Minutes of the Planning & Zoning Commission
Of the City of Cherry Hills Village, Colorado
On October 14, 2008 Held at 6:30 p.m.
At the Village Center

Chairman Plotkin called the meeting to order at 6:30p.m.

ROLL CALL OF MEMBERS
The following Commissioners were present: Ira Plotkin, Ann Kerr, Kevin Iverson, Joe Poche, Laura Christman, Stephanie Bluher, and Jacque McIntryre.

The following City staff members were present: Deputy City Attorney David Foster, City Manager Eric Ensey, and Community Development Clerk Matthew Eckenwiler.

AGENDA ITEM 3: ELECTION OF VICE-CHAIR

Nomination: Commissioner Poche nominated Commission Iverson for the position of Vice-Chair.

2nd Nomination: Commissioner Kerr seconded the nomination.

Nomination: Commissioner Bluher nominated Commissioner Christman for the position of Vice-Chair.

2nd Nomination: Commissioner McIntyre seconded the nomination.

Commissioner Iverson received 4 ayes and 3 nays.

Commissioner Christman received 3 ayes and 4 nays.

Commissioner Iverson was named the Vice-Chair of the Commission.

APPROVAL OF MINUTES

The minutes for September 23, 2008.

1st motion: Commissioner Christman motioned to approve the minutes.

2nd motion: Commissioner Bluher seconded the motion to approve the minutes.

The minutes were approved unanimously.

AGENDA ITEM 5A- A request by Jim Rubin of 5 Random Road for a floodplain development permit to realign a portion of the Blackmer Gulch channel within the designated 100-year floodplain

Mr. Ensey addressed the Commission explaining that the applicant was seeking approval of a floodplain development permit in order to realign a portion of Blackmer Gulch. He said the applicant was proposing to realign approximately 280 linear feet of gulch that falls in the 100-year floodplain. Mr. Ensey explained that the applicant was seeking approval of the application because he believed it would improve access for his lot.

Mr. Ensey stated that the applicant had provided the required hydraulic analysis and other supporting documentation that indicates no rise in the base flood elevation. He said that the City Engineer, Mike Dungan, reviewed these reports and agrees with their findings.

Mr. Ensey explained that staff reviewed the criteria of Section 16-17-40(c)(4). He said that all floodplain development applications must meet this criteria and staff did not find that the applicant demonstrated that failure to grant the application would result in a hardship and the applicant did not show good and sufficient cause because the lot is currently in the beginning stages of construction.

Mr. Ensey said that staff recommended that the Commission deny the application to the City Council.

Commissioner Iverson stated that staff should emphasize the need for applicants to demonstrate good and sufficient cause as well as considerable hardship prior to spending a lot of money on engineering reviews and hydraulic reports.

Jim Rubin
5 Random Road

Mr. Rubin addressed the Commission stating that he had abided by all the criteria required for a floodplain development permit and that it was not until the previous week that staff had informed him that he needed to demonstrate good and sufficient cause as well as potential hardship if the application is not approved.

Mr. Rubin demonstrated to the Commission, with the use of an overhead photograph of his property, the location of the floodplain in proximity to the location of his home that is currently under construction. He said that because of the shape of the lot and location of the house, less of the property was usable because of the hardship of the Blackmer Gulch channel. Mr. Rubin stated that he wanted to realign the channel by moving it further to the south, opening up more usable area on his lot.

Mr. Rubin stated to the Commission that he, just like other families in Cherry Hills Village, deserved to have open land to allow for his young children to run around and use the land he owns for recreation and other uses, but that with the Blackmer Gulch channel as it exists currently, he and his family are unable to maximize the usable area of the lot. He said that the realignment process would not result in a long-term disruption and would not affect neighbors along the Blackmer Gulch. He emphasized that the entirety of the realignment construction would take less than a week.

Mr. Rubin explained to the Commission that after further review of the floodplain development permit application process, he believed that staff was imposing on him a criteria more fitting to the hardship criterion related to variance approvals. He stated further that he felt the criterion he was being reviewed under was unfair and harsh. Mr. Rubin said that he had complied with all the requirements associated with his building permit as well as with the requirements of his floodplain development application. He emphasized to the Commission that he should have the same right to develop his property as other property owners.

Commissioner Christman asked Mr. Rubin to further explain his previous application in May of 2008 where he presented a Letter of Map Revision (LOMR) to the Commission and the City Council.

Mr. Rubin explained that the LOMR process was a different issue than the floodplain development permit he was currently seeking. He said that at that time, he was seeking approval of a revision to the floodplain map showing a change in the location of the floodplain.

Commissioner Christman stated that at the May 2008 City Council meeting, Councilman Rosswell commented that Mr. Rubin's LOMR application did not sufficiently demonstrate the

intended use of the property, which did not sufficiently justify a floodplain boundary change at that time. She furthered stated that, as a result of this comment, there should have been further review of the floodplain ordinance and the requirements for this application by the applicant.

Mr. Rubin stated that the LOMR requested was a completely different process than what is required for his current floodplain development application. He further explained that he had reviewed the LOMR ordinance and believed he had met the requirements of the application.

Commissioner Poche asked the applicant how his engineers addressed subsurface waters in relation to his proposed channel realignment.

The applicant requested that his representative address Commission Poche's question.

Nathan Torrey
WRC Engineering, Inc.

Mr. Torrey explained that subsurface water is not an element reviewed during a floodplain development analysis.

Commissioner Poche asked if the realigned channel could eventually work its way back to its original position.

Mr. Torrey said that vegetation, rip rap, and other erosion control elements are designed in a way to prevent repositioning of the channel.

Chairman Plotkin asked Mr. Rubin if he was aware of the existing location of the floodplain on his property at the time he purchased the lot.

Mr. Rubin confirmed that he was aware of the existing floodplain on his property.

Chairman Plotkin then asked Mr. Rubin if he had reviewed Section 16-17-60(c)(4) prior submitting his application.

Mr. Rubin explained that he had his engineer submit the application based on the criteria required for an engineer, but that he was never aware of the hardship element in the criteria.

Chairman Plotkin asked Mr. Rubin to clarify his exceptional hardship as it relates to his floodplain development permit.

Mr. Rubin explained that his hardship was the inability to fully use his property at its greatest capacity because of the location of the Blackmer Gulch channel.

Paul Means
Representative of Jason Matherly, 10 Random Road

Mr. Means stated that he did not believe the accessibility issue was substantial considering that the property was used for many years leading up to Mr. Rubin's purchase of the lot without any issues. He said that another concern was that one of the City's trails cuts through the southern portion of Mr. Rubin's lot and that a modification to the ditch in that area will impact those who use that trail.

Mr. Means explained that the greatest concern that he and Mr. Matherly had was that the hydraulic analysis provided by the applicant and the findings that there would not be a rise in the base flood elevation. He said that any change to this floodplain could cause catastrophic events for Mr. Matherly's property.

Mike Dungan
Muller Engineering

City of Cherry Hills Village Engineer

Mr. Dungan demonstrated to the Commission the location of the floodplain on Mr. Rubin's property.

Mr. Dungan explained that the proposed realignment only moves the low point of the floodplain "bowl" on Mr. Rubin's property and will not alter the floodplain and the water flow through the area.

Commissioner Poche asked Mr. Dungan why he thought the City would not recommend approval of the application if the applicant's proposal did not impact the floodplain.

Mr. Dungan responded that in his engineering review is limited to the technical criteria of the application.

Commissioner Christman asked Mr. Dungan to clarify his analysis of the proposed gulch realignment and how it did not affect the nature of the gulch.

Mr. Dungan explained that there may be some additional erosion, but the proposed rip rap and vegetation help to mitigate the effects of the erosion.

Commissioner Bluher asked Mr. Dungan if the realignment of the channel would impact the flow of the water down Blackmer Gulch because the proposal appeared to increase the distance of the channel. She asked if that meant less water would flow to downstream users because of this modification.

Mr. Dungan explained that there may be a slight change in the amount of water flow, but that it was too small to measure and too minimal to consider a concern to any downstream users.

Jason Matherly
10 Random Road

Mr. Matherly addressed the Commission stating that he has lived in Cherry Hills Village for over nine and a half years and when he bought his property he was aware of his rights and protections. He explained that he was concerned that the Federal Emergency Management Agency (FEMA) would not review the results of Mr. Rubin's hydraulic analysis and that the City had the ability to approve the floodplain application based on an analysis by private engineer. He said that the only time he had experienced flooding on his property was three to for years ago, which was water from Blackmer Gulch.

Mr. Matherly explained that this greatly concerned him as a resident of Cherry Hills Village and that altering floodplains is a very serious issue. He stated to the Commission that a requirement of the floodplain development permit criteria should be to demonstrate exceptional hardship. He asked that the Commission protect him and his property by denying Mr. Rubin's application.

Mr. Rubin addressed the Commission emphasizing that he was not proposing to alter the floodplain, but rather a realignment of the channel which does not impact the floodplain.

Chairman Plotkin closed the public hearing.

Commissioner Christman stated that the Master Plan includes a reference to preserve and maintain natural floodplains. She said that without an exceptional hardship demonstrated, the application should not be approved.

Commissioner Iverson stated that most review criteria are black and white, but that the demonstration of exceptional hardship and the demonstration of good and sufficient cause is a gray area. He said an exceptional hardship results if an applicant is denied a reasonable use of his property, provided the applicant does not violate the City's Code requirements.

Commissioner Bluher said that she was particularly concerned with the fact that Mr. Rubin purchased a lot with almost 50% of the property impacted by the 100-year floodplain and then chose to build a home on the lot and then later claim an exceptional hardship.

Deputy City Attorney Foster encouraged the Commission not to review the application on the basis that there may be a self-imposed hardship. He said that the Commission should review the application on the good and sufficient cause as well as the exceptional hardship criteria.

Commissioner Christman motioned to recommend denial of the requested floodplain development permit to the City Council for the realignment of an approximately 280 linear foot portion of Blackmer Gulch for the property located at 5 Random Road. Failure to grant the authorization will not result in an exceptional hardship to the applicant for the reasons stated in the staff memorandum dated October 14, 2008.

Commissioner Bluher seconded the motion to deny the application.

Ira Plotkin	aye
Ann Kerr	aye
Kevin Iverson	nay
Joe Poche	nay
Laura Christman	aye
Stephanie Bluher	aye
Jacque McIntyre	aye

Ayes 5 Nays 2

The motion carried.

AGENDA ITEM 5B- Adoption of Planning and Zoning Commission Rules of Procedure

Chairman Plotkin asked the Commission if anyone had any new modifications to suggest for the proposed Planning and Zoning Rules of Procedure.

Commissioner Bluher asked why the rules call for a supermajority vote of 5 members to amend the Rules of Procedure. She explained that a more common practice is to require a majority vote.

Mr. Ensey explained a change to the Commission's bylaws should not be a simple process and should require a greater majority of the members be present.

Commissioner Bluher stated another concern regarding the time limit requirement under the "Hearings" section. She explained that the allotment of further time to speak only being granted at the discretion of the Chair seemed to discount what other members of the Commission consider to be a "reasonable" extension.

Deputy City Attorney suggested using the word "encourage" in the time limitation language and amending the rule to: Any individual wishing to address the Commission during public hearings or public comment periods, are encouraged to speak for no more than five (5) minutes. The applicant or the applicant's primary representative are encouraged to speak for no more than fifteen (15) minutes. Subsequent speakers on behalf of the applicant are encouraged to speak for no more than five (5) minutes. The Chair may extend the speaking time further at his/her discretion.

Commissioner Bluher motioned to recommend approval of the Planning and Zoning Commission Rules of Procedure as amended.

Commissioner Christman seconded the motion.

Ira Plotkin	aye
Ann Kerr	aye
Kevin Iverson	aye
Joe Poche	aye
Laura Christman	aye
Stephanie Bluher	aye
Jacque McIntyre	aye

Ayes 7 Nays 0

The motioned passed unanimously.

AGENDA ITEM 5C- Proposed amendments to Chapter 17 of the Municipal Code concerning the creation of procedures for review of minor amendments to subdivision plats

Mr. Ensey addressed the Commission saying that Staff is presenting a proposed amendment to Chapter 17, Subdivisions, for the purpose of creating a procedure for minor amendments to subdivision plats. He stated that the intent is to create an expedited procedure for plat amendments that are technical in nature and do not create or alter lot boundaries. Mr. Ensey said that most jurisdictions have in a place a procedure for minor amendments to subdivision plats and up until this proposal, Cherry Hills Village has not had such a procedure.

Commissioner Christman said that there are many types of notes on all the subdivisions in Cherry Hills Village. She stated that she was in complete support of an expedited process that allows property owners to remove minor technical notes from subdivision plats so long as all effected property owners and lenders are notified of the amendment. Commissioner Christman explained that plat notes and easements are not always technical but material in nature and should not be eligible for this proposed process. She further stated that it would be appropriate to include typographical errors for this process.

Mr. Ensey asked Commissioner Christman for clarification on who she felt should be notified for a subdivision plat amendment.

Commissioner Christman stated that all parties listed on a subdivision plat and affected by the notations listed on the plat should be notified of amendments to the subdivision plat.

Commissioner Iverson asked Mr. Ensey if it was a requirement in the Code that all properties affected by a subdivision plat be notified of a public hearing in the existing subdivision process.

Mr. Ensey confirmed that all properties are notified in such an event.

Commissioner Iverson requested that the discussion be tabled to the next meeting and that staff provide comparisons of other jurisdictions and the language used for their minor amendments to subdivision plats.

Mr. Ensey said that staff would provide research to provide the requested information.

Reports

None.

Commissioner Plotkin adjourned the meeting at 8:32p.m.

Ira Plotkin
Chairman

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Matthew Eckenwiler
Community Development Clerk