

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, April 14, 2015 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Vice Chair Rubin called the meeting to order at 6:35 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Vice Chair Jim Rubin, Commissioner David Wyman, Commissioner Peter Niederman, and Commissioner Doris Kaplan.

Present at the meeting were the following staff members: Kathie Guckenberger, Deputy City Attorney; Tory Carmann, City Engineer; Robert Zuccaro, Community Development Director and Cesarina Dancy, Community Development Clerk.

Absent from the meeting were Chair Peter Savoie and Commissioner Al Blum.

APPROVAL OF MINUTES

Commissioner Niederman made a motion, which was seconded by Commissioner Wyman to approve the March 10, 2015 minutes as written.

The motion passed unanimously.

AGENDA ITEMS

- a. *Request by Blue Hill Land Company LLC, for a Minor Subdivision and Floodplain Development Permit*

Mr. Zuccaro stated that staff is presenting a request for review of a minor subdivision plat to subdivide an approximately 2.2-acre parcel into two, 1.1-acre residential lots. He stated that a floodplain development permit is also included in the application for minor modifications to the street curb in the floodplain associated with the drainage plan for the subdivision.

Mr. Zuccaro displayed a vicinity map and indicated the location of several trails. Mr. Zuccaro stated that the property is zoned R-3, 1-Acre Residential District and is currently vacant. Surrounding properties are all zoned R-3. The adjacent properties to the north, west and south are developed with single family residences and the adjacent property to the east is vacant. The southwest portion of the subject property is covered by the Englewood City Ditch and floodplain.

Mr. Zuccaro stated that there is a designated on-street trail adjacent to the subject property along East Kenyon Avenue that connects to an unpaved trail to the east along the East Kenyon Avenue alignment and then turns north along the South Downing Street alignment. To the west, the on-street trail connects to a paved trail along South Clarkson Street.

Mr. Zuccaro outlined the code requirements for minor subdivisions and floodplain development permits.

Mr. Zuccaro stated that staff has prepared an analysis of all requirements.
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Mr. Zuccaro stated that the southern lot (Lot 2) is proposed to have frontage with East Kenyon Avenue and a northern lot (Lot 1) is proposed to have access via an easement through Lot 2. The access easement will be recorded by separate document from the plat. He continued to say that the City Attorney and City Engineer have reviewed the easement and recommend approval.

Mr. Zuccaro stated that a Phase III Drainage Report has been submitted for the proposed subdivision and the drainage plan proposes a stormwater detention pond located on Lot 2 to accommodate stormwater from both properties. A drainage easement for the detention pond will be established by separate document from the plat and maintenance responsibility will be shared between both property owners. The detained stormwater would outlet onto Kenyon Avenue, bypass the Englewood City Ditch and drain into Greenwood Gulch Bypass. The City Engineer has reviewed the Phase III Drainage Report and recommends approval.

Mr. Zuccaro stated that a referral was sent to South Metro Fire Rescue. No requested revisions to the plat or adverse comments were submitted.

Mr. Zuccaro stated that the applicant has proposed that the full 7.5% dedication be made as cash in lieu of land. He continued to say that based on appraisals from August 22, 2013, the value of each proposed lot are \$506,000 and \$508,000, totaling \$1,014,000. Based on this appraisal price, the 7.5% cash in lieu dedication requirement would be \$76,050. He stated that staff has informed the applicant that current appraisals are required to determine the final dedication amount. Mr. Zuccaro stated that the applicant is currently in a quiet title lawsuit over the property and has requested that the subdivision review continue pending the outcome of the lawsuit. He continued to say that because of the unknown timeframe for the lawsuit, the applicant has requested that the final appraisals not be submitted until after the lawsuit is settled.

Mr. Zuccaro stated that the Parks, Trails and Recreation Commission (PTRC) reviewed the proposal for cash in lieu of land dedication at their March 12, 2015 meeting and the PTRC recommended approval with the following two conditions:

1. PTRC's acceptance of an appraisal current within three months of full execution and recordation of the plat shall be provided to the City and that the final dedication amount shall be based on such appraisal.
2. Blue Hill Land Company's successful resolution of current and any future litigation such that it provides clean title of its ownership of the parcel.

Mr. Zuccaro stated that all 8 minor subdivision review criteria were found to be in the affirmative.

Mr. Zuccaro stated that the proposed subdivision divides a parcel of land in common ownership into two parcels and does not appear to create zoning or other nonconformities. There are no existing structures on the property.

Mr. Zuccaro stated that the two proposed lots will each be 1.1 net acres, exceeding the minimum lot area for the R-3 zone district.

Mr. Zuccaro stated that all applicable submittal requirements have been reviewed by staff and appear to meet the requirements of the Code.

Mr. Zuccaro stated that no public or private streets are proposed. A private shared driveway access easement is proposed to access the north lot (Lot 1) through the south lot (Lot 2). He

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continued to say that the City Attorney and City Engineer have reviewed the easement and recommend approval.

Mr. Zuccaro stated that 10' wide perimeter drainage and utility easements are proposed. Referrals were sent to Denver Water, Cherry Hills Village Sanitation District, Xcel Energy, Comcast and Century Link, and no requested revisions to the plat or adverse comments were submitted by the utility companies.

Mr. Zuccaro stated that there are no existing trails on the property. Kenyon Avenue to the south of the subdivisions includes a designated on-street trail that connects to an unpaved, off-street trail to the east along the East Kenyon Avenue alignment and then turns north along the South Downing Street alignment. To the west, the on-street trail connects to an off-street paved trail along South Clarkson Street. He continued to say that rather than have additional off-street trails through the proposed subdivision, the PTRC recommends that a cash in lieu dedication for 7.5% land dedication requirement.

Mr. Zuccaro stated that floodplain encumbers both lots and limits the developable area, and that multiple lot configurations were discussed with the applicant to try and minimize the impact of the floodplain encumbrances. The southern lot (Lot 2) is the most encumbered and has about a 4,000 square foot building area outside of the floodplain and setbacks. The buildable area is approximately 75' wide north to south and varies in depth from approximately 50' on the south side to 110' on the north side. Although this buildable area is less than a typical R-3 one-acre lot, he stated that staff believes an adequate building envelope is available.

Mr. Zuccaro stated that the Master Plan Land Use/Development Goal is to "Maintain the existing land use and development pattern." The Master Plan Land Use/Development map designates the property as Low-Density Residential, which is defined as having one-acre or larger parcels. He continued to say that the proposal for 1.1 acre lots is consistent with the Master Plan Land Use/Development Goal and Map.

Mr. Zuccaro stated that staff finds that the proposed floodplain development meets the review criteria in Section 16-17-60. He continued to say that the applicant's engineer has provided a letter stating that the street curb improvement will not adversely affect existing floodplain limits or base flood elevations. The improvements are necessary to adequately channel stormwater runoff down a short section of E. Kenyon Avenue into the Greenwood Gulch Bypass. He continued to say that the City Engineer has reviewed the floodplain development permit and recommends approval.

Mr. Zuccaro stated that there were two conditions of approval in the staff memo and that a third was added by the City Attorney. He stated that copies of the new condition are located on the dais.

Mr. Zuccaro stated that staff recommends approval of the Blue Hill Minor Subdivision and floodplain development permit with the following conditions:

1. Prior to recordation of the plat, the applicant shall provide an appraisal in order to determine fair market value of the property and the required amount of cash in lieu of land dedication in accordance municipal code section 17-3-30. Such appraisal shall be performed by a certified appraiser and current within three months of full execution and recordation of the plat.
2. Prior to recordation of the plat, the applicant shall provide documentation satisfactory to the City demonstrating: (a) successful and final resolution of the current litigation, *Spears*

- et al v. Parker Semler, et al*, Arapahoe County District Court, Case No. 2014CV031853; and (b) applicant's clear title to and legal ownership of the property.
3. Immediately prior to and contemporaneously with the recordation of the plat, the applicant shall record the Declaration of Drainage Easement and Declaration of Easement granting a shared driveway access easement to Lot 1 of the Blue Hill Subdivision, which is included in Exhibit B to the staff memorandum.

Vice Chair Rubin asked where would the application go after Planning and Zoning approval.

Mr. Zuccaro replied that the application would then be presented to City Council at a public hearing.

Commissioner Wyman asked about a discrepancy of the lot size indicated in Exhibit B.

Mr. Zuccaro replied that the original letter that was submitted is out of date and the lot configuration has since been revised to address the floodplain.

Commissioner Wyman asked what the capacity of the detention pond was.

Troy Carmann, City Engineer, replied that it was a 100 year detention pond.

Commissioner Wyman asked was it an actual pond or a swale.

Mr. Carmann replied that it was a porous landscape detention facility which contains pervious soils and sands.

Commissioner Wyman asked if this is similar to the field at St. Mary's Academy.

Mr. Carmann replied that it is similar.

Commissioner Wyman asked if there was standing water how long would it take to drain.

Mr. Carmann replied that 72 hours is the standard. He continued to say that it is not an exact science and it could take anywhere from 24-124 hours to drain.

Commissioner Wyman asked what is the probability of a reduction in capacity or delay in drain over time.

Mr. Carmann replied that the porous detention facilities are less susceptible to deterioration over time and that they are easier to maintain. He continued to say that any storm water detention facility requires some degree of maintenance and that this proposed facility is favorable to this application.

Commissioner Wyman asked what direction is the flow of the water.

Mr. Carmann replied that it is in a southwest slope.

Commissioner Kaplan asked what the purpose of the curb is.

Mr. Carmann replied that the curb provides separation between the stormwater flow and irrigation flow. He continued to say that the flow of water will go into Greenwood Gulch and not into the ditch.

Commissioner Niederman asked if Blue Hill is the current owner of the property.

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Mr. Zuccaro replied yes.

Commissioner Niederman asked what date the property was closed on.

Bob Kelsey, representative for the applicant stated that it was purchased approximately 10 years ago.

Commissioner Niederman asked what information staff could provide regarding the lawsuit.

Mr. Zuccaro replied that he was limited on what information he had. He continued to say that the owner was not present at the meeting, but had answered these questions when the application was reviewed by the PTRC.

Mr. Kelsey stated that the applicant is in a quiet title lawsuit which was filed by a previous landowner. He continued to say that the current owner is confident in their victory and would like the subdivision plans to proceed concurrently with the lawsuit.

Commissioner Kaplan asked why the owner was not present.

Mr. Kelsey said he did not know that it was his understanding that the owner would be present.

Mr. Zuccaro stated that the PTRC draft minutes in the packets indicate that the land was acquired by the applicant in 2003, and was previously sold in 1994. He continued to say that these dates have not been verified and that the owner is being sued by the original owner. He stated that the applicant has requested that the application move forward and that the applicant has agreed to all of the conditions of approval.

Deputy City Attorney Guckenberger stated that the conditions of approval implicitly indicate that clear title and legal ownership is established prior to recordation of the plat.

Commissioner Niederman asked what the intent of the owner regarding the property was.

Mr. Kelsey replied that he intended to sell the lots for home sites.

Commissioner Niederman asked if the lawsuit was contesting rightful ownership.

Mr. Kelsey replied yes.

Mr. Zuccaro stated that if the Commission was comfortable with the conditions they could move forward or if they wanted to continue the meeting to a date certain so that the owner could address the Commission that was an option as well.

Commissioner Niederman stated that he would like to hear from the applicant directly.

Deputy City Attorney Guckenberger stated that the case is set for trial in December and that each party does not anticipate settlement.

Commissioner Wyman made a motion, which was seconded by Commissioner Kaplan, to continue the application to the May 12, 2015 meeting of the Planning and Zoning Commission at 6:30 pm at the Village Center so that the owner could address the Commission on the ownership issues.

The motion passed unanimously.

REPORTS

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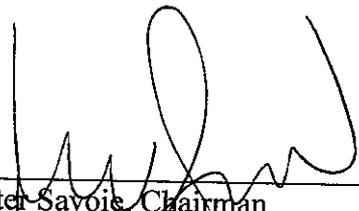
Mr. Zuccaro stated that City Council has asked for the Commission to hold a joint study session with the PTRC to study and review fence codes for fences adjacent to public trails. He stated that an email would be sent to confirm availability for dates.

ADJOURNMENT

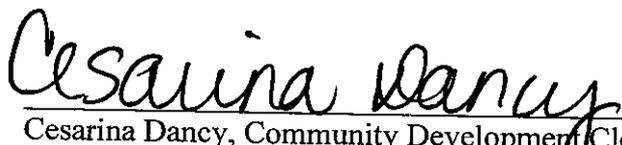
Commissioner Kaplan made a motion, which was seconded by Commissioner Niederman, to adjourn the meeting.

The motion passed unanimously.

The meeting was adjourned at 7:11 p.m.



Peter Savoie, Chairman



Cesarina Dancy, Community Development Clerk