

**CITY COUNCIL MINUTES**  
**CITY OF WHEAT RIDGE, COLORADO**  
**7500 WEST 29<sup>TH</sup> AVENUE, MUNICIPAL BUILDING**

**September 9, 2019**

Mayor Starker 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**

Zachary Urban	David Kueter	Amanda Weaver	
Janece Hoppe	Leah Dozeman	George Pond	Larry Mathews

Absent: Kristi Davis (excused)

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; City Treasurer, Chris Miller; Interim Police Chief, Dave Pickett, other staff, guests and interested citizens.

**APPROVAL OF THE AGENDA**

Councilmember Mathews asked to pull Item 1b from the Consent Agenda.

In order to accommodate a scheduled Executive Session, Mr. Dahl asked that the following schedule be followed: At the end of the Regular Meeting the Council should recess to the Special Study Session; then reconvene the Regular Meeting for the purpose of going into Executive Session. Following the Executive Session, Council can return to the Regular Meeting and adjourn.

**CITIZENS' RIGHT TO SPEAK**

**Jefferson County Sheriff Jeff Shrader** asked the Council to endorse Jefferson County Ballot Issue 1A. It is a TABOR timeout. He explained the ramifications for public safety if the measure does not pass.

- The sheriff's budget will be cut about \$10M.
- He will have to close one housing floor (of five) of the jail in 2020, and close another floor in 2021. That's 640 beds.
- This reduction of about 550 inmates will force him to do two things:
  - 1) Enact a court ordered reduction of sentences by 50%.
  - 2) Refuse to accept prisoners for petty offenses, municipal offenses, and up to and including Class 4 Felonies. Offenders with multiple DUIs and some with "persons crimes" would be included in this.

- The DA's budget will also be cut by \$1.5M. This will reduce the number of lawyers and investigators and change public safety policy throughout the County. Citizens can look to KeepJeffcosafe.com for more details. He asked the Council to please pass a resolution in support of 1A.

## 1. CONSENT AGENDA

- a. Motion to cancel the Study Session of the Wheat Ridge City Council on November 4, 2019, due to the Municipal Election
- b. Resolution No. 48-2019 – a resolution concerning the acquisition and acceptance of private property for the purpose of constructing, installing, maintaining, and using public improvements for improving the intersections of W 52<sup>nd</sup> Avenue/Ward Road and Ridge Road/Ward Road and the pedestrian bridge, associated plaza areas, and the multi-use trail by negotiation and voluntary purchase and authorizing such action as necessary to accomplish said purposes [*acquisition costs: \$711,480; from 2E funds*]
- c. Resolution No. 49-2019 – a resolution approving an intergovernmental agreement with the City of Mountain View regarding Stormwater Drainage Improvements [*41<sup>st</sup> & Fenton*]
- d. Resolution No. 50-2019 – a resolution approving the memorandum of understanding between the West Metro Fire Protection District and the City of Wheat Ridge concerning DUI blood draw services [*WMFPD has personnel trained for this*]

Councilmember Pond introduced the Consent Agenda.

**Motion** by Councilmember Pond to approve the Consent Agenda Items a), c), and d); seconded by Councilmember Hoppe; carried 7-0.

Councilmember Pond introduced Consent Item 1b.

**Motion** by Councilmember Pond to approve Item 1b; seconded by Councilmember Hoppe.

Councilmember Mathews asked if this would include eminent domain. No. It authorizes all other options, but eminent domain would come to Council.

The motion carries 7-0.

## PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

2. Council Bill No. 13-2019 – An Ordinance amending the Wheat Ridge Code of Laws concerning procedures for protests under Section 5.10 of the Home Rule Charter (Case No. ZOA-19-03)

The City Charter provides for a legal protest to be filed against a zone change request. If a protest by 20% of adjacent property owners is received, the rezoning ordinance must be approved by a  $\frac{3}{4}$  vote of the entire Council (6 votes). The purpose of this code amendment is to clarify the protest procedure and to enact a delay in the public hearing in the event a protest is received.

Councilmember Hoppe introduced Council Bill 13 -2019.

Mayor Starker opened the public hearing.

City Clerk Shaver assigned Ordinance No. 1673.

Staff Presentation – Jerry Dahl

- This doesn't change the Charter; it implements the Charter for protest procedures.
- The Charter doesn't define the time when a protest can be filed; this ordinance will.
- The motion in the packet is the 1<sup>st</sup> reading version. He has given Councilmember Hoppe the 2<sup>nd</sup> Reading version. He recommended some additional changes:
  - Detailing the protest process in one place – not three as currently exists.
  - Community Development Department figures out if the 20% is met.
  - A recess can occur to determine if the protest is sufficient.
  - If sufficient, the item will be continued to the next meeting.
  - Includes properties diagonally adjacent to the corners of the subject property.
  - A protest can be rescinded by a written instrument. (Council could disallow withdrawal of a protest if it wishes.)
  - At Council's request, it is written to require protests to be filed prior to commencement of the hearing.

Public Comment

**Meghan Schleicher** (WR) has concerns about this. Citizens are at a disadvantage, while staff and developers are experts on this. Citizens should be given plenty of time, as the ability to obtain signatures is a challenge. Also, who do we call for answers to questions – including what properties are eligible to protest. Please include wording that provides the ability of citizens to correct their protest, and provides a way of knowing which addresses are to be included.

**Dorothy Archer** (WR) donated her time to Ihor Figlus.

**Ihor Figlus** (WR) spoke in opposition to this change.

- At best it is unnecessary; at worst it is erroneous and subverts the Charter.
- The Charter specifically does not require advance submission of a protest to prevent undue influence from being exerted against the protesters. Protests can be submitted "at the hearing". Requiring a continuance will effectively create a two week advance submission requirement in direct opposition to the intent of the Charter.
- A protest does not create a pressing need or change the facts of the case.
- The matter is quasijudicial; Council should not be discussing it.

- The only thing that can change is withdrawal of a protest; protests cannot be added. This opens the door for unsavory influence on a protestor. Given the zealousness of a developer currently pursuing his rezoning in this city, it isn't hard to imagine this happening.
- If anything, Council should be adopting an ordinance requiring them to vote on a rezoning that has a protest at the hearing - without a continuance.
- He noted an error in the diagram Figure 26-11.2 panel E. He explained how the corners should remain and cited precedent in Case WZ 18-09 in Aug 2018 when a diagonal property across the street was allowed to protest and it was accepted.

**Rachel Hultin (WR)** spoke in favor of the ordinance.

- It came forward from her remarks about the desire to have more notice, transparency, predictability and inclusion.
- If there's a protest that means there is something that needs to be addressed.
- If citizens have gone through the process, we should pay closer attention to it. They should be allowed that extra time.
- A protest changes the dynamic on the dais and creates tension.
- She didn't expect all the nuances that came out of this process (e.g. corners). Citizens should all have the same accurate information.
- She understands the issue of opening this up to undue influence, but ultimately our community values predictability, inclusion and transparency.
- A protest is a signal to pay closer attention. She thinks it's fair to give us all time to understand what that is.

**Odarka Figlus (WR)** responded:

- If the desire is predictability, stability and integrity, this proposal works against all of those things and will jeopardize the City's integrity and predictability. Everyone, including developers, should understand/expect the possibility of a protest.
- Regarding tension on the dais, there should be none; discussion should be only about the merits of the case.
- During the intervening 2 weeks period, there could be undue influence through the police power of the City or influence on the protester to withdraw their protest. There is already hesitancy to protest for fear of repercussions.
- Being allowed to file a protest during a hearing makes sense because sometimes you have to listen to the proposal before you know if you want to protest.
- It's also hard to get people to come again to another meeting. People won't trust what's happening – wondering what back room deals could happen during the two weeks.
- This can also be unfair to the developer. If he has a good proposal he has to wait and uncertainty is added.
- This not fair to anyone. It doesn't open the process; it clouds it up.

#### Council Questions

Councilmember Mathews had concerns about not including properties diagonal across the street in the "100 feet". Mr. Dahl agreed that the intent of the Charter was as if the street was not there, and advised Council could articulate that if they wished.

Councilmember Weaver asked if notification would now include these diagonal areas. Mr. Johnstone outlined the notification policy: 600ft for the neighborhood meeting, 2-300 ft for rezoning, depending on the type of land use application, and immediately adjacent for subdivision plats. The 100 ft will be calculated around the whole perimeter of the property.

Councilmember Kueter had questions about the 20% and noted that adding more properties could be a 2-edged sword.

Councilmember Urban noted the Charter says protests are to be received “by the hearing”. If we can’t require protests to be due by 1<sup>st</sup> Reading, how can we require protests by the start of the hearing (2<sup>nd</sup> Reading), then continue it, prohibiting further protests, and essentially create a Third Reading? During discussion Mr. Dahl advised that Council gets to decide what “by the hearing” means and needs to decide when the door closes for protests. If it is “at the commencement of the hearing” followed by mandatory continuance, the letter of the Charter is satisfied, but probably not the spirit of the Charter. While no new protests could be filed during the next two weeks, the list of things that could happen in two weeks is large. The continuance satisfies the Charter but raises other concerns.

Councilmember Hoppe asked if Council could add “once the hearing has commenced, no new protests can be submitted”. Mr. Dahl indicated that is possible with the words “prior to initial commencement of the hearing”.

Councilmember Kueter inquired if multiple owners protest, to make the 20%, what if one property owner withdraws. Mr. Dahl advised it can be individual protest documents or one document signed by multiple protesters – in which case all protestors would have to agree to withdraw the protest. In any case, you still need to follow the 20%.

Councilmember Urban confirmed with Mr. Dahl that there is currently nothing in the Charter that prevents Council from continuing a hearing. He encouraged maintaining flexibility.

Mayor Starker closed the public hearing.

**Motion** by Councilmember Hoppe to approve Council Bill 13-2019, an ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions, on second reading, order it published, and that it take effect 15 days after final publication, with the following adjustments;

- Section 1.7: Add a new a) to read “prior to the commencement of the hearing”,
  - Adjust subsequent lettering,
  - Page 3, Figure 26-112.1, Figure E: Add the corner properties
- seconded by Councilmember Kueter.

**Motion** by Councilmember Urban to amend changing “Council shall” to “Council may”; seconded by Councilmember Mathews. Discussion followed and the amendment failed 3-4, with Councilmembers Hoppe, Weaver Kueter and Pond voting no.

Mr. Dahl received clarification from Councilmember Hoppe regarding changes to paragraph 7. She agreed to strike “no later than”, and replace it with “prior to commencement of”. Councilmember Urban noted that language comes from the Charter, so how can we amend Charter language in the Code? Mr. Dahl agreed and recommended new wording.

Councilmember Hoppe restated the motion with new wording.

**Motion** by Councilmember Hoppe to approve Council Bill 13-2019, an ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions, on second reading, order it published, and that it take effect 15 days after final publication, with the following **amendments**;

- Section 1.7: Add a new a) to read “**All protests shall be submitted prior to the commencement of the public hearing**”
- Adjust subsequent lettering,
- Page 3, Figure 26-112.1, Diagram E: **Diagonal properties shall be added as shown in Diagram B**

The second to the motion agreed.

**Motion** by Councilmember Weaver to amend the main motion by adding a subsection h) stating the Community Development Department shall provide written guidance to the public on procedures for protest; seconded by Councilmember Hoppe; carried 7-0.

Discussion of the main motion continued.

- Councilmember Kueter: We should be encouraging the developer and the protesters/neighbors to work together.
- Councilmember Hoppe: This is an effort to grow inclusivity and transparency. All citizens benefit when the playing field is leveled.
- Councilmember Pond thanked people for coming in and speaking. Allowing protests up until the start of the hearing preserves the ability for “last minute” protests.
- Councilmember Urban: This does not level the playing field. It forces unnecessary delay of the process, ties Council's hands, and is an impediment to citizens' rights.
- Councilmember Dozeman: Planning Commission voted this down for a variety of reasons. Tension prevents good discussion.

**Motion** by Councilmember Dozeman to continue this item to the next Regular Meeting for review and further discussion of the proposed amendments; second by Councilmember Urban; carried 7-0.

3. Resolution No. 51-2019 – A Resolution approving a two-lot subdivision with variances for lot width and lot size for property zoned Residential-Three (R-3)

located at 2810 and 2816 Benton Street (Case No. WS-19-05 / Horton Subdivision)

The applicant is requesting approval of a two-lot subdivision with lot width and size variances. The purpose of the request is to allow for two existing single-family homes to be contained on separate lots, with one also encompassing a carriage house which currently functions as a legally nonconforming third dwelling unit.

Councilmember Kueter introduced Resolution 51-2019.

Mayor Starker opened the public hearing and swore in the speakers.

#### Staff Presentation - Planner Stephanie Stevens

- Ms. Stevens entered into the record the case file, the subdivision regulations, and the contents of the digital presentation.
- She testified that all posting and notification requirements had been met.
- The 0.30 acre property was originally subdivided in 1893. Two single family homes and a carriage unit were built in 1917, 1930 and 1970 (pre-dating City zoning regs).
- A chicken coop converted to dwelling unit was recently demolished. The carriage unit is a legal non-conforming structure.
- Zoning is R-3 and is surrounded by similar zoning with primarily single family houses.
- The proposal re-subdivides from 4 lots to 2; Council approval is needed on this due to the request for variances.
- The structures were developed over lot lines. There are several nonconformities, but the subdivision improves and decreases incrementally those nonconformities.
- Layout allows two existing single-family homes to be contained on separate lots, with one including the carriage house - a legal nonconforming 3rd dwelling unit.
- The requested variances are lot width (slightly narrower than allowed in R-3).
- Public improvements are in place and do not need to be added.
- Outside agencies can serve the property and have no concerns.
- The 15-day public hearing notice generated no calls or letters of opposition.
- Staff and the Planning Commission recommend approval of the subdivision with variances.

#### Applicant

Mr. Terry Horton, who lives on Cody in Lakewood, spoke.

- Each property has electricity and gas lines.
- Plumbing and furnaces were upgraded to code 20 years ago.
- It's zoned R-3 but he will not build a triplex; he is signing a document that neither he nor anyone who buys it in the future can build a triplex.
- They lived in the big house for 5 years. All houses have been rentals for the last 15 years. They want to sell off one house to pay off mortgage for the other one. A property management company will tend to the one they keep.

Public Comment No one came forward to speak.

#### Council Questions

Councilmember Weaver asked about the possibility of an R-3 dwelling. Ms. Stevens testified that due to lot size it will only ever allow single family houses.

Councilmember Mathews is not sure things will not change. Mr. Johnstone explained that absent any changes to the zoning or the development regulations these lots are only big enough to allow a single family home on each lot. The carriage house is legally non-conforming; if it is torn down it cannot be rebuilt.

Mr. Horton stated he is not a developer. He will sell one lot and keep one as a rental.

Mayor Starker closed the public hearing.

**Motion** by Councilmember Kueter to approve Resolution No. 39-2019, a resolution approving a two-lot subdivision with variances for lot width and lot size for property zoned Residential-Three (R-3) located at 2810 and 2816 Benton Street for the following reasons:

1. City Council has conducted a proper public hearing that meets all public notice requirements as required by Section 26-109 and 26-407 of the Code of Laws.
2. The requested subdivision has been reviewed by the Planning Commission, which has forwarded its recommendation of approval.
3. The subdivision plat has been found in compliance with Article IV of Chapter 26 of the Code of Laws.
4. All agencies can provide services to the property with improvements installed at the developer's expense.
5. The variance request is in compliance with a majority of the review criteria.

seconded by Councilmember Hoppe; carried 6-1, with Councilmember Mathews voting no.

#### **ORDINANCES ON FIRST READING**

4. Council Bill 15-2019 – An Ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area

The Sloan's Lake Flood Hazard Area Delineation (FHAD) is now ready to be adopted as a Local Flood Hazard Area (LFHA).

Councilmember Kueter introduced Council Bill 15-2019.

**Motion** by Councilmember Kueter to approve Council Bill 15-2019 - an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area, on first reading, order it published, public hearing set for Monday, September 23, 2019 at 7:00 p.m. in City Council Chambers, and that it take effect 15 days after final publication; seconded by Councilmember Urban; carried 7-0.



## **DECISIONS, RESOLUTIONS AND MOTIONS**

5. Motion to award a contract and approve subsequent payment of \$83,000 to KC Construction Inc., of Castle Rock, CO, for the Wheat Ridge Police Evidence Building improvements and approve a 10% contingency in the amount of \$8,300

The project will add a second floor within one side of the building to create more storage space for evidence. Modifications will include structural, mechanical and electrical additions/improvements.

Councilmember Dozeman introduced Item 5.

### **Staff Presentation**

Karen O'Donnell spoke briefly. This project will complete the build-out of the evidence building and provide much-needed space for storage of evidence.

There was no public comment, and there were no questions from Council.

**Motion** by Councilmember Dozeman to award a contract and approve subsequent payment of \$83,000 to KC Construction Inc., of Castle Rock, CO, for the Wheat Ridge Police Evidence Building improvements and approve a 10% contingency in the amount of \$8,300; seconded by Councilmember Weaver; carried 7-0

6. Resolution No. 52-2019 – A Resolution approving the acceptance of Justice Assistance Grant (JAG) funds in the amount of \$10,440 to be combined with budgeted funds to upgrade three security cameras covering the Police Department parking lot

The WRPD would like to combine the 2019 JAG funds with \$6,218 of budgeted IT Division funds to upgrade three security cameras that monitor the employee parking lot east of the police building to a digital format.

Councilmember Urban introduced Item 6.

**Staff Presentation** – Dave Pickett was available for questions

Council had no questions. No one from the public spoke..

**Motion** by Councilmember Urban to approve Resolution No. 52-2019, a resolution approving the acceptance of Justice Assistance Grant funds in the amount of \$10,440 to be combined with budgeted funds to upgrade three security cameras covering the Police Department parking lot; seconded by Councilmember Dozeman; carried 7-0.

### **CITY MANAGER'S MATTERS**

Mr. Goff reported the long awaited hiring of a new Public Works Director. He will start November 1 after he finishes some projects in North Dakota and moves his family here. A press release will be issued. ~ Rocky Mountain Bottle has a proposal from PraxAir for long term noise mitigation. In the meantime they've done some short term fixes - adjusting the cycling of the oxygenator and changing piping that was improperly installed. .

### **CITY ATTORNEY'S MATTERS**

### **ELECTED OFFICIALS' MATTERS**

**Leah Dozeman** reminded everyone the Farmers 5000 is this weekend, Sunday at 9am.

**Motion** by **Janeece Hoppe** to have a resolution in support of Jeffco1A prepared for a vote at the next meeting; seconded by Councilmember Kueter; carried 7-0.

**Mayor Starker** reported attending the Ridge Fest. It was a great time. He thanked the City staff that volunteered to help with the event and Localworks for their collaboration.

The Mayor recognized Councilmember Urban for the purpose of a motion.

**Motion** by Councilmember Urban to recess to a Special Study Session for a report on the Clear Creek Crossing PIF Collecting Agent Agreement, seconded by Councilmember Hoppe, carried 7-0.

**RECESS TO SPECIAL STUDY SESSION at 9:00pm** (A short break was also taken.)  
*[Notes for the Special Study Session are under separate cover. Audio of the Special Study Session is available within the recording of this Regular Meeting. Cf. 9:13-9:21pm.]*

### **RECONVENE CITY COUNCIL MEETING at 9:21pm**

Following the Special Study Session, Mayor Starker reconvened the Regular City Council Meeting and recognized Councilmember Hoppe for the purpose of a motion.

**Motion** by Councilmember Hoppe to go into Executive Session for a conference with the City attorney and City Manager and appropriate staff under Charter Section 5.7(b)1 CRS 24-6-402(4)(b) to receive legal advice concerning pending litigation Clark/Sorrentino and McLeod, and to return to the open meeting at the close of the Executive Session for the purpose of taking any final action deemed necessary; seconded by Councilmember Urban; carried 7-0.

### **RECESS TO EXECUTIVE SESSION at 9:22pm.**

The Executive Session was held in the Lobby Conference room.

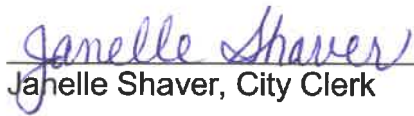
**RECONVENE REGULAR MEETING**

Following the Executive Session the Regular Meeting was reconvened at 9:55.


There being no further business Mayor Starker declared the meeting adjourned.

**ADJOURNMENT**

The meeting adjourned at 9:55pm.

  
Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON October 28, 2019

  
Janece Hoppe, 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.