Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Monday, December 13, 2010 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 Chair Laura Christman; Commissioner Joe Poche; Commissioner Peter Savoie; Commissioner Jacque McIntyre; and Commissioner Jim Rubin.

Also present at the meeting were the following staff members: Rob Zuccaro, Community Development Director; David Foster, Deputy City Attorney; Troy Carmann, City Engineer; Laurel Landsman, Community Development Clerk; and, Rick Fendel, Water Counsel.

Absent was Commissioner Ann Kerr.

APPROVAL OF MINUTES

Vice Chair Christman made a motion, seconded by Commissioner Savoie to accept the October 12, 2010 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Request by Ms. Sally Murray of 5055 S. Albion Street for a Floodplain Development Permit to Allow Dredging of an Existing Pond and Adding Fill Material to an Abandoned Irrigation Ditch in the Special Flood Hazard Area

Mr. Zuccaro said that the applicant is requesting approval of a floodplain development permit in order to dredge an existing pond on the property located at 5055 S. Albion Street; removing the sediment from the pond and depositing the dredge materials in an adjacent abandoned irrigation ditch.

Mr. Zuccaro explained that the applicant had made a similar request in 2005 to dredge the pond and remove the dredge material from the property and the request was approved at that time. However, the applicant never commenced the work and has changed the request to include filling an abandoned ditch with the dredge materials. Because of that change to the request, a new permit is required. Mr. Zuccaro said that because a portion of the ditch extends onto CDOT property that staff is recommending that a condition be added to the application, if it is approved, stating that none of the dredged materials be allowed to be deposited into any portion of the ditch that is not on the applicant's property.

Mr. Zuccaro said that there had been some concern over water rights with respect to this application. Mr. Zuccaro said the City Attorney and staff had spoken with the City's water rights attorney, Mr. Rick Fendel, who reviewed the decree and was present at the meeting to answer questions.

Mr. Zuccaro said that the "irrigation ditch" was not used for irrigation but to route water from one end of the pond to another. He said the applicant had dug the ditch themselves and will explain the original intent of the ditch.

Mr. Zuccaro went on to say that the applicant's water rights are not clear from the documents submitted and the City does not have specific criteria for verifying water rights. Therefore, staff recommends that a condition be placed on the application, should it be approved, that the applicant be responsible for obtaining any necessary water rights and that approval of the application does not relieve the applicant of this responsibility.

Mr. Zuccaro said that the City Engineer reviewed the applicant's request and found that the requirements for a floodplain development permit were met and agreed with the findings of the hydraulic analysis that indicated that the proposed project would not result in any increase in base flood elevations. Urban Drainage and Flood Control District has also reviewed the request and has no objection to issuing a permit. A letter from the Army Corps of Engineers was also provided that indicated that a "404 permit" was not required for this project.

Mr. Zuccaro stated that staff has provided findings for each review criterion in the staff memorandum. He said that all criteria were either met or were not applicable. Staff recommends approval of the application subject to the following three conditions: 1) The applicant's engineer shall provide a written statement after the work is completed, that the construction was completed in accordance with the hydraulic study and that the dredging and grading results in no rise in the base flood elevations; 2) No dredge materials shall be allowed to be deposited in the portion of the ditch that extends off of the applicant's property to the south; and, 3) The applicant shall be responsible for obtaining any necessary property and/or water rights approval for the project, including the right to fill the ditch as proposed. The City of Cherry Hills Village is not responsible for approving water rights and approval of this permit does not relieve the applicant of the obligation to obtain necessary water rights approval, if any, or to prevent injury to water rights.

Chairman Plotkin asked if there were any questions for staff. There being none, he opened the floor for the Public Hearing.

Bill Ruzzo, 6641 W. Pendleton Drive in Lakewood, on behalf of and as engineer for the owner of the property, introduced Chuck Best, the applicant's son-in-law to explain the nature of the ditch.

Mr. Best said that the owner put in the ditch as part of landscape work and explained that the purpose of the ditch was to divert water from one end around to the outflow of the pond. He said the ditch was never used for irrigation. He said the idea was to prevent algae blooms in the pond but that the ditch didn't work very well. Since the ditch never functioned properly anyway, the owner now wants to fill in the ditch with the material dredged from the pond.

Mr. Best said they met with the water commissioner who said that water rights would not be impacted by the pond dredging.

Commissioner Christman asked Mr. Best about the portion of the ditch that lies on the adjacent property. She said it looks as if the inlet to the pond started south of the property line which would mean that the ditch starts south of the property line. The actual ditch runs to the west and along the property line and doesn't appear to go back to the pond.

Mr. Best said that the ditch actually does go back to the pond but that it is difficult to see because of the cattails.

Mr. Best said that in the process of putting silt in the ditch that the cattails would not be affected.

Mr. Murray said that there hasn't been any water in the ditch for years and there are no cattails in that portion of the ditch that will be filled.

Vice Chair Christman said that she called the Army Corps of Engineers to find out what information they had been provided in support of the application that enabled them to receive the "404 exemption" for the pond. She said that the Army Corps did not have a record that the ditch was being filled in.

Mr. Ruzzo said he had a new letter from the Army Corps of Engineers. He said that he would provide Mr. Zuccaro with a copy of the information he gave to the Army Corps of Engineers, which clearly indicated the ditch would be filled in. He suggested that the Army Corps, when speaking with Commissioner Christman, may have been reviewing the file from the previous 2005 application rather than the 2010 application.

Vice Chair Christman asked if it would be possible to get hold harmless language from the applicant in case someone was inclined to sue the City in relation to the water rights issue.

Deputy Attorney Foster said that he did not feel that the hold harmless was necessary in addition to the condition that staff has suggested; that the City is not responsible for verifying water rights and that the applicant is responsible for obtaining such rights and for preventing injury to water rights and that it isn't typical for cities to require such language for development applications. Mr. Foster asked Mr. Fendel if he was aware of any property owners in the area that were particularly concerned about water rights.

Mr. Rick Fendel, the City Water attorney, said that there are some property owners who depend on Greenwood Gulch for irrigation who might have water right concerns. He said that the City does not have an obligation to review water rights.

Commissioner Rubin asked Mr. Ruzzo if the pond flow comes in from outside of the property and if it flows out of the pond.

Mr. Murray said that the water flows in and then out of the pond. When the Highline is full it charges the springs and while it is never completely dry, sometimes it is pretty thin.

Commissioner Rubin asked if the water is controlled anywhere upstream that may be turned off or on by a gate.

Mr. Best said no, he didn't believe so.

Vice Chair Christman said because the water flows into the Platte it is under the auspices of the Army Corps.

Chairman Plotkin asked if there were any other questions. There being none, he said he would entertain a motion at this time.

Motion Regarding Floodplain Development Permit for 5055 S. Albion Street

Commissioner Rubin made a motion, seconded by Commissioner Savoie to recommend to the City Council approval of the request by Ms. Sally C. Murray for a floodplain development permit to allow dredging of the pond and depositing the dredge materials into an abandoned ditch within the special flood hazard area on property located at 5055 S. Albion Street with the following conditions:

- The applicant's engineer shall provide a written statement after the work is completed certifying that the construction was conducted in accordance with the hydraulic study and that the dredging and grading results in no rise in the base flood elevations.

- No dredge materials shall be allowed to be deposited in the portion of the ditch that extends beyond the applicant's property to the south.
- The applicant shall be responsible for obtaining any necessary property and/or water rights approval for the project, including the right to fill the ditch as proposed. The City of Cherry Hills Village is not responsible for approving water rights and this permit does not relieve the applicant of the obligation to obtain necessary water rights approval, if any, or to prevent injury to water rights.

The motion was unanimously approved.

REPORTS

Mr. Zuccaro reported that there had been a green building focus group meeting in December and that the final bulk plane report would be submitted the first of the year; probably in January or February.

Mr. Zuccaro and Mr. Foster talked briefly about the green building focus meeting.

The next regularly scheduled meeting of the Commission is January 11, 2011.

ADJOURNMENT

A motion was made by Commissioner Christman seconded by Commissioner Poche to adjourn the meeting.

The motion passed unanimously.

The meeting adjourned at 7:38 p.m.

Ira Plotkin, Chairman

Jessica Sarger for Laurel Landsman

Laurel Landsman, Community Development Clerk