

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, June 9, 2015 at 6:30 p.m.
At the Village Center

STUDY SESSION

The Planning and Zoning Commission participated in a joint study session with the Parks, Trails and Recreation Commission from 5:30-6:30.

CALL TO ORDER

Vice Chair Rubin called the meeting to order at 6:47 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 Al Blum

Present at the meeting were the following staff members: Rob Zuccaro, Community Development Director; Marcus McAskin, Deputy City Attorney; Troy Carmann, City Engineer; and Cesarina Dancy, Community Development Clerk.

APPROVAL OF MINUTES

Commissioner Wyman made a motion, which was seconded by Commissioner Niederman to approve the April 14, 2015 and May 12, 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 (Public Hearing; Continued from March 10, 2015; April 4, 2015; and May 12, 2015 meetings).*

Mr. Zuccaro stated that staff is presenting an applicant 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 stated that the Commission originally reviewed the request at the April 14, 2015 meeting. Due to a pending lawsuit regarding the subject property, the Commission continued the request and asked that the owner of the property be present at the next meeting to address the commission and answer questions about the lawsuit.

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.

The applicant, Parker Semler, gave a history of the lawsuit and how he came to acquire the property. Mr. Semler also gave information on the timing of the pending litigation. He stated that depositions would be happening over the next two weeks and trial is set to start December 2015. Mr. Semler stated that he is aware of and is in agreement with all of the conditions of approval that have been set forth.

Commissioner Blum asked if the City Attorney had anything in writing regarding the lawsuit.

Deputy City Attorney McAskin replied that nothing has been received in writing. He continued to say that the conditions of approval provide that the plat would not be effective until the lawsuit is settled.

Commissioner Blum asked if there were any FEMA requirements that needed to be addressed.

Mr. Zuccaro replied that there were not as long as building stayed out of the floodplain. He continued to say that for structures in the floodplain, there is a floodplain development process. He stated that the only proposed improvement with this application that is in the floodplain is the road.

Commissioner Niederman asked what the value per acre of the property was.

Mr. Semler replied that the value was \$500,000 per acre.

Commissioner Niederman asked who the members of the Blue Hill Land Company were.

Mr. Semler replied that he was the sole member.

Commissioner Wyman asked about the status of the section of Kenyon Avenue leading into the property.

Mr. Zuccaro replied that the website of the assessor shows it to be public right-of-way.

Commissioner Blum made a motion, which was seconded by Commissioner Niederman, to recommend approval of the proposed Blue Hill Minor Subdivision and associated 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 Blue Hill Subdivision, which are included in Exhibit B to the staff memorandum.

He stated that such recommendation is based on the findings and analysis in the June 9, 2015 staff memorandum.

The motion passed unanimously.

b. Proposed Amendment to Municipal Code Section 16-16-130 Concerning Wireless Co-Location Rules

Ms. Kropf stated that staff is presenting for consideration an amendment to Municipal Code Section 16-16-130 to include wireless co-location rules as adopted by the Federal Communications Commission (FCC). Co-location is the mounting or installation of wireless equipment on an existing eligible support structure for the purpose of sending or receiving radio frequency signals. She continued to say that in 2014, the FCC adopted new rules that determine when a co-location request on an existing wireless site must receive zoning approval regardless of state or local law. The rules state that a co-location request must be approved if it does not involve a substantial change.

Ms. Kropf stated that the proposed language includes the definition of substantial change, which might include an increase in height, width, and number of cabinets or other criteria. For example, the City would be required to approve a co-location request for new equipment to be installed on an existing tower in the right-of-way if the height of the structure did not increase by more than 10% or 10 feet, whichever is greater, despite the City's maximum height limit. An application can be denied if the request would result in a substantial change, impair a concealment element needed to qualify as an alternative communication facility or fail to meet a design element or condition of approval from the original application or any amendment thereto.

Ms. Kropf stated that the Colorado Communication and Utility Alliance (CCUA) issued a memo addressing the new rules and a proposed model ordinance to assist with implementation. She continued to say that staff and the City Attorney have reviewed the model ordinance and incorporated the requirements while attempting to minimize their impact.

Ms. Kropf stated that staff recommends approval of the proposed amendment as drafted in order to comply with current federal regulations.

Commissioner Wyman asked if this posed any conflicts to the implementation of undergrounding utilities.

Mr. Zuccaro replied that the City has an agreement with Crown Castle to remove/relocate any sites if the City poles are moved underground.

Vice Chair Rubin asked if this was going to give the City less ability to regulate the towers.

Ms. Kropf replied that there height increases will be allowed, but that the City will have the right to deny any substantial changes.

Mr. Zuccaro replied that any previously approved conditions would still apply to existing single pole and wall mount structures.

Commissioner Niederman stated that many residents are unhappy with their cellular coverage in the City and asked if there was a map of existing tower locations.

Mr. Zuccaro replied that there was not a map only of towers but that he could provide the locations of each. He continued to say that the City has made many efforts to improve coverage for residents, but have been unable to compel the carriers to provide the contracts. He stated that Crown Castle is glad to build whatever the City needs, but the providers have to agree to provide the services. He stated that it is often a business decision, and many carriers feel that the City does not have enough population to support their costs of new equipment.

Mr. Zuccaro stated that the ordinance in question is not related to the issue of current coverage in the City. He stated that regardless if the ordinance is passed, it will have to be followed as it is a federal regulation.

Commissioner Blum made a motion, which was seconded by Commissioner Niederman to recommend approval of the proposed amendment to Municipal Code Section 16-16-130 to include new wireless co-location rules as proposed in Exhibit A of the June 9, 2015 staff memorandum.

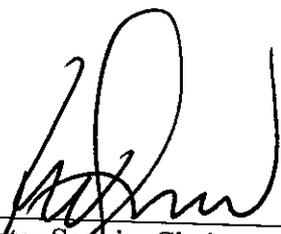
The motion passed unanimously.

ADJOURNMENT

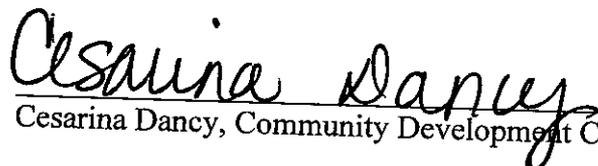
Commissioner Wyman made a motion, which was seconded by Commissioner Niederman, to adjourn the meeting.

The motion passed unanimously.

The meeting was adjourned at 7:42 p.m.



Peter Savbie, Chairman



Cesarina Dancy, Community Development Clerk