Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, March 22, 2011 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chairman Ira Plotkin called the meeting to order at 6:31 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; and Commissioner Peter Savoie.

Present at the meeting were the following staff members: Rob Zuccaro, Community Development Director; David Foster, Deputy City Attorney; Emily Kropf, Community Development Clerk; Abe Barge from Winter and Company; and Mary Phillips from Winter and Company.

Two residents were also in attendance.

Absent were Commissioners Ann Kerr, Jacque McIntyre and Jim Rubin.

APPROVAL OF MINUTES

Vice Chair Christman made a motion, seconded by Commissioner Savoie, to accept the January 25, 2011 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Study Session for Proposed Changes to City's Zoning Standards

Mr. Zuccaro stated that the purpose of the study session was to introduce the Commission to the recommendations of the Residential Development Standards Committee (RDSC). Approximately two years ago, City Council appointed the RDSC to review the City's zoning standards in response to concerns expressed by residents, including views being blocked and the character of the neighborhood changing.

In September 2009, the RDSC released its final recommendations, which incorporated the use of a bulk plane, floor area ratio (FAR) and increase in building height. Mr. Zuccaro explained that City Council had reviewed the RDSC's proposed changes and subsequently hired Winter and Company to study the concept of a bulk plane in greater detail in relation to different zone districts and neighborhoods.

Mr. Zuccaro stated that the City hosted a public input meeting on March 2nd, as well as a focus group meeting with homebuilders and architects on March 9th, in order to receive feedback from the community about the proposed changes. The turnout for the public input meeting was positive with approximately 25 residents in attendance. The majority of attendees supported the proposed changes. The focus group also had a thoughtful dialogue with several homebuilders in attendance.

Mr. Zuccaro continued that the City is at a point in which the bulk plane and FAR reports are complete and feedback has been collected from residents and homebuilders. Input from

the community and the Commission will be used to modify the proposed regulations. The City will then begin drafting ordinances to present to City Council.

Winter and Company Presentation

Mr. Barge stated that the main purpose of the presentation was to answer any questions that the Commission has regarding the use of a bulk plane, FAR and increase in building height. He said that he was also interested in any feedback that the Commissioners have regarding the recommendations.

Mr. Barge identified several concerns that have been expressed by the community regarding current housing trends. These include: looming structures, solar access, privacy, views, overall mass and scale.

Mr. Barge presented several illustrations of current building trends in the City that are broken down by zone district, as well as neighborhood context. The illustrations describe the project, demonstrate current conditions and establish what new developments would look like with new regulations.

Mr. Barge defined a bulk plane as a standard that lowers height limits near the edges of lots by establishing an inclined plane over which buildings may not protrude. The recommended bulk plane for the City would allow a taller starting height at the front of the lot and a lower starting height at the rear of the lot and an angle of 40 degrees. The adoption of this regulation would require that buildings fit in the area defined by the bulk plane. If the City were to adopt a less permissive starting height towards the front of the lot, the majority of existing homes would not meet the new standard.

Mr. Barge stated that floor area ratio (FAR) is a zoning standard that relates floor area to lot size. For example, if a 10,000 square foot lot has a 5,000 square foot house located on it, there is a FAR of .5. The size of the lot will determine the maximum size of the house. The design of the home is not affected by the FAR, only the size is affected. Mr. Barge provided an example of a house with a FAR of .14, which is average for the City. Mr. Barge then identified a house in the same neighborhood with a FAR of .23, which is above average. Mr. Barge identified a house with a FAR of .5, which is the largest building that could be built on the lot. The RDSC is recommending a standard FAR of .23. Mr. Barge said that the recommended use of FAR is intended to balance effectiveness, predictability, context sensitivity, flexibility and integration of existing conditions.

Mr. Barge stated that the RDSC's final recommendation also includes an increase in the maximum building height allowed. In exchange for using bulk plane and FAR standards, the Committee has recommended that the maximum building height be raised from 30 feet to 35 feet. This standard encourages flexibility and provides compromise. If the City were to adopt this regulation, the edges of the building would be lower but the middle of the building could be higher.

Mr. Barge discussed the impact of these standards in the community. Mr. Barge identified one type of building currently seen in the City. The house is situated on a narrow lot and appears relatively constrained. The house would not fit in the new building envelope determined by the bulk plane. The two story building mass at the front of the structure would fit in the envelope but the rear would not. Although these standards would place limitations on development, there are many design choices still available.

Mr. Barge identified a number of additional considerations in order to accommodate existing conditions and encourage flexibility. There might be recommended exceptions for gable roof ends, dormers and chimneys. These structures might extend through the

building envelope. Mr. Barge indicated that there would also be a special bulk plane for accessory structures in the R-1 and R-2 zone districts.

Mr. Barge stated that the feedback from the community was supportive. During the public input meeting, there was active participation from residents and support for the bulk plane and FAR standards. In fact, some residents felt that the FAR was too permissive. There was more skepticism on behalf of the homebuilders at the focus group. They felt that the proposed changes would reduce flexibility and discourage diversity. There was overall support for an increase in building height, however.

Commission Discussion

Chairman Plotkin asked if either resident would like to address the Commission about the proposed changes.

Both residents declined and said that they would like to hear the Commission discuss the issue first.

Chairman Plotkin asked the Commissioners what they thought about the recommendations.

Vice Chair Christman responded that she liked the proposed changes.

Chairman Plotkin asked Mr. Barge to explain the rationale that led to the proposed changes.

Mr. Barge responded that City Council asked Winter and Company to study the RDSC's recommendations in the context of the different zone districts in the City.

Chairman Plotkin stated that it seems like the majority of residents' concerns in terms of size come from the R-3 zone district. He asked what percentage of the City's land is located in R-3.

Mr. Zuccaro responded that R-1 contains the largest percentage of land, but that there are more homes built in R-3.

Chairman Plotkin asked if the City was basing its decision to change the current zoning standards based on approximately 25% of the population. He stated that he is not hearing the same concerns expressed by residents in R-1 and R-2.

Vice Chair Christman disagreed. She stated that she lives in R-2 and has heard complaints from residents in her zone district, as well. She has also heard concerns expressed by the residents of R-5, which is situated next to R-1.

Mr. Zuccaro stated that the City asked Winter and Company to study specific recommendations for each zone district. When the RDSC examined the issue, it was discovered that the majority of concerns originated from R-3, but that there were complaints in each of the zone districts.

Commissioner Poche commented that there are several homes located in R-3 that should never have been approved for construction. He said that although the new trend is to build larger houses, the majority of homes in the City remain relatively modest. Commissioner Poche continued that if he purchased his property 20 years ago and the proposed changes were approved, the value of his property would decrease.

Vice Chair Christman asked to see evidence that illustrates a decrease in property values as a result of modifying the City's zoning standards.

Commissioner Poche responded that he could not provide proof that there would be a definite decrease in value, but he knows that there have been a number of individuals who have applied for variances with the Board of Adjustment and Appeals in order to obtain a fraction of their original property value.

Chairman Plotkin stated that according to the FAR standard, if he hypothetically sells his home before the proposed changes have been implemented, the buyer has lost 10,000 square feet and $750,000. Chairman Plotkin inquired as to whether this was a case of regulatory taking by the government.

Vice Chair Christman said that in terms of valuation, the last thing a buyer wants is to spend millions of dollars on open space and have a large house built next door. She continued that the issue cannot be avoided without regulation. The ability to know a neighbor is subject to the same zoning standards is important. She has heard numerous complaints from residents in R-3. The residents in this area feel strongly about the issue and have assumed that the City will find an acceptable solution.

Commissioner Poche commented that it is within the property owner's rights to decide how to use his land. He said that the City cannot continue to create legislation, which in turn restricts the rights of residents. He suggested that Winter and Company study increased setbacks as a possible alternative. Commissioner Poche continued that in areas of greater density there may be a need for stricter standards. He said that it would be illogical to enforce a FAR of .23 in R-1.

Chairman Plotkin asked what the rationale was of a FAR of .23 rather than a FAR of .35, considering the fact that the land located in R-1 accounts for approximately 50% of the City.

Mr. Barge responded that a FAR of .23 was recommended by the RDSC. The number has yet to be fully scrutinized.

Mr. Zuccaro continued that the rationale was based on a close examination of every home in the City. The intent was to study the upper percent of homes in each district that were "outliers" in the community and identify an appropriate FAR that would impact those houses.

Chairman Plotkin stated that it seems like the residents would like to maintain the semi-rural characteristic of the City. He asked why a big house was not considered semi-rural. He said that the proposed changes were based on personal preferences.

Mr. Barge countered that the process was based on the idea that residents have a voice and that regulations can help that voice be heard.

Mr. Zuccaro stated that the community is responsible for defining what type of city it would like to be.

Commissioner Poche said that the simplicity of the City's regulations is important. He finds that regulations that are easier to understand are also more focused.

Vice Chair Christman asked if any of the Commissioners had an issue with the adoption of the bulk plane.

Chairman Plotkin and Commissioner Poche responded yes.

Commissioner Poche continued that he did not understand why a two-story home had to be quite as compacted according to the bulk plane standard. He believes that the ground level is where the problem lies. Commissioner Poche continued that he has empathy for residents who have "outliers" located next to them. There have to be other alternatives, however.

Mr. Barge said that the rationale for the combined use of a bulk plane and FAR is based on concerns regarding scale and mass. The bulk plane would address the issue of scale, while the FAR would address the issue of mass.

Chairman Plotkin stated that the issue has become a matter of taste. He asked whether the City was attempting to regulate taste. Chairman Plotkin continued that he would have no qualms with the bulk plane if he was allowed to utilize it to its maximum allowance. In terms of direction for Winter and Company, he would like to see a greater FAR for R-1. He also stated that accessory structures should not be included in the FAR.

Mr. Zuccaro responded that the square footage of accessory structures is already limited by the City.

Chairman Plotkin suggested a separate FAR for accessory structures.

Chairman Plotkin continued that if the City were to adopt the bulk plane, it should not enforce the FAR. Conversely, if the FAR is adopted, then the bulk plane should not be enforced.

Commissioner Poche stated that overbuilding in R-3 and R-4 is the City's most significant problem. He continued that for the past few decades the community has had several homes that were considered "outliers", and no one was negatively impacted.

Vice Chair Christman responded that there have been a number of residents who have urged the City to implement a design review in order to prevent these types of structures from being built.

Commissioner Savoie asked if the Commission was willing to dispose of two years of work by the RDSC, as well as hundreds of voices in the community. The RDSC unanimously supported the bulk plane and FAR standards. Committee members found that the standards would be effective if used together. Commissioner Savoie asked the Commissioners if they supported separate standards for zone districts.

Chairman Plotkin responded that he did.

Commissioner Savoie stated that he was in agreement.

Vice Chair Christman said that she understands that R-1 is different due to the size of its lots. She stated that a separate FAR in the R-1 zone district would be acceptable, and a FAR of .23 in R-2 and R-3 would be reasonable. She still believes that the combination of a bulk plane and FAR is important, however. Vice Chair Christman continued that the bulk plane and FAR standards could be beneficial for design purposes. She believes that there are several homes in the community that would benefit from an increase in building height.

Chairman Plotkin asked Mr. Foster what he thought in regards to the legality of the proposed changes.

Mr. Foster responded that the City was within its legal authority to adopt the proposed standards. Furthermore, there have not been any complaints filed regarding pending plans that could be affected.

Chairman Plotkin expressed concern about limiting the rights of residents.

Mr. Foster responded that the City already limits development.

Mr. Barge asked the Commission why it was focusing on R-1 rather than each of the zone districts.

Chairman Plotkin responded that in terms of size, a 50,000 square foot house built in R-1 would not impact a neighbor as much as a home located in R-3 that is built near the property line.

Mr. Barge agreed that the proposed standard may be inappropriate for R-1. He continued that there were only two examples of "outliers" in this zone district.

Chairman Plotkin asked to look at a sliding scale of FAR limitations during the next study session.

Commissioner Savoie expressed interest in hearing comments from the residents in attendance.

Public Comments

The first resident stated that he lives in R-4, which has a number of non-conforming lots. He believes that up to 20% of homes in R-4 can be considered "outliers". He continued that it would be unfair if his neighbor was able to build a large structure, but he was not because he did not have plans submitted at the time the standards were proposed. He believes that the FAR standard would have a negative impact on R-4. Furthermore, homeowner associations have the ability to police communities in terms of design. The proposed changes would be unnecessary.

The second resident stated that he lives in R-1. His neighborhood is subject to an architectural covenant. Currently there is a dialogue among several neighbors to limit the size of houses in order to preserve the semi-rural characteristic of the area. These residents are opposed to an increase in building height. If the increase in height was approved, it would be possible to build a 4-story house with a flat roof. The resident continued that he suspects that a bulk plane of 45 degrees will cast a shadow.

Commissioner Savoie stated that any structure with an incline higher than 29 degrees will cast a shadow. He said that a bulk plane of 29 degrees would be an architectural disaster. The RDSC recommended 45 degrees as a compromise.

The resident continued that he is also concerned about how building height will be measured. He believes that it is a better rationale to limit the height of houses rather than square footage.

Chairman Plotkin asked if there were any additional comments from the Commissioners, staff or residents. He concluded that the Commission would study the proposed standards and readdress the issue at the follow-up study session.

Mr. Zuccaro said that the next Planning and Zoning Commission meeting was scheduled for April 12, 2011. The agenda items include a follow-up study session regarding the proposed changes and a public hearing for a flood plain proposal.

Chairman Plotkin responded that the meeting might have to be deferred in observance of Passover.

ADJOURNMENT

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

The motion passed unanimously.

The meeting adjourned at 8:08 p.m.

Ira L. Plotkin

Ira Plotkin, Chairman

Emily Kropf

Emily Kropf, Community Development Clerk