Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 25, 2009 at 6:30 p.m.
At the Village Center

CALL TO ORDER

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

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chairman Ira Plotkin; Vice Chairman Kevin Iverson; Commissioner Jacque McIntyre; Commissioner Stephanie Bluher; Commissioner Laura Christman; Commissioner Ann Kerr; and Commissioner Joe Poche.

Also present at the meeting were the following staff members: Mr. Jay Goldie, Public Works Manager; Ms. Laurel Landsman, Community Development Clerk; and Deputy City Attorney, David Foster.

APPROVAL OF MINUTES

Commissioner Iverson made a motion to accept the July 28, 2009 minutes as written, the motion was seconded by Commissioner Bluher. The motion passed unanimously.

AGENDA ITEMS

Petition for Vacation: To Vacate a Portion of East Union Avenue and Relocate a Trail Easement on the Property Located at 4750 S. Dahlia Street

Deputy City Attorney David Foster asked that speakers limit themselves to five minutes of speaking and to try and refrain from repeating what other speakers have said. Mr. Foster asked that the applicant limit themselves to 15 minutes.

Mr. Goldie greeted those attending the meeting and said that the Commission has before them two requests from the owners of 4750 S. Dahlia Street. Mr. Goldie stated that this is a public meeting and not a formal hearing. The commission is not making a legislative decision but is in fact making a recommendation to City Council on the two requests. Once a recommendation is received from both the Parks Trails and Recreation Commission and the Planning and Zoning Commission, City Council will then schedule a formal public "hearing" on the matter. A partial synopsis of these code requirements are outlined in the staff memo.

Mr. Goldie stated that the code states that no ordinance vacating a right of way shall be approved unless the City Council finds that the vacation of the right of way does not leave any property without an established public road or private access easement.

The Planning and Zoning Commission does not have to consider these issues when making a recommendation to City Council. The Code does not spell out any specific criteria for the commission to base their recommendations on. Mr. Goldie stated that all requirements outlined in the code pertaining to a formal right of way vacation request have been met by the applicant. The City Attorney has reviewed the submittals to ensure their compliance with the City Code. Additionally all required public notifications have been properly made including mailings and posting of the property.

Mr. Goldie stated that there are two requests before the Commission:

They are the vacation of two portions of Union Avenue that are currently not being utilized by the City as roads or trails and the relocation of Trails # 5247 and 4750.

Mr. Goldie then asked if the commissioners had any questions for staff.

Commissioner Iverson said to clarify, the Planning and Zoning Commission could, if it chose to do so, recommend one petition but not the other to the City Council.

Commissioner Iverson asked about how the property included in the vacation petition is currently maintained.

Mr. Goldie said that the property is maintained as open space and if it were to be subdivided in the future that might cause some maintenance issues.

Mr. Goldie introduced Mr. John Woodward, who represents the Mooney's, owners of 4750 South Dahlia to make a presentation to the Commission more fully explaining the two requests being made.

Mr. Woodward introduced Steve Mooney who resides at 802 E. Stanford Avenue. He explained that they purchased the Dahlia property a year ago. He said they are bring these petitions forward in an effort to "clean up" property issues relating to the property. He says they have no intention of subdividing in the future.

Mr. Woodward brought out an exhibit (included in the packet) and briefly went over the history of the property in question. He stated that in 2001 a lot of people worked very hard to get a trail dedicated. Fairfax was vacated in 2001 – half to property owners on east, half on west. Merle Chambers granted the easement over her property for the trail. He said that the trail was dedicated first and Fairfax vacated later. The "half moon" parcel lies wholly within the Mooney's property; the "rectangular" property is between the Mooney's and the Greenblatt's property. Mooney's have an "odd" parcel on the other side of the trail.

Mr. Woodward said the Mooney's wish to acquire the parcels and pay the City the fair market value of the parcels. They wish to move the trail to the northeast some 30 feet closer to the Greenblatt's property.

Mr. Woodward said the Mooney's have proposed to withdraw their petition to move the trail as long as they can acquire the property in the vacation of Union Avenue portion.

Mr. Woodward said he is aware of neighbors concerns about traffic but he doesn't think there would be increased traffic if the trail was moved.

Mr. Woodward asked for questions from the Commissioners.

Commissioner Iverson asked for clarification on the change in the petition regarding the trail easement movement.

Chairman Plotkin asked if the Mooney's were aware of the status of the property and its encumbrances at the time of their purchase.

Mr. Woodward responded that they were aware of the property's encumbrances when they purchased the property.

Chairman Plotkin and Commissioner Christman each asked how it serves the public interest to move the trail.

Mr. Woodward said the public purpose was the City getting money to buy other open space that would be more useful to the public.

Commissioner Iverson said he agreed the City could use some money but still doesn't see how it serves the public interest.

Mr. Woodward said the Public interest is in helping the Mooney's to "clean up" their property.

Mr. Woodward said that if the Mooney's don't get the trail moved they might install fencing parallel to the trail.

Commissioner Christman asked if they would be willing to record a covenant that they would not subdivide.

Mr. Woodward responded that it was not in the best interests of the Mooney's to record such a covenant.

Commissioner Bluher asked how the setbacks were measured. If the property line is the setback then if the vacation goes through the setback would be the Greenblatt's property line.

Commissioner Bluher then suggested that a covenant to preserve the 80-foot buffer along the Highline Canal that might be written so that it maintained the position of the current property line.

Commissioner Bluher asked how the petitions fit with the Master Plan since part of the goals in the Master Plan are to maintain and enhance current trails.

Chairman Plotkin suggested that the moving the trail would make it difficult for some users and may cause a need to modify or rebuild the bridge in another location.

Chairman Plotkin opened the floor to speakers for public comment.

Gary Tamblyn - 5370 Dove Creek Drive, Elizabeth, Colorado. Mr. Tamblyn said he was here talking on behalf of his mother who lives adjacent to the Mooney's property. He discussed the history of his mother's property. They redrew the subdivision tract in 1988, expanding Lot 1 and defined Lot 2, Clark Colony Subdivision. The covenants were very careful about the Fairfax Street access and a new owner of their property may want to have access from South Fairfax. In 2002, at the time of the vacation of a portion of Fairfax, the City assured the family that their rights were preserved. That vacation gave Merle Chambers and now the Mooney's the property where the trails cross. He doesn't feel that the Mooney's should be given special treatment which would keep the Tamblyn's from being able to further access South Fairfax. He feels that moving the trail is against their family's best interests.

Carolynne White – attorney speaking on behalf of the Greenblatt's who reside at 2 Cantitoe Lane. She presented a letter that she wrote to the Park's Commission. She said that the Greenblatt's are seeking a permanent, irrevocable commitment that the Mooney's will not do anything with the property if they receive the vacation. The 15-foot strips are not oversights or anomalies – it was understood that these properties would be the buffer for the trail. These small pieces of property serve two purposes – buffering the trail for adjacent properties and second giving visual open space for the community. These petitions would negatively impact neighbors and are in conflict with trail plans and vision of the City.

Mr. Goldie said that the street (Fairfax) was dedicated on the original plat of the Clark Colony Subdivision.

Commissioner Iverson asked how the vacation of the right-of-way would have a negative impact on the Greenblatt's.

Phill Greenblatt – 2 Cantitoe Lane. Mr. Greenblatt reiterated his position, as stated in his letter, that as far as the buffer goes, he said they made a compelling case that the trail should not be moved closer to their property. He said that Merle Chambers did, in fact, dedicate the property as far into her property as she did as a concession to their concerns about privacy. Mr. Greenblatt said that he, the City, and South Suburban had agreed on berming and landscaping but never had a formal agreement in place. He said he saw no public benefit to the vacation.

Jim Muhm – 4951 S. Holly Street. Mr. Muhm said he was active with recreational trails for many years and participated in the acquisition of many new trails. All trails have been acquired by getting cooperation from citizens. He said the City should cooperate with neighbors' requests when the conditions do not harm anyone else.

Lin Merage - 4800 S Fairfax Street. Ms. Merage said a lot of compromises were made in order to acquire the trails. She said that her privacy would be impacted if the petitions were granted. She asks that the City leave the trail where it is currently located.

Mr. Lyons – 4880 S Fairfax Street. Mr. Lyons said where Fairfax dead ends it becomes a cul-de-sac where they could have a traffic problem which hasn't occurred. When Merle Chambers dedicated that property she did so with forethought and placed the trail easement in the place it is currently with the purpose of buffering. They would like to see the trail left where it is. They also wanted to make it known they would not support an extension of South Fairfax Street to the north.

Jeff Wellborn – 4901 S Fairfax Street. Mr. Wellborn said that their was a lot of cooperation and working and talking with each other to get the trail granted in the first place. Merle Chambers granted the easement because she felt it was the right thing to do. When a landowner gives something to the City in trust he said we should honor that gift. She knew that it was the only way to find a good bridge location for the trail. He asks that the City think hard before undoing Merle Chambers gift. He also said he would be opposed to increased traffic if Fairfax were extended.

Mr. Wellborn also said that Mr. Greenblatt was right about discussions with South Suburban on berming and landscaping.

Mr. Woodward said that any berming and landscaping would never have been along the Mooney's property and that the trail would never be closer to Ms. Merage's property.

Mr. Woodward said moving the trail doesn't "undo" the gift of Merle Chambers it just would move it.

Commissioner Bluher asked about where neighbors who were affected by the petitions lived relative to the trail and bridge sites.

Mr. Woodward pointed out on his exhibit where the neighbors affected by the petition who spoke at this meeting live.

Chris Sharp – 200 Inverness Drive East, assisting Mr. Woodward. Mr. Sharp described the maps and where the neighbors lived farther up Fairfax and on Dahlia.

Deputy City Attorney David Foster said that all the documents and exhibits that were used in the meeting, along with the minutes, will become part of the meeting record.

Commissioner Christman said she had researched the files and came up with some documents that she copied for the meeting. She said she would like to talk briefly about what she found.

Commissioner Christman read a portion of a memo from Cheryl Kuechenmeister, City Manager, dated July 17, 2001, that set out where the best place for the trail would be. She read where Ms. Chambers intended that the trail go on the south side of Union. It mentioned that South Suburban would work with Mr. Greenblatt on landscaping. The South Fairfax neighbors were addressed in the memo which discussed the vacation of Fairfax, preserving enough property for a shift in the trail access. The memo stated that the Merages would make a contribution to the trail project. The memo said the trail easement will be reduced to 12 feet with the remainder used for landscape and buffer. She said that the memo shows that there was in fact "a deal" with respect to the trail and that Merle Chambers gave the property knowing that it encumbered her property.

Ms. Christman said that in reviewing the environmental reports from the Wildlife Division of the State of Colorado – having open space along the sides of the canal is beneficial for natural habitat.

Commissioner Christman said she thought it might be unwise to sell off open space property while there is current litigation with South Suburban regarding open space.

Chairman Plotkin asked if there was anything else for the public comment portion of the meeting. As there was no more public comment, he opened the Commission's discussion of the two petitions.

Chairman Plotkin said he would like to hear the Commissioners thoughts first on the vacation of Union Avenue.

Commissioner Iverson said that relative to the vacation of East Union Avenue, he saw it as either land or money for the City and he was in support of the petition. He said that relative to the trail relocation petition, that unless all neighbors were in agreement, he would not support the petition.

Commissioner Iverson made a motion to support the petition for vacation of Union Avenue to City Council and Commissioner McIntyre seconded.

Commissioner Bluher asked if there is an opportunity to put the burden on the petitioner to make sure that certain conditions are met prior to voting.

Deputy City Attorney Foster said the Commission could recommend conditions to the City Council.

Voting on Vacation of Union Ave to inform decision to City Council:

Commissioner Bluher – No
Commissioner McIntyre – No
Commissioner Poche - No
Chairman Plotkin – No
Commissioner Iverson – Aye
Commissioner Kerr – No
Commissioner Christman – No

The Commission voted not to recommend approval of the petition for vacation of East Union Avenue to City Council.

Regarding the second Petition to relocate Trails #5247 and 4750, Commissioner Iverson made a motion, seconded by Commissioner McIntyre, not to recommend approval of the second petition to City Council.

Commissioner Bluher – Aye
Commissioner McIntyre – Aye
Commissioner Poche - Aye
Chairman Plotkin – Aye
Commissioner Iverson – Aye
Commissioner Kerr – Aye
Commissioner Christman – Aye

The Commission voted unanimously not to recommend the petition to Relocate a Trail Easement to City Council.

Chairman Plotkin said he knows that this is arduous with feelings on each side and thanked everyone for their participation.

The Commission and Deputy City Attorney Foster briefly discussed placing conditions on their recommendations to the Council.

Chairman Plotkin thanked everyone for their attendance and their interest.

REPORTS

Mr. Goldie stated that there were no new reports at this time.

ADJOURNMENT

A motion was made by Commissioner Kerr, seconded by Commissioner Bluher, to adjourn the meeting at 8:23 p.m.

The motion passed unanimously.

The meeting adjourned at 8:23 p.m.

Ira L. Plotkin
Ira Plotkin, Chairman

Laurel Landsman
Laurel Landsman, Community Development Clerk