

CITY COUNCIL MINUTES

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

February 22, 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; Community Development Director, Ken Johnstone; Public Works Director, Scott Brink; other staff, guests and interested citizens.

APPROVAL OF MEETING MINUTES OF January 25, 2016

There being no objection, the Meeting Minutes for January 25, 2016 were approved as published.

PROCLAMATIONS AND CEREMONIES

STEAM presentation

Mayor Jay read a proclamation honoring the WRHS STEAM team for the sculpture it is planning to build and install in the community. Members of the STEAM team were present with a ¼ size model of the sculpture – an aluminum and steel interpretation of a hand and a tree. In connection of the theme of "Hope" inspired by Freddie Steinmark, the piece will be located on the Lutheran Medical campus in front of the infusion center. The hand itself will be 6 feet tall. Student **Amy Leasure** spoke for the group of student who were present and pictures were taken. **Diane Robb**, chair of the WR Cultural Commission, commended the group and reported that each student on the team will receive a copy of the proclamation

CITIZENS' RIGHT TO SPEAK

Michael Illo (WR) recalled the WR Listens slogan before last fall's election. Now that the election's over he doesn't feel the council majority is listening. The city voted against narrowing 38th Ave, but rather than listen to them you've discredited them, claimed they didn't understand what they were doing, wasted more time/money achieving not much and continue to push for a design that people voted against. You say the road width

won't change, but the planning sessions clearly push in that direction. Now you refuse to represent your constituents on measure 300 saying the ballot wording was flawed. The people feel the flaws are in the Quadrant lawsuit. A citizen majority disagrees with what the Council majority wants. The Council majority wanted 300 to fail; now you're letting personal preference override your civic duty, kissing up to special interests and exhibiting a derogatory position towards voters. How ironic this is looking back at WR Listens.

APPROVAL OF AGENDA

ORDINANCES ON FIRST READING

1. Council Bill 04-2016 – An Ordinance Vacating the western 19 Feet of Marshall Street, adjacent to 4901 Marshall Street within the City of Wheat Ridge, County of Jefferson, State of Colorado (Case No. WV-16-01/Marshall Street Vacation)

This request is occasioned by the application for a Planned Building Group by adjacent property owners. Staff review has determined this portion of Marshall Street is not necessary to retain for any future public use as construction of I-70 and I-76 has made any future expansion of Marshall Street unlikely. The staff report and minutes from the February 18, 2016 Planning Commission public hearing will be included for Council's review for second reading.

Councilmember Urban introduced Council Bill 04-2016.

Motion by Councilmember Urban to approve Council Bill 04-2016, an ordinance vacating the western 19 feet of Marshall Street, adjacent to 4901 Marshall Street within the City of Wheat Ridge, County of Jefferson, State of Colorado on first reading, order it published, public hearing set for Monday, March 28, 2016 at 7:00 pm in City Council Chambers, and that it take effect 15 days after final publication; seconded by Councilmember Davis; carried 8-0.

DECISIONS, RESOLUTIONS AND MOTIONS

2. Resolution No. 17-2016 a Resolution approving a Development Agreement for the Fruitdale School Property

Hartman Ely Investments (HEI) plans to convert the Fruitdale School into about 16 apartments. A public-private partnership is necessary, but staff believes there is broad and diverse public benefit to be gained. The development agreement with HEI calls for the City to commit a \$1.9M short-term loan and \$470,000 in a grant that would not be repaid. Additional funds will come from the WR Housing Authority, Jefferson County (HUD HOME funding), and energy and historic preservation tax credits.

Councilmember Wooden introduced Resolution No. 17-2016.

Staff Report

Mr. Dahl reported that Council has approved the term sheet. This development agreement, while longer and more complex, is faithful to the term sheet.

Council questions

- Councilmember Duran inquired about availability of funds. Mr. Goff indicated the City Treasurer has set up a separate account for this with monies received for the Kipling Trail grant. In this account the City will get 1.5% interest.
- Councilmember Fitzgerald had some questions about details in the text of the agreement.
- Councilmember Mathews expressed concern about how much taxpayer money is going into this private project.

Motion by Councilmember Wooden to approve Resolution No. 17-2016, a resolution approving a Development Agreement for the Fruitdale School Property; seconded by Councilmember Fitzgerald; carried 7-1, with Councilmember Mathews voting no.

3. Motion to award the 2016 Crack Seal Project to Precise Striping, LLC, Frederick, Colorado, in the amount of \$116,400 with a contingency amount of \$5,820, and authorize the Director of Public Works to issue change orders up to a total contract and contingency amount of \$122,220.

This budgeted project is the first of three preventative maintenance projects for 2016. The other two projects will be slurry seal and asphalt overlay.

Councilmember Pond introduced Item No. 3.

There was no staff report.

Council questions

- Mr. Brink explained that streets are prioritized with the use of a software program and staff prioritization.
- Dover Street south of 41st is scheduled for slurry seal this year. Drainage would be another project.

Motion by Councilmember Pond to award the 2016 Crack Seal Project to Precise Striping, LLC, Frederick, Colorado, in the amount of \$116,400 with a contingency amount of \$5,820 and that the Director of Public Works be authorized to issue change orders up to a total contract and contingency amount of \$122,220; seconded by Councilmember Mathews; carried 8-0.

4. Motion to approve the Slurry Seal Project Contract Renewal with A-1 Chipseal Company, Denver, CO in the amount of \$114,865 and to approve a

contingency amount of \$5,750 and that the Director of Public Works be authorized to issue change orders up to a total contract and contingency amount of \$120,615.

This budgeted project is the second preventative maintenance project scheduled for 2016.

Councilmember Hoppe introduced Item No. 4.

There was no staff report.

Council questions

Slurry seal lasts for several years. How much we do in a given year fluctuates up and down depending on the year and the budget. Slurry seal does have benefit.

Motion by Councilmember Hoppe to approve the Slurry Seal Project contract renewal with A-1 Chipseal Company, Denver, CO in the amount of \$114,865, with a contingency amount of \$5,750 and that the Director of Public Works be authorized to issue change orders up to a total contract and contingency amount of \$120,615; seconded by Councilmember Duran; carried 8-0.

5. Motion to approve appointments to Boards and Commissions

Mayor Jay introduced Item No. 5.

Motion by Councilmember Duran to approve the following appointments in District 1:

- **Betty Jo Page** to the Board of Adjustment, term ending March 2, 2019
- **Robert Alldredge** to the Liquor Authority, term ending March 2, 2019
- **David Kueter** to the Parks & Recreation Commission, term ending March 2, 2019
- **Alan Bucknam** to the Planning Commission, term ending March 2, 2019

seconded by Councilmember Hoppe; carried 8-0.

Motion by Councilmember Urban to approve the following appointments in District 2:

- **David Kuntz** to the Board of Adjustment, term ending March 2, 2019
- **Robert Phillips** to the Building Code Advisory Board, term ending March 2, 2019
- **Scott Ohm** to the Planning Commission, term ending March 2, 2019

and to postpone the appointment to the Liquor Authority;

seconded by Councilmember Davis; carried 8-0.

Motion by Councilmember Fitzgerald to approve the following appointments in District 3:

- **John Miks** to the Liquor Licensing Authority, term ending March 2, 2019
- **Emery Dorsey** to the Planning Commission, term ending March 2, 2019
- **Bobbi Rubingh** to the Cultural Commission, terms ending March 2, 2017;
- **Jerith Gronski** to the Cultural Commission, terms ending March 2, 2018;

seconded by Councilmember Pond; carried 8-0

Motion by Councilmember Wooden to approve the following appointments in District 4:

- **Claudia Worth** to the Liquor Authority, term ending March 2, 2019,
- **Janet Leo** to the Planning Commission, term ending March 2, 2018;

and to postpone appointment to the Cultural Commission;

seconded by Councilmember Mathews; carried 8-0.

Motion by Mayor Joy to appoint Nicole Kathleen Carter as Jefferson County Library Liaison; seconded by Councilmember Wooden.

Mr. Dahl advised that a motion to ratify a mayoral appointment should be made by a councilmember.

Motion by Councilmember Hoppe to ratify the mayoral appointment of **Nicole Kathleen Carter** as Jefferson County Library Liaison; seconded by Councilmember Wooden; carried 8-0.

6. A motion to direct the City Attorney to defend Count 2, the constitutional claim, in the Quadrant litigation

Councilmember Duran introduced Item 6.

At the February 8, 2016 regular Council meeting Councilmember Duran made a motion, seconded by Councilmember Urban, to direct the City Attorney to defend Count 2 (the constitutional claim) in the Quadrant lawsuit. Subsequently, a motion by Councilmember Hoppe to table the vote on Ms. Duran's motion until February 22, 2016 passed.

On February 8, 2016 the City Attorney filed the City's answer in the Quadrant litigation. As directed by City Council in executive session the answer defends Count 1 (the administrative/legislative claim) and remains neutral on Count 2 (the constitutional claim). The City is permitted to amend its Answer.

Staff report

Mr. Dahl advised that Councilmember Duran's motion is now off the table and back before the Council. The motion is pending and debate can resume.

Public comment

Charlie Myers (WR) On behalf of Citizens for an Inclusive Wheat Ridge (CFIWR) Mr. Myers read a portion of an amendment in its original filing in District 1 Court outlining why they feel the Quadrant lawsuit is unfounded and incorrect in its entirety. Quadrant claims ballot question 300 is an ex post facto law and is unconstitutional. CFIWR notes the ex post facto clause forbids governing bodies from passing retroactive criminal and civil laws; it does not refer to the electorate. The TIF reform that voters passed does not deny the development; neither does it criminally punish conduct that was lawful when it was done.

Maureen Daly (WR), representing CFIWR, read further from the CFIWR filing with a definition of an ex post facto law. It 1) makes a previously legal conduct criminal, and

punishes it, 2) makes a crime greater than it was when it was committed, 3) changes the punishment and inflicts a greater punishment, or 4) alters the legal rule of evidence and receives less for different testimony than the law required at the time. All such laws are unjust and oppressive, but Count 2 of Quadrant's lawsuit is unfounded. The constitutional clause refers to governmental bodies passing retroactive criminal or civil laws – not the electorate. The voters of Wheat Ridge have superior rights to amend their charter as a home rule city. CFIWR asks the Court to rule in favor of the City of Wheat Ridge and its voters on Counts 1 and 2.

Robert Alldredge (WR) expressed that he doesn't know enough about this issue to make arguments for or against. He sees three issues: anti-Walmart, TIF approval over \$2.5M, and the retroactivity. If he had been more involved early on he would have had yard signs opposing it. He believes it's done citizens a disservice; we're spending thousands on attorney's fees; and it's created an image in the construction/development industry that is not what we want.

Vivian Vos (WR) read a letter for/by Mariann Storck. It quoted part of question 300 (passed by the citizens) as it now appears in the Charter, and quoted the ordinance directing councilmember to take an oath to support the charter and ordinances of the City. Councilmember aren't monarchs or dictators, but are representatives elected to serve the will of the people. Those who've chosen to remain neutral on Count 2 of Quadrant's lawsuit have decided their oath of office is irrelevant. She asked Council to affirm their oath by directing the City Attorney to defend Count 2. She noted there are precedential cases in Jefferson County to support a position of retroactivity. ~ Ms. Vos noted she agreed with the statement and asked what a "neutral action" consists of and how it speaks to this situation.

Discussion followed.

- Councilmember Mathews stressed that Council has been losing credibility; Council should listen to and represent the will of the people and support the Charter.
- Councilmember Duran referenced the Community Exchange group and feels Council should listen to and support the voters.
- Councilmember Davis noted Council had to factor in information presented to them as part of the attorney-client relationship. She said a judge will decide.
- Councilmember Fitzgerald believes this is the sixth time Council has discussed this. It's a done deal -- Council has already given direction to the attorney. It makes no sense to change our stance. He doesn't understand why we're going through this again. He feels Count 2 is unconstitutional and his first oath is to support the Constitution of the United States.
- Councilmember Urban expressed that he feels it would be better to present the best defense we can, knowing a judge will make the decision.
- Councilmember Mathews would like to see what comes out in discovery. Ballot question 300 came to the Council before it made the agreement to sign the contract [with Quadrant]. There was advanced notice this was coming; signs were all over. Quadrant knew they were taking a risk. We need to defend this fully.
- Councilmember Duran reminded councilmembers their oath includes upholding our Charter and ordinances. Citizens drove this initiative because they felt they

weren't being listened to by the Council. We should let citizens know we have their back. A judge will decide, and we'll live with that, but regardless of what was said in executive session the right thing to do is to defend our citizens.

- Councilmember Wooden asked for a general description of what a neutral stance is. Mr. Dahl explained that per Council's direction the answer he filed states that the City takes no position as to whether Question 300 is unconstitutionally retrospective.
- Mayor Jay expressed anger that Council is being pressured into decisions based on political assertions that we aren't listening, that we're not paying attention. This Council has worked very hard at these decisions. They don't want to oppose it; they want to remain neutral. It may or may not be right, but this is the kind of dissension that continues with our City, and when kept at the top keeps it up below. The divisiveness that this type of action continually causes is not good for our City, is not good for the developers who'd like to work with us. She'd like Council to vote and then let it go. To keep beating up on each other is, to her, really unkind.

There being no further discussion a vote was taken on Councilmember Duran's motion from February 8, 2016 to direct the City Attorney to defend Count 2, the constitutional claim in the Quadrant litigation.

The motion failed 3-5, with Councilmembers Wooden, Fitzgerald, Davis, Pond, and Hoppe voting no.

DISCUSSION ITEMS

1. Self-Storage Developments ~ Ken Johnstone

With one application in progress and two applications pending, staff would like to know if Council is interested in implementing any policies regarding self-storage units.

The following issues were presented:

- Two story units are usually climate controlled and are used for storage of records.
- Single story units tend to be for personal items.
- The use presents low impact for traffic, no crime trends, and no high demand on City services.
- The City could have attractive standards (e.g. brick vs metal)
- Proliferation: Market demand can be addressed by limiting the number.
- They do tend to locate in lower cost real estate areas such as industrial, however we've wanted to encourage employment based development in those areas. (The TOD site could be a concern.)
- Other jurisdictions regulate this land use.
- Options include
 - Restricting zoning
 - Creating an approval process
 - Ramping up architectural and landscaping requirements

- Regulations on operational issues such as hours of operation and out of state management

What is Council's threshold of concern?

Discussion followed. We have two self-storage facilities now. There was general support for architectural standards, operational guidelines and a reasonable limit on the number of such facilities in the City.

Councilmember Davis received consensus to direct Mr. Johnstone to pursue regulatory guidelines.

2. Snow Removal Policy ~ Scott Brink

The current policy is that adjacent properties are responsible for removing snow from sidewalks. We don't have it in our code so people don't get tickets. Mr. Brink highlighted the issues of enforcement, high traffic areas, businesses, contract services and the possibility of special service districts.

Discussion followed.

- Mixed support on the Council for an ordinance
- An ordinance should be for businesses and residences too
- Commercial corridors should be addressed first
- Reach out to businesses and residential areas
- Work with business owners on a volunteer basis
- Some residential properties have special circumstances. (e.g on an arterial street, but don't face that street)
- Sometimes people shovel and the City plow redeposits snow on the walk
- Council should see an accompanying budget for anything proposed to be enacted
- We should help each other; give warnings, not fines
- Concern expressed for senior population who may not be able to comply
- Bus stops are a concern
- Most complaint calls are concerning businesses and rentals
- Suggestion to have an award for businesses that do a good job in snow removal
- Encourage volunteerism; have a way to report problems (a hotline)
- Give 24 hours to shovel, but don't give citations

Staff will bring something back to the Council.

3. Kipling Village Proposed Streetscape Improvements ~ Scott Brink

The owners of Kipling Village Apartments (4665, 4635, and 4551 Kipling) have come in with a landscaping plan to improve their parking lot along Kipling. They'd like to remove the City-installed brick wall with wheat panels, which do need some maintenance. The

sidewalk and street lights would not be impacted. The cost would be borne by the property owner.

Discussion followed.

There was no objection to the removal of the wall. There was support for reuse (here or elsewhere in the City) of the wheat panels.

CITY MANAGER'S MATTERS

Mr. Goff mentioned the new City website is up and running. Citizens are encouraged to check it out and offer comments. There's a link and a phone number. We want to make it as user-friendly as possible.

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

Janelle Shaver commented that many of the issues Council addresses have been discussed at length by previous councils. She offered examples.

Monica Duran thanked the citizens who come in on Monday nights, and email or call to share their thoughts and concerns and offer input. We need and appreciate it; don't stop.

Janeece Hoppe enjoyed the smart growth conference; she has ideas to share.

Kristi Davis thanked the councilmembers who went to the smart growth conference. ~ She congratulated the students from the STEAM program who came in to show their sculpture. ~ She will be sending out a postcard with details about meeting with her. ~ With the difficult decisions today she wants folks to know the door is always open for people to reach out to her with questions and she'll answer them to the best of her ability.

Tim Fitzgerald said the smart growth conference was very meaningful and he feels overwhelmed with good ideas.

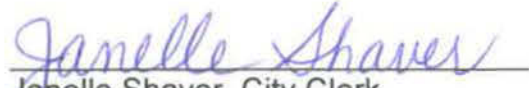
Larry Mathews announced a get-together for District 4 folks and anyone who'd like to come this Saturday at 9am at City Hall. Councilmember Wooden and he will be there

Genevieve Wooden announced that STEM/STEAM gala event tickets are available online on the Wheat Ridge High School's website. The event will include a silent auction and specialty cars.

Mayor Jay noted attending the smart growth conference – her third time to attend. She especially appreciated the information on climate change; we have a lot of works to do. She excited about possible advances for our City – new ways of doing things that are both ecologically viable and attractive.

ADJOURNMENT

The meeting was adjourned at 9:17 pm.



Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON March 14, 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.