Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, September 25, 2012 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Christman called the meeting to order at 6:34 p.m.

ROLL CALL

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

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

Absent were Commissioner Peter Savoie and Commissioner David Wyman.

APPROVAL OF MINUTES

Chair Christman suggested that the notes from the study session during the previous meeting be removed and added as an attachment.

Commissioner Rubin made a motion to accept the August 28, 2012 minutes with the notes from the study session added as an attachment. Commissioner Szymanski seconded the motion, which passed unanimously.

AGENDA ITEMS

Proposed Ordinance Amendment to Municipal Code Section 16-5-10 Concerning the Sale of Agricultural Products Produced on the Premises in the R-1, R-2 and R-3 Zone Districts

Mr. Zuccaro stated that staff is presenting for recommendation to the City Council a proposal to amend Municipal Code Section 16-5-10 allowing the sale of agricultural products produced on the premises in the R-1, R-2 and R-3 zone districts. The issue was discussed during a study session at the Commission's previous meeting on August 28, 2012. Since the study session, staff has added a summary of peer communities that allow the sale of agricultural products produced on the premises. The summary is intended to provide the Commission with examples of how such ordinances have been structured in other communities.

Mr. Zuccaro continued that the draft ordinance amendment has been included in the staff memo as Exhibit A. The proposed amendment does not include any restrictions for the sale of agricultural products but would change the Municipal Code to allow the sale of agricultural products produced on the premises. The proposed ordinance also includes language related to home occupations in order to prevent any confusion that if the amendment is adopted it would be prohibited by the portion of the Municipal Code that addresses home occupations. Staff has also included the City's historic zoning ordinances in order to provide the Commission the historic development of the City's agricultural use regulation. The minutes from the ordinances are not included but can be provided upon request.

Commissioner Szymanski said that the proposed amendment does not include any restrictions for parking or hours of operation.

Mr. Zuccaro responded that the proposed amendment would allow the sale of agricultural products produced on the premises. If the amendment was approved, the City could amend it at a later date if there were any issues as a result. The proposed amendment does not include restrictions for conditional use permitting, parking or times of operation. Mr. Zuccaro continued that he had contacted two of the peer communities that are similar to the City in regards to demographics and residential character. Woodside, California and Village of Indian Hill, Ohio, reported that few residents take advantage of the ability to sell agricultural products. The representative from Woodside, California said that the city does not require a permit the sale of agricultural products, which makes it difficult to track who may be doing it. The representative from Village of Indian Hill, Ohio reported that generally only larger farms over 100 acres sell agricultural products produced on the premises.

Commissioner Szymanski said that the Commission spent considerable time discussing the issue of short-term rental homes. It was found that the owner of the subject residence would be allowed to continue renting the residence on a short-term basis because he would be grandfathered under the existing policy. Commission Szymanski asked if the same problem would occur if the sale of agricultural products is permitted and later prohibited because of potential issues. He asked if an individual would be able to continue selling agricultural products if it was allowed for a period of time.

Mr. Zuccaro replied that if an individual sold products from his property on a continuous basis, he would be able to continue doing so if the use had been established but was later prohibited. Reasonable regulations regarding hours of operation and parking could be introduced, however.

Commissioner Rubin stated that a neighbor would have certain protections if a resident sold products from the premises and the activity was considered offensive or injurious.

Chair Christman said that she disagrees and believes that the neighbor has no protection against such activity. She continued that if the City allowed the sale of agricultural products it would be permitting commercial farming, which involves a different set of standards than a residential property. She added that she did not know why the City would want to allow that.

Commissioner Szymanski stated that the City has defined itself as a residential community. If an individual sold agricultural products from the premises and it negatively impacted everyone else, there would be a conflict with the goals of the community. He added that the residential zone districts are not mixed-use.

Chair Christman added that the City of Denver does not even permit commercial farming in residential areas.

Commissioner Rubin said that the proposed ordinance only allows for a very narrow use of agriculture. It does not allow the operation of a commercial business on the property.

Chair Christman stated that the use of agriculture in the proposed amendment is broad. The only activity restricted is fur farms, kennels, stables and garbage.

Commissioner Poche asked if the Village Club would be legally allowed.

Chair Christman responded that it is not a commercial stable.

Mr. Zuccaro said that the Village Club has a special use permit and an agreement with the City to allow stabling of a certain number of horses.

Commissioner Poche asked how many horses are allowed per property.

Mr. Zuccaro responded that there is not a limit as long as it is not a nuisance.

Commissioner Poche asked if he could breed horses on his property for commercial purposes.

Chair Christman responded that it would be allowed under the proposed ordinance.

Commissioner Rubin asked if there is a pressing need for the change in policy.

Commissioner Szymanski stated that a change in policy could result in a slippery slope. He added that this was also addressed during the discussion of short-term rental homes.

Commissioner Poche replied that when discussing the issue of short-term rental homes it was found that the use was already prohibited by the Municipal Code.

Chair Christman said that the police had a difficult time enforcing the ban on short-term rental homes.

Commissioner Szymanski added that it forced neighbors to act as policemen.

Commissioner Rubin stated that he does not support the City developing regulations based on an individual request.

Commissioner Poche asked why the Municipal Code does not define both commercial and agricultural use.

Mr. Zuccaro stated that the Municipal Code does not define commercial use, but common definitions of commercial use indicate that any sale of goods would constitute a commercial use.

Chair Christman asked if a resident is able to sell products from the premises occasionally.

Mr. Zuccaro replied that the Municipal Code only allows for home occupations.

Chair Christman asked if the portion of the Code that allows for home occupations should be broadened to include the occasional sale of products from the premises.

Commissioner Poche responded that it could become a slippery slope. A resident can grow apples, process them into a remedy, and then try to sell them as a holistic service on a regular basis.

Mr. Zuccaro stated that while a holistic health service may be allowed as a home occupation, the sale of a product associated with holistic service would not be allowed because it is illegal to sell any product from the premises.

Mr. Zuccaro added that he searched the City's Master Plan and found that agriculture is not mentioned. In terms of the vision of the community, however, the Master Plan does describe the City's residential character as semi-rural, which could be interpreted to include agriculture.

Chair Christman said that she has never heard from a resident that the City should allow the commercial sale of agricultural products. She has heard that individuals would like to bring their products to a farmers market that is organized in the City once or twice per year.

Mr. Zuccaro replied that if an individual wanted to sell herbs or vegetables from a garden for 6 weeks out of the year during summer, for example, it would be considered a commercial activity according to the current policy.

Chair Christman asked if the individual would be able to take those products to a farmers market located outside of the City.

Mr. Zuccaro replied that it would depend on the interpretation of truck garden as the Municipal Code prohibits such activity.

Chair Christman stated that this seems to indicate that the City has historically prohibited commercial agriculture.

Mr. Zuccaro said that the City adopted a blanket prohibition on commercial agriculture in 1970.

Commissioner Poche stated that there is a home located in the City of Greenwood Village that sells pumpkins.

Mr. Zuccaro responded that he contacted the City of Greenwood Village and found that they consider the sale of agricultural products once or twice per year from the premises as not being considered commercial because it does not occur on a regular basis. Any regular sale of goods would be considered commercial and prohibited according to Greenwood Village. Some properties in Greenwood Village produce vegetables that are used by local restaurants and harvested by local restaurant employees. This activity would likely not be allowed in the City of Cherry Hills Village because the property would then be considered a truck garden, which is prohibited. It can be argued that the intent on the ban of truck gardens is to prevent commercial vehicles or outside employees from entering the City to harvest products.

Commissioner Poche stated that it seems that the City is trying to prevent a retail market from occurring on a regular basis.

Commissioner Rubin said that he could see how a stand that an individual sells products from could cause problems for other residents.

Chair Christman replied that she does not think a change in policy is needed. She added that home occupation could be expanded to include the sale of agricultural products once or twice per year.

Commissioner Rubin asked who requested the change in policy and why the wanted the change.

Mr. Zuccaro responded that a resident requested the change but did not specify what type of products she wanted to sell. The proposed ordinance would allow residents to sell products produced on the property. City Councilmember Stewart has been working with staff on drafting the proposal. The proposed ordinance would not allow a produce stand, retail structure or signage.

Commissioner Poche said that there is a house in Englewood located at the end of East Quincy Avenue that sells tomatoes. It does not appear to cause any issues.

Chair Christman replied that a sign would not be allowed in the City

Commissioner Szymanski stated that restrictions would have to be added.

Mr. Zuccaro said that if the Commission wanted to cautiously allow the sale of agricultural products it could require special use permitting with specific review criteria that is limited to a certain amount of time and requires the individual to reapply every year.

Chair Christman responded that this would allow neighbors to report any issues that are caused by the sale of products and protest the renewal of the special use permit.

Commissioner Rubin stated that it seems as though the Commission feels that the change in policy is not necessary.

Commissioner Szymanski replied that he does not see how a change in policy would benefit the community. He added that he recommends denial of the proposed ordinance.

Commissioner Rubin said that he is not opposed to an individual selling a product to a local restaurant or at a farmers market.

Mr. Zuccaro responded that the Municipal Code would not allow that.

Chair Christman replied that it would not be a commercial truck garden if it occurred occasionally.

Mr. Zuccaro agreed.

Commissioner Poche stated that he does not see why the sale of agricultural products should not be allowed if it does not create a nuisance.

Commissioner Szymanski replied that if a resident had a truck picking up vegetables every weekend it would create a nuisance.

Chair Christman said that the City Council has not suggested that commercial agriculture should be permitted in the City.

Commissioner Rubin made a motion to recommend to the City Council denial of the proposed amendment to Municipal Code Section 16-5-10 allowing the sale of agricultural products produced on the premises in the R-1, R-2 and R-3 zone districts.

Commissioner Poche seconded the motion, which was approved unanimously.

REPORTS

Mr. Zuccaro stated that the *Wall Street Journal* has published a report listing the ten most desirable suburbs, and the City of Cherry Hills Village was listed as number one.

ADJOURNMENT

The meeting was adjourned at 7:15 p.m.

Laura Christman, Chair

Emily Kropf

Emily Kropf, Community Development Clerk