Minutes of the Planning & Zoning Commission
Of the City Cherry Hills Village, Colorado
Tuesday, May 26, 2009
Held at 6:30pm
At the Village Center

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

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

The following City staff members were present: Planning Manager Rob Zuccaro and Administrative Clerk Sarah Henderson.

APPROVAL OF MINUTES

None.

AGENDA ITEM 4A: Study Session for Retaining Wall Design Standards

Mr. Zuccaro stated that this agenda item was a follow up to the retaining wall design discussion that the Commission held during the May 12th meeting. As directed by the Commission, staff drafted a code amendment for consideration that would limit the height of retaining walls to 6 feet above natural grade within the front, side, and rear yards of a lot. Mr. Zuccaro noted that staff adhered to the Commission's request of not requiring limitations on the height of retaining walls located within the building envelope. He stated this proposed amendment could be achieved by adding language to the existing fence regulations of the municipal code. Mr. Zuccaro also mentioned that the Commission might want to consider landscaping standards for tiered retaining walls. Mr. Zuccaro concluded by stating that the Commission might want to consider no action on this item, if it is determine that there is not an issue with regard to retaining walls that needs to be resolved.

Commissioner Christman pointed out that fences along public roadways, which are not open, have many types of requirements. She said that by definition, retaining walls would not be open, so she thought to be fair and consistent; the requirements for retaining walls should be the same as the fences that are not open.

Commissioner Christman and Commissioner Iverson both inquired about the definition of front, side, and rear yard.

Mr. Zuccaro stated that the definition for these items is in Section 16-1-10.

Commissioner Christman and Chairman Plotkin expressed concerns that people may try to get around the 6-foot height rule by putting in several tiered retaining walls. Chairman Plotkin referenced the property of 15 Lynn Road as an example.

Mr. Zuccaro stated the proposed amendment has a 6-foot limitation above natural grade.

Commissioner Poche inquired about the house on Lynn Road that was 33 feet above natural grade. Mr. Zuccaro explained that houses are allowed to be 30 feet above natural grade and he further stated the proposed amendment, as written, did not apply to retaining walls within the building envelope.

Commissioner Christman inquired if someone could put tiered retaining walls within the setbacks to avoid the 6-foot limitation.

Mr. Zuccaro stated the amount of tiers that could be created would be limited by the natural grade. He explained that if some excavation is done, then the first retaining wall would be below

natural grade, so the total height of the tiered retaining walls may total more that 6 feet. Mr. Zuccaro used the example of a house that may have a 40 foot wall due to the fact that they excavated down below historic grade before building.

Commissioner Christman and Commissioner Iverson both expressed concerns regarding having the rules for retaining walls be different for fences and berms.

Mr. Zuccaro mentioned that the Commission might want to consider amending the code to limit the overall height to 6 feet in total, no matter if excavation is done or not.

Commissioner Iverson disagreed with Mr. Zuccaro's suggestion. A discussion ensued among the Commissioners regarding the intent of the code with respect to the visual impact of a 6-foot high fence from natural grade, versus a 9 foot high fence that was installed after excavating 3 feet of natural grade.

Chairman Plotkin stated that a new home on Lynn Road has several tiers, which are more than 12 feet high. He said they start from the natural grade where the stable is located and they go up a slope. Chairman Plotkin said it appears they did tiers with a rather grand staircase and then on the east side there is a rather large wall. He inquired if this is the type of problem that is causing concerns, or would it only be a concern if it was located closer to Lynn Road.

Mr. Zuccaro said there were several complaints from residents regarding the height of the retaining walls on this property, which were more than 6 feet above natural grade.

Commission Iverson noted that those retaining walls were within the building envelope.

Mr. Zuccaro stated that based upon the discussion that occurred during the previous meeting, the proposed amendment does not include regulations regarding retaining walls within the building envelope. He further noted that everything is up for discussion, including taking no action in regards to implementing a code amendment.

Chairman Plotkin noted that a 25 foot wall would currently be allowed within the building envelope.

Mr. Zuccaro clarified that Chairman Plotkin was referring to a retaining wall, not a courtyard wall. Chairman Plotkin stated he was speaking of a retaining wall.

A discussion ensued regarding the allowed heights of courtyard walls. Mr. Zuccaro explained that a courtyard wall fell under the definition of a fence, so the maximum height would be limited to 6 feet above natural grade.

Commissioner Poche noted that tennis courts are an exception to the rule.

Commissioner Christman stated that rules regarding retaining walls should not be any different than what is allowed with courtyard walls, otherwise there would be an incentive to build retaining walls as opposed to courtyard walls.

Commissioner Iverson inquired how natural grade is defined if a property is sloping.

Mr. Zuccaro stated it is defined as undisturbed preconstruction grade, so the natural grade would follow the natural slope. Mr. Zuccaro said it is not like a house where the center point is located.

Commissioner Iverson stated that fences and retaining walls should be treated the same, even if they are within the building envelope. He inquired if there would be a reason why they should not be treated the same.

Chairman Plotkin stated that erosion is the reason why they should be treated differently and he used his property as an example. He said there is an approximately 18 foot height difference from the bottom to the top of the hill on his property. Chairman Plotkin said he has

approximately 8 foot retaining walls along his driveway, which keep the land on top of the hill from eroding.

Commissioner Christman inquired if there is anything in the code to prevent multiple fences or courtyard walls; as long as the natural grade height restrictions are followed.

Mr. Zuccaro answered no.

Chairman Plotkin and Commissioner Kerr expressed concerns for property owners that do not have flat pieces of ground.

Commissioner Iverson stated that some people build retaining walls to get up or down their property and inquired if the restrictions being discussed are unreasonable.

Chairman Plotkin said the property on Lynn Road has a sizable drop and that their retaining walls are in place to help them to get from the top to bottom of their property.

Commissioner Christman stated that if retaining walls were treated the same as fences, then people could still protect their land. She stated that using tiered retaining walls is usually better than just using one large retaining wall.

Chairman Plotkin stated that he didn't necessary disagree with Commissioner Christman, but he expressed concern that using an absolute number, such as 6 feet, might not work in a case such as the Lynn Road property that they have been discussing.

Commissioner Christman stated that it should work if tiered retaining walls are based off of the natural grade.

A discussion ensued about the natural grade and sloping property and the visual impact when the aggregate height of a wall is more than 6 feet.

Chairman Plotkin mentioned that the property on Lynn Road has a massive wall on the east side of the staircase, which can be viewed from some of the neighboring properties.

Mr. Zuccaro stated that 15 Lynn Road could not have gotten to the height they wanted to under the proposed 6-foot amendment restrictions. Mr. Zuccaro said they would be a little over in some areas, unless they made adjustments, such as lowering the patio.

Commissioner Iverson stated that philosophically, retaining walls should be treated the same as fences. He then inquired if retaining walls and fences should be considered as similar, or should they be treated differently due to health and safety concerns.

Commissioner Poche said that from a property rights point of view, why are we concerned about inside the building envelope as opposed to outside the building envelope. He inquired why more regulations needed to be imposed, as long as property owners are following the existing code.

Commissioner Iverson stated that a fence that is over 6 feet high could not be built now.

Commissioner Poche stated that there are properties with a berm located within the building envelope that have a 6-foot fence on top of the berm.

Mr. Zuccaro stated that according to the current code, that berms located with the building envelope are limited to 3 feet. He further noted that fence/berm combinations are not allowed to be over 6 feet.

Commissioner Poche stated that a property has quasi public domain, such as the setbacks, and then there is the rest of the property, which he understands needs some regulations in order to provide some type of conformity. He then said if the property owner's purpose is to make the

maximum use of his or her own property, then why do we care about what type of retaining walls are used.

Commissioner Kerr answered by saying it has to due with the impact on the surrounding properties. She also inquired if these are the type of issues that the Residential Development Standards Committee (RDSC) is addressing.

Mr. Zuccaro stated that the RDSC might not be able to review these types of issues due to the amount of items they are already addressing. The RDSC may choose to focus more on the main house, instead of peripheral things, such as grading and berms.

Chairman Plotkin inquired if the Commission only provided regulations for retaining walls within the setbacks, would they be providing staff with enough guidance. He then inquired if they should only provide direction regarding fences and retaining walls in the setbacks or should the Commission provide language regarding retaining walls within the building envelope.

Mr. Zuccaro stated that staff had hoped to receive feedback from the Commission on what direction they preferred to take regarding this subject. He noted that the issues with retaining walls have only occurred within the building envelope; therefore, regulations might not be needed regarding retaining walls that are located in the setbacks. Mr. Zuccaro also said that staff will not move forward with this issue if the Commission decides a code regarding retaining walls is not needed.

Commissioner Iverson inquired if Mr. Zuccaro had a definition of a retaining wall.

Mr. Zuccaro stated that the building code does have a definition, but currently the municipal code does not define it.

Chairman Plotkin stated he agreed with Commissioner Poche that regulations regarding retaining walls within the building envelope should not be imposed, unless it is a health and safety issue. He expressed concern about imposing height restrictions on retaining walls within the building envelope.

Commissioner Christman used an example of tennis courts and how they are allowed to have a retaining wall that goes 12 feet up, but a fence is only allowed to be 6 feet. She said that it was wrong to have this inconsistency and not good for the neighbors.

A discussion ensued about the difference between the utilization of retaining walls within the building envelope versus other parts of the property.

Commissioner Christman and Commissioner Iverson both agreed that fences and retaining walls should have the same regulations. Commissioner Iverson further stated he believed there should not be rules for retaining walls within the building envelope.

Commissioner Bluher used an example of her former property in Dallas. She said it had a fence on top of a berm, which was then on top of a retaining wall. She stated it was unattractive for the neighbors and so she believed that regulations need to be in place to prevent such an accumulative effect.

Mr. Zuccaro inquired if the direction that staff should take is to change the language so there is a 6-foot height limit for retaining walls and that the regulations imposed are consistent with the fence regulations. Mr. Zuccaro inquired if the Commissioners wanted to impose any type of landscaping requirements if there are tiered retaining walls.

Commissioner Iverson replied the landscaping requirements should be the same as a fence.

Mr. Zuccaro stated he will provide additional language regarding this issue during a future meeting. Mr. Zuccaro also noted that the Commission can choose to call for a public hearing on this issue.

Commissioner Christman inquired if a public hearing would also occur during a city council meeting.

Mr. Zuccaro stated that yes a public hearing would occur during the 2nd reading of a code amendment at a city council meeting.

AGENDA ITEM 4B: Study Session for Master Plan Annual Review

Chairman Plotkin announced that the Commission had in front of them a copy of the Master Plan and Implementation Priority Worksheet.

Mr. Zuccaro stated the annual review of the Master Plan allows the Commission to evaluate the existing polices, recommend any new policies, and to evaluate implementation strategies for the plan. He also explained the 5 categories that were listed on the Implementation Priority Worksheet.

A discussion ensued regarding the responsibility of the Planning and Zoning Commission with regards to the Master Plan. Concerns were discussed with regards to overlap of other Boards and Commissions and how to work effectively to review the Master Plan.

Chairman Plotkin suggested that the Planning and Zoning Commission should give the other Boards and Commissions an opportunity to list their priorities on the worksheet.

Commissioner Iverson inquired if the annual review was a self imposed process as opposed to being mandated by the municipal code.

Mr. Zuccaro stated that Commissioner was correct, that it was a self imposed process.

Chairman Plotkin suggested that each Commissioner fill out their worksheet individually and return them to Mr. Zuccaro within the next two weeks.

Commissioner Bluher stated that she had already completed her worksheet. She also provided a copy of a Denver Post article to the Commissioners which was titled "Ruling drain protections for state waterways" and a flyer from a real estate company that discussed the uniquessness of Cherry Hills Village.

Commission Iverson said that the worksheet had a missing box, which should be titled "do nothing".

Mr. Zuccaro said he would add a column titled "do nothing" and he will add another column titled "already pursued" or "already implemented".

Commissioner Iverson stated it would be helpful if the Commissioners reviewed the results of the survey, since in theory the Commissioner's prioritizations should reflect the citizen's prioritizations.

Chairman Plotkin adjured the meeting at 7:39pm

Ira L. Plotkin

Ira Plotkin
Chairman

Sarah Henderson

Sarah Henderson
Administrative Clerk