

# **CITY COUNCIL MINUTES**

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

**December 14, 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**

Monica Duran	Zachary Urban	Kristi Davis	Janece Hoppe
Tim Fitzgerald	George Pond	Genevieve Wooden	

Absent: Larry Mathews

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Public Works Director, Scott Brink; other staff, guests and interested citizens.

### **APPROVAL OF MINUTES OF November 23, 2015 and Study Session Notes of November 16, 2015, and December 7, 2015**

There being no objection, the Minutes for November 23, 2015 and Study Session Notes of November 16, 2015, and December 7, 2015 were approved as published.

### **PROCLAMATIONS AND CEREMONIES**      none

### **CITIZENS' RIGHT TO SPEAK**

**Carol Sue Frickel** spoke about the Wheat Ridge Back Pack Program. **Trinity** and **Jennifer Brown**, along with **Sharon Brush** and **Chloeh Halloway**, who benefit from the program, explained what the program means to them and demonstrated the items in a typical back pack that students get for the weekend. Kullerstrand, two other elementary schools in Wheat Ridge and Head Start receive back packs. The backpacks are assembled weekly by volunteers for students on free/reduced lunch.

**Rachel Hultin** (WR) announced that applications are being accepted for WR2020's 2016 Wheaties Academy. The cost is \$250, but scholarships are available. ~ She also announced the ATAT State of the City event on January 12 at Colorado Plus. They recognize people and groups that support walking and biking. Tickets are \$15.

### **APPROVAL OF AGENDA**

Mr. Goff said it would be proper to switch the order of Agenda Items 8 and 9.

#### **1. CONSENT AGENDA**

- a) Motion to award ITB-15-28 2015 Miscellaneous Drainage Projects to Diaz Construction, Lakewood CO, in the contract amount of \$179,570 with an additional contingency amount of \$20,000 *[Budgeted item; replace two failed storm sewer pipes on the bluff on the south side of Clear Creek]*
- b) Resolution No. 55-2015 – amending the Fiscal Year 2015 General Fund Budget to reflect the approval of a Supplemental Budget Appropriation in the amount of \$300,000 for the purpose of funding the Kipling Ridge Tax Increment Financing Agreement *[for June to December 2015]*
- c) Motion to adopt the 2016 Regular City Council Meeting Calendar
- d) Motion to approve reappointment of Nancy Snow and Wanda Sang to the Election Commission, terms to expire December 31, 2017
- e) Motion to ratify the Mayoral Reappointment of James Bahrenburg to District II of the Wheat Ridge Urban Renewal Authority dba Renewal Wheat Ridge, term to expire November 30, 2020
- f) Motion to appoint Elected Officials to Outside Agencies  
*CO Municipal League – Zachary Urban; Monica Duran, Alternate*  
*Police Seizure Fund – Larry Mathews*

Councilmember Pond introduced the Consent agenda.

Motion by Councilmember Pond to approve the consent agenda; seconded by Councilmember Fitzgerald; carried 7-0.

### **PUBLIC HEARINGS AND ORDINANCES ON SECOND READING**

- 2. Council Bill 28-2015 – an Ordinance Approving a Zone Change from Restricted Commercial (RC) to Mixed Use-Neighborhood (MU-N) for property located at 4340 Harlan Street (Case NO. WZ-15-08/Lightway)

Councilmember Urban introduced Council Bill 28-2015.

Rezoning is the first step in the process for redevelopment. All further site plan review will be done administratively with no additional public hearing required.

Clerk Shaver assigned Ordinance 1589.

Mayor Jay opened the public hearing and swore in Meredith Reckert.



Staff presentation

Ms. Reckert entered into the record the comprehensive plan, the zoning ordinance, the case file and packet material and contents of the digital presentation. She testified that all notification and posting requirements have been met.

Ms. Reckert explained the reason Mixed Use Zones were created in 2010 was to provide a predictable and streamlined development process. The process involves a neighborhood meeting, Planning Commission hearing, City Council public hearing and administrative review of site plans. Property owners and developers liked Mixed Use because it provides flexibility with land uses, minimal expenditures up front and a predictable schedule. It encourages medium density mixed development and allows for a range of commercial, retail and residential uses.

The property in question is 11,000 sf and has most recently been an antique store. The parking lot will be resurfaced but no other changes are planned. The zone change is necessary to allow the owner to locate a satellite day care facility of Lightway at Sloans in Edgewater. Ancillary office and residential uses are anticipated. No one came to the neighborhood meeting and staff has received no notice of concerns. All agencies can serve the property. The Planning Commission had a hearing and recommends approval.

Staff recommends approval for the following reasons:

- The zone change promotes the health, safety and welfare of the community, with no significant adverse effects.
- A zone change to MU-N is supported by the adopted plans.
- MU-N is compatible with the surrounding area.
- The criteria used to evaluate a zone change supports the request.

There was no public comment or discussion/questions from Council.

Mayor Jay closed the public hearing.

**Motion** by Councilmember Urban to approve Council Bill 28-2015 – an ordinance approving a zone change from Restricted Commercial (RC) to Mixed Use-Neighborhood (MU-N) for property located at 4340 Harlan Street (Case NO. WZ-15-08/Lightway) on second reading and that it take effect 15 days after final publication for the following reasons:

1. City Council has conducted a proper public hearing meeting all public notice requirements as required by Section 26-109 of the Code of Laws.
2. The requested rezoning has been reviewed by the Planning Commission, which has forwarded its recommendation.
3. The requested rezoning has been found to comply with the "criteria for review" in Section 26-112-E of the Code of Laws;

seconded by Councilmember Davis.

Councilmember Davis asked about space for a playground. Ms. Reckert testified there is space in the back yard for that and all state requirements for day care would be required.

The motion carried 7-0.

3. Council Bill 29-2015 – an Ordinance Approving the Rezoning of property located at 10590 W. 44th Avenue from Planned Commercial Development (PCD) to Mixed Use-Neighborhood (MU-N) (Case No. WZ-15-04/Golabek).

Councilmember Wooden introduced Council Bill 29-2015.

The applicant is requesting a zone change to expand the permitted uses, including residential. Following the zone change all further site plan review will be administrative.

Clerk Shaver assigned Ordinance 1590.

Mayor Jay opened the public hearing and swore in Ms. Reckert.

Staff presentation

Ms. Reckert entered into the record the comprehensive plan, the zoning ordinance, the case file and packet material and contents of the digital presentation. She testified that all notification and posting requirements have been met.

The property is a .45-acre plot on the corner of 44<sup>th</sup> & Moore Street. In 2001 the property was rezoned with the intent to develop into a garden center. The applicant wants MU-N zoning so it can include residential with any possible commercial uses. There have been no concerns from the neighborhood. All agencies can serve the property. Further site plan review will be done by staff.

Staff recommends approval for the following reasons:

- The zone change is consistent with the comprehensive plan.
- Increased uses will benefit and may serve as a catalyst for other investments in the area.
- The criteria used to evaluate a zone change supports the request.

Mayor Jay closed the public hearing.

**Motion** by Councilmember Wooden to approve Council Bill 29-2015 - an Ordinance Approving the Rezoning of property located at 10590 W. 44th Avenue from Planned Commercial Development (PCD) to Mixed Use-Neighborhood (MU-N) (Case No. WZ-15-04/Golabek) on second reading and that it take effect 15 days after final publication for the following reasons;

1. City Council has conducted a proper public hearing meeting all public notice requirements as required by Section 26-109 of the Code of Laws.
2. The requested rezoning has been reviewed by the Planning Commission, which has forwarded its recommendation for approval.
3. The requested rezoning has been found to comply with the "criteria for review" in Section 26-112-E of the Code of Laws."

Seconded by Councilmember Hoppe; carried 7-0.



Mayor Jay opened a public hearing for Items 4-7.

To minimize potential negative impacts of HB-1348, staff is recommending a substantial modification to the City's four Urban Renewal Plans. Modifying the plans prior to January 1, 2016 will allow Urban Renewal to continue using tax increment financing (TIF) in the plan areas under current law rather than the new regulations of HB-1348 which takes effect January 1, 2016.

4. Resolution No. 48-2015 – Approving a substantial modification to the Wadsworth Boulevard Corridor Redevelopment Plan to allow for the utilization of Tax Increment Financing

Councilmember Pond introduced Resolution No. 48-2015 and read an explanation of the issue covered by these resolutions.

5. Resolution No. 49-2015 – approving a substantial modification to the West 44<sup>th</sup> Ave. Ward Road Redevelopment Plan to allow for the utilization of Tax Increment Financing

Councilmember Wooden introduced Resolution No. 49-2015.

6. Resolution No. 50-2015 – approving a substantial modification to the I70/Kipling Corridors Urban Renewal Plan to allow for the utilization of Tax Increment Financing

Councilmember Wooden introduced Resolution No. 50-2015.

7. Resolution No. 51-2015 – approving a substantial modification to the 38<sup>th</sup> Avenue Corridor Redevelopment Plan to allow for the utilization of Tax Increment Financing

Councilmember Urban introduced Resolution No. 51-2015.

#### Staff presentation

Steve Art gave the staff presentation. He explained how these areas are set up to mitigate blight. He noted uncertainties and ambiguity acknowledged by the sponsor of HB 1348 and the Governor. HB 1348, [*passed in the recent legislative session*] requires adding new members to the URA board to include:

- 1 from the County
- 1 from the school district
- 1 from another taxing district.

Mr. Art said we want to avoid making these people come to URA meetings unnecessarily. HB 1348 also requires Impact Reports and a negotiation process with all taxing entities.

Mr. Art outlined the "substantial modification" process. There will be no changes to property taxes or changes to any properties. All property owners, residents and business owners were notified; the Plan and Impact Report have been submitted to the County and the school district; posting requirements have been fulfilled.

Mr. Art stated that what is being asked for tonight is the start of the 25 year TIF clock on all the plans. No specific activity is considered with this action.

Ann Ricker of Ricker/Cunningham, an urban renewal consultant, gave a presentation highlighting the intent of the four existing urban renewal areas:

- Wadsworth Boulevard
- West 44<sup>th</sup> Avenue and Ward Road
- I-70/Kipling Corridor
- 38<sup>th</sup> Avenue Corridor Redevelopment Plan (less the NW corner of 38<sup>th</sup> & Upham)

#### Public Comment

**Karen Case** (WR), owner of property near 38<sup>th</sup> & Eaton, said other than a letter about this hearing there has been no neighborhood meeting. Neighbors didn't know about this action and didn't know about the hearing. It was determined that Ms. Case's concerns were about the modification to the 38<sup>th</sup> Ave Corridor Plan – Items 8 and 9. Mr. Goff explained there is no rezoning happening – only an amendment to the plan to allow TIF to start. Ms. Case said when 41<sup>st</sup> and Fenton was developed they were promised neighborhood meetings, but there were none. Mr. Goff assured her the City follows proper procedures, but she suggested that follow-through by the City is not always happening. Councilmember Hoppe told Ms. Case the town hall meeting for the design of 38<sup>th</sup> Avenue would be on January 14 at the Rec Center.

Mayor Jay closed the public hearing.

Motions for the resolutions followed.

#### Item 4

**Motion** by Councilmember Pond to approve Resolution No. 48-2015 a resolution approving a substantial modification to the Wadsworth Boulevard Corridor Redevelopment Plan to allow for the utilization of Tax Increment Financing; seconded by Councilmember Urban; carried 7-0.

#### Item 5

**Motion** by Councilmember Wooden to approve Resolution No. 49-2015 – a resolution approving a substantial modification to the West 44<sup>th</sup> Ave. Ward Road Redevelopment Plan to allow for the utilization of Tax Increment Financing; seconded by Councilmember Pond; carried 7-0.

#### Item 6

**Motion** by Councilmember Wooden to approve Resolution No. 50-2015 – a resolution approving a substantial modification to the I70/Kipling Corridors Urban Renewal Plan to



allow for the utilization of Tax Increment Financing; seconded by Councilmember Duran; carried 7-0.

Item 7

**Motion** by Councilmember Urban to approve Resolution No. 51-2015 – a resolution approving a substantial modification to the 38<sup>th</sup> Avenue Corridor Redevelopment Plan to allow for the utilization of Tax Increment Financing; seconded by Councilmember Hoppe; carried 7-0.

Mr. Goff explained there would be one staff report for Items 8, 9, and 10.

8. (Original Item 9) Resolution No. 53-2015 – A Resolution approving a non-substantial modification to the Wheat Ridge Town Center Project Urban Renewal Plan

In order to facilitate the redevelopment of the northwest corner of 38<sup>th</sup> & Upham, staff recommends the 4.5 acres be removed from the Town Center Plan and become a new, separate plan. The Town Center Plan is 30 years old and has already used TIF.

9. (Original Item 8) Resolution No. 47-2015 – approving the West End 38 Urban Renewal Plan and finding that the West End 38 Urban Renewal Plan area is a blighted area, designating such area as appropriate for an Urban Renewal Project pursuant to the West End 38 Urban Renewal Plan, and finding that the acquisition, clearance, rehabilitation, conservation, development, redevelopment, or a combination thereof of such area is necessary in the interest of the public health, safety, morals, and welfare of the citizens of the City of Wheat Ridge

This resolution forms a new urban renewal plan area called West End 38 for purposes of developing the northwest corner of West 38<sup>th</sup> and Upham Street. The Plan, which allows for tax increment financing for the project, is adopted by the City Council and implemented by the Urban Renewal Authority.

10. Resolution No. 54-2015 – concerning the proposed redevelopment at the Northwest Corner of West 38<sup>th</sup> Avenue and Upham Street, and authorizing a Cooperation Agreement in connection therewith

The Urban Renewal Authority has entered into a Redevelopment Agreement with West End 38 LLC (West End) for a mixed use project at the northwest corner of 38<sup>th</sup> & Upham. The Cooperation Agreement authorizes tax increment financing of \$4.8M to help fund public improvements. Approval of a Cooperation Agreement between Urban Renewal and the City is required to establish the obligation of both parties related to collection and distribution of incremental sales tax revenue.

Councilmember Davis introduced Resolution No. 53-2015, Resolution No. 47-2015, and Resolution No. 54-2015

Mayor Jay opened the public hearing [required for Resolution No. 47-2015].

Staff presentation

Mr. Art presented the West End 38 URA Plan involving parcels at 38<sup>th</sup> & Upham. These parcels are currently part of the Town Center Plan (Safeway and Ross areas) which has already used TIF. The request is to remove these parcels and create a new area.

Although not part of this request, Mr. Art briefly summarized the current proposal for the space. It includes 150 market rate rental units, 13,800 sf of commercial space oriented to 38<sup>th</sup> Avenue, a new Vectra Bank building, a public plaza and structured parking.

Mr. Art testified that all requirements for the substantial modification process as outlined under Agenda Items 4-7 have been followed.

Mr. Art explained the resolutions:

Resolution 53 removes the parcels from the Town Center urban renewal area.

Resolution 47 adopts the West End URA Plan.

Resolution 54 is the Cooperation Agreement between the City and the URA.

Ann Ricker went through the Conditions Survey.

- She testified that the site contains 9 of 11 blight factors that will substantially impairs sound growth of the city, retard the provision of housing, or constitute an economic or social liability, and are a menace to public health, safety and welfare. Existing blight factors include:
  - b) predominance of defective or inadequate street layout,
  - c) faulty lot layout
  - d) unsanitary or unsafe conditions
  - e) deterioration of site or other improvements
  - f) unusual topography or inadequate public improvements or utilities,
  - h) existing conditions that endanger life or property by fire or other causes
  - i) building that are unsafe/unhealthy to live/work in
  - j) environmental contamination
  - k.5) substantial underutilization of site, buildings or other improvements
- The Plan includes 4 parcels (4.5 acres) and adjacent ROW that are owned by two entities -- Olive Street Development and Wadsworth Building Corp (Vectra Bank).
- The property is zoned MU-C (Mixed Use-Commercial).
- The project removes blight and is consistent with the Comprehensive Plan

Public Comment – none

Mayor Jay closed the public hearing.

Motions to adopt the resolutions followed.



(for new Agenda Item 8)

**Motion** by Councilmember Davis to approve Resolution No. 53-2015 – a Resolution approving a non-substantial modification to the Wheat Ridge Town Center Project Urban Renewal Plan; seconded by Councilmember Hoppe; carried 7-0.

(for new Agenda Item 9)

**Motion** by Councilmember Davis to approve Resolution No. 47-2015 – a resolution approving the West End 38 Urban Renewal Plan and finding that the West End 38 Urban Renewal Plan area is a blighted area, designating such area as appropriate for an Urban Renewal Project pursuant to the West End 38 Urban Renewal Plan, and finding that the acquisition, clearance, rehabilitation, conservation, development, redevelopment, or a combination thereof of such area is necessary in the interest of the public health, safety, morals, and welfare of the citizens of the City of Wheat Ridge; seconded by Councilmember Fitzgerald; carried 7-0

(for agenda Item 10)

**Motion** by Councilmember Davis to approve Resolution No. 54-2015 a Resolution concerning the proposed redevelopment at the Northwest Corner of West 38th Avenue and Upham Street, and authorizing a Cooperation Agreement in connection therewith; seconded by Councilmember Duran; carried 7-0.

## **DECISIONS, RESOLUTIONS AND MOTIONS**

11. Motion to reconsider Council Bill No. 22-2015 – an ordinance repealing and reenacting Article II of Chapter 9 and amending Article II of Chapter 17 of the Wheat Ridge Code of Laws to Regulate Smoking in Public Places

Councilmember Fitzgerald introduced Item No. 11.

On October 12, 2015, Council adopted an ordinance which:

- Aligned the city code with the Colorado Clean Indoor Air act (CCIAA),
- Broadened the definition of "smoking",
- Prohibited smoking in all City parks and facilities,
- Prohibited smoking at transit stops,
- Permitted smoking in outdoor patio areas of restaurants and bars,
- Prohibits hookah bars, and
- Reaffirms the City's prohibition of open and public consumption of marijuana and the operation of marijuana clubs.

Following adoption, the Council heard additional comments related to "specialty vaping stores", addressed it at a study session and directed the following changes be made:

- Delete the terms "including liquid" from the definition of *tobacco*
- Create a new category of business – "*specialty vaping store*", where smoking, including vaping of liquids, would be permitted.
- Make necessary conforming amendments to accomplish these changes.

Mr. Dahl elaborated on the purpose for the reconsideration and the resultant changes. He reported that similar changes exist in Arvada and they report no problems related to the special vaping stores.

**Public Comment**

**Katherine York** (Lakewood) said she is happy with the allowance of testing in vapor shops and thanked the Council.

**Cindy Gallespie** (WR) thanked Council for listening to their requests.

**Sean Johnson** (Lakewood) shops at one of the local vape shops and appreciates being able to test different flavors.

**Kevin Price** (Littleton) thanked the Council for a reasonable solution. He noted that e-cigarettes in the United Kingdom are supported by the government, and that pharmaceuticals and big tobacco don't support vaping because it hurts their business.

**Todd Dempser** (Arvada), owner of the vape store in Arvada that Mr. Dahl visited, suggested there are misconceptions about vaping. He said people who vape don't want smoking because they are all ex-smokers, and they have nothing to do with marijuana. They want healthier environments and are on the same side as the Council.

**Mike Sawyer** (Lakewood), police officer in a mountain town, shared his story as a former smoker who vapes. He thanked the Council for making these changes.

Mr. Dahl suggested striking the parenthetical phrase in section 9-24 that reads "including vaping of liquids".

**Motion** by Councilmember Fitzgerald to reconsider Council Bill No. 22-2015, Ordinance No.1584, Series of 2015, – an ordinance repealing and reenacting Article II of Chapter 9 and amending Article II of Chapter 17 of the Wheat Ridge Code of Laws to regulate smoking in public places, and further to amend and readopt the same upon reconsideration in the form provided by the City Attorney, with the deletion of "(including vaping of liquid)" in section 9-24(11); seconded by Councilmember Pond.

Brief discussion followed. It was noted that buildings for cigars, cigarettes and vaping do not require special ventilation systems.

The motion carried 7-0.

12. Motion to accept Right-of-Way and Temporary Construction Easements from adjacent property owners along Tabor Street between 49<sup>th</sup> Avenue and Ridge Road



This action accepts three of the five required rights-of-way necessary for the widening of Tabor Street (north of 49<sup>th</sup> Avenue) and the addition of bike lanes and sidewalks. The project is partially funded with federal money. The City's right-of-way consultant, H.C. Peck & Associates, used the Federal Uniform Act to acquire the necessary properties. Acceptance of the other two rights-of-way is expected on January 11, 2016.

Councilmember Wooden introduced Item No. 12

There was no staff report. Council had no questions.

**Motion** by Councilmember Wooden to accept Right-of-Way and Temporary Construction Easements from adjacent property owners along Tabor Street between 49th Avenue and Ridge Road; seconded by Councilmember Duran; carried 7-0.

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

**Mr. Goff** played the first of the City's new promotional videos advertising the public process to design 38<sup>th</sup> Avenue. This video and others like it will air on Channel 8, the City website and other social media. Interviews with some groups are ongoing. The first town meeting will be January 14 from 6-8pm at the Rec Center. ~ It was pointed out that the three public meetings are all different and build on each other, so interested parties should plan to attend all three meetings if possible. ~ A mailer is also planned.

### **CITY ATTORNEY'S MATTERS**     none

### **ELECTED OFFICIALS' MATTERS**

**Monica Duran** read a response to comments at the last two meetings about the recent election in District 1 and on ballot question 300. She believes councilmembers should include public input in their decision-making process and that all people's opinions are important -- whether they're on a board or commission or not. ~ She addressed one councilmember's statements about the percentages and vote counts in District 1 in the elections of 2013 and 2015. Unmentioned was the fact that in both cases incumbents were not re-elected. ~ She was elected fair and square and deserves the same respect afforded previous incumbents. The election is over; the voters have spoken in District 1 and on 300. Eulogies of past councilmembers and fear tactics about 300 should stop. ~ She cited another councilmember who has called for civility, but uses profanity on the dais, in emails and at public meetings. At the last Council meeting this councilmember eulogized a councilmember who wasn't re-elected, read a poem and labeled people who have different opinions as "bullies" -- then called a point of order on Ms. Duran when she started to read a short comment. ~ Ms. Duran invited councilmembers to show respect for the office they hold and the citizens they represent, and to join her in repairing relationships with the citizens and mending fences with the people.

**Janeece Hoppe** announced that she and Monica Duran will be having a meeting with District 1 folks on January 27 at Clancy's from 6-8:30pm. People are invited to come meet their new councilmembers.

**George Pond** wished everyone happy holidays and a happy new year.

**Kristi Davis** wished everyone a happy holiday.


**Mayor Jay** noted that plans are being made for a Council retreat in 2016. No date is set yet. ~ She wished everyone a Merry Christmas and happy holidays.

### **ADJOURNMENT**

The meeting was adjourned at 9:02 pm.

  
Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON January 11, 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.