



**PLANNING COMMISSION
A G E N D A
May 6, 2010**

Notice is hereby given of a Public Meeting to be held before the City of Wheat Ridge Planning Commission on May 6, 2010, at 7:00 p.m., in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Heather Geyer, Public Information Officer at 303-235-2826 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

- 1. CALL THE MEETING TO ORDER**
- 2. ROLL CALL OF MEMBERS**
- 3. PLEDGE OF ALLEGIANCE**
- 4. APPROVE THE ORDER OF THE AGENDA (Items of new and old business may be recommended for placement on the agenda.)**
- 5. APPROVAL OF MINUTES – April 15, 2010**
- 6. PUBLIC FORUM (This is the time for any person to speak on any subject not appearing on the agenda. Public comments may be limited to 3 minutes.)**
- 7. TRAINING SESSION**
 - A. Training Session with City Attorney & Senior Planner**
 - B. Public Officials' Liability**
- 8. OTHER ITEMS**
- 9. ADJOURNMENT**



PLANNING COMMISSION

Minutes of Meeting

April 15, 2010

1. CALL THE MEETING TO ORDER

The meeting was called to order by Chair MATTHEWS at 7:00 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL OF MEMBERS

Commission Members Present:

Anne Brinkman
Alan Bucknam
Mark Dietrick
John Dwyer
Dick Matthews (left meeting early)
George Pond
Steve Timms

Commission Members Absent:

Dean Gokey

Staff Members Present:

Meredith Reckert, Sr. Planner
Tim Paranto, Public Works Director
Ann Lazzeri, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. APPROVE THE ORDER OF THE AGENDA

It was moved by Commissioner TIMMS and seconded by Commissioner DWYER to approve the order of the agenda. The motion carried 7-0.

5. APPROVAL OF MINUTES – March 18, 2010 and April 1, 2010

It was moved by Commissioner DWYER and seconded by Commissioner BUCKNAM to approve the minutes of March 18, 2010 as presented. The motion carried 7-0.

It was moved by Commissioner DWYER and seconded by Commissioner BUCKNAM to approve the minutes of April 1, 2010 as presented.

The motion carried 4-0 with Commissioners BUCKNAM, DIETRICK and TIMMS abstaining.

6. **PUBLIC FORUM** (This is the time for any person to speak on any subject not appearing on the agenda.)

There were no individuals present who wished to address the Commission at this time.

7. **PUBLIC HEARING**

- A. **Case No. WZ-08-05:** An application filed by Daniel Dearing for approval of a zone change from Agricultural-One to Planned Commercial Development and approval of a Conceptual Outline Development Plan for property located at 4859 Miller Street.

This case was presented by Meredith Reckert. She entered all pertinent documents into the record and informed the Commission there was jurisdiction to hear the case. She reviewed the staff report and digital presentation. She noted a correction to her report: the property in question is located 1600 feet from the Medved Autoplex rather than 600 feet.

Staff concluded that while the Comprehensive Plan and Urban Renewal Plan designate this area as "employment", the proposed investment in the property is minimal and the zone change will result in expansion of an illegal nonconforming use. Staff does not support this type of "incremental" zoning where a commercial use will be entitled with little benefit to the City. Staff would support a rezoning that included the parcel to the south and brought the entire operation into a higher level of compliance with the City's zoning and development standards. The applicant did not indicate a willingness to take that approach. Therefore, staff gave a recommendation of denial.

Ms. Reckert entered into the record her memorandum dated from April 15, 2010 to the Planning Commission presenting the history related to the subject property.

(In Chair MATTHEW's absence, Vice Chair BUCKNAM served as Chair for the remainder of the meeting.)

Commissioner TIMMS asked if the approved FDP and front façade building permit for the property at 10501 West I-70 Frontage Road referenced anything about an additional parking lot on Parcel B. Ms. Reckert replied that they did not. In response to another question by Commissioner TIMMS, Ms. Reckert explained that there is usually an expiration on an FDP; however, ODP's generally run with the land. There is nothing that addresses time limits for an interim use which is intended in this case.

In response to a question from Commissioner TIMMS, Tim Paranto explained that the new parking lot would require some detention or water quality areas for runoff to be trapped.

Commissioner TIMMS asked what steps would be necessary to make the property become a legal conforming use. Ms. Reckert explained that the applicant would have to apply for a special use permit and 20% landscape coverage would be required. The applicant was advised in 2005 to apply for a special use permit and chose not to go that route. If this application is denied by City Council, code enforcement action would be taken.

In response to a question from Commissioner POND, Ms. Reckert stated that the photographs in the staff report were taken within the last month and the aerials were taken in 2008.

In response to questions about drainage from Commissioner POND, Mr. Paranto explained that, due to the size of pavement, only water quality treatment would be required.

Commissioner POND asked about enforcement of the interim use of the ODP. Ms. Reckert explained that after five years, the applicant would be notified that the ODP had expired. If compliance was not achieved in a certain amount of time, court action would be taken.

Since there is no access from Miller, Commissioner DWYER asked if there would be an easement through the southern lots to allow access to the northern lots. Ms. Reckert stated that this would be a condition to be met before recording the ODP.

Commissioner BRINKMAN requested to hear the conditions into the record. Ms. Reckert read the following conditions into the record:

1. Prior to recording of the zone change ordinance and ODP mylar, the legal description be revised to meet current city datum and incorporated.
2. As part of the recording of the ODP mylar, access easements be created, reviewed and recorded with reception numbers cited on the ODP document.
3. Prior to recording of the ODP mylar, the following note should be added:
All landscaping shall be served by a fully automated irrigation system.
4. Prior to recording of the ODP mylar, an emergency access be provided to Miller Street. Such access shall be 24 feet in width and be hard surfaced, not road base.
5. All paving, landscaping and drainage facilities shall be installed prior to any commercial use on Lot One.

Vice Chair BUCKNAM asked to hear from the applicant.

Daniel Dearing

Mr. Dearing, the applicant, stated that he has owned the property for many years and uses the property north of 10501 W. I-70 Frontage Road as parking for the auto body business. He has tried to use parcel A for expansion of the automobile lot sales at 4855 Miller Street. The City has requested the two parcels be rezoned in order to bring them into conformance. He would like to pave part of Lot A, install lighting, landscaping, drainage and remove existing outbuildings. He has had discussions with the police department regarding security enhancement for the property. He stated Abra Auto Body will go out of business if zoning isn't granted to allow parking for the business. He also stated that he has been working on this matter since 2008.

Andrew Marner

Mr. Marner, engineer for the applicant, stated that the proposed area to be paved and used for parking is about 10,000 square feet and very flat. The soil is porous and water quality management could be accomplished with a swale. In the future, when parking is expanded, a detention basin would be built on the northwest corner of Parcel A.

Commissioner BRINKMAN asked the applicant why he had not applied for a special use permit for the 4855 Miller address. Mr. Dearing stated that he understood a special use permit was issued in 1987 for another car lot. Meredith Reckert stated that a special use permit has never been issued for this property.

Commissioner DWYER commented that it seemed a solution would be for the two rear lots to be zoned C-1 and have a special use permit also. Ms. Reckert explained that the present zoning code requires any zone change to Commercial must be a PCD.

Commissioner DWYER asked the applicant why he does not want to have a special use permit for the 4855 lot and zone the rear lots as PCD. Another solution would be to rezone all three lots PCD. Mr. Dearing stated that the zone change relates to 4859 Miller and didn't understand why 4855 has to be rezoned. He also stated his understanding that the city has plans to take property for a turn lane right-of-way on the 4855 parcel if any land use applications are approved. He stated his opposition to giving up any land for a turn lane. Ms. Reckert stated that Mr. Dearing was correct about the right-of-way.

Commissioner DWYER commented that if the lots are split and parcels A & B are only considered, the city's criteria would not be met.

Mr. Dearing stated that he paved the 4855 property and installed landscaping. He stated that if landscaping has died, he would replace it. He stated that the city

gave him a verbal approval that all criteria had been met on this property, and now the city has said the criteria has not been met.

Commissioner DWYER expressed concern that there is no access to Parcel A from Miller because the lots could be sold separately at some time in the future. Mr. Dearing stated that he would have no problem with having access to Miller. In regard to Parcel B, he would like access to be from 10501 West I-70 Frontage Road. Without that access and ancillary parking, he stated Abra Auto Body would go out of business.

Mr. Dearing stated concern about increased criminal activity involving cars at both businesses. The thieves come through both Parcels A and B. He has had discussions with the police department about crime abatement. He stated the police department was in favor of their request for rezoning.

In response to questions from Commissioner TIMMS, Mr. Dearing stated that he bought the 10501 property in 1987 and purchased 4855 Miller and parcels A&B a few years later. He stated that no one lives in the existing house and there are plans to remove that and all the outbuildings. He also stated that he was not aware that overflow parking was not allowed on the A-1 property.

Commissioner TIMMS asked if Mr. Dearing had considered consolidating parcels A and B into one lot. Mr. Dearing replied that he hadn't thought about that possibility but it was something that he would consider. He also stated that he has no intention to develop parcels A and B for anything more than parking at this time. Both businesses have long term leases.

Commissioner TIMMS expressed concern that he didn't see parcels A and B being utilized for temporary use since the businesses have long-term leases.

Commissioner DWYER asked why Mr. Dearing was not pursuing permanent development rather than interim use. Mr. Marner explained that Mr. Wolf would like to lease the space for his auto sales but is unable to do so until zoning is approved.

Commissioner BUCKNAM commented that the interim use only calls for lighting on the extreme western portion of parcel A which doesn't seem sufficient for crime mitigation. Mr. Dearing stated that parcel B is lighted from the north side of the 10501 building. He asked to light only the portion he plans to pave. He plans to clean up the property and install landscaping which should help to deter crime.

In response to a question from Commissioner BRINKMAN, Ms. Reckert explained that Mr. Dearing was informed that requirements for the right-of-way reservation for a turn lane are the same under a PCD or an SUP.

Phil Wolf

Mr. Wolf operates the auto sales business at 4855 Miller. He stated that he has been in operation since August of 2000 at this location and today is the first time that he heard that it was an illegal nonconforming use. He did confirm that theft is a big problem for his car lot.

Commissioner BRINKMAN referred to the memorandum entered into the record earlier that stated that city personnel met with him on February 3, 2005 where he was informed he needed a special use permit to expand the car sales lot, and was informed of the same situation again in 2007, and yet Mr. Wolf states he was not aware that he was nonconforming until this evening.

Mr. Wolf stated that he has paid several fines to the city for noncompliance. He believed that if he was not in compliance, he would have been fined again.

Ms. Reckert stated that after three years of negotiation in the court system, Mr. Wolf finally agreed to pave.

Mr. Wolf maintained that tonight was the first time he was aware that he was in noncompliance.

Commissioner TIMMS asked if the "pros" of using parcel A for expansion of his business outweighed the "cons" of crime. Mr. Wolf explained that expansion for the sake of increased revenue definitely outweighs the cons.

Ms. Reckert stated that she had a copy of a letter dated May 2007 where she reminded Mr. Wolf of the 2005 meeting where he was advised of the need for a special use permit for his car business.

Commissioner BUCKNAM asked Mr. Wolf if he would agree to a special use permit if he needed it to continue with his business. Mr. Wolf replied that he didn't think it could be enforced, but he would talk about it.

In reply to a question from Commissioner POND, Mr. Wolf stated that the current lease will expire in eight to ten years.

Commissioner BRINKMAN asked if a PCD is granted to 4855 Miller and parcels A and B would the lots be tied together forever or could they be sold separately. Ms. Reckert explained that it would depend on how the lots were to be used and access would be an issue in order to prevent having a landlocked parcel.

In response to a question from Commissioner BRINKMAN, Ms. Reckert explained that right-of-way dedication or reservation can be required at time of subdivision process, building permit, special use permit, and zone change.

Mr. Paranto stated that right-of-way could be provided by dedication or the city could recommend a reserve be placed on the property until such time as needed.

At this time, Meredith Reckert entered into the record the right-of-way reservation map for Case No. WZ-08-05.

Vice Chair BUCKNAM asked if there were others present who wished to address the Commission. Hearing no response, he closed the public hearing.

(Vice Chair BUCKNAM declared a short recess at 8:45 p.m. The meeting was reconvened at 8:49 p.m.)

Commissioner POND expressed concern about separation of parcels A and B from 4855 Miller and 10501 West I-70 when connection issues exist. The present situation points to more than an interim use.

Commissioner DWYER stated that he could understand why the applicant has chosen to go this route; however, because there is a connection between the two lots, he had difficulty agreeing that a zoning change is to the best interest of the city. The Commission is being asked to approve a change in zoning to a partially paved vacant lot that doesn't meet zone change criteria.

Commissioner BUCKNAM stated that, as a small business owner, he understands the concern of the applicant to get maximum benefit for the least amount of cost. However, these parcels are connected and he was not comfortable in treating them separately and not considering a more integrated approach. He also expressed concern about access issues for parcel B.

Commissioner BRINKMAN asked requirements for a business license. Ms. Reckert explained that application is made through the sales tax department and then routed to the planning and building departments for review. She stated that there was misrepresentation on the 2000 business license indicating that the permit was for office use only. Commissioner BRINKMAN commented that she assumed the 2007 business license renewal form was accepted and approved by the planning department.

Commissioner BRINKMAN stated that she understood the reasons the applicant doesn't want a special use permit and his concerns about right-of-way dedication. She expressed concern about the conflicting accounts between the property owner and tenant and the City.

It was moved by Commissioner BRINKMAN and seconded by Commissioner TIMMS to recommend denial of Case No. WZ-08-05, a request for approval of a zone change from A-1, Agriculture-One to PCD, Planned Commercial Development, and approval of a conceptual Outline

Development Plan for property located at 4859 Miller Street for the following reasons:

- 1. The proposed rezoning would effectively allow for the expansion of an illegal nonconforming use.**
- 2. The City's zoning and development code does not make allowances for "interim uses".**
- 3. There will be minimal economic benefits to the City.**

The motion carried 5-1 with Commissioner BRINKMAN voting no.

8. OTHER ITEMS

Ms. Reckert advised the Commission that the first two sessions have been held concerning the bike and ped master plan. There next two meetings will be held on April 20 and 21 at the recreation center.

9. ADJOURNMENT

It was moved by Commissioner DWYER and seconded by Commissioner BRINKMAN to adjourn the meeting at 9:05 p.m. The motion passed unanimously.

Alan Bucknam, Vice Chair

Ann Lazzeri, Secretary

PLANNING COMMISSION TRAINING SESSION

Second Floor Conference Room

May 6, 2010 7:00 p.m.

A. INTRODUCTIONS

Gerald Dahl and Meredith Reckert

B. QUASI-JUDICIAL ACTIONS

1. The quasi-judicial standard
2. *Ex-parte* contacts
3. Right to impartial decision maker

C. TAKING TESTIMONY

1. Goal
2. Some suggested rules
3. What testimony is admissible

D. TAKING ACTION

1. Importance of findings and reasons for approval or denial
2. Amendments to motions
3. Stick to the request before you
4. Variances
5. Grounds for denial
6. Failed motions

E. EXACTIONS AND CONDITIONS OF APPROVAL

1. Commonly imposed conditions
2. Commonly imposed exactions
3. Exactions require clear standards and adequate notice
4. *Nollan v. California Coastal Commission*
5. *Dolan v. Tigard*
6. Regulatory takings
7. Acceptable conditions
8. Conditions which are not permitted
9. Technical requirements

F. PLANNED DEVELOPMENTS

1. Design and use flexibility
2. Planned Development Districts

G. QUESTION AND ANSWERS

WHEAT RIDGE PLANNING COMMISSION WORKSHOP
May 6, 2010
Gerald Dahl and Meredith Reckert

A. INTRODUCTIONS

B. QUASI-JUDICIAL ACTIONS

1. The quasi-judicial standard: Actions on zoning matters and on variance requests or appeals from administrative officials are quasi-judicial, not legislative. The consequences of the fact that an action is quasi-judicial are several:
 - a. notice and hearing required
 - b. right to present witnesses and evidence
 - c. right to legal argument
 - d. no *ex parte* contacts allowed
 - e. right to an impartial decision maker
2. Ex parte Contacts
 - a. Defined: contacts between the applicant or opponents and the members of the body outside of publicly scheduled hearings and meetings on the application.
 - b. Why should these contacts be avoided? Judges never talk to the parties outside the courtroom. Neither should you. The consequence of engaging in these contacts can be as severe as invalidating the action of the commission.
 - c. How can *ex parte* contacts be avoided? If you are called by the applicant or opponent and the matter is identified by them, immediately advise them that as a commission member, it is improper for you to talk about the case outside of the hearing room. Urge them to bring their points of view and testimony to the hearing.
 - d. The prohibition extends to e-mails and written materials as well: Make sure any materials you receive outside of the hearing are given to the staff to be copied and shared with everyone at the time of hearing.
 - e. What to do if an *ex parte* contact has occurred: Disclose the contact at the beginning of the hearing; describe its content as completely as possible. In an extreme case, you may be required to step down and not further participate.
3. Right to an Impartial Decision Maker
 - a. Like judges, you should not decide the case before hearing the evidence.

- b. Refrain from “signaling” your opinion before the testimony is complete.
- c. You should not attend and speak on the application at other meetings prior to final decision of the body of which you are a member.

C. TAKING TESTIMONY

1. Goal: That commission members and public attendees leave the hearing feeling that it was fair and that their views were heard and appreciated. Explain the rules for conduct of the hearing at the outset, then stick to them.
2. Some Suggested Rules:
 - a. Require those wishing to speak to sign up and indicate for / against and who they represent.
 - b. If a large number have signed up, divide the available time and assign it at the beginning.
 - d. Suggest speakers do not repeat prior testimony if they can state they agree with an earlier speaker.
 - e. Make sure that all attendees at the public hearing know they have the right to speak.
 - f. Thank all the speakers for appearing.
3. What Testimony is Admissible?
 - a. There is no prohibition / limitation on kind or nature of testimony in the Wheat Ridge Code of Laws.
 - b. Relaxed rules of evidence apply in administrative hearings.
 - c. Hearsay: “I heard G. Dahl say that: [Where Dahl is not present and cannot be cross examined.] Hearsay is admissible.
 - d. It is appropriate for the commission to consider the weight and credibility of testimony.
 - e. Consider all the testimony and evidence. Don’t let the number of people for or against the application determine your decision.

D. TAKING ACTION

1. Importance of findings and reasons for approval or denial
 - a. “[A] record of proceedings before the Board must contain details of the evidence presented and proper grounds and reasons to support its decision.” *Murray v. Board of Adjustment of Larimer County*.
 - b. Draw your conclusions from the evidence.

- c. Summarize the evidence and relate the evidence relied upon to satisfy the criteria in the Code of Laws.
 - d. Staff-proposed motions can be added to with additional statements by the maker of the motion.
2. Amendments to Motions
- a. Must be germane to the main motion
 - b. Good way to add one or a series of conditions
 - c. An amendment seeking to “reverse” the main motion is a substitute motion and is not favored.
3. Stick to the request before you
- a. Apply the same standards of relevance to your comments and decision that you would want to see in public testimony.
 - b. If it is a rezoning case, do not engage in site planning.
 - c. The Applicant is in charge of the application. If the request is for rezoning to C-1, that is what you vote on. (Exception: variances)
4. Variances – Code Section 26-115.C.3 (When part of another application before Planning Commission)
- a. Appropriate subjects for variances include setbacks, lot size, width, cul-de-sac length, etc.
 - b. Density waivers or increases are not appropriate for a variance.
5. Grounds for Denial
- a. Appropriate grounds for denial: anything in the applicable portions of Chapter 26.
 - b. Inappropriate grounds for denial: failure of developer not to volunteer a condition which could not independently be imposed by the City; that the project is the wrong use or density if the zoning in place allows this.
6. Failed Motions
- a. Failed motion means no recommendation (unlike BOA).
 - b. If motion fails, someone on the prevailing side should immediately move to recommend the opposite position.

E. EXACTIONS AND CONDITIONS OF APPROVAL

What can the City require as conditions of approval of a land use case? Are there different “rules” depending upon the type of land use case? What are permitted grounds for denial?

- 1. Commonly imposed conditions: building height; recreational facilities; parking; street improvements on/off site; sound and view impact

mitigation; fire equipment; landscaping; paving; utilities; snow storage; and drainage.

2. Commonly imposed exactions: land dedication; park fees; facilities to be dedicated to public use.
3. For exactions, the case law requires clear standards and adequate notice. *Beaver Meadows v. Larimer County*, (1985)
 - a. Off site road impacts and emergency services
 - b. Specific delegation of authority required in the code
 - c. Resulting regulations must be specific
4. *Nollan v. California Coastal Commission*, (California 1982): reasonable relationship between the exaction / condition and a legitimate government interest required.
5. *Dolan v. Tigard*, (Oregon 1994): "rough proportionality" between the exaction and the impact sought to be mitigated
6. Regulatory takings: the outside limit of permitted regulation: no right to "highest and best use."
7. Acceptable conditions to recommend be imposed (examples):
 - a. Standard of (court) review: Is the condition tied to an applicable provision of the Code?
 - b. Land dedication requirements (how much, where, when)
 - c. Corrections to the plat
 - d. Conditions which support enforcement of the technical requirements of Chapter 26 (eg: drainage easements)
 - e. Requirements for maintenance of common elements (eg: requirement to establish an HOA)
 - f. Preservation of trees and vegetation – Code Sec. 26-414.D: "Natural features and vegetation of the area must be preserved it at all possible."
 - g. Redirecting traffic patterns – Code Sec. 26-414.B: "The residents of the City must have available to them within the area, safe and convenient movement to points of destination or collection. Modes of travel to achieve this objective should not conflict with each other or abutting land uses.
 - h. Conditions offered by the applicant
8. Conditions which are not permitted:
 - a. Density restrictions (if site plan review)
 - b. Matters outside the scope of the applicable portions of Chapter 26

- c. Conditions which have no Code basis
 - d. Conditions which actually redesign the application
9. Technical Requirements
- a. The City has professional staff to review drainage plans and development design.
 - b. Trust your staff
 - c. Best time to ask staff questions: before the hearing

F. PLANNED DEVELOPMENTS

- 1. Allows flexibility in design and use
- 2. Five Planned Development Districts are available under the Code:
 - a. Planned Residential Development - PRD
 - b. Planned Commercial Development - PCD
 - c. Planned Industrial Development - PID
 - d. Planned Hospital Development - PHD
 - e. Planned Mixed Used Development – PMUD
- 3. All rezonings for commercial or industrial uses must be processed as a planned development, as well as all rezonings for residential uses in excess of one acre.



Memorandum

TO: Planning Commission

THROUGH: Ken Johnstone, Community Development Director

FROM: Kathy Field, Administrative Assistant

DATE: April 30, 2010

SUBJECT: Preventing Public Officials' Liability

The Colorado Intergovernmental Risk Sharing Agency (CIRSA), the City's property/liability and workers' compensation insurance broker, has produced a video entitled "*In the Scope of Your Authority: Preventing Public Officials' Liability.*" This video was designed to be viewed by the City's elected and appointed officials, and the management team. It discusses how elected and appointed officials can avoid mistakes that can lead to liability claims and identifies best practices that will allow officials to be successful.

In addition to the video, CIRSA in collaboration with the Colorado Municipal League (CML) have prepared a "*Public Officials Liability Handbook*". This handbook is intended to provide an overview of some of the liability issues facing public entities, as well as some suggestion for avoiding and reducing liability. A copy is enclosed. (If you already have a handbook, please return it to Community Development.)

The video, which is 17 minutes long, will be played for Planning Commission at the May 6th meeting.