

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

April 8, 2019

Mayor Starker called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

ROLL CALL OF MEMBERS

Zachary Urban	Janeece Hoppe	George Pond	Amanda Weaver
Kristi Davis	Larry Mathews	Leah Dozeman	David Kueter

Also present: City Clerk, Janelle Shaver; City Treasurer, Chris Miller; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Administrative Services Director, Allison Schenk; Community Development Director, Ken Johnstone; Parks & Recreation Director, Joyce Manwaring; other staff, guests and interested citizens.

PROCLAMATIONS AND CEREMONIES

Wheat Ridge High School Boys Basketball 2019 4A Jeffco League Champions

Mayor Starker congratulated **Coach Tom Dowd**, Assistant Coaches Sean Mulligan and RJ Tejon, and the players on their accomplishment and presented him with a certificate from the City. Coach Dowd, having been at WRHS for 23 years, noted the playoff games were like the old days when the gym would be packed. He said the school has wonderful kids and a great faculty and staff. The school is at a competitive disadvantage compared to other school facilities, but what comes from the staff and students is remarkable. This team was hard working kids and he expects a couple more league championships. He invited folks to come to the Barn for a game next year.

National Crime Victims' Rights Week

Mayor Starker read a proclamation designating the week of April 7-13 as National Crime Victims' Rights Week. **Joanie Nelson**, who works with VOI, spoke briefly about the efforts to help victims of crime. Last year in Wheat Ridge there were 237 calls to assist crime victims. 137 were daytime responses and the volunteers did 100 of those calls. Total volunteer hours in WR last year was 15,980 hours; they assisted 1,371 victims. She thanked the City on behalf of the volunteers and the victims.

2019 National Telecommunicators Week

Mayor Starker read a proclamation designating the week of April 14-20 as National Telecommunicators Week to honor the 118 men and women who respond to emergency calls, dispatch emergency professionals and equipment, and render life-saving assistance to the citizens of Wheat Ridge. **Division Chief Pickett** reported the

regionalization of emergency service has been very successful. Jeffcom Director, **Jeff Streeter**, received the proclamation and spoke about the success of Jeffcom, which consolidated eight primary answering points for law, fire and EMS. Jeffcom is a large center that employs 130 telecommunicators and 18 supervisors. He introduced **Deputy Director Michael Brewer** and **Supervisor Chris Garramone**, who worked previously as a supervisor for Wheat Ridge. April 4 was the one year anniversary of services. During this first year Jeffcom has answered 580K non emergency calls and over 250K 911 calls. He thanked the City for honoring these dedicated professionals this week.

Infill Development Award

Mr. Goff announced that Wheat Ridge received an award for Infill Development from the Urban Land Institute for the Fruitdale Apartments project. A short video about the project was played. Housing Authority members **Janice Thompson** and **Tom Abbott** were on hand. Janice Thompson, who attended Fruitdale School as a child, thanked the staff, Jim Hartman, and the past and present councilmembers and Housing Authority members for saving the school.

APPROVAL OF MINUTES Council Minutes of January 28, 2019; Study Session Notes of February 4, 2019 and Special Study Session Notes of January 28, 2019 and February 25, 2019

There being no objections, the City Council Minutes of January 28, 2019; Study Session Notes of February 4, 2019 and Special Study Session Notes of January 28, 2019 and February 25, 2019 were approved as published.

APPROVAL OF AGENDA

CITIZENS RIGHT TO SPEAK

Rachel Hultin (WR) spoke in favor of the consent agenda item about keeping the sidewalk in the ROW. She commented that this is a huge agenda with complicated projects. She likes the sidewalks that are public/private partnerships and the increase in parks.

Kathleen Martell (WR) co chair of the NRS committee thanked Council for doing this project. She sees a lot of opportunity for the City.

Kim Calomino (WR) shared that Wheat Ridge pops up a lot on the internet. That's exciting. She told Council to keep up the good work.

Judy Capra (WR) related how important it is to notify residents about changes. People don't like some of these changes. She believes people who move into our neighborhoods are more interested in using existing housing vs new. People want to be involved at the neighborhood planning; they are not comfortable letting City Council make some of these decisions that affect their neighborhoods. When a big project is going to have a drastic impact on the neighborhood, people should be notified. She

also wonders if it does any good to come in and talk because it seems like everything is a done deal.

Tanya Cardwell (Denver) plans to move here and move her dog business here. She would like to see dog runs allowed in a zone other than Industrial.

John Clark (WR) spoke about District 4. He noted the train still uses its whistle at night. He spoke about \$1.2M of 2E money being used for a public/private partnership for the TRAX project which will bring 220-280 market rate residential units to District 4 at 52nd & Tabor. He distributed photos from Zillow advertising properties for sale in his neighborhood near 46th & Swadley: half a duplex with garage and large side yard, a corner horse property, 44 townhomes coming to a 2-acre lot, and a single family house that sold so fast there's no picture. He invited Council to come see the neighborhood.

Amber Ehrmann (WR) appreciates the parkland and open space in the City. It is essential to our character. She likes to see more open space.

Riley Lindberg (LW) grew up in WR and appreciates the greenbelt. He likes how we integrate urban with open space and thinks we should work together to ensure new developments honor our culture. The charm of WR is the farming roots and being different than other communities. He wishes to see more of our roots preserved and incorporated into our city. He recommended the Dark Sky Society for good ideas about reducing overlighting.

Katie Zaback (WR) moved here 4 years ago to be in a community they could be involved in. They walk and bike a lot, and would like to see more of that. They like that Wheat Ridge is multi-generational. She noted how housing costs are rising as people move into the area. Policies the Council makes are so important to help lower housing prices for families. She supports well-planned density if it's needed to keep housing costs down. Regarding rentals, she urged bringing in more families.

Joe DeMott (WR) told the Council that several years ago the Wheat Ridge Chamber joined with WR United Neighborhoods to host the long tradition of the WR Candidate Forum. Two years ago Council had another group host it; last year it fell by the wayside altogether. The Chamber is planning a Candidate Forum this year. He requested use of Council Chambers for the forum and having it televised by the City on Channel 8.

Jan Kissell (WR) stated that apartment houses don't bring revenue to the City. She suggested those folks shop at Walmart and Target. We keep bringing in seniors and doing away with our children. Soon Stevens will be shut down like Martensen was. She fears for her property values because of all the apartment houses that are going in.

Matt Cavanaugh (WR) wanted to speak in favor of the development on Upham. Mayor Starker instructed him to wait for the agenda item.

Robert Moore (Westminster) grew up on Upham Street and thinks the neighborhood has become dilapidated. He thinks the proposed development will be an upgrade, and that people want to come to a small community that is upgraded.

CONSENT AGENDA**1. CONSENT AGENDA**

- a. Motion to award and approve payment to Centerpoint Energy Services, Inc., Denver, CO, for Natural Gas Services provided to the City's Municipal Building, Anderson Park Building, and the Recreation Center [*direct purchase for cost savings*]
- b. Motion to award a contract and approve subsequent payments to A-1 Chipseal/Rocky Mountain Pavement, Denver, Colorado, for the 2019 Crack Seal Project, in the amount of \$134,750, and a Contingency amount of \$6,750 for a total not to exceed amount of \$141,500 [*first of three; budgeted*]
- c. Resolution 22-2019 – approving a Memorandum of Understanding between Colorado State Patrol – Beat Auto Theft Through Law Enforcement (BATTLE) and the City of Wheat Ridge [*shares our data; no financial impact*]
- d. Resolution 23-2019 – approving the Second Amended and Restated Intergovernmental Agreement establishing the Juvenile Assessment Center [*no financial impact*]
- e. Motion to approve payment to LL Johnson Distributing Company, Denver, Colorado in the amount of \$94,711.36 for purchase of a new 2019 Toro Groundsmaster 5900-D Mower [*budgeted*]
- f. Motion to award a contract and approve subsequent payments to J.F. Sato & Associates, Littleton, CO, in an amount not to exceed \$134,120 for Engineering Consulting Services for 38th Avenue and Kipling Intersection Improvements [*adds second left turn lane for eastbound 38th Ave; funds available in Public Improvement Projects – Development Related*]
- g. Resolution 21-2019 – amending the Fiscal Year 2019 General Fund Budget to reflect the approval of a Supplemental Budget Appropriation in the amount of \$18,000 to support Porchlight, a Family Justice Center [*our share based on population*]

Councilmember Mathews introduced the Consent Agenda.

Motion by Councilmember Mathews to approve the Consent Agenda items a), b), c), d), e), f) and g); seconded by Councilmember Hoppe; carried 8-0.

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

2. **Council Bill 33-2018** – An Ordinance approving a Zone Change from Agricultural-One (A-1) to Planned Residential Development (PRD) with an Outline Development Plan (ODP) for property located at 4440 Tabor Street

(Case NO. WA-18-15/Clear Creek Terrace)(Continued for Council Action from February 11, 2019)

The applicant is requesting the zone change to prepare the property for development of a 26-unit townhome project.

This request was heard at a public hearing at City Council on January 14, 2019. A legal protest was entered into the record. After the presentation and testimony, the public hearing was closed and a motion was approved to continue the case to February 11, 2019. On February 11, there were vacancies on Council and pursuant to the applicant's request, a motion was approved continuing the case to April 8, 2019.

Councilmember Dozeman introduced Council Bill 33-2018.

Mayor Starker opened the public hearing.

City Clerk Shaver assigned Ordinance 1663.

Mr. Dahl gave directions on two related procedural matters.

- Legal protests A proper legal protest was filed on January 14 by an adjacent property owner. This triggered a requirement of 6 votes for passage. Since that time the legal protest has been withdrawn, so only five votes are needed for approval. Another legal protest was filed this evening. This protest is untimely (filed after the close of the public hearing) and therefore invalid.
- Eligibility of councilmembers to vote
- Councilmember Kueter was not at the January 14 hearing, but has since listened to the tape of the meeting. When the matter was continued Mr. Dahl questioned Mr. Kueter – establishing that he had listened to the tapes and therefore can and should vote on this matter.
- Councilmember Weaver heard this case when she was on the Planning Commission and, in fact, made the motion to approve the case. She was subsequently appointed to the City Council. His opinion and case law establishes that she has prejudged the case. He consistently reminds councilmembers not to attend Planning Commission meetings on matters that will come to Council as this constitutes ex parte information. He recommends that Councilmember Weaver should recuse herself due to her prejudgment and ex parte issues.

He also reviewed a Charter provision that requires councilmembers to vote unless 1) they have a personal or private interest in the matter, or 2) the remainder of Council votes by unanimous consent to excuse the councilmember from voting. He recommends that mechanism be used now to determine if Councilmember Weaver should vote. If the vote is unanimous for her to recuse herself, she will not vote. If the vote is not unanimous, he will have questions for her to establish a reasonable record.

Councilmember Pond wanted to know if Councilmember Weaver had listened to the proceedings of January 14. Mr. Dahl said it doesn't matter - prejudgment is prejudgment and ex parte is ex parte. These can't be undone.

Motion by Councilmember Mathews to excuse Ms. Weaver from voting on this item; seconded by Councilmember Dozeman.

Discussion followed.

Councilmember Kueter asked to hear the alternative legal opinion of the applicant. Mr. Dahl explained that opinion and why he disagrees with it based on case law.

Councilmember Hoppe suggested that Ms. Weaver should vote because she does not have a personal financial interest in the property and all the Council sees what the Planning Commission sees. Mr. Dahl clarified that City Council only gets the minutes from the Planning Commission hearing and doesn't have benefit of the testimony. In his opinion the Charter provision about approving/waiving her recusal is for situations exactly like this – when a member has had to prejudge a case.

Councilmember Pond believes that the Planning Commission hearing and the City Council hearing are different and therefore Councilmember Weaver's previous vote does not constitute prejudgment. .

Councilmember Mathews suggested that if Councilmember Weaver is not allowed to recuse herself we are making a mockery of the quasi-judicial procedure. Allowing her to vote would set a precedent, and in the future anyone with pre-knowledge could vote.

Councilmember Urban asked how Councilmember Kueter knew the developer's attorney had a different opinion; he was not aware of that. Councilmember Kueter wasn't sure how he knew that – likely from correspondence from staff or Mr. Dahl.

Councilmember Urban asked Mr. Dahl if allowing Councilmember Weaver to vote would create a legal reason for objection. Dr. Dahl explained how either way (failure to recuse or force to recuse), a legal objection could be made. He will defend either way.

Motion failed 4-3, with Councilmember Davis, Pond, and Hoppe voting no.

[Unanimous vote needed for approval.]

Mr. Dahl offered a series of questions to Councilmember Weaver to establish that:

- She was at the Planning Commission hearing for this case on November 15, 2018 and made the motion to approve it;
- She is familiar with the case because of that hearing;
- She has reviewed written materials in the packet or listened to the tape of the January 14, 2019 City Council hearing; and
- She believes she can make an unbiased decision despite her participation in reviewing the case when she was a member of the Planning Commission.

Mr. Dahl advised that Councilmember Weaver can vote.

Motion by Councilmember Mathews that Councilmember Kueter be recused from voting as he has outside knowledge the rest of the Council does not have; seconded by Councilmember Urban.

Discussion followed.

Councilmember Kueter doesn't believe that information from the City Attorney to Council about a legal interpretation is outside information that would be disqualifying.

Councilmember Mathews asked if that information was distributed to the entire Council.

Mr. Dahl noted he got an email from the applicant's attorney, but he did not distribute it to anyone other than staff. Mr. Kueter was asked how he found out the applicant had a different legal opinion. He said he didn't remember; he would have to check his correspondence. He posed that in the absence of knowledge it would be a legitimate question to ask the City Attorney if there was a differing legal theory.

Mr. Dahl suggested this was no different than the occasional ex parte contacts that councilmembers inadvertently encounter. He usually questions the councilmember publicly to clear it up. Mayor Starker asked Mr. Dahl to so question Mr. Kueter.

Mr. Dahl questioned Councilmember Kueter about how he learned of the alternate legal opinion. Councilmember Kueter verified that:

- He had not been contacted by the applicant's attorney;
- He doesn't recall how he found out Mr. Dahl had been contacted by the applicant's attorney;
- There was conversation at the retreat about whether Councilmember Weaver could vote; and
- He did not receive any written material from Mr. Dahl or other councilors on this matter.
- He supports the motion to excuse Councilmember Weaver from voting, and he feels he can render a fair and unbiased decision on Item 2.

Mr. Dahl noted that a unanimous vote of the remaining councilmembers would be necessary to excuse councilmember Kueter from voting.

Councilmember Davis recalled some conversation at the retreat about someone not being able to vote.

Councilmember Mathews' motion to excuse Mr. Kueter from voting under Charter Section 5.9 **failed** 3-4, with Councilmembers Davis, Pond, Hoppe, and Weaver voting no. Mr. Dahl advised that Council member Kueter is required to participate and vote.

Councilmember Urban asked why the legal protest was allowed to be rescinded after the January 14 hearing was closed. Mr. Dahl views the withdrawal of the protest as procedural. It is not evidence; it is similar to a motion being filed in a court case. If an interested party withdraws it would be unfair to the applicant to impose a voting requirement triggered by a protest that is no longer there.

Motion by Councilmember Dozeman to approve Council Bill 33-2018 an ordinance approving the rezoning of property located at 4440 Tabor Street from Agricultural-One (A-1) to Planned Residential Development (PRD) with approval of an Outline

Development Plan, on second reading, and that it take effect 15 days after final publication; for the following reasons:

1. The Planning Commission has recommended approval of the rezoning after conducting a proper public hearing.
2. The proposed rezoning has been reviewed by the Community Development Department, which has forwarded its recommendation of approval.
3. The proposed rezoning has been found to comply with the "criteria for review" in Section 26-303 of the Code of Laws."

seconded by Councilmember Hoppe.

Councilmember Mathews noted that Council rules allow citizens to speak on any item on the agenda, and asked that the public be allowed to speak. Mayor Starker ruled that the hearing was closed and the public could not comment. Mr. Dahl concurred.

Motion by Councilmember Mathews to allow citizens to speak on the item; seconded by Councilmember Dozeman.

Mr. Dahl advised that if this motion passes, it effectively reopens the hearing, and the matter should be continued so it can be properly posted and noticed.

Councilmember Davis spoke against reopening the hearing since it was not publicized.

Councilmember Dozeman shared that she wanted to support this project, but has issues with how this process has been conducted, including

- The continuance,
- The developers strategic move to continue when he didn't have the votes,
- Councilmember Weaver being cleared to recuse herself and now she is voting, and
- Councilmember Kueter being privy to information none of the other councilmembers have.

Substitute motion by Councilmember Dozeman to continue the item, reopen the public hearing and get details on how the information came about with Mr. Kueter; seconded by Councilmember Mathews.

Councilmember Hoppe noted this started in January and she doesn't think it would be fair to the developer to continue it further and delay his building timeline vis a vis subcontractors, bankers and bids.

Councilmember Urban supports a continuance, making the point that there are a lot of unanswered questions, including finding out why the legal protest was withdrawn.

Councilmember Mathews noted how people think Council rushes things through and are not transparent. He thinks a reset is in order because there are so many unanswered questions.

Councilmember Dozeman's motion to continue failed 3-5, with Councilmembers Davis, Pond, Hoppe, Weaver and Kueter voting no.

There were comments on Councilmember Mathews' motion.

- Councilmember Hoppe does not favor citizen comment tonight because the meeting was not properly noticed.
- Councilmember Urban favors public comment, but without proper notice he doesn't think it's appropriate to take public comment tonight.]
- Councilmember Dozeman commented that it was interesting that we would defer to Council on this matter, but not on matters of a councilmember recusing him/herself.

Councilmember Mathews' motion to allow citizens to speak on this agenda item failed 2-6, with Councilmembers Davis, Pond, Hoppe, Weaver, Urban and Kueter voting no.

Main motion to approve Council Bill 33-2018 carried 5-3, with Councilmembers Mathews, Dozeman and Urban voting no.

- 3. Council Bill 34-2018** – An Ordinance approving the sale of designated park land at the intersection of West 38th Avenue and Johnson Street and, in connection therewith, authorizing execution of an agreement for said sale (Continued for Council Action from February 11, 2019)

The City has the opportunity to sell the vacant parcel of park property located on the southwest corner of 38th Avenue and Johnson Street for the development of a CVS Pharmacy. Charter section 16.5 requires a unanimous vote of City Council to dispose of park property.

Councilmember Pond introduced Council Bill 34-2018.

City Clerk Shaver assigned Ordinance 1664.

Staff presentation

Mr. Dahl had a few words of explanation as the hearing for this item was already held.

1. Because this is a legislative matter, contact from citizens is permitted, and
2. Councilmembers Kueter and Weaver can vote on this.

Mayor Starker announced that the hearing had been closed, and a motion was in order.

Motion by Councilmember Pond to approve Council Bill 34-2018, an ordinance approving the sale of designated park land at the intersection of West 38th Avenue and Johnson Street on second reading and that it takes effect 15 days after final publication, on second reading, and that it take effect 15 days after final publication; seconded by Councilmember Hoppe.

Mayor Starker asked if there was any discussion.

Councilmember Weaver noted having done extensive research on the history of this park. She had some questions of staff but the Mayor disallowed that since the hearing was closed. She continued with explanation of her research about the public process in 2008 which provided for this property to be considered for future commercial development. Additionally, she found that in 2009 this property was not un-deeded as parkland and was exchanged for space at the Baugh House. These are the reasons she will vote for this sale.

Councilmember Mathews raised a point of order that the public hearing was closed and now new testimony is being introduced. Mayor Starker ruled that this was just discussion amongst councilmembers.

The motion failed 7-1, with Councilmember Mathews voting no. **[Unanimous vote required.]**

Mayor Starker declared a recess at 8:50pm. The meeting reconvened at 9:03pm.

- 4. Council Bill 02-2019** – An Ordinance approving a zone change from Residential-Three (R-3) to Planned Residential Development (PRD) with an Outline Development Plan (ODP) for Property located at 4000-4066 Upham Street (Case No. WZ-18-17/Ridgetop Village)

The purpose of this request is to prepare the property for development of a 38-unit townhome project. Two related requests are for approval of a Specific Development Plan (SDP) and a Major Subdivision plat.

- 5. Resolution 19-2019** – approving a Specific Development Plan (SDP) for property located at 4000-4066 Upham Street (Case NO. WZ-18-18/Ridgetop Village)

This second step in the approval process for a PRD will provides site plan and design details for the development of the subject property.

- 6. Resolution 20-2019** – A Resolution approving a Major Subdivision for property located at 4000-4066 Upham Street (Case No. WS-18-02/Ridgetop Village)

A major subdivision will establish lot lines, tracts, easements, and right-of-way dedications for the proposed townhome development.

Councilmember Davis introduced Item 4. Council Bill 02-2019 (Zone change from R-3 to PRD), Item 5. Resolution 19-2019 (Specific Development Plan), and Item 6. Resolution 20-2019 (Major Subdivision).

City Clerk Shaver assigned Ordinance 1665.

Mr. Dahl reported a number of protests had been received prior to the hearing. One is valid. Consequently, the rezoning will require 6 votes to approve. Legal protests apply only to rezonings so the SDP and Major Subdivision will only require 5 votes to approve.

Mr. Dahl noted that Councilmember Weaver heard this case when she was on the Planning Commission. She seconded the rezoning and the major subdivision and voted yes on all three items. As with Item 2, he deems this to be evidence of pre-judgment and ex parte information and advises her to recuse herself. He also alerted Council to Sec 5.9 of the Charter which places that decision in the Council's hands.

Motion by Councilmember Urban allow Councilmember Weaver to recuse herself on Items 4, 5, and 6; seconded by Councilmember Mathews; failed 4-3, with Councilmembers Davis, Pond, and Hoppe voting no. [*Unanimous vote required.*]

Mr. Dahl questioned Ms. Weaver about her prior knowledge and voting on this matter when she was on the Planning Commission. She asserted she can make an unbiased decision based on the record of this hearing tonight despite her earlier Planning Commission action.

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

Staff presentation - Lauren Mikulak

Ms. Mikulak entered into the record the contents of the case file, the zoning ordinance, the comprehensive plan, the subdivision regulations, and the digital presentation. She testified that all posting and notification requirements had been met.

Ms. Mikulak used an aerial map to explain area zonings and land uses.

- The property is almost 2 acres and contains four single-family houses that range in age and condition - built between 1928 and 1952.
- The subject property is surrounded by R-3 zoning which allows single family, duplexes and multi-family. A variety of housing types do exist in the area including three single family houses to the south and one across the street; and four apartments to the north, and some on the other side of Upham Street.
- Building heights range from one- to 2 ½ stories. She pointed out the single-family houses to the north and east.
- Adjacent on the east side of the property is a 19 acre campus owned by the School District which houses Stevens Elementary and the Sobesky Academy.
- The drainage facility for the project is accommodated on the school property.
- The PRD proposes 38 attached, privately owned, single family townhomes. It establishes zoning and development standards, specifies site and building designs, and creates the lots lines.
- Any height, density, setback or architectural requirements, would be specific to this property and required to be built. Any changes would require a public hearing.
- The applicant has chosen to process all documents concurrently.
- R-3 allows townhomes, open space, single- and two-family development.

- Proposed height is 35 feet, which is allowed in all residential zones.
- Differences accommodated by the PRD:
 - As R-3, lot consolidation would allow 22 units. This PRD plans for 38 units.
 - Setbacks vary from similar (side mostly 20') to less than R-3 (front 15', backyard 5').
 - Parking requirements are similar: This PRD has 85 off street spaces and 8 off-street spaces. R-3 requires 84 off-street spaces.
 - Architecture requirements are the same, with a few stricter requirements.
 - She read the purpose of a PRD. Differences are expected.
- The Outline Development Plan provides:
 - Each group of units range from 2 to 6 units, each similar in width with a tuck-under, 2-car garage that is alley loaded.
 - Storm water drainage (required) to be accommodated on the school property.
 - Unique feature is ample open space. Having no setbacks between units and alleys frees up space for a small, private, internal pocket park. With the front yards, sidewalks and communal area there is about 35% open space (more than residential standard).
 - Architecture is the other unique feature. The plan is for a melded contemporary and traditional styles – especially mid-century. Has ample windows and a very open feel.
 - Upham is a local street, so no detached tree lawn is required, but the 15 foot setback from Upham offers opportunity for private street trees.
 - Also has a variety of roof lines, materials, masonry bases, orientation of siding (horizontal and vertical), and colors.
 - Building frontage along Upham St will be 15 feet from the street.
- She described how these are not slot homes because
 - 1) they have front yards,
 - 2) they have porches, yards and doors that have relation to the street, and
 - 3) the driveways are not too visible from the street.
 - 4) Slot homes are tall, lack variety in materials, have no ground floor windows, lack articulation of floors, and often lack open space.
- The Subdivision Plat document meets subdivision regulations.
 - It creates separate lots lines for each townhome.
 - It creates open space and utility easements and dedicates ROW.
 - It requires sufficient asphalt the on-street parking, and curb, gutter and sidewalk. Provides the
- Per the Comprehensive Plan the subject property is located in an area labeled “Neighborhood” – between 38th and 44th. She enumerated the goals for this area from the Comp Plan and the 38th Avenue Subarea Plan, and indicated staff finds those goals to be supported by this project.
- This project also provides a new type of house that doesn't exist on Upham Street.
- Concerning land use (for rezoning), most of the properties on Upham are single family, but are book-ended by multi-family.
- Regarding traffic, this section of Upham is considered a mega-block (1/2 mile long with no cross streets). There are 400 dwelling units in the area, but the high volume units at 44th and 38th have access to signal lights. A trip generation letter was

required. 38 units is not enough to warrant further traffic analysis or trigger a signal at Upham. Public Works will continue to monitor the traffic.

- The Findings: The project is consistent with adopted plans, goals, and policies.
 - Outside agencies can serve, and there will be no significant adverse effects.
 - No traffic mitigation is required; it will not result in significant adverse effects.
 - This project is not feasible under any other zone district. The only two options that would accommodate this development are Planned Development or Mixed Use District.
 - There is adequate infrastructure to support the project..
 - For the Specific Development Plan and the subdivision, the proposal complies with the purpose of the PRD and the ODP.
- Neighborhood meeting was held on January 16, 2018 with 9 neighbors attending.
- Public Comment: Three letters of support are in the packet. Several recent letters of support and objection are filed with the City Clerk. She's had several phone calls.
- A legal protest was filed which affects voting requirements for the rezoning.
- The developer is working with all the outside special districts - utilities and fire.
- Planning Commission recommends approval.
- Staff recommends approval with some standard conditions for the subdivision plat.

Applicant

Tony Del Gruppo (4251 Kipling, WR) presented RidgeTop Village

He gave a power point presentation showing why they think this project will benefit the City, the neighbors and the 38th Ave Corridor.

- Investment is happening in the area. A number of apartments are being built in the area. This is a good location for this project.
- They relied on the walkability of the area for this design. They focused on the Village Park concept. The gathering space in the middle is for all.
- Each unit has a private yard – a 12-15 foot space on which to entertain, customize or have a garden.
- The project has an abundance of open space - 35%.
- There are two unique duplexes on Upham Street to help the southern neighbor and make for an attractive street scene. Units are less dense near Upham.
- Building separation is generous throughout.
- North/south setbacks are increased to 20 ft for privacy and to reduce massing.
- Lots of variety in height, size, materials and color. No two adjacent buildings alike.
- Aesthetically: Units on Upham oriented to the street; enhanced landscaping on Upham; a mid-century modern look and materials will be done.
- Many of their decisions were a result of neighborhood outreach.
- Their drainage design reestablishes historic flow of water to the east. The detention pond will be updated and reworked to accommodate their development.
- He shared his thoughts on area density, buffering, and the legal protest.

Mayor Starker announced that due to the large number of speakers signed up for public comment, each person would be limited to 3 minutes.

Public Comment

Joe Sadar (WR) lives on Teller and is against this because of high density and increased traffic on a narrow street. On-street parking already overflows. With the short front setbacks there will be no place to widen Upham St. We have yet to feel the impact of all the new traffic when 38 & Upham fills up, and the new apartments by Lucky's. Emergency response time will be affected. School traffic is already bad. The Wadsworth reconstruction will further add to the congestion. This will worsen an already existing problem. He also doesn't think the architecture fits with the community.

Steve Prose (WR) opposes this proposal. He urged Council not to change from R-3 to increase the density. He reported that original drawings showed 5 feet from the street and heights over 35 feet. He noted flat roofs block sunlight from neighbors. One plan he saw had artificial grass – not real grass. He believes the increase to the school drainage pond will cause water problems on Reed Street. Upham is already a bypass street for Wadsworth, as is Reed. With the narrowing of 38th Ave and the new apartments at 38th & Upham, this extra traffic will make problems worse. From his experience as a WR firefighter he noted that getting out onto 38th Ave was challenging 15 years ago, is worse now, and will get worse in the future. He noted the NRS survey showing that people don't want this kind of development in residential neighborhoods.

Kathy Havens (WR) considers this development predatory. She attended the January 2018 meeting, asked questions, and after that heard nothing. Code enforcement has not responded. This developer has owned the property for some time, and the lots have deteriorated badly. Was that intentional to create a need for redevelopment? The current zoning allows 22 units; she would support that. She thinks the drainage is a big issue; current drainage is inadequate. The developer will go away and an HOA will be responsible. Those 4 houses are small to provide a place for water to drain and to allow for animals. These 4 properties would easily sell as horse properties. She doesn't want to create the urban renewal project of the future. She also noted that The Transcript has nothing about Wheat Ridge.

Gordon Hinshaw (WR) lives across the street from the proposed development. He told how code enforcement has been an issue. Besides increased traffic, there will be further noise, light and air pollution, and more safety and police concerns. People aren't against development, they're against *this* development. He distributed pictures of the current view he has to the east, and the proposed view, and reminded Council this could end up as 49% rentals. He thinks the attempt to promote growth has created an open door to overly dense development – against the City's traditional ideals or and the current residents. He noted only one of the properties was posted.

Lin Martinelli (WR) agrees with all the comments. She lives on Upham and never got one notice until the sign went up. She doesn't know where this idea of neighborhood

input came from. She doesn't think the development is compatible with the street or what neighbors want. She donated the balance of her time to Mr. Hinshaw. **Mr. Hinshaw** said this is too dense. He doesn't blame the owner, he blames the City for making R-3 unworkable. He pointed out that of the four people on this street who are for this, three are renters. Two properties owned by one owner creates the possibility of a request for those properties to become PRD. Look at Tejon Street. We have a choice; Council has a choice.

Sharon Johnston (WR) lives on Teller and opposes this mostly due to traffic. She's not opposed to new things, but thinks in this area things are moving very quickly.

Suzanne Capra (WR) has watched all the development over time. She thinks this is a big mistake due to inadequate parking, a doubtful presentation of glamour, and how close the buildings are to each other. She hopes Council will not change this zoning to PRD; we don't need more apartments.

Kim Calomino (WR) thinks this is an example of well-managed change that is consistent with the goals of the Comprehensive Plan. It provides greatly needed diverse housing, is consistent with the intent of planned development, is compatible with surrounding uses, and will create a high quality development. It will help promote our Main Street concept. We need to consider our large goals and needs.

Rob McCleod (WR) lives on the south side of this property and supports the project. Parts of Upham Street are dying and need help, and this development fits that bill. He and his wife have been involved in this process since before January 2018 and have seen several iterations of the plan. They've been consulted about drainage and how to minimize impact to his property, so they feel they've had input. He thinks this PRD may be a remedy. The City has invited them to come improve our city. The current properties look terrible; this will be an improvement. He thinks the design is charming. Young families want to start in a townhome in a pedestrian friendly, multi-use, urban/suburban setting. This will attract families. He recalled how the west side of Upham was turned down as blighted and there was a hope someone would come fix these four properties.

Judy Capra (WR) lives east and north of this project. She thinks this process has not been fair. There are issues of rezoning and the development itself. The City has been working with the developer, but no one worked with the neighbors. The neighbors learned of this a couple weeks ago and now have the challenge of learning how to tell why we don't like it. Who gives them guidance? She had read all the materials and done research. While the area is zoned R-2 it is almost all single family. These neighbors like a small house on a large lot. The zoning should have been taken separately, then the development. All the young families sign the petition against this. This density does not fit the neighborhood.

Mark Bowman (Lakewood) is a realtor who came to the area six years ago. He thinks Wheat Ridge and Arvada have something special to offer, but as we grow we have to have density. He works with developers all over and has been involved promoting the Ridge at 38; he thinks this is the most well-thought out development he's ever seen for meeting the needs of the neighborhood. It will help the Main Street and he supports it.

Carol Mathews (WR) reminded Council that our City's future stands on attracting more strong households and that a vast majority of our citizens have expressed their desire to maintain a low-density, family character. Tonight you are considering rezoning for more high density housing. You are sucking the oxygen out of the air, blocking our sunlight and wasting our land – taking the Wheat Ridge feel out of Wheat Ridge. There are developers who will make a family community. There are other options, such as the garden homes that were promised by Lucky's. People don't want high density. We need to consider what we're doing before we look like Arvada or Lakewood with high rises everywhere. We are becoming just a corridor for their traffic. The only thing we have left is our character - which is single family houses.

Rhonda Champion (WR) listed ways Wheat Ridge is changing; it's not the place she moved to, and one dense building leads to another and another. Upham St doesn't support this; it will change the character of the street with bottlenecks at both ends. We aren't a city of trees anymore and safety isn't what it used to be. We are selling our soul to developers who will build monstrosities and then retire to their cul de sacs on a mountain. There will be no place for children to play or pets to run. Concrete will be their play yard. Do we really have to sacrifice our quality of life to accommodate growth? She noted the criteria for this development says it should promote the health, safety, and welfare of its citizens. How that is accomplished has yet to be explained.

Rachel Hultin (WR) talked about her house that was built on former farmland. Wheat Ridge has documents to protect the beauty of a lot of our neighborhoods, but the Comp Plan currently calls for Upham to be a transition area. The density that is being called for surrounds this site. She worked in real estate development and noted that rarely has she seen a developer work so hard to accommodate concerns of the neighbors as he responds to the market. He worked with some neighbors and changed his plan to respond to their concerns. He worked with the school district. The businesses on 38th want more households within walking distance. If this is not approved we would have one big lot with R-3 would allow 22 units with no oversight.

Bruce McIntyre (WR) is most concerned about the drainage. He give the history of that drainage ditch: It started as a retention ditch but the City later changed to a detention ditch and put in a large storm drain on Reed Street. These developers want to pay the school for the use of the ditch, and agreed to improve and maintain it. It is unclear who will maintain it after the developers are gone. If any money is exchanged it should go to the City, not the schools. Is it sufficient to handle drainage from 1.8 acres?

And what about mosquito control? The school refers us to the City on that, and the City refers us to the school district. Please vote against this.

Dorothy Archer (WR) is concerned about drainage. She related how three-story houses were built behind her and drainage was ignored. Problems have followed. She believes a developer should create their own drainage on their own property. People aren't opposed to this development; they are opposed to the density. Yes, improve the City, but not at the homeowners who are already here.

Mayor Starker called on several speakers who signed up to speak, but had left.

Joann Sorrentino (WR) said this has been poorly communicated to the neighborhood and the street cannot accommodate this development. If you don't drive in this area at 3:30 in the afternoon, you have no idea of the added congestion this will bring. It is insulting that the school district jumped at the chance to get their storm drainage problem fixed. The schools shouldn't be fixing storm water problems – the City should. She doesn't appreciate people laughing about children walking on 38th. There is nothing for children to do on 38th Ave – other than a few events. There are bars and a few shops. This development is not a place for children. Families with children want homes with yards. No dimensions have been given on the yard in the center of the development. This has been shoved at us, and it's not the image of Wheat Ridge.

John Minshall (Golden) grew up in Wheat Ridge. He owns rentals on the west side of Upham. He agreed the four properties are eyesores, but doesn't think this development is right. He spends a lot of time on that street; it is very inadequate and tight. Meeting other cars head on is a problem, much less a fire truck. The effects of the 38th & Upham apartments are yet to come. Traffic is already terrible. When people try to make a left turn it back traffic up. People will take chances and it will be dangerous. Mr. Del Gruppo came to his house in Golden recently and told him how this would increase property values. Mr. Minshall thinks quality of life is more urgent than property values. This drawings look nice for the site, but he's concerned how it will exasperate existing problems off the site, up and down the street.

Joe DeMott (WR) has talked about this development with his business partners. He spends all his time and energy in Wheat Ridge. He wants to improve his business, but has a hard time spending money with a flat return. He's not seeing the benefit of the growing economy because we have height and density restrictions. We have a very loyal customer base, but we need developments like this. He support this and commended the developer for his due diligence.

Matt Cavanaugh (WR) lives over on Dudley and is a homebuilder. He thinks this is a monumental feat the developer has accomplished. He has done outreach. The people who oppose this are people who have lived here a long time. Wheat Ridge is wanted so badly and we have so much potential here. He thinks staff is doing a fabulous job, and he will be disappointed if this is not approved.

Janice Scuderi (WR) doesn't live in this neighborhood, but she has listened to these folks. She said these kinds of developments are all over the country and people can work successfully against vision plans. To defend your rights as homeowners she recommended looking to the work of Rosa Corey in California. Drainage is a valid concern and driving on 38th is a nightmare now. In California she saw a lot of regret on whole cloth change of neighborhoods – particularly scraping existing homes and replacing them with high density. She thinks the high density at 38th & Wadsworth is unsightly. This is not the ugliest set of overpriced crackerboxes she has ever seen, but just because it is a bit nicer than slot home (stack and pack) that doesn't necessarily mean it's a good use of that property. Toning down this development would be a much saner idea.

Neil Shay (Denver) is one of the applicants. He read a letter of support from Rhonda Norman who lives on Upham St. She supports pedestrian friendly development.

Mayor Starker announced that since it was 11:00 this agenda item would be finished and then a motion would be considered about the remainder of the agenda.

Teri Dalbec (WR) has several concerns about the high density of this project which will more than double the number of single family residences in that area.

- No one has said the size of the units or number of bedrooms.
- She noted the park in the middle seems very small and the porches are very close together.
- She works in Denver and noted that people are getting very fed up with high density and are looking for other places. People want houses with yards. Wheat Ridge incorporated because we didn't want to be a Denver-zoned community. Why not have 22 units as a PRD?
- The setback of 5 feet from the school property could be problematic in the future.
- There has been no mention of the Fair Housing Act for these 3 story units. One out of four units has to be completely disability-accessible. Are they?
- This appears to be a government sponsored project. Everything the government has done has been supportive of the developer and the City has not addressed any of the neighbors' concerns.
- She hasn't talked to anyone who likes the development on Depew that shades the street – other than the people who live there. This will do the same thing.
- The drainage issue is a huge thing to vote on. It should never be allowed to put water onto someone else's land – and then leave it to an HOA? She urged voting this down.

Rollie Sorrentino (WR) said as a taxpayer and voter he disapproves of this rezoning and would like Council to consider these reasons and vote against the PRD.

Notice: He lives within 300 feet of this and he received no notice until for the Feb 7 Planning Commission meeting. He wasn't noticed for the Jan 18 hearing, and the second letter he received was erroneously dated March 27.

Density: Property that has had 4 houses on it for 70 years will have 38 units on it. This is an unacceptable increase in density as it would more than double the number of residential dwellings on Upham Street. Regardless of zoning, this is a single family neighborhood. This project would change the character of the neighborhood.

Infrastructure: There is not sufficient infrastructure to support this project. There are no storm drains on this property. None of these four lots have storm drainage. This developer has a tentative agreement with the school district to route storm water eastward onto school property. But for this offer to Jeffco schools this project could not happen. He thinks this is the wrong project at wrong location at the wrong time.

Odarka Figlus (WR) spoke in support of the neighbors. She noted there was only one sign for the hearing. Do people know it involves four properties? She believes this is too dense; a small plot of AstroTurf is not a yard and leaving the management of the drainage to an HOA is not wise. She yielded the balance of her time to Mr. Sorrentino. Mayor Starker said the rules only allow a person to speak one time.

Robert Moore (doesn't live in WR; grew up in WR; owns property in WR) He is pleased this project has off-street parking. He believes this is the kind of development young people with children are looking for.

Dan Hinshaw (WR) agrees that this extra density will alter the neighborhood. It is out of proportion. He encouraged voting against this.

John Clark (WR) was not allowed to donate his time to Mr. Sorrentino because Mr. Sorrentino already spoke. Mayor Starker read the rule stating that people could only speak one time. Mr. Clark wanted Council to know how bad this whole thing looks tonight. People see this on TV. It stinks to high heaven.

Mr. Del Gruppo was given time to responded to some of the themes of public concern.

- People who weren't notified live outside the area of impact. He didn't reach out to some folks because they didn't show up to anything else.
- Traffic: Upham has parking on both sides now. By removing two curb cuts they will be creating new on-street parking. The project wasn't large enough to warrant a full traffic study. Their peak hour traffic projects one car every three minutes. Even two cars would be a light impact.
- Parking: Units are 1600-1800K sf, 2-3 bedrooms. They are exceeding the R-3 per unit standards for parking.
- Storm water: He thinks it's a very effective use of regional and private infrastructure. The school has a substandard facility that will be improved. No dollars will be exchanged; yes the developer will upgrade the facility and build them a new fence. They are proposing a metro district on this project which will be stronger than a HOA.
- There are 18 ADA accessible units scattered in the project.

- Density: There is a benefit of not having a storm basin on site. If they had to put the drainage on their property it would eliminate 2-3 buildings. This helps justify the cost of the new infrastructure. This will be a public private partnership.
- They worked hard to comply with all requirements and have a quality project.

Council questions

- Is there an easement for the drainage? Yes
- Envision WR shows buffer on the west side of Upham, not on the east side.
- The 38 Ave Sub area plan predates the Comp Plan and doesn't focus on this area. Less density is more appropriate.
- The expense of the utility improvements is self-imposed by the developer because of the increased density.
- Increased density begets more increased density and the infrastructure isn't there.
- Two parking spaces for a three bedroom unit isn't adequate if there are teen drivers. Only eight of the units are 3-bedroom units. There are nine spaces around the "park" and eight on-street spaces.
- The school drainage basin currently is inadequate. It will be improved. The storm sewer line to Reed St is adequate and well-engineered.
- 60 trips during peak hours triggers a traffic study. The site is projected to have 20.
- Staff prefers a regional solution for drainage.
- Before any application is submitted, notice of the neighborhood meeting is sent via first class mail to properties within 600 feet. Prior to Planning Commission and City Council hearings a sign is required to be posted – one per property, one per street frontage, and written notice must be sent to every property owner within 300 feet. In this case, the date was changed for the hearing, so a third mailing occurred.
- Councilmember Davis reported getting a letter from Kristine Disney about this case. She submitted it to the Clerk and is available to read.
- Per staff, the traffic from 38 units wouldn't be that much more than from 22 units.
- How much traffic can Upham hold before the street fails? That is unknown at this time. If another development applies staff will take a closer look.
- The traffic study for this development factors in the new development at 38th & Upham – which had to do a more comprehensive traffic analysis due to the large number of units.
- Why is the developer choosing 38 units instead of 22 units the R-3 allows? The developer elaborated on how 22 units would not support the infrastructure for this project. 22 units would be \$700K apiece; 38 makes them mid-\$400K – which is market. Removing two buildings to provide the drainage basin would not change the look of the project or lower the cost of the infrastructure. The density improves financability and marketability. Density usually produces compromise; this doesn't.
- There is no Astroturf in the park; it is about 3,000 sf.
- The front patios will be maintained by the HOA. Three options will be offered to the buyers -- patio deck, crusher fine, or Astroturf. Common areas will be live grass.

Mayor Starker closed the public hearing.

Motion by Councilmember Davis to approve Council Bill 02-2019 an ordinance approving the rezoning of property located at 4000-4066 Upham Street from Residential-Three (R-3) to Planned Residential Development (PRD) with approval of an Outline Development Plan, on second reading, and that it takes effect 15 days after final publication, for the following reasons:

1. The Planning Commission has recommended approval of the rezoning after conducting a proper public hearing.
2. The proposed rezoning has been reviewed by the Community Development Department, which has forwarded its recommendation of approval.
3. The proposed rezoning has been found to comply with the "criteria for review" in Section 26-303 of the Code of Laws.

seconded by Councilmember Hoppe.

Councilmember Dozeman favors this but is concerned about the way business has been conducted tonight. She believes in transparency, and doesn't believe the quasi-judicial policy has been followed. Allowing a former Planning Commission member, who has prejudged this case, to vote on this is not good. She thinks density is a necessary change so young people can live here, but she thinks the proceedings here have been at best unethical, at worst illegal.

Councilmember Urban agrees higher density should be allowed in certain areas, but doesn't believe the Comprehensive Plan call for this much density in this area. It's on the line and the neighbors expect some compromise. He noted with interest the City's willingness to spend \$900K on the front of Stevens Elementary school, when behind the school there is a drainage ditch in disrepair.

Councilmember Hoppe believes the charter allows for Councilmember Weaver to vote tonight. If citizens want the noticing requirements to change let the Council know; that is something Council can change. She believes this is a quality product and should be added to our community.

Councilmember Davis believes Councilmember Weaver is ok to vote and doesn't think it's unethical. She believes the businesses on 38th Ave need this density to provide customers, and this project is the best way to provide affordable housing. She is glad we have a developer that is working with the neighbors and doing a quality product.

Councilmember Pond doesn't think the ex parte principle was violated. He appreciates the concern about density, but believes this is a good product. He thinks the PRD provides the requirement for compromise, and that the Comp Plan supports this much density. He understands traffic is an issue and needs to be considered in the aggregate. He thinks the drainage is an improvement and should be successful. It's important to have affordable housing moving close to the businesses on 38th Ave.

The motion failed 5-3, with Councilmembers Mathews, Dozeman and Urban voting no.
[Six votes required.]

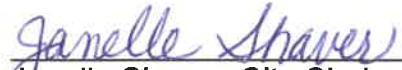
Mr. Dahl advised that action on Items 5 and 6 is no longer necessary.

Motion by Councilmember Hoppe that due to the lateness of the hour the remainder of the agenda be continued to April 22; second by Councilmember Urban; carried 8-0.

Mayor Starker called for Elected Officials Matters. **Leah Dozeman** announced that the Grange will be having a Community Night on April 25 at 7pm. Pie and ice cream will be served and a citizen to be named will be honored. The public is invited.

ADJOURNMENT

The City Council Meeting adjourned at 12:20 pm.



Janelle Shaver, City Clerk

APPROVED BY CITY COUNCIL ON June 10, 2019



Janece Hoppe, Mayor Pro tem

The preceding Minutes were prepared according to §47 of Robert's Rules of Order, i.e. they contain a record of what was *done* at the meeting, not what was *said* by the members. Recordings and DVD's of the meetings are available for listening or viewing in the City Clerk's Office, as well as copies of Ordinances and Resolutions.