



The Montrose City Planning Commission held a meeting May 9, 2007, at 6 p.m. in City Hall Council Chambers. The meeting agenda was posted in accordance with the Colorado Open Meetings Act (C.R.S. §24-6-401, et.seq.).

PRESENT

Kristine Bagnara, Matt Box, Frank Casey, Moira Collier, Bob Nicholson, James Rumble, Judy Wind and City staff Ben Morris, Ginny Howell, Kerwin Jensen, and Roger Shores, were present.

ABSENT

Sergeant Paul Eller, Garry Baker, Alisa Babler

GUESTS

David Kienholz, Peter Borner, Alan & Rhonda Boyles, Ray Hawks, John & Linda Field, Darlene Stanfield, Judy Griffin, Scott Scarborough, Darlene Mora, Scott Ludian, Chuck & JoAnne Sanden, Sylvia & Carlos King, Mike Thorpe, Louis Faussonne, Marvin Howze

Planning Commission Chairperson, Frank Casey, called the meeting to order at 6 p.m.

APPROVAL OF MINUTES

Matt Box pointed out an error on page 3 of the April 25th minutes.

Judy Wind made a motion to approve the corrected minutes of the April 25, 2007, meeting. Moira Collier seconded the motion and it carried unanimously.

OTHER BUSINESS

Frank Casey said he would like to have a short discussion regarding the new ordinance and §2-1-1 and 2-1-2 of the City codes.

CUP #07-0003 – GRAND AVENUE.

This is a request for a Conditional Use Permit to allow self-storage units in the B-4 (Neighborhood Shopping) zoning district on Lot 2 of the El Rio Vista Subdivision (proposed address of 920 N. Grand). Alan & Rhonda Boyles are the applicants.

Roger Shores, Assistant City Planner, introduced this item and reviewed the written staff report. All public notice requirements have been fulfilled and all official files and exhibits were entered into the record.

Staff asked the Commissioners to base their decision on the Conditional Use Permit criteria. If the criteria are met and the development is made attractively compatible with the area, staff would have no objections to approval of this request.

Alan Boyles of 2300 W. Fox Park Street approached the podium to speak in favor of the request. Mr. Boyles said he would be willing to finish the cedar fence at the back of the lot. He said he will fence in the rest of the area later on, and provide adequate landscaping. Mr. Boyles stated he will begin with constructing the two buildings on the east side of the property only and there will be paving around those two units. He was asked if there was any type of office planned and he said that at a later date if there is no demand for more units, he might construct a home on the lot to manage the units. The hours of operation will probably be restricted to 6:00 a.m. to 10:00 p.m. and it would probably be a keypad entry. Bob Nicholson said there are nine items in the Conditional Use Permit to review that are to be addressed and it notes that the burden of proof is on the applicant. He asked Ben Morris, Assistant City Attorney, if it would be fair to ask the applicant to address them. He was told that it hasn't happened every time, but it is certainly fair. The Commissioners asked Mr. Boyles to address the criteria and he did. He again stated he would like to pave the property in sections as the storage units are constructed.

Darlene Mora of 121 N. 9th Street approached the podium to ask if this use would make it easier for someone to rezone the abutting property to the south. She was told that each request is weighed and measured against the required criteria and this would neither make it harder or easier for someone to request a rezone on that property.

Marvin Howze of 925 N. Ute approached the podium. Mr. Howze wanted to know if Mr. Boyles would be willing to grant an easement along the back of the property in order for the six property owners behind him to access the backs of their properties. He also asked if there would be limitations as to what people can store in the units. He said he would not like to see such things as hazardous chemicals, gasoline, or any other type of hazardous material stored there. Kerwin Jensen explained it is very difficult to know what people put inside the units and to enforce that type of thing. Kerwin said maybe the applicant has given some thought as to how he would regulate that. Judy Wind asked Ben Morris, Assistant City Attorney, if the applicant would be able to deal with this type of problem by way of a contract with the renters that would forbid storage of this kind of product. Ben Morris said that the applicant would be able to do that. Mr. Howze took his seat.

Judy Wind said most residential units do not have an easement allowing them access to the back of their property and she said she would like to ask for Legal advice during the discussion period as to whether or not the Commissioners could even require the applicant to give up an easement of that type. Kerwin said the neighbors are asking for legal use of the applicant's property for access to their own property, but he said he thinks that would be a private matter between the applicant and the neighbors. Ben Morris said he agrees with that; reasonable conditions can be placed on granting of the Conditional Use Permit, but they have to be rationally related to what is being proposed. If based on the evidence presented, the Commissioners find that an easement is required based on the proposed use, then it could be considered a rational condition.

Frank Casey asked Mr. Howze to return to the podium and then asked if the neighbors' properties had any other access. Mr. Howze said they all have access off of Ute Avenue and he has a gate to access the backside of his property now. Judy Wind asked Mr. Howze to confirm the fact that he is accessing the back of his property from the back of someone else's property without permission and he agreed.

Alan Boyles was asked to return to the podium. Mr. Boyles was asked how he might deal with storage of chemicals. Mr. Boyles said he will not allow flammable liquids or hazardous chemicals that are not common to household use and this will be included in the contract. The insurance wouldn't allow that either. Ben Morris, Assistant City Attorney, stated that the City does have a code that covers storage of hazardous materials and that can be found in the 2003 International Fire Code and that is administered and enforced by the Fire Department.

The public testimony portion of the hearing was closed.

The Commissioners reviewed the criteria and discussed conditions they would like to see placed on this request such as consultation with the Police Department regarding safety issues and crime prevention. They felt they needed more information, however, to make a final decision. Judy Wind said she would like to require that the fence be constructed initially in order to make the project more compatible and attractive to the neighborhood. The Commissioners requested a narrative that could be entered as an exhibit and it would become part of the official file.

The public testimony portion of the hearing was reopened.

Frank Casey asked Mr. Boyles to return to the podium and the Commissioners wanted to know how long it might take to gather the information/drawings. The Commissioners want to see documents respective to the exterior building/roof materials, the fence, and the placement and type of landscape proposed. They also recommended that he consult with Sergeant Eller of the Police Department, regarding the CPTED program.

The public testimony portion of the hearing was closed.

Judy Wind made a motion to continue CUP #07-0003 on Grand Avenue, which is Lot 2 of the El Rio Vista Subdivision, to allow self-storage units until June 13, 2007 and asked 1). to see documents respective to the exterior building/roof materials, both type and materials of the fence, and the placement and type of landscape proposed, and 2). They also recommended that he consult with Sergeant Eller of the Police Department, regarding the CPTED program. Moira Collier seconded the motion and it carried unanimously.

RZ #07-0008 – 123 ACRES OF THE EAST SUNNYSIDE NO. 3 ADDITION.

This property is zoned RL and the request is to rezone 119.5 acres to R-1A (Large Estate District) and 3.5 acres to B-4 (Neighborhood Shopping district). GL Holdings LLC is the applicant.

Roger Shores, Assistant City Planner, introduced this item and reviewed the written staff report. All public notice requirements have been fulfilled and all official files and exhibits were entered into the record.

A City 8" gravity sewer passes through the property and a 12" City water line extends down Sunnyside Road to the west part of the property. But the fact that these improvements are there, doesn't mean they're adequate to serve the property. Sunnyside Road also requires extensive improvement before lots are sold. Like any other land poised for subdivision, these services will need to be brought to acceptable levels before a final plat is approved.

The property was zoned RL after annexation in 2001. The zoning ordinance specifically limits the aggregate density to no more than one unit per three acres, though an individual lot can be as small

as 1/3 acre. The R-1A (Large Estate) zoning that is requested allows lots as small as 1/2 acre and technically, the aggregate density could be the same.

Staff is supportive of the request for R-1A and B-4 zoning, but stated the Commissioners should review the rezoning criteria before making their decision.

Frank Casey said there were a number of requirements based on the annexation and he asked if any of those requirements would be stepped on in this request. Certain portions of the property were designated as open space, and Roger said the open space was encouraged and there was a potential increase in density offered in conjunction with providing significant open space. There were also restrictions like the preservation of view corridors and not having ridge top residences. Kristine Bagnara asked if those requirements would still need to be followed. Roger said what has been done in the past was the zoning that was approved in conjunction with annexation, and he thinks that those features would no longer be in effect if the property is rezoned. Ben Morris, Assistant City Attorney, stated that Ordinance 1832 would no longer be effective on this 123-acre portion of that annexed land.

Scott Scarborough of 62470 Ophir Circle and Scott Ludian of 2924 Lost Creek Road South approached the podium to speak in favor of the proposal. Mr. Scarborough and Mr. Ludian are representing the owner of the property. They explained why they are planning to put the neighborhood shopping in the center of the property instead of down along Sunnyside Road. Frank Casey asked them to review the criteria and explain how they meet those criteria. Ben Morris, Assistant City Attorney, asked the applicant about page 2 of Ordinance 1832 and the condition that there be a 200-foot buffer on the part of the property owned by Circle H Ranches (also known as the Hawk's property), at the time of this zoning which adjoins Project 7 Facility. The condition goes on to say that the buffer shall allow no residential use of that part of the property, but it shall remain as open space. He asked if that area is within the 123-acres being proposed tonight for a rezone and Mr. Scarborough said it is not.

Carlos King of 68930 Miguel Road approached the podium. Mr. King stated the applicants came to him with photos and ideas for a development that they are planning for this 123 acres, and he has no problems with anything as long as the plans stay as they were proposed to him. Kerwin Jensen stated that the only thing that can be guaranteed is that the homes would be on 1/2 acre lots. The ponds, architectural features, and cost of housing after construction cannot be guaranteed.

John Field of 15740 6800 Road approached the podium to support the zoning change. He said the current lot size of 3-acres is way too much ground for most people to maintain and this is a good area for development. This ground is not amenable to farming or ranching, he said.

Mike Thorpe of 68169 Sunnyside Road approached the podium and he said if the developer does what they've said and they go by what they have shown him, he would be supportive of the request. He asked if there could be a condition that the lots on the perimeter be kept at 1-acre each as a buffer.

Bob Nicholson stated to Ben Morris, Assistant City Attorney, that we are often confronted with situations where we are in a zoning decision where there have obviously been discussions between the developer and several adjoining property owners and they have reviewed plans. That, he said is appropriate and proper in his opinion. The issue, as always stated by citizens, is that they have no concerns if the project is done as proposed to them. The Planning Commission cannot control that. Bob says he does know of instances where owners of adjacent property and developers have met

and have tried to hash out an agreement and a covenant that they can actually file on the property that states exactly what they are going to do. Bob asked Ben if that is an appropriate way to deal with these kinds of issues or if that would be too cumbersome.

Ben stated that it can be appropriate, though it isn't something that they (the Planning Commission) can require. From the City's point of view, we are interested in §4-4-27(A)(1) and the requirements therein. If the applicants or developers choose to put private covenants on their property to help further the goal of making it fit in with the uses that surround it or to help make the neighbors more amenable to a new development, that is a legitimate goal that they can pursue if they choose. Or they can wait and see if the objections will persuade the Commissioners not to accept their application for this particular zone.

Kerwin stated that Matt Miles did that very thing with his development, Bear Creek. There were some County residents that requested only one-story homes along that boundary. The zoning code allows a height of 35-feet. He self imposed that one-story height limit on himself, so it is entirely up to the property owner.

The public testimony portion of the hearing was closed.

The Commissioners reviewed and discussed the criteria.

Moira Collier made a motion to recommend approval of the R-1A on 119.5 acres and B-4 zoning on 3.5 acres to City Council for RZ #07-0008 on a total of 123 acres of the East Sunnyside No. 3 Addition. Matt Box seconded the motion and it carried unanimously.

OTHER BUSINESS

ORDINANCE 2158

Frank Casey stated they received a complete revision of §2-1-1 and 2-1-2 of the City codes in regards to the establishment of the Planning Commission and to the terms of office. He had a question in relation to the new Ordinance #2158 and he has concerns and wants it explained. Ben Morris, Assistant City Attorney, stated that City Council had a couple different concerns. The code provides that the Mayor, with the consent of the Council, appoints the Planning Commissioners and that isn't how it has been done for some time now. When new Planning Commissioners are appointed, reappointed or a vacancy is filled, it is done by a majority or consensus vote, not by the mayor alone going out and recruiting people.

Prior to this ordinance, Planning Commissioners were better insulated than staff or the City Council itself so they decided to change that. Ben said that almost any ordinance can be done as an emergency except those that levy a tax, create a fee or create a special privilege. Judy Wind said it is just the appropriate jargon to make it right. The charter under certain conditions allows emergency ordinances, and they have to be called the same thing as the charter calls them. Matt Box asked what the process would have been had it not gone through as an emergency ordinance. Ben said it would have been a regular ordinance and would have had two readings instead of one. Judy said they are just cleaning up the process to reflect what actually takes place.

Frank Casey asked what impact this has on the working orders and by-laws of the Planning Commission. Ben said there were none to his knowledge. In terms of day-to-day business,

nothing should change. If the Commissioners are comfortable in what they are doing, and feel they are doing the right thing, nothing needs to be changed. Frank Casey said he has to be frank in stating his concerns, and that is that the wording he sees and in his understanding of their jobs, is that they are to provide advice in some areas making sure everything is done by regulation and if they have concerns in certain areas, they are to forward those concerns, recommendations, thoughts on to City Council or staff. His reading of this new ordinance is that they don't want them to do that. He asked if Council is changing the fact that the Commissioners are advisors in some areas over and above what is on the agenda. Things that come before them cause them to have concerns about certain ordinances and regulations. It has been his understanding that Council wants the Commissioners to give their thoughts on those things.

Ben said he doesn't think that has changed. Judy said she can't relate what Frank just said to the new ordinance. To her, she feels that they changed the ordinance to say that not just the mayor appoints the Commissioners, but it is done by majority vote instead. Judy said she doesn't feel the ordinance addresses anything about their duties. Frank said there was additional language in the original section of the code that isn't in the new ordinance and that is what he is questioning. Ben read the new ordinance into the record for the Commissioners, along with the "Whereas" provisions that explain its purpose.

NEXT TIME

The next Planning Commission meeting is scheduled May 23, 2007 at 6:00 p.m.

ADJOURNMENT

Moira moved to adjourn the meeting at 7:59 p.m. Matt Box seconded the motion, and it carried unanimously.

CHAIRPERSON

ATTEST