

CITY COUNCIL MINUTES

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

June 8, 2015

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

Jerry DiTullio	Zachary Urban	Kristi Davis	Genevieve Wooden
Tim Fitzgerald	George Pond	Tracy Langworthy	Bud Starker

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Police Chief Daniel Brennan; Community Development Director, Ken Johnstone; Administrative Services Director, Heather Geyer; other staff, guests and interested citizens.

APPROVAL OF THE MINUTES OF April 27, 2015 and May 11, 2015 and Study Session Notes of May 4, 2015 and May 18, 2015

Without objection the minutes of April 27, 2015 and May 11, 2015 and the Study Session Notes May 4, 2015 and May 18, 2015 were approved as published.

PROCLAMATIONS AND CEREMONIES

CITIZENS' RIGHT TO SPEAK

Alex Kuisis (Edgewater) announced and invited everyone to the 5th annual Wheat Ridge Garden Tour on July 11. Tickets will be on sale from 8am until 1:30pm. The bike tour is from 8:00-8:30, otherwise it is self-guided. In the last five years they have donated \$5,300 back into Wheat Ridge charities.

Vivian Vos (WR) read a letter from Jim and Patty Meeker of Meeker Auto Sales to the City Council and staff. The letter spoke about an exchange they had at the May 18th study session with Councilmember Wooden about streetscape design, amenities and private property use for 38th Avenue. Councilmember Wooden appeared frustrated and agitated listening to them. Since 2B wasn't approved by the voters, they ask that a 4-lane design option with left turn lanes at Harlan and Pierce be presented to the citizens and business owners. They believe streetscape improvements are needed and the 4-lane design will require land from property owners. Councilmember Wooden said property owners would never agree to that and when asked, she didn't answer if staff had

ever approached any property owners about using their land for streetscaping. The Meekers have not been asked to use their land for landscaping, but they would. Their property is their livelihood. Their door is always open to the City to discuss. They asked Councilmember Wooden to listen to and respect the views of citizens and businesses that have different opinions; she works for them – not the city manager and staff.

Larry Mathews (WR) described in detail the wonderful vista viewable from behind Everitt Junior High. We forget what a magnificent location we have here in Wheat Ridge. He hopes we can all come together and see what a unique opportunity we have. Maybe we don't need to worry so much about what we don't have and consider the blessings we do have.

Councilmember Wooden explained that she was a bit agitated with the Meekers because the break was over, the meeting had resumed and she needed to get back in to the meeting. ~ She said Meekers said all the property owners on 38th would be willing to give up land and she questioned that; they don't speak for everyone along 38th. She thanked Meekers for their passion about 38th Avenue, but reminded them that others are also passionate about bringing people to that district. The sticking point is what it will look like. She encouraged everyone to come together to create a district that will satisfy the greatest amount of people. ~ She apologized if anything she said offended the Meekers, but based on how they've acted at Council meetings and on social media she is quite cautious with them. She apologized if they felt she was being condescending, but she is cautious based on their previous actions.

APPROVAL OF AGENDA

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

1. Council Bill No. 09-2015 - an ordinance authorizing the issuance of the City of Wheat Ridge, Colorado Development Revenue Note in a principal amount not to exceed \$1,000,000 to finance improvements to the Seniors' Resource Center

Councilmember Starker introduced Council Bill No. 09-2015.

The Seniors Resource Center is asking that the City act as a conduit for tax exempt financing for the construction of Phase 2 at their facility. This will allow the SRC to receive a much better interest rate. The City will incur no financial liability.

Clerk Shaver assigned Ordinance 1571.

Mayor Jay opened the public hearing.

Mr. Zabawa of the Seniors Resource Center was present. Mayor Jay swore him in but Council had no questions of him.. There was no discussion.

Mayor Jay closed the public hearing.

Motion by Councilmember Starker to approve Council Bill No. 09-2015 - an ordinance authorizing the issuance of the City of Wheat Ridge, Colorado Development Revenue Note (Seniors' Resource Center, Inc. Project), Series 2015 in a principal amount not to exceed \$1,000,000 to finance certain facilities that provide day care, respite, transportation, and other services to seniors; authorizing the execution and delivery by the City of a financing agreement, a note, and closing documents in connection therewith; making determinations as to the sufficiency of revenues and as to other matters related to the project; ratifying action heretofore taken and providing other matters relating thereto, on second reading and that it take effect immediately upon adoption; seconded by Councilmember DiTullio; carried 8-0.

2. Resolution No. 30-2015 – approving a Three-Lot Subdivision Plat with lot width variances for property zoned Residential-Two (R-2) located at 7193 W. 32nd Ave. (Case No. WS-15-01)

Councilmember DiTullio introduced Resolution No 30-2015.

The purpose of the request is to create three residential lots: one for the existing farm house, one for a new single family house and one to remain undeveloped at this time. Because the applicant is seeking to preserve the existing farmhouse, the lot layout requires two lot width variances.

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

Staff presentation

Lauren Mikulak, Planner, gave the staff presentation. She entered into the record the contents of the case file, the zoning ordinance and subdivision regulations, and the contents of the presentation. She reported all appropriate posting and notification requirements have been met.

The property is zoned R-2 and is surrounded mostly by R-2. The historic farm house was built in 1899. Preservation of that home has guided the lot line design. The corner lot will accommodate the farm house; an interior lot [east side] will be eligible for a single family home; the north lot is big enough for a duplex but isn't planned for development now.

Normally a three-lot subdivision would be done administratively, but not when there is a variance request. The only reason for the variance is the applicant's desire to preserve the farm house. Standard lot width size for single family in R-2 is 75 feet. These two lots will be slightly sub-standard in width at 73 feet and 68 1/2 feet wide. They are however significantly oversized in total square footage. The minimum requirement is 9,000 sf; these lots are over 12,000 sf and 13,500 sf. The neighborhood average is 10,500 sf.

Ms. Mikulak noted that the owner could demolish the farm house and get an administrative subdivision for 3 standard size lots that would orient east-west. All agencies can serve the property. Staff recommends approval with three conditions related to public improvements and fees in lieu of parkland dedication.

There were no questions from Council.

Applicant

The applicant, **David Mann** (WR), was sworn in by Mayor Jay. Mr. Mann requested that if this is approved that the park fees of \$5,000 be waived.

There were no questions from Council.

Public Comment

Phillip Mann, partner and owner of the plan, said he lives in the farm house now. The new house that will be built will be for his son and family. He noted their shock at the cost of the public improvements (curb/gutter/sidewalk) that are required -- \$25-26,000. He asked that the park fees be waived. They're only adding 5 people and they plan an urban garden for the back lot.

There were no questions from Council.

Thomas Slattery (WR) was sworn in. He disagrees with staff's analysis of the criteria. Of the nine criteria staff submits that only the first seven apply.

- Criteria #1 staff agrees has not been met. The property could continue to function as a single-family house without the variance.
- Criteria #2 Will it alter the character of the neighborhood? He believes it will by putting a large house on a narrow lot.
- Criteria #3 Possible without the variance? Yes, the two houses *would* be possible without the variance. A two-lot subdivision is very feasible. There are several one and two family homes on oversized lots along 32nd and in R-2 zone. That's the character of the neighborhood.
- Criteria #4 Unique hardship due to physical conditions or topography? They bought the lot knowing what it was. This is not a hardship. The fact that they can't develop it as much as they want is not a hardship.
- Criteria #5 The alleged hardship is not created by anyone having an interest in the property? To buy a lot knowing what it is and then wanting a higher use -- you are creating your own hardship.
- Criteria #6 Will not be detrimental or harm property values? This is questionable.
- Criteria #7 The unusual circumstances necessitating the variance are present in the neighborhood and are not unique to the property. He concurs with staff that this has not been met. The hardship is self-imposed.

Of the seven criteria, only two are met. The east lot would be an ideal spot for an urban garden.

Mr. Slattery was told he was out of time and stopped speaking.

Councilmember DiTullio noted there is no time limit for speakers in public hearings. Mr. Dahl confirmed that.

Mayor Jay closed the public hearing.

Mr. Dahl delayed the closing of the public hearing to advise there is a process for waiving parkland dedication fees. For a waiver of fees to be considered the applicant must have submitted a letter of request for waiver. The fees cannot be waived without that letter. If

Council is inclined to waive those fees, Mr. Dahl suggested continuing the hearing for two weeks for action – to give the applicant time to submit a letter of request.

Councilmember DiTullio asked if the fees could be waived pending a letter of request and recommendation for approval by staff. Mr. Dahl explained why that would not be possible. There was discussion. Mr. Dahl said the applicant could be asked if he wanted to wait the two weeks.

Mr. Dahl explained again that Council could not approve the subdivision tonight and address the fee waiver in two weeks.

The applicant was asked if he wanted to wait two weeks. He asked and was told the fees do go to the parks. David Mann withdraw his request for waiver of the park fee.

Mayor Jay closed the public hearing.

Motion by Councilmember DiTullio to approve Resolution No. 30-2015, a resolution approving a three-lot subdivision plat with lot width variances for property zoned Residential-Two (R-2) located at 7193 W. 32nd Avenue for the following reasons:

1. City Council has conducted a proper public hearing that meets all public notice requirements as required by Section 26-09 and 26-407 of the Code of Laws.
2. The requested subdivision has been reviewed by the Planning Commission, which has forwarded its recommendation.
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.

And with the following conditions:

1. Curb and gutter improvements shall be constructed along Teller Street and W. 32nd Place.
2. Fees-in-lieu of sidewalk construction shall be provided at the time of recordation if the sidewalk is not otherwise to be constructed by the applicant.
3. Fees-in-lieu of parkland dedication shall be provided at the time of recordation.

seconded by Councilmember Starker.

Mr. Dahl noted that because this is a variance it requires a super-majority vote (6 votes).

Councilmember DiTullio said he watched the Planning Commission hearing for this. He's aware neighbors are concerned about density. He referenced the property across the street and noted that this property owner could do the same thing – scrape the almost one acre, then come to Council and get it rezoned as a PRD which is potentially 21 units per acre. Or they could just scrape the house now and build three duplexes. This is less density.

The motion carried 8-0.

ORDINANCES ON FIRST READING

- 3.** Council Bill 10-2015 an ordinance amending Articles II and VI of Chapter 26 of the Code of Laws, concerning Residential Side and Rear Yard Setbacks (Case No. ZOA-15-02)

Councilmember Pond introduced Council Bill 10-2015.

This ordinance amends setback requirements for side and rear yards that face public streets. It affects only substandard residential lots that are 60 feet or less in width. The purpose is to reduce the setback burden on substandard properties and establish standards for new construction that are more consistent with existing neighborhood conditions.

Motion by Councilmember Pond to approve Council Bill 10-2015, an ordinance amending Articles II and VI of Chapter 26 of the Code of Laws, concerning residential side and rear yard setbacks, on first reading, order it published, public hearing set for Monday, July 13, 2015 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.

- 4.** Council Bill 11-2015, an ordinance vacating an existing Utility Easement on property zoned Residential-Three (R-3) located at 3601 Eaton St. (Case NO. WV-15-01/Steck)

Councilmember Starker introduced Council Bill 11-2015.

The applicant is requesting the vacation of a 50-foot wide easement which runs under the building – a 13-unit apartment building. The easement area was previously public street right-of-way in Jefferson County. Prior to the City's incorporation the county vacated the right-of-way, but retained the easement. The potential buyer would like to have the easement vacated. No overhead or underground utilities are located in the easement.

Motion by Councilmember Starker to approve Council Bill 11-2015, an ordinance vacating an existing utility easement on property zoned Residential-Three (R-3) located at 3601 Eaton Street on first reading, order it published, public hearing set for Monday, June 22, 2015 at 7 pm in City Council Chambers, and that it take effect immediately after final publication; seconded by Councilmember DiTullio; carried 8-0.

- 5.** Council Bill 12-2015, an ordinance amending Article V of Chapter 19 of the Wheat Ridge Code of Laws concerning Alarm Systems

Councilmember Langworthy introduced Council Bill 12-2015.

This ordinance will remove the requirement for the Police Department to license alarm providers and assess charges for repetitive false alarms. The Police Department does

not perform these tasks and believes that these provisions are not necessary to ensure that alarm companies are legitimate and well-operated.

Motion by Councilmember Langworthy to approve Council Bill 12-2015, an ordinance amending Article V of Chapter 19 of the Wheat Ridge Code of Laws concerning Alarm Systems on first reading, order it published, public hearing set for Monday, June 22, 2015 at 7 pm in City Council Chambers, and that it take effect fifteen (15) days after final publication; seconded by Councilmember Wooden; carried 8-0.

- 6.** Council Bill 13-2015, an ordinance approving the renewal of a Cable Television Franchise with Comcast of Colorado IV, LLC and in connection therewith, repealing and reenacting Section 23-1 of the Code of Laws

Councilmember Davis introduced Council Bill 13-2015.

This ordinance renews the City's cable franchise contract with Comcast for another 10 years.

Motion by Councilmember Davis to approve Council Bill 13-2015, an ordinance approving the renewal of a cable television franchise with Comcast of Colorado IV, LLC and in connection therewith, repealing and reenacting Section 23-1 of the Code of Laws on first reading, order it published, public hearing set for Monday, June 22, 2015 at 7 pm in City Council Chambers, and that it take effect fifteen (15) days after final publication; seconded by Councilmember Starker; carried 8-0.

CITY MANAGER'S MATTERS

Mr. Goff announced that the Farmers' Market will begin June 18 in front of Ross and Big Lots on Wadsworth. Hours will be from 10-2 every Thursday throughout the summer. Also, Sprouts has scheduled its ribbon cutting for June 24 at 7am. Council is invited. That will be their first day open.

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

Jerry DiTullio, at the request of "Keep Wheat Ridge Local", distributed copies of the proposed TIF ballot question they're circulating. He pointed out the effective date of March 31, 2015. It's a concern. He's had discussions with Wazee Partners who are looking to develop 38th & Upham with condos, underground parking, a public plaza and possibly a library. They are looking at a TIF that is higher than the \$2.5M limit. He's concerned that if Council approves any TIF and this ballot question passes, all those TIF will have to go to the voters. ~ He noted he is teaching morning classes for students with autism. If Council has questions they can reach him in the afternoon.

Kristi Davis will have her third Catch Up with Kristi this Wednesday from 2-3 at Grammy's Goodies at 4601 Harlan. Folks are invited to come give her their comments. ~ She also invited folks to the Garden Tour because she is one of the stops on the tour.

Zach Urban asked about the clean-up of the Urban Renewal property that is part of the 38th & Wadsworth development. Per Council resolutions an EPA grant was to cover the cost of that environmental remediation, but now he's learned that grant was not applied for. Then Urban Renewal passed a resolution to apply for a revolving loan fund through CHFFA, but that was never used. Ultimately we paid for the remediation with proceeds from the development at 44th and Upham.

Mr. Goff responded that the clean-up is being paid from funds Urban Renewal has in their accounts – funds which come from the City's \$300,000 yearly allotment. ~ He doesn't recall a resolution that said an EPA grant was going to be used. We tried to apply for a clean-up grant, but when we purchased the property a Phase 1 environmental assessment was already done. Looking at the EPA grant procedures they require an application to be filed within 6 months of the Phase 1 being done. So because of the timing we weren't eligible. The City went to the EPA, and although they agreed it is a bad policy, they couldn't change anything. Congressman Perlmutter tried to get the policy changed, but had no luck. ~ We did apply for a low interest loan with CHFFA but the Urban Renewal Authority had enough cash on hand so we didn't need to use that loan.

Mr. Urban cited two resolutions that set aside a match to that grant and supported the application for it. Neither one of those actions was taken and Council wasn't told. Mr. Goff said he thought Council was informed; Urban Renewal knew about it. Mr. Urban said he may have missed the notice, but when a course of action is laid out and it doesn't happen, Council should be notified that it hasn't happened.

Mr. Goff said they didn't try to apply for another Phase 1 assessment because the project was moving along and they didn't want to delay it. The \$300,000 will be a City/Urban Renewal contribution to the project. The bank we bought the property from contributed \$40K to the clean up, and we will sell the property for more than we paid for it.

Kristi Davis noted a part of that money will be in the sale price. She stated that the point of Urban Renewal is not to always make a profit. She cited the property for the apartments at 44th & Wadsworth as an example of other projects that lost money for Urban Renewal. Their losing money to invest in the City is part of their role to get things moving. It's not unusual.

Mr. Urban said his concern was not about URA investing in the City; his concern was that a course of action was proposed and ratified by resolution, but that's not the course of action that was taken.

Bud Starker reported attending the Criterium and thought it was a great event. He expressed appreciation to the organizers and volunteers and thanked City staff for their work on the event.

George Pond reminded people of the meeting tomorrow night, June 9, at the Rec Center to discuss Discovery Park. People are invited to come discuss possible solutions.

Tim Fitzgerald thanked Public Works for their quick response to a severe drainage problem on 32nd Avenue.

Tracy Langworthy noted that Annaleigh Ashford, a graduate of Wheat Ridge High School, won a Tony award last night. ~ She thanked Mighty Joe's who had their ribbon cutting on Saturday. Their food is terrific. They're tucked behind Starbuck's at 10160 W 50th Ave and they have more room than it appears from the outside. She encouraged folks to try them out. ~ She said she stopped by the Criterium and thinks it's amazing how fast they ride those bikes.

Genevieve Wooden asked if it was appropriate for a councilmember to meet privately, behind the scenes, with developers. Jerry DiTullio responded that until an application is filed he can talk to anyone he wants to and he would appreciate not having his motives questioned. ~ Mayor Jay said she talked to developers when she was on Council. ~ Mr. Dahl restated his advice from the past that councilmembers can talk to people up until the time an application is submitted and it becomes quasi-judicial. Unless Council creates new rules around this there are no restrictions. He did caution against prejudging a case before it is a case, but said the prejudgment rule should not prevent conversations. ~ Zach Urban remarked that it was disingenuous to suggest people were meeting behind the scenes. He happened to see Jerry meeting with those developers last Friday at a local restaurant. It was out in the open and not behind closed doors at all. He thinks conversations like that are part of a councilperson's job.


Mayor Jay reported attending the Leaves of Hope. It was a Lutheran Hospital fundraiser for cancer survivors. It was a lovely occasion. ~ She later went to the Criterium and thought it was just great.

ADJOURNMENT

The meeting adjourned at 8:12 pm.


Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON June 22, 2015


Bud Starker, 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.