Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, December 6, 2011 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 Ann Kerr, Commissioner Joe Poche, Commissioner Jim Rubin and Commissioner Steve Szymanski.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; Jay Goldie, Public Works Director; Joan Fritsche, Assistant City Attorney; and Emily Kropf, Community Development Clerk.

Absent was Commissioner Savoie.

APPROVAL OF MINUTES

Vice Chair Christman made a motion, which was seconded by Commissioner Szymanski, to accept the November 22, 2011 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Vacation of a Portion of Meade Lane Right of Way

Mr. Goldie stated that the City has requested a vacation of a portion of the Meade Lane right of way in order to accommodate the proposed joint public safety facilities at 125 Meade Lane. He continued that in 2005 an ordinance vacating the current alignment of Meade Lane was approved in order to build a new City Center. A new Meade Lane right of way was established but never constructed when the proposed plan to build a City Center was placed on hold. The current alignment of Meade Lane will remain in place even though the right of way under it has been vacated.

Mr. Goldie continued that it is necessary to vacate a portion of the Meade Lane right of way in order to ensure that the proposed joint public safety facilities is not located within the floodplain and meets the City's setback requirements. The City has been working with adjacent property owners, and ownership of half of the right of way will be given to the adjacent property owner at 135 Meade Lane in order to keep the lot conforming.

Vice Chair Christman asked if an amended plat would be required for the adjacent property owner.

Mr. Zuccaro responded that a portion of the right of way accepted by the adjacent property owner would automatically become part of their property and there is no requirement that the plat be amended.

Vice Chair Christman stated that she wants to make sure that there will be no future title problems.

Mr. Goldie stated that an amended plat would be recorded for the City Center.

Mr. Zuccaro stated that the plat for the City Center would be amended as the City will be subdividing a parcel for the joint public safety facilities as a result of its joint ownership, which will eventually come before the Commission.

Chairman Plotkin stated that he would entertain a motion.

Commissioner Szymanski made a motion to recommend to City Council the vacation of a portion of Meade Lane as outlined in the staff report dated December 6, 2011, to facilitate the construction of the proposed new police/fire facility.

Vice Chair Christman seconded the motion, which was unanimously approved.

Request by Multiple Property Owners within the Buell Mansion Subdivision for an Amended Plat to Remove the R-3A Zone District 50-Foot Buffer Requirement

Mr. Zuccaro stated that staff is presenting a request from multiple property owners to approve a Minor Amendment to The Buell Mansion Subdivision in order to remove the 50-foot buffer requirement for R-3A zoned lots abutting R-1 zoned lots within the subdivision. The buffer area, which is located within the subdivision, is limited to landscaping only. Removal of the buffer may be requested as long as all property owners within the subdivision that are subject to the buffer and adjacent to the buffer approve of the request.

Mr. Zuccaro continued that a request for buffer removal must follow the procedures outlined for Minor Amendments to subdivision plats. Ms. Cheryl Pederson, Estate Manager for the Buell Mansion Owners Association, has provided staff with notarized authorization letters from all property owners encumbered by the buffer and those contiguous to the buffer, as well as the recorded deeds and certified records from Arapahoe County confirming ownership. The applicants have also provided a proposed Minor Amendment plat noting the vacation of the buffer. The Minor Amendment plat has no changes from the original Buell Mansion Subdivision plat other than the notation that the 50-foot buffer is to be vacated.

Mr. Zuccaro stated that there are several review requirements that must be met for approval of a Minor Amendment to a subdivision plat. Staff has found that the applicants have met these requirements and recommends approval of the request with two conditions. First, upon final approval by City Council, the Buell Mansion Owners Association shall provide certification that the property ownership has remained the same as represented in the application or provide updated authorization letters and ownership documentation with the final mylar plat submitted for recordation. Second, prior to the City Council hearing, the title of the plat shall be amended to state 'The Buell Mansion Subdivision, Minor Amendment to Lots 19, 20, 21, 73, 76, 77, 78, 82, 83, 84, 85, 86, 87 and 88 to Remove 50-Foot Buffer' in order to amend the plat only for the lots encumbered by the buffer.

Mr. Zuccaro added that the signature block on the proposed plat has one deviation from what would typically be required. The owner signature block has been replaced with a note indicating that authorization letters from the property owners have been provided and are on file with the City. This note is in lieu of all property owners, mortgage holders and lien holders signing the plat and is proposed due to the logistical concerns of obtaining these signatures for all owners needed for authorization.

Vice Chair Christman asked if the title certificate and mortgagee signature block have been removed.

Mr. Zuccaro responded yes and that this was one reason to change the title of the amended plat to make it clear that the amendment was only for the lots encumbered by the buffer. He continued that the applicants have requested that the note replace the signature blocks of the property owners, lien holders and mortgage holders. He added that staff is comfortable with this change because it only pertains to the removal of a minor buffer.

Vice Chair Christman stated that another city experienced a situation in which several matters were foreclosed out, including an amended plat. The city did not have an issue with the foreclosed amendment since it only pertained to two of the lots in the subdivision. Several years later when a title company refused to insure any of the properties within the subdivision because of the foreclosed amendment; it became an issue for the city. The city was blamed for not getting the signature of the mortgagees and was forced to settle out of court for not being consistent in its practices. Vice Chair Christman asked if Cherry Hills Village could receive indemnity from the Buell Mansion Owners Association if any future title issues were to arise.

Ms. Fritsche stated that this was one option, but she did not know the wherewithal of the association.

Mr. Zuccaro responded that he did not know if the Buell Mansion Owners Association has the authority to offer indemnity since it does not own the subject property.

Vice Chair Christman stated that the city experienced a similar problem and had to pay a large amount of money to fix the error.

Commissioner Kerr asked if the legal description on the deed of each lot would also change.

Mr. Zuccaro responded that the legal description would change to include the minor amendment.

Commissioner Kerr asked if the new legal description would have to be recorded.

Mr. Zuccaro responded yes and that the City would be recording a new plat, which would transfer to each lot's legal description on the deed during a conveyance of ownership. Mr. Zuccaro added that the City has administrative procedures in place for similar requests.

Commissioner Kerr stated that her only concern is related to a transaction she is currently having trouble with due to a lot line discrepancy between the property's plat and deeds. As a result, the current title company would not insure the property.

Ms. Fritsche responded that this would not be an issue because the legal description of the lot is not changing.

Commissioner Szymanski stated that since the subject property is already owned the City would be removing a restriction previously placed on the property.

Mr. Zuccaro responded yes. He added that the lot dimensions would not change and there would not be full development rights allowed as a result of the removal of the buffer. The buffer area would serve as a setback for the property, and any items typically allowed within the setback would be allowed in this area if the request was approved.

Chairman Plotkin stated that the public hearing was open.

Ms. Pederson stated that she would answer any questions that the Commission had regarding the request on behalf of the applicants.

Commissioner Rubin asked if the original intent of the buffer was to allow homes located in the R-3A portion of the Buell Mansion Subdivision to be built closer to the rear lot line.

Ms. Pederson responded that the original intent of the buffer was to protect the open space of the R-1 lots before the R-3A lots had been developed. Ms. Pederson continued that it seems unfair now that the lots have been built on to penalize the residents of R-3A who are unable to utilize a portion of their lot.

Chairman Plotkin stated that the public hearing was closed.

Vice Chair Christman stated that she is fine with the amended plat as long as the City has no liability associated with waiving the title certificate and mortgagee signature.

Commissioner Szymanski asked if the property owners could provide indemnification for the City.

Mr. Zuccaro responded that the Commission could approve a variance in the administrative procedure in regards to the signature blocks on the amended plat.

Vice Chair Christman stated that she did not want the applicants to have to start the process over. She continued that the property owners could use a covenant that is recorded against the deed, but it would not be enforceable against subsequent owners if there was a foreclosure. It would act as a personal covenant, which would be binding on subsequent owners, however. Vice Chair Christman added that if a title policy issue were to arise in 10 to 15 years she would like to make sure that the City is not liable.

Mr. Zuccaro responded that the property owners could provide a signed letter of indemnification to the City. If the Commission wished to grant a variance in the administrative procedure in order to waive the mortgagee signature block, there would not be additional work for the applicants other than posting a new notice sign stating that a variance to the administrative procedure of the subdivision regulations has been requested.

Chairman Plotkin asked if this would require a new public hearing.

Mr. Zuccaro responded yes.

Vice Chair Christman asked if the Commission was not already granting a variance to the administrative procedure by foregoing the mortgagee signature block.

Mr. Zuccaro responded that staff can waive certain administrative requirements that then do not require a variance.

Vice Chair Christman asked why the City cannot waive the signature block requirement and request a letter of indemnification from the applicants.

Mr. Zuccaro responded that the Commission could, but it would not be addressing the issue of liability through an approved variance to the administrative procedure as a result.

Commissioner Poche asked how the amended plat differed from the vacation of a portion of Meade Lane right of way.

Vice Chair Christman responded that if there is a foreclosure on any of the subject properties the lien holder would also foreclose out the amendment to the plat. She added that a matter of record cannot be created without the signature of the title holder. Vice Chair Christman continued that she agrees with the property owners that acquiring the

signature of the lender would be difficult. Once a property is refinanced or sold, the issue will no longer exist.

Commissioner Rubin stated that it seems as though the land is not being affected since the property owners are not being given approval to build on the removed buffer area. Commissioner Rubin added that the amendment would probably not be challenged by a lender if there was a foreclosure.

Vice Chair Christman responded that the lender will foreclose on the amendment automatically unless the Buell Mansion Owners Association gets the amendment exempted during a foreclosure. Vice Chair Christman added that it would only be an issue if one of the subject properties was foreclosed out under a current loan.

Chairman Plotkin asked if the concern that was raised by the Commission regarding possible future title issues can be noted in the record.

Mr. Zuccaro responded that it would be in the minutes of the meeting.

Chairman Plotkin asked if the Commission could recommend to City Council that the City Attorney address the issue of liability and an indemnification form in regards to the Commission's concern.

Mr. Zuccaro responded that the Commission could recommend approval of the request with a third condition, which states that City Council consult with the City Attorney in regards to an indemnification form for the City.

Chairman Plotkin stated that he would entertain a motion.

Commissioner Rubin made a motion to approve the Minor Amendment to the Buell Mansion Subdivision with the three conditions recommended by staff.

Commissioner Kerr seconded the motion, which was approved unanimously.

Request by Cherry Hills Country Club for a Major Event Permit to Host the 2012 US Amateur Championship on August 13-19, 2012 (Public Hearing)

Chairman Plotkin stated that the request by Cherry Hills Country Club for a Major Event Permit has been rescheduled for January 10, 2012.

REPORTS

Mr. Zuccaro stated that there were no reports at this time.

ADJOURNMENT

Vice Chair Christman made a motion to adjourn, which was seconded by Commissioner Kerr. The motion passed unanimously.

The meeting adjourned at 7:08 p.m.

Ira L. Plotkin

Ira Plotkin, Chairman

Emily Kropf

Emily Kropf, Community Development Clerk