Minutes of the Planning & Zoning Commission
Of the City of Cherry Hills Village, Colorado
March 10, 2009
Held at 6:30 p.m.
At the Village Center

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

The following Commissioners were present: Ira Plotkin, Ann Kerr, Kevin Iverson, Joe Poche, Laura Christman, and Stephanie Bluher. The following Commissioners were absent: Jacque McIntyre

The following City staff members were present: Deputy City Attorney David Foster, Planning Manager Rob Zuccaro, City Engineer Mike Dungan, and Community Development Clerk Matthew Eckenwiler.

**APPROVAL OF MINUTES**

The minutes for January 27, 2009:

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.

Chairman Plotkin requested the Commission to focus specifically on the agenda items and avoid discussion about the other issues not listed on the agenda.

**AGENDA ITEM 4A- Administrative Review of Floodplain Development Permits for Bank Stabilization**

Mr. Zuccaro addressed the Commission stating that the first study session is to discuss administrative review of floodplain development permits for bank stabilization, which was a continued item from the previous meeting. He said that staff had provided the Commission with examples of recent floodplain development permits that involved bank stabilization. Mr. Zuccaro said that the Commission requested that staff write specific language for the proposed amendment. He said that staff created a list of bullet items that summarize the main concepts staff wishes to incorporate in the amendment.

Mr. Zuccaro explained that the administrative process would only review bank stabilization applications. In addition, he said the City planned to adopt Chapter 12, of the Arapahoe County Stormwater Management Manual. Mr. Zuccaro said that applicants would be required to provide a hydrology study with all bank stabilization applications. He said the applicant would also be required to provide proof that all state and federal permits were obtained prior to making application with the City. Lastly, Mr. Zuccaro said that applicants would be required to notify all adjacent neighbors within a designated period of time. Mr. Zuccaro explained that any opposition from an adjacent neighbor would result in requiring review by the Planning and Zoning Commission and City Council. He said that staff would reserve the right to require any bank stabilization applications to be reviewed by the Planning and Zoning Commission and City Council if necessary.

Commissioner Christman asked Mr. Zuccaro if the applicant would be required to demonstrate a need for bank stabilization.

Mr. Zuccaro said that Chapter 12 of the Arapahoe County Stormwater Management Manual provides a guideline for those situations in which bank stabilization would be a necessary.

Mike Dungan
City of Cherry Hills Village Engineer
Muller Engineering

Mr. Dungan agreed with Mr. Zuccaro stating that the manual will provide guidance for demonstration that erosion or the potential for erosion to occur exists.

Commissioner Poche asked for clarification regarding Commissioner Christman's question. He stated that property owners should be encouraged to protect their properties from erosion.

Commissioner Christman explained that some applicants may not have a demonstrated need for bank stabilization and requiring applicants to demonstrate a need would ensure that unnecessary projects are not approved.

Commissioner Bluher commented that non-adjacent property owners who are affected by a bank stabilization process should be notified. Ms. Bluher noted that the variance process requires notification of all properties affected by the applicant's request and the administrative review of bank stabilization should be subject to the same requirements.

Chairman Plotkin responded that during the drafting of the Master Plan, the Commission and Advisory Committee found difficulty in including words such as "affected," as it was challenging to define which properties downstream were affected and which properties were not. He stated that using the phrase "adjacent property owners" is more definitive than "property owners who are affected."

Commissioner Iverson asked if it would be possible to create a definition of bank stabilization.

Mr. Zuccaro answered that Chapter 12 of the Arapahoe County Stormwater Management Manual provides criteria for what bank stabilization would include.

Commissioner Iverson suggested that the definition of bank stabilization reference Chapter 12 Arapahoe County Stormwater Manual.

Commissioner Iverson commented on the requirement to notify adjacent property owners. He asked for explanation regarding the process by which an adjacent property objects to the proposed bank stabilization and how the applicant, as a result, seeks a recommendation from the Planning and Zoning Commission followed by approval from the City Council.

Deputy City Attorney Foster responded that the proposed amendment establishes a public process in which a property owner can receive administrative approval in a more efficient way. He explained that by having the option for adjacent property owners to object to the proposed bank stabilization, the City is better protected and can still hold the regular approval process.

**AGENDA ITEM 4B- "Good and Sufficient Cause" and "Exceptional Hardship" Review Criteria in Floodplain Development Regulations**

Chairman Plotkin noted that the Commission received a letter from Mr. and Mrs. Scott (of 4501 South Monroe Lane) that supports staff's recommendation to leave the floodplain development permit review criteria the way it is currently written in the City Code.

Mr. Zuccaro stated that the next item for discussion was to examine the review criteria of proving "good and sufficient cause" and "exceptional hardship." He said that staff provided the

Commission a historic context of the review criteria and examples of floodplain regulations from other cities including, Vail, Colorado, Scarsdale, New York and Darien, Connecticut. Mr. Zuccaro explained that none the cities referenced had the language "good and sufficient cause" or "exceptional hardship" referenced within their ordinances in relation a regular floodplain development permit, and reserved these terms for variances related to floodplain development permits.

Mr. Zuccaro stated that he analyzed the two review criteria in relation to the Flood Insurance Rate program the City follows and other communities' ordinances concluding that Cherry Hills Village was unique for having such level of review.

Mr. Zuccaro said that he provided the Commission with a map of the City indicating all properties that are affected by the floodplain. He said that an estimated 211 properties fell under the category of being affected by the 100-year floodplain.

Mr. Zuccaro said that the review criteria of "exceptional hardship" and "good and sufficient cause" were included in the 1978 ordinance as well as the 1989 ordinance update. He said that staff recommended maintaining the same level of review because it protects the floodplain and ultimately the character of Cherry Hills Village.

Commissioner Bluher said that she reviewed some of the legislative history from 1973, 1978, and 1989 to see how the City created and adopted the floodplain ordinance. She said that in review of the Village Crier publication from the past, there was a significant population growth from 1970 to 1973, at a rate of 135%, which was faster than any other Colorado city with a population of 4,000 people or more. She noted that in her review of the 1974 ordinance, it was clear that City Council wanted two governing bodies involved with the review of floodplain development permits; the Planning and Zoning Commission and City Council.

Commissioner Iverson said that he thought all cities in Colorado would have review criteria for floodplain development permits for reasons of health and safety as well fulfilling the national flood insurance program requirements. He asked for clarification regarding the statement made in the January 27, 2009 memorandum that compared floodplain development review criteria of other cities to Cherry Hills Village and concluding that the other cities had similar technical review criteria.

Mr. Dungan responded that the differences between Cherry Hills Village's review criteria and other cities is subtle, but those differences are significant. He said that the difference with the most impact upheld by Cherry Hills Village was no allowance for any rise in base flood elevation. Mr. Dungan said that all other cities allowed for a certain percentage of rise in the base flood elevation.

Commissioner Iverson asked for clarification of the term "development" and the types of construction considered falling under its definition.

Mr. Zuccaro explained that any kind of modification to the floodplain is considered to be development. He said that some types of landscaping and fencing construction are allowed within a floodplain so long as they meet criteria outlined in the City Code.

Commissioner Iverson asked where the term "development" is defined in the City Code.

Mr. Zuccaro responded that it is in Section 16-17-30.

Commissioner Iverson asked if construction performed on City owned property is subject to the same review criteria.

Mr. Zuccaro answered that the City is required to seek the same level of review for any proposed floodplain development.

Commissioner Iverson asked if Mr. Zuccaro had found any city that had the same review criteria of "exceptional hardship" and "good and sufficient cause."

Mr. Zuccaro confirmed that he had not found any other city that had either of the review criteria stated within its ordinances for regular floodplain development permits, but several cities used the criteria for variance requests related to floodplain development permits.

Commissioner Iverson asked Mr. Zuccaro to explain why he chose Vail, Scarsdale, and Darien as comparable cities to Cherry Hills Village.

Mr. Zuccaro answered that the cities he compared to Cherry Hills Village had similar populations, demographics, and types of residential development.

Commissioner Iverson said that in the March 10, 2009 memorandum, staff did not recommend any changes to the floodplain development review criteria on the basis that the recently adopted Master Plan did not call for any changes to the review process. He asked Mr. Zuccaro why in 1989 the City Council modified the floodplain ordinance even though, at that time, the Master Plan did not call for any changes.

Mr. Zuccaro said that City Council will occasionally address issues that may not be outlined in the Master Plan.

Commissioner Iverson asked Mr. Zuccaro if it was staff's interpretation that by allowing very little development in the City's floodplains, the objective to maintain the rural character and maintain open space is accomplished.

Mr. Zuccaro pointed out that in the past the City had zoned several floodplain areas as open space.

Deputy City Attorney Foster advised the Commission to focus the discussion on the review criteria outlined in the agenda.

Commissioner Iverson expressed concern that the need to prove "exceptional hardship" and "good and sufficient cause" was too high of a standard that could not be met.

Commissioner Bluher stated that the three floodplain development permit examples provided to the Commission had "exceptional hardship" and "good and sufficient cause." She said that while Cherry Hills Village may be the only city with "good and sufficient cause" and "exceptional hardship" within its standard floodplain review criteria, she would rather the process remain the same. Commissioner Bluher pointed out that in the examples of the other cities' ordinances, the review criteria and burden of proof on the applicant was potentially more intensive.

The Commission reached a consensus not to recommend any changes to the floodplain development permit review criteria.

**AGENDA ITEM 4C- Update on Traffic Signalization and Signage at University Boulevard and Quincy Avenue**

Chairman Plotkin stated that he met with Steve Hersey of the Colorado Department of Transportation (C-DOT) to discuss sign alternatives to the sign posted at the intersection of University Boulevard and Quincy Avenue that reads "No Right Turn on Red, Monday through Friday from 7:00am to 5:00pm." He said that by adding the sign, the issues with the

intersection's traffic flow were not resolved. Chairman Plotkin said that the sign did not address the three month period of the year when the school is not in session. He said that he had observed the intersection of University Boulevard and Quincy Avenue and saw very few children actually walk through the intersection. Chairman Plotkin said he then observed the intersection of Belleview Avenue and Holly Street. He said the intersection operated without the all red pedestrian crossing signal and had signs posted that instructed drivers that no right turn on red was allowed when pedestrians were present. He concluded that, in his opinion, the all red pedestrian crossing signal was not necessary at the intersection of Quincy Avenue and University Boulevard.

Chairman Plotkin stated that the Commission should recommend to City Council that a new sign be posted at the intersection of University Boulevard and Quincy Avenue that would read "No Right Turn on Red when Pedestrians are Present."

Chairman Plotkin said that in his meeting with Steve Hersey of CDOT, that the intersection of University Boulevard and Quincy Avenue was the only intersection in Region 6 that had an all red pedestrian crossing. He suggested the Commission also recommend to City Council that the all red pedestrian crossing be changed to a standard pedestrian crossing signal.

Commissioner Kerr stated that the school's main concern was for the safety of the children and without establishing other ways to combat the concerns with removing the all red signal, she did not feel the school would support the recommendation Chairman Plotkin was suggesting.

Commissioner Christman added that the Cherry Creek School District, Cherry Hills Village Elementary, and the PTA should support the recommendation before the Commission should ever go forward to City Council.

The Commission reached a consensus not to recommend any changes to the signage at this time.

**Reports**

None.

Commissioner Plotkin adjourned the meeting at 7:33p.m.

Ira L Plotkin

Ira Plotkin
Chairman

Matthew Eckenwiler

Matthew Eckenwiler
Community Development Clerk