

CITY COUNCIL MINUTES

CITY OF WHEAT RIDGE, COLORADO
7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

February 8, 2016

Mayor Jay called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

ROLL CALL OF MEMBERS

Monica Duran	Zachary Urban	Kristi Davis	Janeece Hoppe
Tim Fitzgerald	George Pond	Genevieve Wooden	Larry Mathews

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Acting Police Chief Jim Lorentz; Parks & Recreation Director, Joyce Manwaring; Administrative Services Director, Heather Geyer; other staff and interested citizens.

APPROVAL OF SPECIAL MEETING MINUTES OF January 20, 2016

There being no objection, the Special Meeting Minutes for January 20, 2016 were approved as published.

PROCLAMATIONS AND CEREMONIES none

CITIZENS' RIGHT TO SPEAK

Shannon Hancock (Broomfield), executive director of the Outdoor Lab Foundation, thanked the Council for their contribution of almost \$20,000 to local schools for the Outdoor Lab program. This helps hundreds of students who would otherwise not be able to attend. Donations are necessary to ensure that all students are able to attend Outdoor Lab for free. Besides the week-long science program, the program has added a stewardship and sustainability program that works with students on environmental issues, food waste, and green energy. One of the focuses this year will be girls in STEM. Wheat Ridge has set a very high bar compared to other Jeffco cities.

Carol Mathews (WR) believes the City is using social issues and emotional tactics rather than common sense business facts to sway the public on the redesign of 38th Avenue. Profitable businesses need exposure, access, accessible parking and a continuous source of new customers. Repetitive foot traffic doesn't produce adequate sales. A prominent city planner she quoted says 'successful city planning relies on the careful calculation of traffic generating capacity of the different land uses in relation to the ability of the street to bare the load'. She believes the current strategy of lane reduction,

streetscaping and a social agenda doesn't properly match traffic capacity with increased population and land use. She encouraged folks to read the 38th Ave Corridor Plan on the City website which calls for high density and multi-family housing on the entire corridor.

Russell L. Mayer (WR) recently attended a town meeting with our state representative at the Seniors' Resource Center. The interior meeting location was hard to find and parking was inconvenient. Upon inquiry, Rep. Daniels told them the City would not permit such meetings at City Hall in Council Chambers. He asked Council to rethink this policy and allow meetings with elected representatives to be held in City facilities because they represent us. It should be at no expense because we are taxpayers and interested in what is going on in our government.

Davis Reinhart (WR) noted that his City [property] tax bill is only \$35 – lower than what he contributes to the fire district, library fund, county and schools. He believes that we have a structural defect in our budget, that we have an aging infrastructure that was built substandard, that we are far behind in addressing public works and that we have no room to invest in ourselves. He encouraged Council to develop a plan to bring to the citizens in the fall, a way to strengthen the overall budget in the City. There are real needs.

APPROVAL OF AGENDA

Mr. Goff asked that Discussion Item 3 be pulled so staff can do further preparation on it.

1. CONSENT AGENDA

- a) Resolution No. 13-2016 – amending the Fiscal Year 2016 Budget to reflect the approval of a Supplemental Budget appropriation for the re-appropriation and re-encumbrance of 2015 Fiscal Year encumbered funds in the amount of \$3,581,804.10 *[unfinished 2015 budgeted projects carried into 2016]*
- b) Resolution No. 16-2016 – amending the Fiscal Year 2015 Crime Prevention/Code Enforcement Fund Budget to reflect the approval of a Supplemental Budget Appropriation in the amount of \$50,390 for the purpose of funding Medical/Dental Insurance, Staff Salaries and Overtime expenses *[expenses were higher than budgeted]*
- c) Motion to accept Rights-of-Way and Temporary Construction Easements from adjacent property owners along Tabor Street between 49th Ave. and Ridge Road *[five property owners; for roadway widening, bike paths and sidewalks]*
- d) Motion to renew the Agreement with Front Range Services, Inc., Commerce City, Colorado for Bus Shelter Cleaning & Snow Removal Services and Bus Bench Refuse Collection and Cleaning Services and approve payment in a total amount not to exceed \$36,000 *[annual fee; weekly service for 30 shelters (\$20,000) and 66 bus benches (\$16,000)]*
- e) Motion to approve the renewal of the Agreement with W.L. Contractors of Arvada, Colorado for on-call Traffic Signal Repair Services and approve payment in a total amount not to exceed \$45,000 *[budgeted]*

- f) Motion to approve the annual renewal of Licensing and support for the Computer Aided Dispatch and Records Management System in the amount of \$86,423 payable to Logistic Systems, Inc. *[necessary for police dept. software]*
- g) Motion to approve the annual payment of \$53,174.68 to the City of Lakewood for Police Radio System Services *[Mount Morrison radio site shared with City of Lakewood and West Metro Fire]*

Councilmember Davis introduced the Consent Agenda, taking time to explain Item a.

Motion by Councilmember Davis to approve the Consent Agenda; seconded by Councilmember Pond; carried 8-0.

ORDINANCES ON FIRST READING

- 2. Council Bill 03-2016 – An Ordinance approving the rezoning of property located at 3865 Kipling St. from Residential-One (R-1) to Mixed Use-Commercial (MU-C) (Case No. WZ-15-12/Equinox)

The proposed rezoning includes two parcels totaling 2.2 acres. The purpose of the rezoning is to modify the list of allowed uses and to simplify the review and approval processes for future development. If approved, future development of the site would be reviewed administratively.

Councilmember Pond introduced Council Bill 03-2016.

Motion by Councilmember Pond to approve Council Bill 03-2016 an ordinance approving the rezoning of property located at 3865 Kipling Street on first reading, order it published, public hearing set for Monday, March 14, 2016 at 7:00 pm in City Council Chambers, and that it take effect 15 days after final publication; seconded by Councilmember Fitzgerald; carried 8-0.

DECISIONS, RESOLUTIONS AND MOTIONS

- 3. Motion to award contract to Mid-America Pool Renovation, St. Louis, Missouri, in the amount of \$170,795 for the purpose of water toy replacement and resurfacing of the outdoor pools at Anderson Park and to approve a Contingency amount of \$17,000 for a total of \$187,795

The scope of the contract includes resurfacing of the lap and leisure pools, removing the non-working hydro tower and replacing it with a spray mushroom water feature, and adding railings to meet ADA guidelines. Other pool repairs and improvements are budgeted and will follow.

Councilmember Mathews introduced Item No. 3.

Ms. Manwaring informed Council the hydro tower is in the middle of the play pool.

Motion by Councilmember Mathews to approve the contract to Mid-America Pool Renovation, St. Louis, Missouri, in the amount of \$170,795 for the purpose of water toy replacement and resurfacing of the outdoor pools at Anderson Park and to approve a Contingency amount of \$17,000 for a total of \$187,795; seconded by Councilmember Wooden; carried 8-0.

4. Resolution No. 14-2016 – A resolution approving the renewal and amendment of an Intergovernmental Agreement for ambulance services among the City of Wheat Ridge, the Wheat Ridge Fire Protection District and Rural/Metro of Central Colorado dba Pridemark Paramedic Services, LLC

Besides approving renewal of the IGA, the resolution also approves two amendments:

- All ambulance responses to structures fires will be identified as an emergency response.
- Cap rates charged to the City for the transport of persons in custody.

Councilmember Fitzgerald introduced Resolution No. 14-2016.

Fire Chief Olme was available for questions, but there were none.

Motion by Councilmember Fitzgerald to approve Resolution No. 14-2016, a resolution approving the renewal and amendment of an Intergovernmental Agreement for ambulance services among the City of Wheat Ridge, the Wheat Ridge Fire Protection District and Rural/Metro of Central Colorado dba Pridemark Paramedic Services, LLC; seconded by Councilmember Duran; carried 8-0.

5. Resolution No. 15-2016 – supporting Redevelopment of the Fruitdale School through a Public-Private Partnership proposed by Hartman Ely Investments

Councilmember Wooden introduced Resolution No. 15-2016. The Housing Authority (HA) has, after thorough consideration of various options, determined that no other option would be financially feasible or prudent. In February, 2015 the HA entered an exclusive negotiation period with Hartman Ely Investments (HEI)

Staff presentation ~ Lauren Mikulak, Senior Planner

- The decommissioned school was purchased by the HA in 2011 when it was scheduled for demolition.
- HEI's plans for the property have evolved over the last year. The current plan is a full residential development of 16 units (5 affordable). This aligns with the mission of the

- HA, specifically high quality affordable housing units, market rate units, (which the City hasn't see in several decades), and loft style units (which the City does not have).
- The HA determined there would be public benefit in saving one of the few extant historic Temple Buell buildings and it is on the National Register [of Historic Places].
 - Additional public benefit would be a fruit orchard in front with a commitment to share that back to the community, an exterior event space, and periodic public access to the historic building.
 - This development has the potential to catalyze needed reinvestment in this area.
 - A public private partnership is necessary to close the funding gap. This \$5.35M project has a variety of funding sources
 - \$640K: committed from Jefferson County (HUD HOME funds),
 - Tax credits: \$10K enterprise zone tax credits; nearly \$100K in solar credits; nearly \$2M in historic preservation tax credits
 - The HA has incurred about \$300K in expenses to date; reimbursement will not be sought. The property will be sold for \$10.
 - From the HA: a \$170K grant and a loan of \$400K.
 - From the City: \$470K in grant funds and \$1.925M in short term loan funds
 - Economic advisors have participated on behalf of the City and HA to produce a deal that's fair and minimizes risk.
 - Tonight's resolution expresses formal support of the City's financial contributions and expresses support for the deal points included in the packet.
 - Mr. Goff noted that this resolution appropriates no funds – just approval of the term sheet and concepts.
 - Elements of the term sheet would return to Council in the form of a development agreement on February 22 containing several conditions that must be met before any funds are released.
 - The intent is that the City loan be repaid with HOME funds and historic and solar tax credits in 2017 and 2018; the HA loan to be repaid later when the building is refinanced or sold.
 - The intent is that the City loan be repaid with HOME funds and tax credits in 2017/2018; HA loan to be repaid later when the building is refinanced or sold.
 - City loan to be paid back with 1.5% interest and HA Loan with 5% interest.

Council questions

Councilmember Urban: Mr. Goff said it's anticipated that at closing late summer, HEI would like 20% of the \$2.9M (\$593K), followed by 6 payments monthly of 10% (each just under \$300K), and finally the last 20%. The 2016 commitment for the City would be \$1.4M; the 2017 commitment would be the other \$1.4M, plus the last 20% payment. Because one of the asks is waiver of inspection fees and several entities will be doing inspections, Councilmember Urban would like to see the inspection process streamlined to share some of those inspections thereby reducing the City's actual costs.

Councilmember Mathews asked about the restricted deed. Mr. Dahl explained the late 1800's reverter clause – if the property is not used for school purposes it reverts to heirs of original owner. He said no heirs can be found and the City has filed suit to clear the deed of the reverter clause by quiet title action so non-educational use can happen.

Councilmember Hoppe had questions on the term sheet.

- Regarding specifying the exact number of affordable units to ensure the HOME funds, Mr. Goff said that number can be specified in the development agreement.
- The periodic public access, the community education piece for the solar power and development of the fruit orchard and edible landscaping will not be a responsibility of the City, but rather HEI and Pinnacle, their management partner.
- The “up to \$190K” the City agrees to pay for potential changes in construction and financing costs would be reimbursed with tax credits.
- Ms. Hoppe suggested “acts of terrorism” be added to the force majeure clause.

Councilmember Mathews' inquired about the financing. There's no collateral for the loan and this project would drain all but \$26K of the HA's cash reserves by the end of 2016.

Councilmember Pond addressed the term sheet, the development agreement and reserve balance.

- Mr. Goff indicated that detail can be added in the development agreement based on information available today and what Council would like.
- Specifics about the number of times for public use will be discussed with HEI.
- The City contribution to this project in 2016 will take our reserves down to 14-16%.
- A supermajority vote is required to take our reserves below 17%. The money, which must be replenished within two years, would come from tax credits.
- The development agreement will come to Council on February 22.

Councilmember Davis commented she understands possible concern on the money that has been and will be spent on this, but tax credits will be available. She sees this as an investment, not necessarily to make a profit. The HA's job is to improve the area – not necessarily make a profit.

Mr. Goff noted a potential for some additional return to the HA (of the \$170K grant and the initial \$300K they have in the project) if eventual refinancing produces a better rate and if the apartments rent for more than anticipated. The developer has agreed to share back so the HA would get more back.

Public comment

Janice Thompson (WR), HA member, noted that projects cost money and don't always produce a return (e.g. How much has been spent on studies for 38th Ave and Wadsworth, for what return?) She spoke of HEI's reputation in the Denver area and their investment of time and money. ~ Referencing a recent Denver Post article about four unique, historic Colorado properties that are threatened (a theater, an opera house, a band shell and the GW sugar factory), she suggested Fruitdale is an endangered property in WR. She thanked the City staff and attorney for all their work on this, which goes well beyond what's in tonight's packet. She thanked HEI for not giving up on this property and is confident the agreement proposal is sound. She sees this as an opportunity for District 4 to have a much needed infusion of exciting development. She thinks this project will turn an eyesore into a gem and that it's the last hope to save the building.

Paul Fiorino (Denver) spoke representing the RFI that was submitted by the Colorado Arts Consortium in July, 2014 (see HA minutes of July 14 and July 22, 2014). He mentioned sparking the efforts that saved the Leadville Opera House that was just referenced, and noted the Fruitdale building is an opportunity for similar preservation. ~ He presented the original reverter clause and a map of the property, expressing how important it is for Wheat Ridge to reconsider and for the new Councilmembers to revisit the other RFI -- that HEI said on July 22, 2014 they would work with. The RFI for a cultural education center is an opportunity for rentals, tenants and affordable housing for artists -- bringing WR to the forefront of what just happened in Lake County. He asked if any Councilmembers had toured the school and offered to tour it with them and discuss his proposition. He reminded Council that the historic preservation tax credits would be available to any entity who wants to keep this a public place.

Mayor Jay gavelled Mr. Fiorino and thanked him for bringing this to Council's attention. Mr. Fiorino pled with Council to table this resolution until they've read the other proposal.

Sharon Rogers (Arvada) said she's seen old school houses in Denver converted to lofts and wonders how those were accomplished. Is there a default back to the county?

Tom Abbott (WR) thinks this is an interesting and expensive project. The fact that you're considering this redevelopment at all shows an evolution has occurred in WR. This project is a mix of urban renewal, economic development, historic preservation and affordable quality housing. Converting schools to housing is common. Tax credits are a new addition. He made note this type of transaction is very complicated and HEI knows what they're doing. He hopes for a supermajority vote make this happen.

Motion by Councilmember Wooden to approve Resolution No. 15-2016, a resolution supporting redevelopment of the Fruitdale School through a public-private partnership proposed by Hartman Ely Investments; seconded by Councilmember Hoppe;

Councilmembers Fitzgerald, Mathews, Urban, and Wooden offered brief comments.

Motion carried 7-1, with Councilmember Mathews voting no.

6. Motion to waive the Attorney-Client Privilege as to the direction given to the City Attorney at the January 25th Executive Session

This item was placed on the agenda by Councilmembers Duran and Mathews to allow for a public vote to be taken on the direction given to the City Attorney in response to the Quadrant lawsuit filed against the City of Wheat Ridge.

Councilmember Duran introduced Resolution No. 15-2016.

Councilmember Duran proposed to read her memo explaining why this was added to the agenda. Mayor Jay said Council would have to approve that. Mr. Dahl offered that the

Mayor could ask if there were any objections. There were none. Councilmember Duran read her remarks about transparency into the record. [Attached]

Staff report

Mr. Dahl gave information about attorney-client privilege provided by statutory and common law. Having given Council his advice in executive session, he plans to file the City's answer on Wednesday. On the table is the question to waive that privilege as to the direction he was given, which Council can do.

Councilmember Fitzgerald asked if Councilwoman Duran's letter violated the confidentiality of the executive session. Mr. Dahl said no, it's just supportive of the placing of this item on the agenda.

Prolonged discussion followed during which Mr. Dahl suggested:

- Not trying to quote from or repeat the discussion in the executive session
- Councilmembers can say their opinions, but they should put it in present day terms. They can express *what* their vote is, not *why*; they should not ask what his legal advice was.
- Other parties can intervene after the City replies to the suit.
- When there is ongoing litigation Council can be less forthcoming so as not to reveal strategy.

Public comment

Marianne Stork (WR) just wants to know if the response from the City to the Quadrant lawsuit will be representative of what the electorate wanted. She isn't interested in knowing details about what went on in the executive session, but from what she has read, executive sessions are only for discussion, not making decisions. It sounds like some decisions were made in executive session.

Tom Slattery (WR) wants to know if Council intends to defend the Charter, or not. Has the City Attorney been directed to defend it by all means, or not? The public has a right to know.

Michael Illo (WR) referenced the lack of transparency and the tug of war that has taken place with constituents on development issues. Regarding 300, citizens are understandably skeptical of whether Council is willing to move in the direction of the outcome of the vote. Details of the executive session aren't necessary, but not allowing citizens to know what direction the City and individual councilmembers are taking seems extreme. Citizens have the right to know if they are being accurately represented and he encouraged councilmembers to put their personal feelings aside. This law suit affects us all. Council may be the client, but citizens feel like they are the client too because they supported this. It was all done in a transparent way; we didn't try to hide anything from the developer. We would like that transparency in return, and would like to know our Council and Attorney are representing us in good faith.

Davis Reinhart (WR) finds it inconceivable that any organization facing litigation would put its deliberations out in public. The citizens' right to know can be resolved after it's

complete. He urged Council not to open this up to public debate while litigation is ongoing.

Carol Mathews (WR) stated that voters have voted. A strong majority supported 300 and we expect our City Council to back our decision. Councilmembers should take the initiative to let their constituents know if you represent them or not. It's unfair to surprise citizens on Wednesday, only to find out you are taking a position contrary to what we voted on. The voters need respect.

Mr. Dahl addressed the concern of "making decisions in executive session". He explained how executive session privilege is different from attorney-client privilege.

Motion by Councilmember Duran to waive the attorney-client privilege as to the direction given to the City Attorney at the January 25, 2016 executive session; seconded by Councilmember Mathews.

Discussion followed, including but not limited to:

- Concern about setting a precedent about revealing attorney-client privilege
- Revealing how they voted will reveal the City's response prior to it being filed. 9:20
- No knowledge about any executive session would ever have served the public.

Motion by Councilmember Mathews to call the question; seconded by Councilmember Duran. Following explanation from Mr. Dahl, the motion and second were withdrawn.

- After the answer is filed on Wednesday councilmembers can reveal if they do or do not support the City's position.
- Mr. Dahl stated that he could file the City's response tomorrow if there is no change in direction.

The motion failed 2-6, with Councilmembers Wooden, Fitzgerald, Davis, Pond, Hoppe and Urban voting no.

Councilmember Duran inquired of Mr. Dahl if she could make motions to direct the City Attorney to defend Count 1 and Count 2 of the lawsuit. He advised that Council has the right to change their mind.

More discussion followed.

Motion by Councilmember Duran to direct the City Attorney to defend County One of the Quadrant lawsuit - the Administrative/Legislative Claim. The motion died for lack of a second.

Motion by Councilmember Duran to direct the City Attorney to defend Count Two of the Quadrant lawsuit – the Constitutional Claim; second by Councilmember Urban.

Discussion followed.

Motion by Councilmember Hoppe to table the pending motion [to defend Count Two] until the February 22 Council meeting; seconded by Councilmember Fitzgerald; carried 6-2, with Councilmember Urban and Duran voting no.

Mr. Goff informed Council that since the power outage earlier in the meeting the City has been operating on back-up power. He advised that Xcel was on site and working on the situation, but he wasn't sure how long the back-up power would last. He offered to reschedule the discussion items to future dates if that was Council's preference.

Motion by Councilmember Davis to table the discussion items to a future study session as soon as possible; seconded by Councilmember Urban; carried 8-0.

DISCUSSION ITEMS (tabled)

1. Website Redesign Presentation
2. Discussion concerning Freestanding Emergency Rooms
3. Discussion of amendment to Ordinance for Pawn Shops and Secondhand Dealers
4. Review of Council Rules of Order and Procedure

CITY MANAGER'S MATTERS

Mr. Goff reminded the public of the second Cre8 Your 38 meeting this Thursday evening at the Rec Center from 6-8pm. The meeting will be held in the gymnasium this time. Childcare will be provided and a shuttle will be available from across the street.

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

Janeece Hoppe announced she would be at a New Partners conference in Portland from Wednesday through Saturday.

Zach Urban expressed a desire to discuss snow removal. Mr. Goff said that is on an upcoming agenda. ~ Mr. Urban also would like to hear from Xcel why there has been frequent power outages and what is being done to mitigate that. It's of particular concern for citizens who are on oxygen. Ms. Geyer reported on recent response from Xcel. One event did involve an animal, but Xcel is aware of frequent intermittent outages -- particularly in District 2. She will follow up with them and have them come in and talk to Council if that's desired.

George Pond thanked the residents from District 3 who attended the coffee with him and Mr. Fitzgerald last Saturday.

Janelle Shaver noted having attended a conference of the Colorado Association of Community Corrections Boards last Friday. The entire morning presentation focused on human trafficking; it was given by a local FBI agent and a former prosecutor from California. Since this issue has come up in Wheat Ridge she would be glad to discuss it with any councilmember.

Mr. Urban noted that today happens to be the International Day of Prayer and Awareness Against Human Trafficking.

Mayor Jay reported that she would also be attending the Smart Growth conference in Portland, as will Councilmembers Fitzgerald and Wooden.

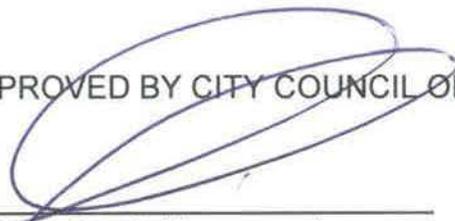
ADJOURNMENT

The meeting was adjourned at 9:59pm.



Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON February 22, 2016



George Pond, 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.