motion by Ms. Berry to approve Council Bill No. 06-2008, Ordinance 1411, on second reading and that it take effect 15 days after final publication; seconded by Mrs. Adams; carried 8-0.

DECISIONS, RESOLUTIONS, AND MOTIONS

Item 5. RESOLUTION 17-2008 – A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET APPROPRIATION IN THE AMOUNT OF \$150,000 FROM THE FISCAL YEAR 2008 GENERAL FUND UNDESIGNATED RESERVES FOR THE PURPOSES OF PURCHASING THE PROPERTY LOCATED AT 3388 SWADLEY STREET IN THE AMOUNT NOT-TO-EXCEED \$300,000.

Resolution 17-2008 was introduced by Mrs. Adams, who read the Executive Summary.

Motion by Mrs. Adams to approve Resolution 17-2008 – A Resolution Approving a Supplemental Budget Appropriation in the amount of \$150,000 from the Fiscal Year 2008 General Fund Undesignated Reserves for the Purposes of Purchasing the Property Located at 3388 Swadley Street in the amount Not-To-Exceed \$300,000.

She further moved to approve the IGA with the Urban Drainage and Flood Control District.

Seconded by Mr. Stites; carried 8-0.

Item 6. Award ITB-08-13-2008 Overlay/Concrete Rehab Project to Brannan Sand and Gravel in the Amount of \$1,206,031.78.

ITB-08-13 was introduced by Mrs. Langworthy, who read the Executive Summary.

Motion by Mrs. Langworthy to award ITB-08-13, 2008 Overlay/Concrete Rehab Project to Brannan Sand and Gravel, Denver, Colorado in the amount of \$1,206,031.78 which includes bid alternates 1, 2, 3 and 4.

She further moved that a contingency amount of \$120,603.18 be established.

She further moved that the Director of Public Works be authorized to issue change orders up to a total contract and contingency amount of \$1,326,634.96.

She further moved that all costs associated with this contract be paid from account number 30-303-800-884, and that these funds be encumbered for the length of the project in accordance with Ordinance #787, 1989 Series.

Seconded by Mrs. Rotola; carried 8-0.

ELECTED OFFICIALS' MATTERS

Mr. Stites reminded citizens to "find it and buy it in Wheat Ridge".

Mrs. Langworthy invited citizens to attend the Grand Reopening of the Village Inn on Kipling from 5-9 pm March 25, 2008 in support of the Joe Pit Coffee Shop at Wheat Ridge High School.

Mr. Womble expressed his excitement, following the discussions at the last Study Session, for the art and entertainment programs coming soon to Wheat Ridge.

Meeting adjourned at 10:51p.m.

Signed: Michael Snow

Michael Snow, City Clerk

APPROVED BY CITY COUNCIL ON APRIL 14, 2008 BY A VOTE OF 8 to 0.

Signed: Mike Stites

Mike Stites, Mayor pro tem

The preceding Minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Recordings and DVD's of the meetings are available for listening or viewing in the City Clerk's Office, as well as copies of Ordinances and Resolutions.