

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 28, 2012 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Christman called the meeting to order at 6:32 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chair Laura Christman, Commissioner Joe Poche, Commissioner Jim Rubin, Commissioner Peter Savoie, Commissioner Steve Szymanski and Commissioner David Wyman.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; David Foster, Deputy City Attorney; and Emily Kropf, Community Development Clerk.

Chair Christman welcomed Commissioner Wyman and asked that he introduce himself.

Commissioner Wyman stated that he has been a resident of the City for 26 years and has a background in public planning, commercial real estate and property tax liens.

APPROVAL OF MINUTES

Commissioner Szymanski made a motion, which was seconded by Commissioner Rubin, to accept the June 12, 2012 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Study Session: Sale of Agricultural Products from the Premises

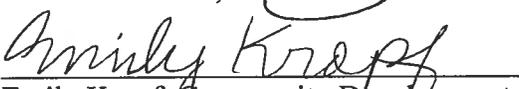
A study session was held on the sale of agricultural products produced on the premises. The notes from the study session are attached.

ADJOURNMENT

The meeting was adjourned at 7:20 p.m.



Laura Christman, Chair



Emily Kropf, Community Development Clerk

Study Session Notes for the Sale of Agricultural Products from the Premises
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Mr. Zuccaro stated that the City Council has asked staff to work with the Planning and Zoning Commission on a possible ordinance for the sale of agricultural products produced in the City's residential zone districts. He continued that a resident had approached the City Council and asked for clarification as to whether the sale of agricultural products from residential zone districts is allowed. Commercial agricultural activity is prohibited and the sale of agricultural goods is not allowed under the current Municipal Code. The City Council decided to further explore the possibility of allowing the sale of such goods from residential lots. Staff has provided several ordinances from other communities that provide a wide range of policies regarding the sale of agricultural products in each city.

Commissioner Poche asked why the City has a sales tax if residents are unable to sell goods within the City.

Mr. Zuccaro responded that there is a sales tax for the City's commercial district and country clubs.

Commissioner Poche said that there is a section in the Municipal Code that states that residents can sell grain and hay.

Chair Christman replied that a resident cannot sell hay as a retail use or advertise for it.

Commissioner Poche stated that the Municipal Code allows individual businesses within the City as long as they are not being advertised for.

Commissioner Rubin responded that individual businesses are not allowed in residential zone districts.

Commissioner Poche said that there are several individual businesses currently located in residential zone districts.

Mr. Zuccaro replied that the Municipal Code allows for home occupations, which pertains to services rendered from a home and is different from the sale of goods.

Deputy City Attorney Foster stated that the Municipal Code reads: "No article may be sold or offered for sale from the premises. This restriction shall not apply to occasional garage sales, the sale of a single used car, the sale of a litter of animals and other similarly noncontinuous and nonrepeated transactions" (Sec. 16-5-10(8)(f)). He added that it is clear that the sale of goods from a residence is not allowed.

Commissioner Poche said that there are provisions in the state tax code that address the sale of goods in a market. He continued that if he were to sell his goods at a flea market less than five times in a year, he would not be subject to the state sales tax.

Deputy City Attorney Foster responded that there is a provision that states that an individual is not required to give his tax identification but should still collect tax if selling goods from a market.

Commissioner Wyman asked if agricultural products would be subject to the state sales tax.

Deputy City Attorney Foster replied that there are some cities that do apply the state sales tax to the sale of agricultural products.

Chair Christman stated that the City has never allowed retail sales from residential zone districts.

Commissioner Poche asked what the definition of retail sales is.

Chair Christman responded that if a resident were to make pottery and sell it from his home, it would be considered a business and would not be allowed.

Commissioner Poche said that the resident could sell his pottery on the internet.

Chair Christman replied that the resident would not be allowed to sell goods from the premises. She stated that the sale of goods from a residential zone district is a policy issue and asked if the Commission wants to change the current policy.

Mr. Zuccaro stated that there are several ordinances from other communities regarding the sale of agricultural products that the Commissioners can discuss if they chose to amend the policy. He continued that in Fort Collins, Colorado, agricultural products can be sold from a residential lot as long as it is an accessory use. In Wheatridge, Colorado, residents are allowed to sell products from stands in residential zone districts as long as they abide by certain time restrictions. In Lacey, Washington, residents are allowed to sell goods if the Community Development Director has determined that there is not an adverse effect on the community as a result. In Kansas City, Missouri, the sale of goods is limited to certain times during the year and is also dependent on lot size.

Commissioner Savoie asked where the issue came from and what type of recommendation the City Council has asked for.

Mr. Zuccaro responded that a resident approached the City Council and asked if the sale of produce from a home garden would be allowed. City Councilmember Russell Stewart has been working with staff on the issue.

Commissioner Poche said that during the mayoral race, several individuals expressed interest in creating a farmers market in the City.

Chair Christman replied that she had asked where the issue originated from and was told that a resident had asked to sell eggs produced on his lot from the premises. She continued that she was also told that residents were not able to raise certain types of animals or sell goods from 4-H projects, which is not correct. An individual is allowed to raise animals, but if he wants to sell products from the premises, it is considered a commercial activity. She added that changing the policy could result in a slippery slope. There is also nothing in the Municipal Code that restricts residents from taking their products to markets outside the City to sell.

Commissioner Poche said that children would not be allowed to have a lemonade stand under the current policy.

Commissioner Rubin said that it is unlikely that anyone would report a lemonade stand. A lemonade stand could also be considered an occasional use.

Mr. Zuccaro stated that the cities that have adopted ordinances that allow for the sale of agricultural goods from residential lots have made distinctions regarding various requirements, including lot size. If the City chose to amend its current policy, it could also

consider requiring a Conditional Use Permit. There could also be limits placed on the hours of operation, parking, signage licensing and taxation.

Commissioner Poche asked how the upcoming farmers market at Kent Denver School was permitted.

Mr. Zuccaro replied that it is considered a special event, which is an allowed use.

Commissioner Wyman said that the ordinances from other communities are not comparable to the City. He continued that the slippery slope argument is persuasive. It is feasible that if the sale of agricultural goods was allowed in the R-1 and R-2 zone districts that the residents of the R-3 zone district would also ask to be allowed to sell goods from their lots.

Commissioner Rubin stated that he agrees. He added that the City should not change the policy because one person has requested it as it would not benefit the community.

Chair Christman said that Fort Collins and Wheatridge, Colorado, have median incomes of \$60,000 and \$45,000 per year and median home prices of \$210,000 and \$238,000. The median income in the City is \$200,000 with the median home price starting at \$900,000. These communities are not comparable to the City. She added that one of the needs of urban agriculture is to provide fruits and vegetables to individuals who could not otherwise afford them, which is not applicable to the City.

Commissioner Poche replied that he does not want the City to turn into a retail community. He added that he would take his goods to another location to sell or give away. He is not opposed to a farmers market that occurs once or twice a year though.

Chair Christman responded that many families in the City give their products away.

Commissioner Szymanski said that the Commission discussed the issue of short-term rentals at length and believes that a change in the policy for the sale of agricultural products would be in conflict with the decision that the Commission reached regarding rentals and commercial activity. He continued that the issue of the farmers market can be addressed in the future when the issue is raised.

Commissioner Savoie stated that even if an ordinance from a similar community was provided, he would still elect not to change the current policy. He added that residents who give their goods away enhance the rural nature of the community.

Chair Christman agreed. She added that she spoke with an attorney for Arapahoe County who handles agricultural matters and disputes and was told that the commercial or retail sale of products from an agricultural producer is a commercial use. If residents were able to sell products as a business from the premises, they would be considered a commercial operator and subject to a higher tax rate.

Mr. Zuccaro stated that he will go back to the City Council and discuss how to proceed. He continued that he might present a draft ordinance to the Commission at a later date.

Deputy City Attorney Foster added that this would give the Commission an opportunity to vote against a change to the policy.

Commissioner Savoie asked if the City Council could approve an ordinance without the recommendation of the Commission.

Deputy City Attorney Foster responded yes.

Mr. Zuccaro stated that he will convey the Commission's feedback to the City Council.

Chair Christman said that the concerns raised regarding agricultural uses are already allowed under the current policy.

Mr. Zuccaro responded that a resident can bale hay but cannot sell it from the premises.

Commissioner Savoie replied that the hay can be sold elsewhere.

Deputy City Attorney Foster suggested that if an ordinance is proposed the Commission might want to designate a Commissioner to attend the meeting to address the City Council and explain the Commission's opinion on the issue.

Mr. Zuccaro stated that the issue might be that the current ordinance is not clear about what agricultural uses are actually allowed. The Commission might want to clarify the agricultural section of the Municipal Code.

Chair Christman replied that an inaccurate interpretation of the policy could be causing issues. She has heard the Municipal Code interpreted to not allow the sale of horses or 4-H projects on the premises, which is not correct.