

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 7, 2007 at 6:30 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:33 p.m.

ROLL CALL

Councilmembers Bonnie Blum, Scott Roswell, Russell Stewart, Doug Tisdale, and Klasina VanderWerf were present on silent roll call. Also present were Interim City Manager Eric Ensey, City Attorney Thad Renaud, Finance Director Karen Proctor, Police Chief John Patterson, Public Works Director Jay Goldie, Parks, Trails & Recreation Administrator Paul Burkholder, and Deputy City Clerk Sarah Henderson.

AUDIENCE PARTICIPATION PERIOD

There was no one from the audience who wished to speak on any subject other than the Lorraine Salazar application for a minor lot adjustment and setback variance. Mayor Wozniak asked that public comment regarding this item be deferred until the subject was discussed later in the meeting.

Mayor Wozniak closed the audience participation period at 6:34 p.m.

CONSENT AGENDA

Mayor Wozniak requested that item 4b be removed from the consent agenda.

Councilmember Tisdale moved, seconded by Councilmember Blum, to approve the following item on the Consent Agenda:

- Approval of July 17, 2007 Minutes

The motion passed unanimously.

Mayor Wozniak asked Chief Patterson to explain his plan regarding the expenditure of funds for the patrol vehicles. Chief Patterson stated the police department was planning to purchase a Ford Expedition, but recently found out that they could purchase a Ford Crown Victoria for about \$6,500.00 less than the Ford Expedition. Therefore, Chief Patterson requested the expenditure of funds be amended to reflect the change from the Ford Expedition to the Ford Crown Victoria.

Councilmember Tisdale moved, seconded by Councilmember Stewart, to approve the purchase of the Crown Victoria in lieu of the Ford Expedition, consistent with the plan acquisition of the 2008 budget items, but the Ford Crown Victoria is approved to be purchased at this time for approximately \$6,500.00 less than what was budgeted for the Ford Expedition.

The motion passed unanimously.

NEW BUSINESS

Request by Wesley Segelke (4480 South University Boulevard) for approval of a Minor Subdivision to allow the subdivision of one 4.976-acre (gross) lot into 2 lots, Lot 1 being 2.476 acres (gross) and Lot 2 being 2.50 acres (gross); with a variance to the minimum lot area because Lot 1 is less than the required 2.5 acres (gross) in the R-1 zone district.

Mayor Wozniak disclosed that he, Councilmember Tisdale, and Interim City Manager Eric Ensey had an informational meeting with Mr. Segelke some time ago before any formal application had been submitted to the City. Mayor Wozniak stated the meeting was just to discuss the general process of what was involved for this type of subdivision application and they did not discuss the substance of the application. Mayor Wozniak stated this meeting would not prevent him from being fair and unbiased. Councilmember Tisdale concurred with Mayor Wozniak's statements.

Mayor Wozniak inquired if other Councilmembers had any additional disclosures. Councilmember Stewart stated that his law firm was involved with representing the applicant, so he asked to be recused. Mayor Wozniak stated that even without Councilmember Stewart they had a quorum.

Mr. Ensey stated that the applicants, Wesley and Martha Segelke of 4480 South University Boulevard, are seeking approval of a minor subdivision to allow the subdivision of one 4.976-acre (gross) lot into two lots, Lot 1 being 2.476 acres (gross) and Lot 2 being 2.50 acres (gross). Mr. Ensey said the applicant is also concurrently seeking approval of a variance to the minimum lot area because Lot 1 is less than the required 2.5 acres (gross) in the R-1 zone district.

Mr. Ensey stated the subject lot is zoned R-1, 2-1/2-Acre Residential and he described the surrounding properties. Mr. Ensey referred to section 17-3-340 of the City Code, which outlines the submittal requirements for a minor plat application. Mr. Ensey stated staff had determined the application complies with the submittal requirements as demonstrated on pages 2-4 of the staff memorandum.

With regard to the land dedication, Mr. Ensey said the property had appraised at \$2.8 million. Mr. Ensey said the cash-in-lieu of land dedication, which is based upon the 7.5% dedication requirement, is \$210,000.

According to Mr. Ensey, the Parks, Trails & Recreation Commission and the Planning & Zoning Commission voted to recommend that the City Council accept cash-in-lieu of land in the amount of \$210,000 for this specific application.

Mr. Ensey discussed the history of the applicant's property with regards to the portion of Lot 1 dedicated to CDOT for the widening of University Boulevard, which represents an exceptional condition associated with the property. Mr. Ensey also stated that because CDOT had the ability to condemn a portion of the applicant's property if the applicant did not agree to sell it to CDOT, staff finds that the proposed waiver is justified and does not conflict with the intent of Chapter 16 of the City Code concerning zoning. Mr. Ensey mentioned that staff does not find that the variance conflicts with the City's Master Plan.

Mr. Ensey concluded by saying that staff recommends that the Council approve the proposed Segelke Acres Minor Subdivision with variance application submitted by Wesley and Martha Segelke to allow for the subdivision of one 4.976 acre (gross) lot into two lots, Lot 1 being 2.476 acres (gross) and Lot 2 being 2.50 acres (gross). Mr. Ensey also stated that staff recommends cash-in-lieu in an amount equal to the 7.5% land dedication requirement.

Councilmember Tisdale inquired about the appraisal amount, and Mr. Ensey stated that copies were being run at this time and would be provided to the Councilmembers shortly.

A discussion ensued regarding trails in the area surrounding the applicant's property and whether accepting cash-in-lieu of additional trails was appropriate in this situation. Mr. Ensey stated the Parks, Trails & Recreation Commission and the Planning & Zoning Commission had discussed this same issue in length and their recommendation was not to pursue a trail with this application.

Mr. Segelke addressed the Councilmembers and stated that he had several people put together his application. He stated that Bill Howard was part of this team and would present his application to the Council on his behalf.

Bill Howard, 6133 Greenwood Plaza Boulevard, Greenwood Village, discussed the reason why cash-in-lieu was an appropriate alternative to a trail dedication. Mr. Howard mentioned safety issues involved with a potential trail in this area.

Councilmember Roswell inquired whether there would be any negative impacts regarding the property if a trail was required in the area. Mr. Howard responded that a trail may cause the lots to be noncompliant. Mr. Howard also said a trail on the south side would not have any place to go and that it would be dangerous due to no crossing signals in the area.

Mayor Wozniak inquired if the northeast corner of the property is adjacent to wetlands and if any thought was given to dedication of land in that area. Mr. Howard responded that it is adjacent to wetlands, but the Parks, Trails & Recreation Commission decided to leave it intact.

Mayor Wozniak opened the public comment period at 6:56 p.m. No one choose to speak, so Mayor Wozniak closed the public comment period at 6:57 p.m.

Councilmember Tisdale stated that he remained troubled by the lack of land dedication.

Mayor Wozniak agreed that, in the past, the Council has been biased toward land dedications. Mayor Wozniak further stated that the Parks, Trails & Recreation Commission and the Planning & Zoning Commission who are usually in favor of land dedication, are both recommending to accept cash-in-lieu.

Councilmember Tisdale stated that he had read the Parks, Trails & Recreation Commission and the Planning & Zoning Commission reports and agreed that cash-in-lieu does make sense in this matter.

The copies of the appraisal of the property were distributed to the Councilmembers and staff. Councilmember Tisdale stated for the record that the appraisal was dated March 8, 2007 and it showed Lot 1 to have a value of \$1,100,000 and Lot 2 to have a value of \$1,700,000.

A discussion ensued regarding safety issues of having a trail that would cross University Boulevard.

Councilmember Tisdale moved, seconded by Councilmember VanderWerf, to recommend approval of the request by Wesley and Martha Segelke for the Segelke Acres Minor Subdivision plat and variance to allow for the subdivision of one 4.976-acre

(gross) lot into two lots, Lot 1 being 2.476 acres (gross) and Lot 2 being 2.50 acres (gross). Such approval is subject to the following conditions:

1. The development agreement in Exhibit E be fully, properly, timely, and completely executed and recorded with the County concurrently with the recordation of the subdivision plat.
2. The application meets the requirements outlined for approval of minor subdivision application and variance requests in Chapter 17 of the City Code, all applicable zoning requirements outlined in Chapter 16 of the City Code, and the Village's Master Plan, as demonstrated in the staff memorandum dated August 7, 2007, together with the appraisal report. The recommendation for approval of this application incorporates the staff findings contained in the August 7, 2007 staff memorandum, which was made available to the applicant and to the public prior to the public hearing.

The motion passed unanimously.

Request by Lorraine Salazar (11 Blackmer Road) for approval of a variance to allow for a Minor Lot Adjustment in which one of the proposed lots does not comply with the minimum lot size in the R-1, 2-1/2-Acre District and a variance to reduce the front setback of the lot from 75 feet to 50 feet as required in the R-1, 2-1/2-Acre District.

Mr. Ensey stated the applicant, Lorraine Salazar, of 11 Blackmer Road, is seeking approval of a variance to Section 17-6-50(3) concerning standards for approval of a Minor Lot Adjustment. Mr. Ensey said the applicant owns both Lot 1 and Lot 2 of Highline Park Subdivision and is seeking approval of a variance to allow for approval of a Minor Lot Adjustment in which the proposed Lot 1 does not comply with the minimum lot size in the R-1, 2-1/2-Acre Zone District. Mr. Ensey further said that the applicant is seeking a variance to reduce the front setback from 75 feet, as required in the R-1 (2-1/2-Acre District), to 50 feet.

Mr. Ensey discussed the history of the site and also reported that the applicant submitted an application earlier this year to the City for a Minor Lot Adjustment to relocate a lot line that currently bisects the home, at which time it became clear that the applicant could not meet the minimum lot area for the zone district due to the location of the house on the lot, the dedicated portion of land to the City, and the applicant's desire to maintain direct access to the Highline Canal for both lots. Mr. Ensey said that the applicant is additionally seeking approval of the variance to the front yard setback to allow for a greater building envelope on the site.

Mr. Ensey mentioned that the criteria for approval of variances associated with subdivision requests states that variances should be based on a finding of exceptional conditions not caused by the action of the subdivider. Mr. Ensey said staff finds that the location of the house on the lot is an exceptional condition, as the house was constructed before the applicant purchased the property. Mr. Ensey further stated that the portion of Lot 1 dedicated to the City also represents an exceptional condition, as the City approached the applicant about acquiring the land for public purposes.

Mr. Ensey discussed the way a minimum lot size for Lot 1 might be achieved, but it would result in a more irregularly shaped lot, which is contrary to the provisions of section 17-6-50(6) of the Code.

Mr. Ensey addressed the variance of the front setback and how, if approved, any structure on the site would not be closer to Dahlia Street than the side setback on the lot to the north.

Mr. Ensey stated staff finds that the location of the existing structure on the site is an exceptional condition not caused by the applicant and that, at some time, the City issued a building permit for construction of the house in its current location, which crosses over a lot line. Mr. Ensey also stated that staff finds the requested variance to the front setback reasonable and would not be in conflict with surrounding properties.

Mr. Ensey reported that the Planning & Zoning Commission reviewed this request and recommended approval of the request to the Council.

Mr. Ensey concluded by stating the staff recommends that the Council approve the requested variance to Section 17-6-50(3) of the City Code concerning standards for approval of a Minor Lot Adjustment to allow for the approval of a Minor Lot Adjustment in which the proposed Lot 1 does not comply with the minimum lot size in the R-1, 2-1/2-Acre Zone District. Additionally, a variance would allow for a reduction in the front setback from 75 feet to 50 feet for Lot 1.

Councilmember Stewart inquired when the house was originally constructed. Mr. Ensey stated that City's records were not clear as to when the house was built.

A discussion ensued regarding the lot sizes referenced on the various paperwork contained in the council packet.

Francis Regis Salazar, 11 Blackmer Road, and husband of the applicant Lorraine Salazar, stated they purchased the property approximately 24-25 years ago. At the time of the purchase, there was a request of a land donation that would allow access to the Highline Canal. Mr. Salazar said they donated the land, since the Canal is for the use of the public. Mr. Salazar said that he always thought his two lots could be subdivided, since they are assessed separately. Mr. Salazar said, since he found out that their home is on a property line, he now has to have the lots reconfigured. Mr. Salazar said the setbacks they are proposing would be the same as their neighbors.

Mayor Wozniak opened the public hearing at 7:18 p.m.

Joe Marion, 1 Blackmer Road, said he moved into his home in 1974. He said his neighbor, Roland Boucher, purchased 2 lots and made it into 1 lot in the 1970's. Mr. Marion stated his Homeowners Association ("HOA"), Highline Park, has bylaws from 1968 regarding this situation. Mr. Marion also stated he believes that this application is appearing before the wrong venue, since the City's jurisdiction comes after their HOA.

Jarry Boatright, 4 Blackmer Road, objected to the fact that no consideration or communication regarding this matter had been given to their HOA, Highline Park, of which he is one a committee member. Mr. Boatright discussed their HOA covenants which state that after 2 lots have been combined into a single lot, they are not allowed to be subdivided into 2 lots.

Jeff Bennis, 3 Tenaya Lane, stated he was alright with the variance, since it is not unreasonable, although he is not excited about having a larger home on a small lot. Mr. Bennis said that his main concern is regarding the traffic situation, especially with Highline Canal parking lot and the Arapahoe Tennis Club. Mr. Bennis said that by adding another home to an already unsafe road, it will make even more congestion.

Mayor Wozniak agreed that traffic is significant for this very quiet area, which is an issue that the Council would need to address separately.

Mayor Wozniak closed the public hearing at 7:28 p.m.

Mayor Wozniak asked for Mr. Salazar to respond.

Mr. Salazar responded that one single home would not draw anywhere near the traffic as the Arapahoe Tennis Club or the Highline Canal parking lot. Mr. Salazar stated that the HOA does not have hearings on who is going to be on the committee and he called it a self-sustaining committee. Mr. Salazar said the covenants are not enforced and he gave examples. Mr. Salazar stated that his property has always been appraised and accessed as 2 separate lots.

Mayor Wozniak inquired if the City Attorney could provide guidance regarding Council involvement with violation of covenants. Mr. Renaud stated that covenants are not enforced through the Council.

A discussion ensued regarding past deliberations of covenants.

Councilmember Tisdale and Mayor Wozniak discussed the size of the lots. Mr. Ensey confirmed that Exhibit C lists Lot 1 proposed size as 2.00-Acres (gross) and 1.85-Acres (net), and Lot 2 proposed size as 2.86-Acres (gross) and 2.76-Acres (net).

Mayor Wozniak inquired if the reason two 2-1/2-Acre lots could not be made out of the entire lot was because of the location of the house.

Mr. Ensey stated that two 2-1/2-Acre lots would require irregularly shaped lots due to the location of the home, plus one of the lots would lose access to the Highline Canal. Mr. Ensey did note that losing access to the canal was not part of staff's consideration when making their decision.

Councilmember Tisdale stated the house was built before the applicant purchased the property, so the applicant knew that the home straddled the lot line. Mr. Ensey mentioned that the problem might not have been clear to the purchaser, but with due diligence they probably should have discovered it. Councilmember Tisdale inquired about the effect of our lot consolidation ordinance with regards to this issue. Mr. Ensey stated the lot consolidation ordinance addresses non-conforming lots, which is not the case in this matter.

Mayor Wozniak asked if there would be two conforming lots and no necessity to readjust the lot lines, if the applicant destroyed the house. Mr. Ensey stated that was correct.

A discussion ensued regarding the issue of hardship and it was determined that 17-3-420(c) states: "Criteria for granting variances: Approval of variances shall be based fundamentally on finding that unusual topographical or other exceptional conditions not caused by action of the subdivider require such variance, modification or waiver; and that granting thereof will not adversely affect the general public nor have the effect of nullifying the intent and purpose of these regulations."

Councilmember Tisdale stated he was troubled by the survey and would like to know the size of space that was purchased by the City.

A discussion ensued about how the home was allowed to be built over a lot line and about the missing records regarding the original history of the property and home. Councilmembers speculated about the intentions of the original homeowner. Councilmembers also discussed that, if the home was not there, the two lots would be conforming and two homes could be built.

Various Councilmembers expressed their desire to know about the history of the property and home, along with having more information from the HOA before they make a decision.

Mr. Renaud confirmed that the information requested by the Councilmembers is:

- chain of title from when home was built until now,
- the city's subdivision files,
- information from the objectors (HOA), and
- exact size of the parcel.

Councilmember Tisdale moved, seconded by Councilmember Stewart, to table the request by Lorraine Salazar for a variance concerning Minor Lot Adjustment and minimum lot area for purposes of requiring additional information, as outlined herein, so that then council can take an informed action on this item. Councilmember Tisdale added that such tabling shall be until the next City Council meeting or until such later time staff is able to supply such information that staff reports the status at the next Council meeting.

Mayor Wozniak asked the applicant if they objected to a continuance before the Council voted on the motion.

Mr. Salazar stated they did not object to a continuance, but he did ask the record to show that they did not sell a portion of their land to the city, but rather donated it.

The motion passed unanimously.

REPORTS

Mayor's Report

Mayor Wozniak spoke about resident complaints regarding construction violations and the need for additional remedies to combat repeat violators. Mayor Wozniak said a \$100 to \$200 fine is not very effective for someone building a \$1,000,000 to \$2,000,000 home. Mayor Wozniak requested that, at the next council meeting, Mr. Renaud present what remedies can be employed by the City, along with findings regarding what other jurisdictions do with repeat construction violators.

Mayor Wozniak stated he was pleased with both Paul Burkholder's and Jay Goldie's work on the trails and thanked them for their efforts.

Mayor Wozniak stated that he will be attending a caucus meeting on August 8th regarding our City being a "Wellness City".

Members of City Council

Councilmember Tisdale stated that Denver Regional Council of Governments will not change the urban growth boundary area for Cherry Hills Village for the time being.

Councilmember VanderWerf suggested a study session might be merited regarding upcoming money items, such as the Village Center, open space, and the crossing at University Boulevard.

Councilmember Stewart echoed Mayor Wozniak's remarks on the good condition of the parks and trails.

Members of City Boards and Commissions

No reports were given.

City Manager & Staff

Mr. Ensey stated that on August 29th at 6:00 p.m. there will be an open house held at Kent Denver for master plan issues. A postcard and also a letter will be mailed out to all the residents. The meeting will be administered by our master plan consulting team.

Mayor Wozniak stated that Councilmembers are allowed to attend, but they will not be presiding. Mr. Renaud stated that, if more than two Councilmembers, will be attending, a notice will need to be posted. Mayor Wozniak instructed that more than two Councilmembers will attend, and directed staff to provide appropriate public notice.

Mr. Ensey stated that the packets included the un-audited financial reports for June.

Mr. Ensey mentioned that the packets also included a memo regarding Cherry Hills Country Club's request for a traffic light at the club's entrance on University Boulevard. Mayor Wozniak did not think the Council had any objections, but that the financial contribution for the traffic light would need to be covered by the parties directly affected. Mr. Ensey responded that staff would bring forward a contract for the Council to consider.

Mr. Ensey said he will send an email to the Councilmembers to inquire if they will be able to attend the September 4th meeting, since it is right after the Labor Day weekend.

Mr. Ensey reported that the budget for 2008 is being worked on now and the department heads will be getting together with their liaisons soon. Mr. Ensey also said that workshops will be scheduled regarding the larger issues.

Mr. Ensey said that the Citizen's City Center Committee report will be presented at the August 21st Council meeting.

City Attorney

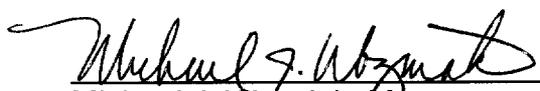
No report.

ADJOURNMENT

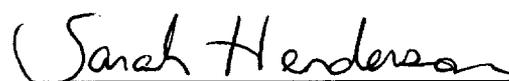
A motion was made by Councilmember Blum, seconded by Councilmember VanderWerf to adjourn the meeting at 8:12 p.m.

The motion passed unanimously.

The meeting adjourned at 8:13 p.m.



Michael J. Wozniak, Mayor



Sarah Henderson, Deputy City Clerk