



Meeting Minutes - Final Planning Commission

Thursday, February 16, 2017

8:30 AM

Council Chambers

5.A. [CPC CA
16-00079](#)

An Ordinance Amending Part 5 (Geological Hazard Study and Mitigation) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as Amended, Pertaining to Geological Hazard Study and Mitigation.
(Legislative)

Presenter:

Peter Wysocki, Planning and Community Development Director

Staff Presentation:

Mr. Wysocki gave a Power Point Presentation. He discussed when the Ordinance was originally adopted in 1996 and updated in 2011, when the Geological Hazard is required, and when this this requirement has to be completed if geological hazards are known. Waivers can be granted by the director if no geological hazards exist on the property.

Some changes are minor and some are major. The changes are listed below:

1. A study would be required with public improvement construction drawings.
 - a. In section B under 7.4.502: Applicability -a geological hazard study would be submitted with a single-family residential building permit, a building permit for a duplex, or when the expansion of the building footprint is more than 50%.
2. Under section 7.4.503.A.1: Exemptions and waivers - east of I-25 is exempt unless there is potential landslide susceptibility and Mine Subsidence map published by Colorado Geological Survey (CGS). Under paragraph 5 expansive was removed for the type of soil along with moderately expansive.
3. Under section 7.4.504: Preparation of the Geologic Studies and Report Guidelines it clarifies who signs and who prepares the studies.
4. Under section 7.4.505, paragraph 3 - Scope of Study: remove "suggesting" and change to "Provide" remove "minimize" and change to "reducing to acceptable standards".
 - a. Sections 4 and 5 were added where is states there be an analysis of potential impacts of surrounding property within the project site and provide recommendations to mitigate significant potential impacts to surrounding properties.
5. Under section 7.4.506, paragraph A was reworded adding no significant changes but new sections were added - D, E and F.
 - a. D & E discuss the process of how CGS receives the report, provides comments and added that the final report would be sent to CGS along with applicable final plans to verify the site

- plan complies with CGS recommended changes.
- b. F adds how the City, Regional Building Department (RBD) or CGS knows if the recommendations listed within the study were followed.
 - c. A requirement to submit an ILC - Improvement Location Certificate to the City prior to Certificate of Occupancy (CO), was added. The city will verify the building was built per setbacks and all other requirements.
6. Under section 7.4.507: Disclosure Statement: a minor change stating if the area of development is the subject of a geological hazard study it identifies what geological hazards exist on the property.

Councilmember Knight and Councilmember Stand have been heavily involved in this process and have a working group that included west side residents, RBD, Home Builders Association (HBA), along with numerous discussions with CGS.

Questions of Staff:

Commissioner Markewich said the ordinance may be in search of a problem. Most of the homes affected were prior to being annexed into the city and building was done per El Paso County codes. He questions if the ordinance is necessary since the current City Codes manages the problem. This would add extra burden to developers, home owners and buyers, adding extra cost and extra time. Why isn't current code sufficient? Mr. Wysocki stated the ordinance wouldn't affect existing homes unless they expanded 50% beyond the building footprint. It doesn't solve the potential issues that may impact existing homes. The ordinance makes the process more defined.

Commissioner Markewich said the biggest difference was CGS having an additional review and receiving the final plans. Mr. Wysocki said yes and the review of single-family residential building permits would be different. The Geotechnical or soils report is already required that is not new.

Commissioner Markewich stated the area that needs this is west of I-25 but that stigmatizes the area. Having I-25 being the dividing line is subjective. Why not use the same language for both side of I-25 and leave out I-25 as the dividing line. Mr. Wysocki said you could, but the maps CGS has are not site specific. We know where some of the hazards exist and it is more prominent west of I-25 thus the reason to exempt east of I-25.

Commissioner Markewich stated that language already exists in the current ordinance. There are maps that show those areas. Just identifying west of I-25 was his problem with the ordinance. The current ordinance was changed in 1996 and updated in 2011. Commissioner Markewich said they didn't have a complete copy of the ordinance. Mr. Wysocki said they only included sections or paragraphs that were being changed for the new ordinance.

Commissioner Shonkwiler said he agreed with Commissioner Markewich. The west side has been stigmatized because of this. The homes affected in the landslides were built in the 1950's and 1960's based on county regulations and were not part of the city. This ordinance should apply to the entire city or only

the areas that have the identified problems. Mr. Wysocki stated the commission could make that recommendation to City Council as part of their motion. But within your recommendation you should clarify that the ILC only applies to single-family residential homes and duplexes. You can ask that west of I-25 is treated the same as east of I-25 and have west be exempt except when there are known geological hazards and have been identified.

Commissioner Smith stated there are geotechnical engineers that have worked here 30-40 years and he has confidence in the geotechnical community. They've worked throughout the entire county area and are aware of the problems. We're trying to make an ordinance that doesn't need to be done or fixed. Also regarding surrounding properties it states you're to analyze and mitigate those any significant potential impacts. What is the definition of significant or potential impacts and how is it resolved? Mr. Wysocki said the significant impacts would be defined in the report. It's a somewhat a subjective call based on what the professional engineers say the design would need to be to mitigate those impacts.

Commissioner Smith discussed the consultant review panel. It says the cost will be born by the applicant but he has to ask for it. Well, if he owns this and pays for it, why does he have to request it? Mr. Wysocki said if a professional preparing the report and city staff are at an impasse this panel would be brought together to resolve what is impasse is about. However, to his knowledge this review panel hasn't been used. Usually the professional preparing the report has it reviewed by CGS and if there are some differences the professional and CGS discuss it and work it out.

Commissioner Smith asked where does the buyer see the disclosure statement. Mr. Wysocki said in the title work. Commissioner Smith stated the problem has been second and third buyers not seeing it. Mr. Wysocki clarified the disclosure statement would be provided to them if the certificate is on the plat. This has been one of the requests from residents, because they ask, "How do we know those problems exist and where do we find it." The city doesn't regulate real estate transactions. We have to be cautious because we don't want to put up red flags or devalue property.

Commissioner Henninger asked what the cost would be for this. Mr. Wysocki said he couldn't answer that.

Commissioner Gibson said she doesn't want to stigmatize the west side but she doesn't feel there is a need to modify language for the east side of Colorado Springs.

Supporters:

Jennifer Roberts stated there is a negative effect to the east because people think there are no problems to the east side, but there are some. She would like it apply to the entire city.

Opponents:

Tim Seibert representing the HBA said he's not in direct opposition. The industry was part of helping with the 1996 revision. The blanket statements of

I-25 being this dividing line started with the Hillside Overlay (HS) language from the 1990's and is a remnant from that. The ordinances that exist today are very effective. Where the challenges exists were before the current geologic regulations were in place and before these areas were part of the city.

Commissioner Shonkwiler said based on Mr. Siebert's experience what would be the cost for this and how long would it take to get a report. Mr. Siebert said it depended on the size of the property. There is always investigation to see if land is suitable for development. After preliminary investigation and no issues are found it can be an abbreviated report but it can be several thousand dollars any previous studies would be sent to CGS to be reviewed which can add several additional weeks. If hazards are found and more analysis need to be completed that would add more cost.

Commissioner Gibson said she's heard several things, this is too much, we don't need it, and we need it but include both east and west of I-25. So what was his position? Mr. Seibert said there many resources out there that he directs a builder or developer to. But for a home buyer or lot owner they may not know of those resources. Many properties west of I-25 do not have these hazards. There are enclaves east and west of I-25 that have Hillside Overlay that have issues. The ordinance focuses more on the process.

Commissioner Phillips clarified Mr. Siebert was in opposition to the item. Mr. Siebert said he was in a quandary. Adding the ILC for before CO is extra time and paperwork that may not yield anything other than more paperwork and time. Should there be more geological reports in unplatted areas that have known hazards, yes, but it's a combination of what are we trying to fix?

Bill Hoffman with GTL Thompson INC and liaison for the Colorado Technical Engineers stated this ordinance and the one you heard about 6 months ago is a solution looking for a problem. What is in the code right now works. He agrees with Mr. Siebert that there are certain things this ordinance is codifying procedures that are already done. West side or east side makes no difference. If the engineer sees a problem he will address it. Most of what is being discussed can be done through implementation.

Commissioner Smith said Mr. Hoffman knows this area very well and asked how this ordinance would affect communities around us. Mr. Hoffman said they will apply too. Commissioner Smith asked Mr. Hoffman if he was a professional engineer, Mr. Hoffman said he is and is licensed by the State. Commissioner Smith asked if a geologist is licensed. Mr. Hoffman said they weren't but if they have a geologist's education they're considered a professional geologist but not a Professional Engineer and they were not held to the same standards as a Professional Engineer. Commissioner Smith asked if they could be a Professional Engineer; Mr. Hoffman said they could if they attended an engineering school and got an engineering degree but geologists aren't considered engineers.

Commissioner Smith asked about the measurements for the ILC and who would do that? Mr. Wysocki said the builder's surveyor.

Commissioner Markewich said since the changes in 1996 and going forward those changes make it seem as if this ordinance isn't necessary. Mr. Hoffman said what we have in place right now works. This has been more of an educational process for the council members. They asked for things to be done and didn't know or understand it is already done. What we have works. Commissioner Markewich asked if they dropped the language about west of I-25, and the ordinance went forward would adding that language be an improvement? Mr. Hoffman said he didn't think the revisions were needed but the actual ordinance is necessary and we have one now that works.

Commissioner Henninger asked if Mr. Hoffman could give estimate of the cost. Mr. Hoffman said depending on the complexity of the site it could be \$500 to \$10,000.

Commissioner Shonkwiler confirmed Mr. Hoffman was at the previous hearing and someone from Regional Building stated that since the ordinance in 1996 and the update in 2011 there has not been a building failure since those regulations went into effect. Mr. Hoffman stated that was correct there hasn't been any failure.

Rebuttal:

Mr. Wysocki said he had no rebuttal but would address some things. The commission can recommend approval as is; you can recommend denial; you can recommend approval subject to modifications. But if your motion is for a modification we want you to recommend the ILC applies only to single-family residential and duplex building permits. It doesn't need referred back to staff because the ordinance is supported by Councilmembers Knight and Strand. If you have a strong opinion of exempting areas west of I-25 unless all these other conditions are present then make that recommendation to City Council and let Council decide if it should be incorporated.

Commissioner Shonkwiler stated without the complete ordinance in front of them he wasn't sure how to frame the motion limiting it to west of I-25. He wanted to make the motion positive but have it apply to all areas of the city where problems exist. City Attorney Marc Smith said it could be done but doing it on the fly wouldn't be the best option because he didn't know what other areas in Chapter 7 it would be affected. You can give specifics for City Council to consider and we'd draft those as part of the recommendations. Commissioner Shonkwiler said maybe it should be tabled. City Attorney Marc Smith said this is going forward to City Council so wouldn't need to be tabled.

Commissioner Markewich asked if the motion excludes all references of either east or west of I-25 allowing the entire city would fall under the guidelines would that be better. City Attorney Marc Smith said striking specific language or word could have other impacts he might not be aware of so he would not recommend to do that. They would prefer more of a reference in concept of what you want and we'd pass that along to the Council.

Discussion and Decision of Planning Commission:

Commissioner Henninger said his concerns were the ordinance is based on a one-time event. As the ordinance is written he can't support it. It needs to

affect the entire city or not at all. He's not in support.

Commissioner Markewich said agrees with Commissioner Henninger this isn't necessary. He felt the changes done in 1996 and 2011 were sufficient. If we can make a change to have it apply to the entire city that would help fix the ordinance that would be forwarded to Council.

Commissioner Smith said we have very good geotechnical firms in the community and he has a lot of confidence in them. This ordinance will cost homebuilders and buyers extra time and money. There's been testimony that we have resources available to us and there are known challenges but those challenges are being addressed. Reputable people who work and deal with the industry testified today that what we have right now works and this is not needed therefore he is not in support.

Commissioner Shonkwiler said he can't vote for the ordinance unless it's amended.

Commissioner Phillips said he didn't think changing the verbiage would matter. At informal we discussed modifying the ordinance regarding west of I-25. Mr. Wysocki said changing the language was discussed with Councilmember Knight and Strand and CGS. The fear is the area may not be mapped, or the mapping may not be precise enough. So because of the irregularities that could happen is why CGS cautioned us not to change the language.

Commissioner Phillips said after listening to the professionals he agrees with Commissioner Smith, we already have something that works. He is not in support of this item. He would ask for a vote without an amendment because he doesn't think the amendment would matter. When City Council reads this they will know why we feel this way.

Commissioner Shonkwiler encouraged Commissioner Markewich to make motion for an amendment because he would second it. If they do not correct the language to destigmatize the west side the City Council will override our recommendation and we will get exactly what is in front of us.

Commissioner Gibson said she wants to be in favor of an ordinance that is good. This will cause builders or homeowners to have an additional expense and she's firmly against that. She will look for an amendment.

Commissioner Phillips asked the commissioners how they felt about an amendment. Commissioner Henninger said he was not in favor of an amendment and overall he's not in favor of the ordinance. Commissioner Smith said he's not in favor of an amendment. Commissioner Markewich said if we could ask for an amendment that includes the entire city and have that recommendation go to City Council. Commissioner Phillips said no because the feeling from the other commissioners is they want to vote this down. Mr. Wysocki said procedurally they could have a motion to deny, then amend that motion and if the amendment fails go back to the original motion.

Commissioner Smith said if we deny this then City Council approves it despite

the fact that we are denying, he doesn't want that to happen. If we vote to deny this ordinance the City Council needs to know we denied and why we deny it without exception.

Motion by Smith, seconded by Vice Chair Henninger, that the Planning Case be denied.

Proposed Motion: Commissioners recommend denial of the proposed ordinance to the City Council.. The motion passed by a vote of 6:0:2:1-recused

Aye: 6 - Markewich, Henninger, Chairperson Phillips, Shonkwiler, Gibson and Smith

Absent: 2 - Graham and Walkowski

Recused: 1 - McDonald