



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Draft City Council

*City Council meetings are broadcast live on Channel 18,
beginning at 1:00 p.m.*

Tuesday, April 22, 2014

1:00 PM

Council Chambers

1. Call to Order

- Present:** 8 - President Pro Tem Merv Bennett, Councilmember Helen Collins, President Keith King, Councilmember Don Knight, Councilmember Jan Martin, Councilmember Joel Miller, Councilmember Andy Pico, and Councilmember Val Snider
- Excused:** 1 - Councilmember Jill Gaebler

2. Invocation and Pledge of Allegiance

The meeting was opened with an invocation by Jimmy Blackwolf Ramirez an Elder of the Southern Ute Indian Tribe. Council President King led in the Pledge of Allegiance.

3. Changes to Agenda/Postponements

Council Administrator Gonzalez stated that Item 13.A., the Appeal of Cumbre Vista Development Plan 2013 Amendment had been withdrawn; the developer pulled the development application.

4. Councilmember Comments

There were no Councilmember Comments.

5. Consent Calendar

These items will be acted upon as a whole, unless a specific item is called for discussion by a Councilmember or a citizen wishing to address the City Council. (Any items called up for separate consideration shall be acted upon following the Mayor's Business.)

5A. Second Presentation:

There were no items for Second Presentation on Consent Calendar.

5B. First Presentation:

5B.B. 14-0166 Boards and Commissions

The Appointments were approved.

5B.C. 14-0023 A Resolution Approving the Intergovernmental Agreement of the Colorado Information Sharing Consortium between the City of Colorado Springs and the Adams County Sheriff's Office, the Arapahoe County Sheriff's Office, the City of Aurora, the Colorado

Department of Public Safety of the State of Colorado, the City of Commerce City, the City and County of Denver, the Douglas County Sheriff's Office, the City of Grand Junction, the Board of County Commissioners of the County of Jefferson, and the Board of County Commissioners of the County of Mesa, Colorado - Peter Carey, Police Chief

This Resolution was adopted.

5B.E. 14-0138 The Lodge at Flying Horse Zone Change and Development Plan - 2
File No. CPC PUD 13-00137 (Planning & Development - Peter Wysocki)

This Planning Case was approved.

Approval of the Consent Agenda

Motion by President Pro Tem Bennett, seconded by Councilmember Martin, that all matters on the Consent Calendar with the exception of items 5B.A., 5B.D., 5B.F., 5B.G., 5B.H., 5B.I., and 5B.J., be passed, adopted, and approved by unanimous consent of the members present. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

6. Recognitions

There were no Recognitions presented.

7. Citizen Discussion

James Schneiter spoke for a vote of the people to reconsider the Council-Mayor ("Strong Mayor") form of government. Councilmember Knight responded that he had received a voice mail and an e-mail from Mr. Schneiter and would be available to speak with him about the matter the following day.

Cynthia Melstrom and Lindsey Apricio spoke regarding the positive experience and benefits of raising goats and encouraged Council's support of the code change ordinance.

Carl Strow spoke regarding corruption in government.

Lloyd Watts spoke regarding a leech field issue and water fees. He stated he believed he is being blacklisted from communicating with Utilities. Councilmember Miller responded that he would follow-up with Utilities on Mr. Watts' concern yet he understood Mr. Watts had been in communication with Gary Bostrom, the Utilities' Chief Water Services Officer. Councilmember Collins asked Utilities CEO, Jerry Forte who was present at the meeting, to please work with the citizen to address his issues. Mr. Forte agreed to do so.

Walter Lawson spoke regarding wildfire mitigation, prevention, and defense strategies including methods for early detection of wildfires.

Joachim F. Dreibach, CEO and Technical Director for Vispectiv, from Switzerland, was invited by Walter Lawson to provide a presentation of Vispectiv's "Forest Ranger Wildfire Early Detection System." Councilmember Miller stated that, after having a chance to sit down and learn more from Mr. Dreibach, he would support a pilot program with an estimated cost of \$60K to reduce time by which assets could be on-site responding to a wildfire threat. He stated he would like Council to have this as a priority item for the next budget cycle. Councilmember Pico stated he would be interested in looking into the the option as well. Councilmember Collins thanked Mr. Lawson for bringing Mr. Dreibeck and indicated the option could be feasible from a cost perspective. Bret Waters, the Director of the Office of Emergency Management, stated he would be interested in meeting with Mr. Lawson regarding the proposed option.

Ross Clinger spoke to request postponement of the Cowpoke Road matter due to family issues. The matter had been postponed once before. If the item could not be postponed again, he requested it be moved up on the Agenda so that he could present his case. Council President King asked Council if they approved taking the item out of order. There was no consensus to take the item out of order.

8. Mayor's Business

Bret Waters, Deputy Chief of Staff, invited Council and the Public to an Emergency Preparedness Meeting scheduled for Thursday, April 24th, at 6:30 p.m., at Cheyenne Mountain School.

9. Items Called Off Consent Calendar

5B.A. 14-0090 Approval of minutes of the previous meeting and dispensing with reading of minutes

Councilmember Miller stated he pulled the Minutes of the April 8th Regular Council meeting because he did not believe the character of his presentation on Eminent Domain was thorough enough. He asked that the Minutes be revised to include a pointer to the file that includes his presentation.

Motion by Councilmember Miller, seconded by Councilmember Pico, that the Minutes be approved as amended to include an addition of a note pointing to the presentation on Eminent Domain. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

5B.D. 14-0137 The Lodge at Flying Horse Zone Change and Development Plan-1 File No. CPC PUZ 13-00136 (Planning & Development - Peter Wysocki)

Councilmember Miller requested a simple explanation of the substantive factors supporting the requested zone change. Meggan Herington, Senior Planner, Land Use Review, explained the requested change is from PUD allowing a short term stay cottage, to PUD with more of a general commercial classification to allow 40 rooms in the first phase and anticipating a future amendment to add an additional 20 units. Parking for the site is planned to be within the main club parking area.

Motion by Councilmember Miller, seconded by President Pro Tem Bennett, that the Ordinance be approved on first reading. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

5B.F. 14-0163 The Renaissance at Indigo Ranch - 1
File No. CPC MP 84-361-A4MN13 (Planning & Development - Peter Wysocki)

Rick O'Connor, Principal Planner with Land Use Review, responded to questions from Council on the five aspects of the Renaissance at Indigo Ranch applications.

Motion by President Pro Tem Bennett, seconded by Councilmember Pico, to approve the amendment to the Stetson Ridge Master Plan, based upon the finding that the Master Plan complies with the Master Plan Review Criteria in City Code Section 7.5.408. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

5B.G. 14-0141 The Renaissance at Indigo Ranch - 2
File No. CPC CP 13-00143 (Planning & Development - Peter Wysocki)

Motion by Councilmember Pico, seconded by Councilmember Miller, to approve the Renaissance at Indigo Ranch Concept Plan, based upon the finding that the plan complies with the concept plan review criteria in City Code Section 7.5.501 E. with the following condition: Provide an arrow showing access from the northerly round-about on Issaquah Drive into the commercial development. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

5B.H. 14-0142 The Renaissance at Indigo Ranch - 3
File No. CPC ZC 13-00141 (Planning & Development - Peter Wysocki)

Motion by Councilmember Pico, seconded by President Pro Tem Bennett, that the Ordinance be approved on first reading for the PBC/AO rezoning, based upon the finding that the rezoning complies with the three review criteria in City Code Section 7.5.603 B. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

5B.I. 14-0143 The Renaissance at Indigo Ranch - 4
File No. CPC PUZ 13-00142 (Planning & Development - Peter Wysocki)

Motion by President Pro Tem Bennett, seconded by Councilmember Pico, that the Ordinance be approved on first reading for the Renaissance at Indigo Ranch PUD/AO rezoning (Planned Unit Development: single-family residential detached,

35-foot maximum height, 4.78 du/ac with Airport Overlay), based upon the finding that the rezoning complies with the three review criteria in City Code Section 7.5.603 E. The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

5B.J. 14-0144 The Renaissance at Indigo Ranch - 5
File No. CPC DP 13-00144 (Planning & Development - Peter Wysocki)

Motion by President Pro Tem Bennett, seconded by Councilmember Pico, to approve the Renaissance at Indigo Ranch Development Plan, based upon the finding that the development plan complies with the development plan review criteria in City Code Section 7.5.502 E and with the PUD development plan review criteria in City Code Section 7.3.606, subject to compliance with the following technical and informational modifications: 1. The development plan needs to include information as to specific units that are subject to additional sound attenuation. Indicate on the development plan the affected units and the necessary noise mitigation. 2. Provide a detail of the retaining walls (materials) 3. Address the items noted by the Landscape Architect consisting of the following: a. Include all street names and classifications on the landscape plan. b. Show all Landscape categories requirements (setbacks, internal, and buffers if there are commercial uses across the non-arterial). The motion passed by a vote of 8-0-1.

Yes: 8 - Bennett, Collins, King, Knight, Martin, Miller, Pico, and Snider

Excused: 1 - Gaebler

10. Utilities Business

There was no Utilities Business reported.

11. Unfinished Business

11.A. 14-0077 Ordinance No. 14-23 amending Sections 1303 (Definitions); 1306 (Stage I Shortage); 1307 (Stage II Shortage); 1310 (Duration of Water Use Restrictions); 1311 (Alternative Water Management Plans); and 1313 (Special Contract Service) of Part 13 (Water Shortage) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, pertaining to water shortage.

Motion by President Pro Tem Bennett, seconded by Councilmember Snider, that the Ordinance be finally passed. The motion passed by a vote of 5-3-1.

Yes: 5 - Bennett, Collins, Martin, Pico, and Snider

No: 3 - King, Knight, and Miller

Excused: 1 - Gaebler

11.B. 14-0078 Ordinance No. 14-24 amending Ordinance No. 13-77 (2014 Appropriation Ordinance) for a Supplemental Appropriation to the

General Fund in the amount of \$2,000,000 for the purpose of roadway repairs. (Chief of Staff - Steve Cox) [7-2 vote]

Councilmember Miller asked to understand the anticipated uses and allocations for the PPRTA funds. Kathleen Krager, Transportation Planning Manager, provided an explanation for the funding allocations which were aligned with PPRTA budgeting and PPACG Board approved priorities. Councilmember Knight highlighted one of those priorities, Powers widening, was key to Peterson AFB. Councilmember Collins inquired about the contracts and expressed concern for how much City Council has spent in supplemental appropriations. Councilmember Miller stated he did not believe that the moving around of funds was what the voters agreed to when approving the PPRTA; he believed it did not meet the transparency and accountability that the voters intended.

Motion by President Pro Tem Bennett, seconded by Councilmember Knight, that the Ordinance be finally passed. The motion passed by a vote of 7-1-1.

Yes: 7 - Bennett, Collins, King, Knight, Martin, Pico, and Snider

No: 1 - Miller

Excused: 1 - Gaebler

12. New Business

12.A. 14-0015

A resolution acknowledging a land donation of a 1.65-acre parcel near Cowpoke Road from David D. Jenkins to the City of Colorado Springs. (Public Works - David Lethbridge)

Ralph Braden, of Norwood, described that Mr. Jenkins is prepared to deed the property to the City. Tim Mitros, Subdivision Engineering Review Manager, described the history of the property that includes a bridge. Various questions evolved regarding how long the bridge providing access to various parcels of land had been maintained by the City since it had once been considered the County's property, when was it annexed, and was it, in fact, property owned by Mr. Jenkins. Mr. Mitros and Dave Lethbridge, Public Works Director, provided input based on their knowledge of the property.

Ross Clinger, a neighboring owner to the subject property, questioned whether Mr. Jenkins actually owned the property and whether he had the right to convey it. Bill Murray questioned the age of the bridge included in the parcel and recommended Council consider the liability involved if they accept the conveyance.

Motion by Councilmember Knight, seconded by Councilmember Martin, that the Resolution be adopted. The motion passed by a vote of 6-2-1.

Yes: 6 - Bennett, King, Knight, Martin, Pico, and Snider

No: 2 - Collins, and Miller

Excused: 1 - Gaebler

12.B. 14-0068

A resolution of the City Council of the City of Colorado Springs, Colorado approving the issuance of Series 2014B limited tax general obligation bonds by the Banning Lewis Ranch Metropolitan District No. 2. (Planning & Development - Carl Schueler)

Carl Schueler, Senior Comprehensive Planner, provided an overview of the Banning Lewis Ranch Metropolitan District No. 2 request for a City resolution approving the

issuance of the 2014B Subordinate Limited Tax General Obligation Bonds. Council was briefed on the item at the April 7th, Work Session. He noted that one correction needed to be made to the resolution as was included in the packet. He stated that in the introduction, Section 5, the word "obligated" will be changed to "allowed" and, therefore, that statement will need to be included in the motion for approval.

Motion by President Pro Tem Bennett, seconded by Councilmember Pico, that the Resolution be adopted approving the issuance by the Banning Lewis Ranch Metropolitan District No. 2 of Series 2014B Subordinate Limited Tax General Obligation Bonds not to exceed \$3,000,000 with the change to Section 5 of the word "obligated" to "allowed". The motion passed by a vote of 7-1-1.

Yes: 7 - Bennett, King, Knight, Martin, Miller, Pico, and Snider

No: 1 - Collins

Absent: 1 - Gaebler

13. Public Hearing

- 13.A. 14-0139** Appeal of Cumbre Vista Development Plan 2013 Amendment - Automatic Postponement (Planning & Development - Peter Wysocki) File No. CPC DP 05-00092-A4MN13

This item was withdrawn by the Developer.

This Planning Case was withdrawn.

- 13.B. 14-0036** Appeal of Planning Commission Approval of a Medical Marijuana Smoking Facility at 332 East Colorado Avenue - Studio A64. (Planning & Development - Peter Wysocki)

Legislative Counsel Andrews provided direction to Council on the order by which the Public Hearing should proceed on the City's appeal of the Planning Commission's decision.

CITY STAFF OVERVIEW:

Peter Wysocki, Planning and Development Director, explained the City's rationale for appealing the Planning Commission's determination to grant an appeal of the Notice and Order issued against Studio A64. He stated that in granting the appeal filed by Studio A64, the Planning Commission permitted a use of the property located at 332 East Colorado Avenue that is not permitted by the City Zoning code. He indicated that the location is not just a medical marijuana establishment, but one that accommodated both medical and recreational marijuana consumption on the premises. He stated this was not a permitted use in a form based zone. He referred to the difference between a private use club vs. a civic use club.

COUNCIL FOR THE APPLICANT (Club A64):

Charles Houghton, Attorney, argued on behalf of Studio A64 and against the action to appeal the Planning Commission's decision. He noted that since the City Administration is not a "person," the appeal cannot move forward because a "person" did not bring the action.

COUNCIL FOR THE APPELLANT (City Administration):

Bethany Burgess, Senior Attorney from the City Attorney's Office, responded that the City's position is the appeal has been filed by the City Planning Director, who is a

person, capable of filing an appeal. Mr. Andrews commented that he had been informed of prior appeals being filed by departments in the past.

Active discussion among Councilmembers ensued on the topic.

Legislative Counsel Andrews requested that Council disclose any ex parte communication to which they may have been a party. Councilmember Martin and Snider acknowledged having received some e-mails to which they did not respond.

Planning Commissioner Donley spoke on behalf of the Planning Commission's decision. He noted two factors influencing their decision: the definition for a membership club (private, non-profit, or commercial) and the form based zone code.

APPLICANT TESTIMONY:

K.C. Stark, David Waugh, Joel Aigner, Judy Darcy, Ingrid Henderson, Lindsay Deen, Jamine Choeny, Abner Marrero, Cyndy Kulp, Chris Young, Michael Suxl, Meral Sarper, Maxine Thomas, Nye Gallaway, Kelli Pope, Gian Rosa, Greg Benson, Alaura Zortman, Shawn Lally, Rich Wyatt, Robert Yates, Lotus, Timothy Moore, Stephen Rizzi, Wesley McLaren, Sara Griffin, Bill Murray, Mark Slaugh, and Christian Harris spoke to support the applicant and to reject the City's appeal.

THOSE IN SUPPORT OF THE APPEAL:

There were no citizens present to speak in support of the appeal.

APPLICANT:

Mr. Houghton encouraged Council's consideration of the value of citizen's having a place to go, to feel safe and comfortable - a social club that can be considered civic by nature.

APPELLANT:

Ms. Burgess presented final comments on behalf of Mr. Wysocki and the City. She first noted Council is authorized under City Code to hear appeals from the Planning Commission on a de novo basis; otherwise, City Council would have to decide they wanted to limit the appeal to the claims made on the original appeal of the Planning Commission. She stated that was not done today.

Secondly, Mr. Wysocki as the City's Zoning Official is responsible for enforcing the City's zoning code including the form based zone code for the downtown area. As part of this zone code, at the time the City's Planning Department and Code Enforcement became aware of the activities taking place at Studio A 64, they were placed in the position of having to issue the Notice and Order on the basis that the activities taking place were not permitted uses under the City's zoning code. She explained the way the City's zoning code contemplates dealing with situations like this is the owner of the business should file a request for a similar use determination by the Planning officials that the uses to take place at the location are a similar use to a permitted use for that location. That was never done. Further, it is the City's position that by failing to request a similar use determination that the owners of Studio A 64 began operation at their own risk. If the City had an opportunity to address these, the issue of whether a similar use was applicable would have been thoroughly explored, and a determination would have been made. That did not happen. In addition, the issue of whether the civic use type would have been permitted at this location would also been addressed. City Planning was never given the opportunity to address either. So from the City Planning Department's perspective, this is a pretty clear case that the activities taking place are not an authorized use at the location.

Councilmember Miller asked Ms. Burgess about starting a business, what all is required

and whether there is a "one stop shopping" map to help one figure out what you have to do establish your business in the City and how do you know when you have to get a similar use permit? Ms. Burgess responded that it is a separate process and City Code describes the requirements. Councilmember Miller asked Ms. Burgess whether every business requires a zoning, similar use determination, to which she responded, if it is clearly permitted under the City Code, then there would be no reason to get a city zoning code approval.

Public Testimony was closed at 5:37 p.m.

Councilmember Gaebler, although advised by Council that she would be unable to vote on the matter having been absent most of the hearing (arriving at 4:45 p.m.), encouraged Council to deny the City's appeal and support the local small business. Councilmember Miller expressed concern that the code needs to be clear, that certain details are not specifically spelled out and leaves a lot to conjecture. Councilmember Martin agreed that Council should look at regulations for this type of operation, move forward and do what is right. Councilmember Collins suggested using Mr. Slaugh and Mr. Stark to help with updating the code relative to these types of businesses to enforce it properly.

Motion by Councilmember Martin, seconded by Councilmember Snider, to deny the City Administration's appeal and direct staff to draft an amendment to City Code for standards and regulations for this type of an operation. The motion passed by a vote of 5-3-1.

Yes: 5 - Collins, King, Martin, Miller, and Snider

No: 3 - Bennett, Knight, and Pico

Excused: 1 - Gaebler

14. Added Item Agenda

15. Executive Session

16. Adjourn

There being no further business to come before City Council, Council adjourned.

Sarah B. Johnson, City Clerk