

# CITY COUNCIL MINUTES

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

July 23, 2018

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	Monica Duran	Tim Fitzgerald	Kristi Davis
Larry Mathews	Leah Dozeman	George Pond	Janeece Hoppe

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 City Council Minutes of July 9, 2018 and Study Session Notes of June 18 and July 2, 2018

There being no objections, the City Council Minutes of July 9, 2018 and Study Session Notes of June 18, 2019 and July 2, 2018 were approved as corrected.

### CITIZENS' RIGHT TO SPEAK

**Chris Lewis** (Evergreen) was contacted by users of the Anderson baseball field to see if he would be is interested in offering a proposals for the new lighting, since the proposed lighting was not viewed as adequate for their level of play. Upon contacting the Parks Director he was told it was a sole source bid and not available to anyone else. He advised Council that sole source bidding is a very bad idea because there is no competition. Open bidding saves the City money. He is interested in offering a bid, but if the Director keeps it locked down, there is no point. Council should know they are not doing themselves any favors this way.

**Elizabeth Capritta** (WR) spoke against scraping houses and three-story houses. Hers is a third generation Wheat Ridge home. They consider WR a small town and like to that way. Two stories is acceptable, but three-stories with a flat roof is going to ruin our city.

**Carolyn Pearce** (WR) has lived here 41 years. They don't like the box houses coming in like they are doing in north Denver. We don't need that in WR. We have beautiful homes that have character. Please don't let them ruin our city. There needs to be some

restrictions to keep them from building right up to the 5 foot line and taking out the yards. Neighborhoods are being ruined. We voted you in to protect us; please do that.

**Dorothy Archer** (WR) is concerned with the representatives of our City doing rezoning for the benefit of developers. In District I it has been easy to buy a property, scrape it, and build 35 feet tall. Even with the 35ft bulk plane this is not a house. She asked again that this issue be brought to a study session and done correctly. Elected officials are to represent the citizens. When neighborhoods are allowed to change the way they are, something is wrong. We are not being represented. She referenced drawings submitted recently by Tom Slattery and an article she gave Council last meeting describing how homes in Wheat Ridge are in high demand, and people are looking for ranch homes. Why are you not protecting that? Why aren't two stories adequate? She directed Council again to look at the duplex at 33<sup>rd</sup> & Teller that is 27 feet with a sloped roof. It is very nice.

**Michael Epsom** (WR) recommended the bulk plane protections for District I be extended to District II. People are concerned about the coming of oversized houses that don't fit the character of the neighborhood. Besides the 15ft bulk plane limits, they would like to see a height restriction similar to Golden, Edgewater and Lakewood – who all have a 30ft height limit. Many prefer 27ft; he would like something under 30ft. He asked that someone on Council make a motion to study enacting a height limit of something under 30ft and extending the 15ft bulk plane to District II.

**Michael Griffith** (WR) expressed concern about security along the Carnation Parade route. He would like to see city vehicles parked at intersections along the parade route to prevent entry by weaponized vehicles or people with medical emergencies. He said the City of Breckenridge did this last month. If not this year, maybe next year.

## **APPROVAL OF AGENDA**

Mr. Dahl explained that during the Executive Session at the end of the meeting he would provide legal advice. Following that he would ask Council to reconvene into open session to take action giving staff direction on dealing with excess revenue obligations.

Councilmember Mathews asked if the matter could be discussed openly – rather than in executive session. Mr. Dahl said it could, if that is Council's pleasure.

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

1. Council Bill 17-2018 – An Ordinance approving the rezoning of property located at 9800 W. 38<sup>th</sup> Avenue from Residential-One (R-1) to Planned Residential Development (PRD) and for approval of an Outline Development Plan (ODP) (Case No. WZ-18-9/Laudick)

The change in zoning is requested to allow for increased residential density and the development of 8 duplexes (16 units) on the 1.28 acre parcel that is vacant and unplatted. The ODP depicts building locations and footprints, circulation, parking, building height and landscaping.

Councilmember Pond introduced Council Bill 17-2018.

City Clerk Shaver assigned Ordinance 1646.

Mayor Starker swore in the speakers.

**Staff Presentation – Meredith Reckert**

Ms. Reckert entered into the records the case file and packet materials, the zoning ordinance, the comprehensive plan, and the contents of the digital presentation.

- She recited the two step process for rezoning to a planned development.

Mayor Starker opened the public hearing.

- Ms. Reckert identified the location of the property with overhead maps and photos. It has 275 feet of frontage on 38<sup>th</sup> Ave. and 140 feet of frontage on Johnson St.
- The property slopes to the south and is bordered on the south by a drainage way that empties into Lena Gulch via a City-owned inlet on the west side of Johnson.
- The property is surrounded by parkland to the west, R-1 single family to the south and southeast, R-2A duplexes to the east, and R-2 to the north that contains single family and duplexes.
- Ms. Reckert highlighted the contents of the 2-page ODP.
  - A private drive would separate the two rows of residences, with access points at the northeast corner onto 38<sup>th</sup> and on the west side onto Johnson St.
  - Eight units to front onto 38<sup>th</sup> Ave; eight units to front south onto open space.
  - Parking: All units to have a 2-car garage that opens onto the private drive.
  - Overflow parking: 2 on-site spaces near the 38<sup>th</sup> Ave entrance, 4 on-site spaces just off Johnson Street, and 3 on-street spaces. [ODP identifies Visitor Parking as minimum 4 on-site spaces and off street parking created along Johnson St.].
  - Southern border of the property to be open space to provide for drainage.
  - Sidewalks: A 5ft sidewalk on the south side of the interior drive and an east/west sidewalk along the south side of the southern units.
- Drainage will run NE to SW to mimic the historic flow. An underground detention structure will be built on the south side of the property to move water under Johnson St. and ultimately to Lena Gulch.
- Public Works has reviewed the project and concluded that traffic from this site will not impact the neighborhood.
- The current R-1 zoning allows low density single family; the PRD proposes 8 duplexes (16 units). Both zones allow pets and in-home occupations.
- Ms. Reckert explained three reasons for the request for PRD:
  - There is a provision in the zoning code that if a property is over 1 acre, and is not being rezoned to Mixed Use or Industrial, it has to go to a planned development.

- The 20 foot grade change on the property is deemed to be a challenge.
- A PRD will allow the applicant to craft specific development standards.
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- Ms. Reckert related that this property is difficult to rezone.
  - The applicant lowered his request from 23 units down to 16 and broke them into separate duplexes (not row houses). Heights are limited, and some specific roof designs are required.
  - Mixed Use would allow 21 units per acre and not all the commercial uses allowed in MU are appropriate for this property.
  - Proximity to arterial streets makes low density residential questionable.
- Ms. Reckert outlined further differences in the current and proposed standards.
  - PRD can allow architectural standards for design and materials; R-1 cannot.
  - There would be no flat roofs, and there will be a 30% masonry requirement on the sides of the buildings that face public ROW or the open space (south units). R-1 could not require this.
  - Building heights can be 35ft in R-1 and PRD, but the applicant has restricted the south units to be designed as 2-stories only.
  - Setback requirements: R-1 requires 30ft front setbacks; this PRD proposes 15ft front setback from the plat boundary.
  - Density: R-1 allows 3.6 units per acre; this proposal is for 12 units per acre.
- If the zone change and ODP are approved, the next step would be application for a Specific Development Plan and plat to be approved only by Planning Commission.
- A neighborhood meeting was held on March 7. 15 neighbors attended. Two comment letter were received and are in the packet.
- All agencies can serve the property. The applicant must pay for infrastructure.
- Planning Commission heard this case and recommended approval.
- Ms. Reckert went through the zoning criteria.
  - Development of this property will promote health, safety and welfare and result in no adverse effects. The property is under-utilized and has had weed and dumping violations. This development will have a positive effect on the neighborhood aesthetically and for property values.
  - All agencies can serve the property when adequate infrastructure is provided.
  - Has there been a change in character that would encourage redevelopment?
  - While abutting neighborhoods are well established, commercial redevelopment has occurred at Kipling Ridge and at 26<sup>th</sup> & Kipling. Kipling carries 39K+ cars a day; 38<sup>th</sup> Ave. carries 13K+ cars per day. The City is invested in the Kipling Corridor; federal funds were used for the Kipling Trail.
- Based on increased traffic and development in the Kipling corridor, staff determines this property is less desirable for low density residential use. Additionally the PRD zoning provides a transition between 38<sup>th</sup> Ave. and the properties to the south and south-east.
- Regarding consistency with Comp Plan goals, objectives and policies:
  - This site is classified as "Neighborhood".
  - Everitt Middle School, Discovery Park and the Rec Center are anchors for this property.
  - The 38<sup>th</sup> & Kipling intersection is identified as a community commercial center.

- Duplexes will support the commercial uses and have convenient access to area recreational amenities.
- Other goals this will meet are: new housing choices, improving underutilized property, eliminating maintenance issues, and possibly be a catalyst for other improvements.
- Ms. Reckert entered into the record a legal protest that was filed this afternoon in the City Clerk's office. The 10 letters were verified to be a valid representation of 20% of the property owners within 100 feet of the development as required in Section 5.10 of the City Charter.
- Due to the legal protest 6 votes of Council will be required to approve the rezoning.

#### Applicant

**Nathan Laudick** (Arvada), the engineer and developer of the project, thanked the staff and the neighbors. He suggested a deal where no one is happy might be a good deal. He went through the various changes he made to try to satisfy neighborhood concerns.

- lowered the density from 23 units to 16 units, and changed from connected townhomes to separated duplexes
- He will require 30% masonry and sloped roofs. There will be no flat roofs allowed.
- With the 35 foot height limits the neighbors to the east will still be able to see over the roofs of both rows of units.
- He stated that 16 units is the lowest he can go and remain financially viable. Real estate agents he has talked to don't think four \$1M houses would sell here.

#### Public Comment

*[All speakers except Jane Harvey, Idella Lewis, Donald Barnes and Evan Smith live in the neighborhood of the property proposed for rezoning.]*

**Don MacDougall** (W. 37<sup>th</sup>) has lived south of this property since the 1960's. He used this and the property to the east to pasture his horses. In 2008 the owner of this property was told by the City that her property was designated as blight. She had many trees removed, including fruit trees. The City said it wasn't good enough, so she had all the trees cut down. Mr. MacDougall thinks the fruit trees were not blight, but a vacant plot is. The fences were removed so it could not be used as pasture. This development will change the ambiance of the neighborhood, and he is concerned about traffic.

**Margaret Nelson** (W. 37<sup>th</sup>) lives adjacent to this property, and doesn't think her comments before Planning Commission were represented very well. Her point is she was driven out of her home of 30 years in Denver due to the destruction of the neighborhood around her. She's been here 2 ½ years and spent considerable money upgrading her house. She knows if this type of zoning establishes a foothold in the neighborhood her home will only be worth the land it's on. She understands this property has to be developed, but doesn't want this high density.

**Douglas Linder** (Johnson St) has lived on Johnson for 15 years. He worries that if this rezoning is granted it will be the foothold to have this start happening all over Wheat

Ridge. Will every little piece of land around the city that folks want to develop become high density, and eventually becoming rentals?

**Eloise Newell** (34<sup>th</sup> Drive) read a letter from her neighbor, Pat Rausch, objecting to this rezoning because the increased traffic will impact the neighborhood and be a safety issue for the park. ~ Ms. Newell is concerned about congestion and safety for the school children who walk in the area. Kipling is already a nightmare three hours in the morning and three hours in the evening. She goes to Wadsworth to get on I-70. As a teacher for 35 years she's also concerned about more traffic next to the park where kids play.

**Theodosia Fedak** (Miller St.) supports the protest and gave her minutes to Fran Singer.

**Lourdes Weingardt** (Independence C.) moved here from N Denver 8 years ago because of what was happening with scraping, the building of monster houses, noise, congestion and lack of parking. She doesn't want that to happen here. She hopes Council will not support changing this from R-1 to something more dense - that could be scraped and then become even more dense in the future.

**Jane Harvey** lives in District IV and works at the Historic Park. She is against scraping and building big boxes. The Historical Society is working on a report on all the old homes in Wheat Ridge that were built before 1920.

**Donald Barnes** (Allison Ct) added his concerns about increased density and traffic. He also questioned if the setbacks on 38<sup>th</sup> Ave. are adequate if the road ever needs to be widened; the future should be considered. He believes the R-1 zone should remain.

**Delaine Novak** (38<sup>th</sup> Ave) lives directly across from the proposed exit onto 38<sup>th</sup>. She doesn't believe there's been a true traffic study for the area. The speed of people coming down from the east is bad. There needs to be a real study. Pulling out onto 38<sup>th</sup> is already bad during rush hour. Also, buildings so tall and so close to the street will make snow and black ice very dangerous. All the ambulances that travel here will be compromised by 3-story buildings that block the sun on the hill and prevent melting. Also, the noise from the ambulances will not be a very good quality of life for the residents.

**Jerry Wade** (W. 37<sup>th</sup> Ave) lives just south of this property. He walks both sides on this issue. Nobody wants change, but he thinks it's unrealistic to expect this won't be developed. With the concessions, he doesn't have an issue with it, compared to what it could be.

**Evan Smith** (Teller St) and his wife are new to WR. They moved here from N Denver to get away from the development; their home became surrounded by large houses that overshadowed it. Council should consider what height and spacing (from the road and between houses) do to a community. Lawns are important. In his experience, the 30% brick doesn't do much to blend with the surrounding neighborhood.

**Warren Butler** (W. 36<sup>th</sup>) has lived in the house he was raised in since 1999. He's seen changes in the neighborhood since 1958, but still thinks 16 units is too many. While 38<sup>th</sup> and Kipling, unfortunately, can probably both hold more traffic, two cars per unit is

32 more cars a day coming out onto 38<sup>th</sup> – which already has issues. Traffic will go elsewhere (37<sup>th</sup>, Independence, Holland) and impact those folks. He also has issues with only 6 visitor parking spaces, which will also impact the neighborhood and the park.

**Guy Stanfield** (W 37<sup>th</sup>) and **Henry & Becky Lewthwaite** gave their time to Ihor Figlus.

**Fran Singer** (36<sup>th</sup> Ave) said this is a perfect example of why Wheat Ridge was created – its residents didn't want to be part of the sprawl that was happening in Denver.

- Wheat Ridge residents should always be concerned about plans that try to bring in high density development that impacts the unique, less-urban character of our community.
- She reminded Council the Comprehensive Plan continuously refers to the need to maintain the balance between redevelopment in the corridors and preserving the character of its neighborhoods. There is no evidence the nearby neighborhood was considered; the developer was approved to put 23 units on a "single family" parcel.
- Every parcel and every neighborhood is different, so the focus should not be about what's allowable, but what's reasonable and beneficial for the area to be impacted.
- These neighbors are not anti-growth or anti-development for this parcel. They are concerned about unit density. She noted that Iris Court to the east has 5 duplexes (10 units) on a parcel about the same size. 16-23 units is out of character both for the neighborhood and for the multi-family development next door. The density of Iris Court would be far more acceptable.
- She suggested the staff plan made several unsubstantiated conclusion about the benefit of this development – such as stating this is a transition to the Kipling Corridor. The conclusion that this a good thing is faulty. Not one benefit to the neighborhood was identified -- only to future inhabitants, the developer and some businesses nearby.
- No balancing criteria was provided in the report. This neighborhood has successfully transitioned with Kipling for 48 years without this development.
- A critical element missing is a traffic report – which would address existing neighborhood traffic, Discovery Park traffic (which is greater than anticipated), and the rumored redevelopment of the Apple Ridge Café property. Johnson and other area streets were not designed for this much traffic; the safety concerns are real.
- This proposal has a general lack of integration with the existing neighborhood and should not be approved.

**Ihor Figlus** (W 36<sup>th</sup>) told Council the proposal is not in conformance with the Comprehensive Plan, which labels this parcel as "neighborhood" – not buffer or for revitalization. The number one priority of the Comp Plan is preservation of established neighborhoods. He read the definition of a stable neighborhood.

- Contrary to the report, changing the zoning of this property will create adverse effects on the adjacent neighborhood; the neighborhood believes this zone change is not warranted because it will create more traffic and have an adverse effect.
- He informed Council that data from the County shows that 38<sup>th</sup> & Johnson has 4 times the accidents as neighboring streets, but no one told them that.
- He went through the zoning criteria and pointed out how and why they are not met.

- This proposal does not bring the property into compliance with the Comp Plan. 2. The property is not within a commercial or recreational zone. 3. There have been no changes in the area that warrant this change; the commercial area to the west has always been commercial.
- He displayed a graphic that illustrated how the proposed lot size is drastically smaller than any lots to the north, south or east. This is not transition; it's blight.
- The applicant claims these will be starter homes. Starter homes don't fit in this area and they will bring a detrimental effect to area property values.
- He objected to this development having no driveways and almost no extra parking. There is no proposal to widen Johnson St, which isn't wide enough to accommodate this much new traffic and already has its own problems.
- Shade on 38<sup>th</sup> Ave will prevent ice/snow melt on the hill -- causing more accidents.

**Odarka Figlus** (34<sup>th</sup> & Miller) agrees with the neighbors. They've worked hard on this; there's a lot at stake here for them and for the city as a whole.

- It's important to look at what fits with, and helps preserve, the unique character of each neighborhood as called for in the Comprehensive Plan.
- Putting high density residential between low density and even lower density, and calling it a buffer, makes no sense. It sounds like spot zoning.
- Everything around this is zoned straight residential. There is no Planned Residential Development in the area. There's no reason the applicant could not have come in with a normal subdivision proposal.
- This developer didn't come from 23 units down to 16; he went from 5 units up to 16. This is a typical ploy -- ask for more than you want so when you come down it looks pretty good. But it's not pretty good because the infrastructure is not there.
- She asked Council to vote against this. She believes there are errors in the zoning document the applicant is presenting and he has not met the criteria. It's his responsibility to show how the criteria is met. Simply saying "This is beneficial," without providing any background is not sufficient. Anyone can make things up.
- Sincere testimony from the neighborhood clearly shows there are problems.
- To say "Single family won't work here," is false. Single family is being built all over; there is a need for it.
- The slope of the property is not a challenge -- it's an asset. This whole area is filled with houses built on sloped properties; it's part of the neighborhood's character.
- Putting in starter homes will not magically lift the housing values in the area.
- There are too many questions and unresolved issues; there's been no fulfillment of the obligation to show that criteria is being met.
- She reminded Council that state statutes say it is reasonable to turn down a rezoning to preserve neighborhood character and neighborhood density.

#### Council questions

Councilmember Fitzgerald asked Ms. Reckert about the parking. The 2 garages spaces per unit are all there is; there are no driveways. Prices of these homes? The applicant wasn't sure, but thinks \$475K to low \$500K. He said these aren't starter homes.



Councilmember Mathews asked about ownership. The applicant said when it's platted there would be property lines splitting the units.

Councilmember Pond asked for a summary of the density of adjacent properties. Per Ms. Reckert, R-1 is usually 3-4 units/acre; R-2 is 6-7. R-2A has a bit smaller lots (9-10 units/acre); Iris Court has a dedicated public street and they were granted a waiver and it is narrower than standard. R-3 is 12-14 units/acre. Regarding why no traffic study was done, Ms. Reckert said they don't have much on that – just general classifications. Johnson Street will be widened and the developer will be responsible for curb, gutter and sidewalk on the east side of Johnson – which will provide some on-street parking.

Councilmember Mathews described how Iris Court doesn't have enough parking and this site doesn't either. It's hard to justify this density in an R-1 neighborhood.

Councilmember Duran asked if the setbacks on 38<sup>th</sup> Ave were adequate. Ms. Reckert said it depends on what you consider adequate. Mixed Use zones allow even less than 15 feet. The buffer along 38<sup>th</sup> Ave is proposed to be 15 feet. Commercial setbacks can be zero. She also had no information on plans for Apple Ridge Café.

Councilmember Dozeman asked about the irrigation ditch.

- The applicant said the water rights were sold to Consolidated Mutual. The ditch is used as a backwash to clear debris from the line. He will tie it into a storm sewer on 38<sup>th</sup>.
- Regarding accidents on Johnson, Mr. Goff said he couldn't comment. He has texted the Police Chief.
- Mr. Johnstone said that based on Public Works' requirements, a traffic study was not triggered – only estimates of trip generation. The local streets were found to be adequate to handle the new traffic from 16 duplex units. He explained the math of it.
- Ms. Reckert added that the Police Department expressed no concerns about the projected numbers for added traffic.

Councilmember Urban asked about drainage. Ms. Reckert noted that at the Outline stage minimal information is given about that; it's mostly a concept plan. She indicated on the map where the detention area would be. The applicant said there would be arched underground chambers under the four guest parking spaces next to Johnson St.

Councilmember Davis asked for a comparison between this development and the recently approved development on Yarrow. Per Ms. Reckert, the Yarrow development is 89 units on 4.5 acres. This is 16 units on 1.2 acres. This is less dense.

Councilmember Dozeman asked how binding the architectural standards are – specifically related to flat roofs. Ms. Reckert said they are very binding. Any deviation would require a zone change.

Councilmember Urban asked how the private drive will be maintained. That has not been discussed since it is not a public street. An HOA would have to take care of the

drive and the drainage. The applicant said that a private drive was selected because a public street would take up too much property. He added that the fire department has signed off on this development. One fire hydrant will be installed at a place to be determined by the fire department.

Councilmember Dozeman asked about parking, specifically how much parking Johnston Street can provide. Ms. Reckert explained that single family requires four on-site spaces if there is no on-street parking, two if there is. Requirements for a PRD are somewhat less. In this development each unit will have two spaces – which will be in the garage; there are 6 extra spaces (for guests of the 16 units); there will also be 3 spaces available on Johnson Street.

Councilmember Davis asked about the County accident figures. Ms. Figlus said the accidents information is available on the Jefferson County website in a large database. Mr. Goff said the Chief has responded that he doesn't think 38 & Johnson is a very accident prone intersection.

Councilmember Mathews said he doesn't like the idea of these houses using Discovery Park for their parking.

Mayor Starker closed the public hearing.

**Motion** by Councilmember Pond to approve Council Bill 17-2018, an ordinance approving the rezoning of property located at 9800 W. 38th Avenue from Residential-One (R-1) to Planned Residential Development (PRD) and for approval of an Outline Development Plan on second reading and that it take effect 15 days after final publication; seconded by Councilmember Hoppe.

Councilmember Mathews commented that setback all along 38<sup>th</sup> Ave are 35 to 50 feet. Even the duplexes on Iris Court are set back more than 15 feet. This does not fit the character of the neighborhood.

Councilmember Duran said she has more questions than answers now – about safety, the neighborhood, and the future of Apple Ridge Café. She will be voting no.

Councilmember Fitzgerald said this is difficult because the people in the audience are his constituents. He believes this to be a case of something being half good and half bad. He doesn't think there's enough parking, but thinks this is a good use for this property. He doesn't think it's reasonable to expect that this property will have much lower density. He will grit his teeth and vote for this.

Councilmember Davis appreciates the folks who came in and people who think this will happen to their neighborhoods. However, this is what was approved for the Yarrow Court apartments. Some neighbors do think their voices were heard and changes were made. Regarding respecting the neighborhood and conforming, she noted duplexes are

right next to this, the roofs will be slanted, and the view of the people on Iris Street is being respected. Parking is always an issue, so she feels that's tough to regulate. She doesn't think it's reasonable to expect that anyone would buy a \$1M house there. She compared this to the recently approved development on Yarrow. She thinks the developer has made enough concessions. She will support this.

Councilmember Pond will support this. He thinks the criteria have been met, and he doesn't think traffic is an issue. He is concerned about parking, but it's not a big enough reason to vote against this. He thinks the developer has made adequate concessions and has been more responsive to neighborhood issues than other proposals that have come to Council. He agrees this is a difficult sight and hopes traffic and parking can be addressed further during the process.

Councilmember Dozeman thinks the developer has made concessions for the neighbors and done a good job at gathering neighborhood input. She'd rather see residential here than commercial. She elaborated on the importance of attracting young families with school aged children. She wants to see this space developed so she will support this.

The motion failed 5-3, with Councilmembers Mathews, Urban and Duran voting no.

## **ORDINANCES ON FIRST READING**

2. Council Bill 22-2018 – An Ordinance creating a new Section 26-643 of the Wheat Ridge Code of Laws prohibiting the use of Freestanding Emergency Room Facilities.

This ordinance revises the Code of Laws to prohibit freestanding emergency room facilities throughout the City.

Councilmember Davis introduced Council Bill 22-2018.

**Motion** by Councilmember Davis to approve Council Bill 22-2018, an ordinance creating a new Section 26-643 of the Wheat Ridge Code of Laws prohibiting the use of Freestanding Emergency Room Facilities on first reading, order it published, public hearing set for Monday, August 13, 2018, at 7:00 p.m. in City Council Chambers, and that it take effect immediately upon Council adoption, seconded by Councilmember Mathews, carried 8-0.

3. Council Bill 21-2018 – An Ordinance adopting a new Section 2-9 of the Wheat Ridge Code of Laws concerning the Retention of Interest Earned on Escrow Accounts held by the City.

This code amendment will allow the City to retain interest earned on escrow accounts that are mandated by the Code of Laws for various purposes.

Councilmember Hoppe introduced Council Bill 21-2018.

**Motion** by Councilmember Hoppe to approve Council Bill 21-2018 an ordinance adopting a new Section 2-9 of the Wheat Ridge Code of Laws concerning the Retention of Interest Earned on Escrow Accounts held by the City on first reading, order it published, public hearing set for Monday, August 13, 2018, at 7:00 pm in City Council Chambers, and that it take effect 15 days after final publication; seconded by Councilmember Duran; carried 8-0.

#### **DECISIONS, RESOLUTIONS AND MOTIONS**

4. Resolution No. 47-2018 – A Resolution to support of the recommendation to create RTD Youth and Low-Income Passes and Low Income Program for Families

This resolution supports RTD's creation of a Youth Pass (70% discount) for ages 13-19, an Under 12 Pass (free when accompanied by a paying rider), and a Low Income Pass (40% discount).

Councilmember Dozeman introduced Item 4.

There was no staff presentation, no public comment, no questions, and no discussion.

**Motion** by Councilmember Dozeman to approve Resolution No. 47-2018, a resolution to support of the recommendation to create RTD Youth and Low-Income Passes and Low Income Program for Families, seconded by Councilmember Pond; carried 8-0.

5. Resolution No. 46-2018 – A Resolution endorsing Statewide Transportation Sales Tax Solution.

A coalition of organizations from across the state of Colorado are advocating for a 0.62% increase in the state's sales tax rate to increase revenue for transportation projects. The Let's Go, Colorado campaign is collecting the necessary signatures to include a question on the November 2018 ballot. This resolution endorses the proposed ballot question.

Councilmember Fitzgerald introduced Item 5.

**Staff presentation** – Mr. Goff had nothing to add -- noting that the Council had been briefed on this at last week's study session. He did say that if this passes the City could potentially receive \$1.1M to use for transportation purposes.

No one from the public spoke and there was no discussion.

**Motion** by Councilmember Fitzgerald to approve Resolution No. 46-2018, a resolution endorsing statewide transportation sales tax; seconded by Councilmember Duran; carried 6-2, with Councilmembers Mathews and Dozeman voting no.

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

none

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

**Mr. Dahl** reviewed for Council the number of votes required by the Charter to pass various things.

- All ordinances require a majority vote of the entire Council (5 votes).
- Rezoning with a legal protest require 6 votes of Council.
- Sale of city-owned property requires 6 votes.
- Sale of parkland requires a unanimous vote of Council.

### **ELECTED OFFICIALS' MATTERS**

**Larry Mathews** noted that 21-hour per day testing with three trains will begin on the G Line. ~ He also commented on Governor Hickenlooper's executive order to bring California's emission laws into Colorado. He encouraged folks to do their own research on this. LEV's (Low Emission Vehicles) i.e. electric cars, may not produce emissions as they drive, but the power plants to service them do.

**Leah Dozeman** reminded everyone the 49<sup>th</sup> Carnation Festival is the 2<sup>nd</sup> weekend of August. Royalty includes Countess Amanda Weaver of Five Fridges Farm and Count Griff Worth, former WRHS principal. The Grand Marshall will be SCL Lutheran Medical Center and the Lutheran Foundation.

**Kristi Davis** related a great community event in which over 20 neighbors got together over a recent weekend to help an elderly woman in District II take care of her yard -- weeding and planting flowers with donated soil and plants. A missionary group also mows weekly. She thanked all who helped.

**Larry Mathews** added that his wife attended the Performance in the Park for children last week. She was greatly impressed with the performance, the turnout, and the enthusiasm. He thanked the staff member that manages these and encouraged everyone to take advantage of these Performances in the Park.

**Clerk Shaver** reminded everyone that Thursday, August 7 is National Night Out. The Police Department will have things going on here at City Hall, but she also related that National Night Out was originally started to get folks together with their neighbors by turning their porch lights on, putting luminaires on their walk or porch, and going outside and meeting their neighbors to promote neighborliness, safety, etc.

**Zachary Urban** congratulated the Police on their great lip-sync performance.

**Mayor Starker** thanked all the people who showed up tonight with a lot of passion and thoughtful reflection about what happens in their community. It is uncomfortable to sit on the dais and listen to the diversity of opinion, but it is very healthy. Elected officials have an obligation to listen to and consider all the angles and all the facts.

## **ADJOURN TO EXECUTIVE SESSION**

### **1. Excess Revenue Obligations under TABOR**

Mr. Dahl explained that the intended purpose of having an Executive Session was to inform Council about a court case in El Paso County that relates to the decision Council will need to make about excess revenue from 2E. While the bulk of the discussion and any action would take place in open session, he believes the Executive Session is really not necessary. If Council agrees we could proceed without the Executive Session.

There was consensus to have the TABOR revenue discussion in open session.

Mr. Dahl referenced a memo from Mr. Goff related to the Taxpayer Bill of Rights (TABOR).

- If a city takes in more money than anticipated with a new tax, it is required to return it to the citizens or seek voter approval to retain it.
- In this case, in fiscal year 2017 the City collected \$457,931 more than estimated.

Mr. Dahl explained three options the City has:

- 1) Have a question on the November ballot asking the voters to allow the City to keep the excess revenue
- 2) Refund the excess revenue by some "reasonable" method – such as a temporary property tax reduction, a sales tax holiday, free admission to the Rec Center, or simply sending a check to residents for approximately \$14.72.
- 3) Do nothing and wait for the Court of Appeals to decide on the El Paso case.
  - This wouldn't be decided for at least a year.
  - If the City waits, and is sued, and loses, the City would have to refund the money with a 10% penalty, interest and attorney's fees.

Questions and discussion followed.

A ballot question could divide the money equally between the four 2E projects or disperse it proportionally based on the percentage of 2E funds per project in the original ballot question or put it towards the project that needs it the most – such as the hook ramps.


Applying the excess revenue to the 2E projects would pay down the bonds sooner.

Councilmember Hoppe received consensus to have an ordinance prepared for a ballot question to ask the voters if the City could retain excess 2E revenue, and further that two alternatives be provided – one splitting the money evenly between the four projects, and another distributing the money proportionally to the 2E projects based on their size.


Mr. Dahl advised that it would be unwise to try to pay for the cost of the ballot question out of the excess revenue.

### **ADJOURNMENT**

The meeting adjourned at 10:18 pm.

  
Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON August 13, 2018

  
Tim Fitzgerald, 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.