

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
August 26, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on August 26, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, and Prior. Members absent: Commissioners Crescibene, Krenning, and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Mr. Bob Paulsen, Current Planning Manager** conveyed to the Commission that there will be items on the agenda for the September 9, 2013 and September 23, 2013 Planning Commission meetings.

COMMITTEE REPORTS

Commissioner Molloy stated that during the Title 18 Committee meeting, held on August 22, 2013 a good dialog was held regarding temporary uses. He said that discussions were ongoing. **Mr. Paulsen**, shared that the Title 18 Committee will be bringing the new Weed Control Ordinance to the September 23, 2013 Planning Commission meeting. He added that the proposed changes to the ordinance are posted on the City of Loveland website and will also be included in the City Update which is included in the utility billing mailings in an effort to notify the public more broadly of upcoming code amendments. In addition to that provision, during the second meeting in October, Title 18 will bring a sizeable amendment addressing the Site Development Plan Process along with the provisions relating to the subdivision code, specifically chapter 16.40 that deals with the posting of securities. Finally, the Committee hopes to bring another large amendment to the Planning Commission towards the end of the year addressing landscape and buffering provisions.

COMMISSIONER COMMENTS

Commissioner Dowding, offered her condolences to the family of **Dave Clark, City Councilor for Ward IV**, for the passing of his father, former City Councilman **Willard Clark**. Chair Meyers shared his condolences to the family as well.

APPROVAL OF THE MINUTES

Chair Meyers asked if the written documentation provided by Citizen **Kim Orr** at the previous Planning Commission meeting, containing information on oil and gas spills in Colorado, were included in the Planning Commission Meeting Minute Package. **Ms. Kimber Kreutzer, Planning Commission Secretary**, responded that they were not included; however she would obtain a copy and include them in the amended meeting minutes. **Chair Meyers** asked for a motion to approve the minutes. **Commissioner Dowding** moved to approve the minutes. Upon a second by **Commissioner Molloy**, the meeting minutes were approved 5-0 with **Commissioner Middleton** abstaining since he was absent from the August 12, 2013 Planning Commission Meeting.

REGULAR AGENDA

1. CanDo Coalition Presentation

The CanDo presentation provided an overview of the CanDo Coalition, the sectors they work in, and information on how they hope to partner with the City of Loveland on their Built Environment strategy. The purpose of the presentation is to educate the Commission on the coalition and explain more about the partnership with the city.

Ms. Jessica Hinterberg, Loveland CanDo Coordinator, the Coalition for Activity and Nutrition to Defeat Obesity, shared that CanDo has partnered with University of Colorado Health System. She explained that the CanDo vision is to create a model community that supports healthy eating and active living. The mission is to engage community members and organizations in obesity prevention through support, advocacy and education. The coalition was initiated in 2004, expanded into Loveland in 2009 and is 300 + partners strong.

The CanDo organization came to exist due to the realization that obesity was a growing problem in the community. While Colorado boasts the lowest rates of obesity in the nation, it also has one of the fastest growing obesity rates in the United States. If the trend continues, by 2020, 76% of Coloradoans will be overweight or obese. **Ms. Hinterberg** added that while Colorado ranks #1 for having the leanest adults, our children rank #23.

Chair Meyers asked where the data in the presentation was obtained from. **Ms. Hinterberg** responded that the information provided was taken from the *F as in Fat-Robert Wood Johnson Foundation* as well as *Live Well Colorado*. **Mr. Meyers** further questioned if the data was directly from the medical community or gathered based on statistical review. **Ms. Hinterberg** countered that the information is gathered through survey work at the community level, and then compared nationally.

She shared that a community that supports health has a combination of healthy environments including healthy schools, well workplaces, health care, safe active transportation, access to healthy food, and media and public awareness.

Katie Guthrie, Certified Planner, addressed the Commission to explain the Built Environment work that CanDo has been doing in Loveland. She explained that the definition

of Built Environment is the human-made surroundings that provide the setting for where we live, work and play. It ranges in scale from: home and apartments, neighborhoods and cities, sidewalks and interstate highways, and backyards and regional parks. It includes all of the places and spaces created or modified by people. **Ms. Guthrie** stated that the definition of a healthy community design is the planning and designing of communities to make it easier for people to live healthy lives.

The principals of CanDo include building complete neighborhoods, providing opportunities for people to be physically active and socially engaged and to ensure access to affordable, healthy food, especially fruits and vegetables. Benefits include improved air quality, promotion of physical activity, lower risk of injury, improved eating habits, and increased sense of community.

Ms. Guthrie shared that CanDo hosted two Lunch-N-Learn series in partnership with city staff, and shared *Weight of the Nation* documentaries, created by HBO. She explained that both sessions had a good turnout from city staff. Community outreach efforts in partnership with the City of Loveland and the Housing Authority included participants from Maple Terrace and Orchard Place. These endeavors gave Loveland youth a forum to participate in the CanDo initiative. Improvements from these initiatives resulted in repairs to a sidewalk children use to get to school, and the creation of a project to create a new sidewalk in their neighborhood.

In conclusion, **Ms. Guthrie** encouraged the Commissioners to visit the CanDo website at www.candoonline.com .

2. Aspen Knolls

This is a public hearing concerning the Aspen Knolls First and Second Subdivisions. The property owner, McWhinney, is seeking to vacate all established public rights-of-way, re-plat the property to remove all lots, outlots, and easements, and rezone the property from P-50-Aspen Knolls PUD to DR—Developing Resource. The Aspen Knolls property was originally approved as a two-phased residential development; the owner at the time of plan approval was KB Homes.

These applications are being requested because the developer has no intention of developing the property under the approved development plans. Rather, the applicant may be interested in utilizing existing raw water credits associated with the Aspen Knolls property for a different development project. The transfer of raw water credits can only be allowed if the property is stripped of its entitlements.

Applications for vacation of public right-of-way are legislative and rezoning is considered quasi-judicial; in both cases, the Planning commission provides a recommendation to City Council. The application for re-platting the property is administrative and not being considered by the Planning Commission. The re-plat will, however, not receive approval unless the corresponding vacation and rezoning applications are approved.

Mr. Troy Bliss, Planner II, addressed the Commission and explained that the Aspen Knolls application consists of three parts. Two of the three items will require Planning Commission action. First is a vacation of the rights-of-way, second, a rezoning of the property. Aspen Knolls is generally located in south central Loveland, south of 14th St. SW and east of Taft Ave. The property is 120 acres in size. The far northwest corner of the site is earmarked for a detention pond for the city. Aspen Knolls was first envisioned as a development back in 2005/2006 and was initially going to be developed by KB Homes of Colorado to create a large residential project.

Mr. Bliss went on to explain that after KB homes got full entitlements to move forward with the project, including approval of a Final Development Plan and a Final Plat, they ultimately decided not to move forward with the project and sold the property to the current owner, McWhinney. McWhinney is seeking approval for the vacation, rezoning and an associated re-platting.

Details of the request include vacating all dedicated public rights-of-way within the Aspen Knolls First and Second Subdivisions; Rezoning the property from P-50-Aspen Knolls Planned Unit Development (PUD) to DR—Developing Resource to remove all development entitlements; and Re-platting the property to remove all lots and easements within the Aspen Knolls First and Second Subdivisions (Administrative action- not part of Planning Commission hearing). **Mr. Bliss** stated that the applicant is also interested in pursuing water credits from the property that would be placed in the city's water bank.

Ms. Judy Schmidt, Deputy City Attorney, explained that although the question of water credits is not before the Commission, she felt it was important for the Commissioners to understand the process that might be used in connection with the water entitlements associated with the Aspen Knolls property.

In consulting with **Ms. Sharon Citino, Assistant City Attorney**, **Ms. Schmidt** distributed an email explaining any such request would therefore have to go to City Council, and the parties agreed that if McWhinney was willing to down-zone the property to DR—Developing Resource that the Water Division would support McWhinney's request to remove the water rights in exchange for issuance of credit in the city's water bank. **Ms. Schmidt** made it clear that this would be a separate step from what is before the Commission this evening.

Mr. Bliss stated that a neighborhood meeting was held on Monday August 19, 2013 and explained approximately 30 people were in attendance. The majority of concern from citizens was that Aspen Knolls was about to go forward with development. During the course of the meeting it was explained that the applications in question were not to proceed with development but to vacate and rezone the property. Questions also arose asking what types of uses are permitted by right in the DR zone, specifically if oil drilling and fracking could ever be allowed. It was clarified that all uses in the DR zone would require a Special Review application, except for oil and gas development which requires a different process **Mr. Bliss** reiterated that the applicant has no plans to develop the property at this point in time. **Mr. Bliss** shared that Planning is recommending approval of the vacation and rezoning, with conditions. He shared that both requests would require approval for either to pass. If the

vacation of the right-of-way is not approved, then the rezoning would not be approved, and vice versa. In addition, all entitlements associated with Aspen Knolls, captured in the FDP, would become null and void and relinquished by the applicant.

Mr. Middleton questioned who owned the mineral rights for the Aspen Knolls property.

Mr. Cole Evans, Project Analyst for McWhinney thanked the Commission for the time and responded to **Mr. Middleton**'s question and explained that mineral rights are owned by the landowner.

Mr. Evans shared that after McWhinney acquired the property from KB Homes, it was decided to put the project on hold due to the downturn in the economy. He went on to say that because demand for single-family home development has increased over the past year and a half, McWhinney examined whether or not to pursue development plans at Aspen Knolls. It was concluded that development of this project was no longer desirable because alley homes were no longer in demand and with the downturn in the economy, the desire for smaller lots and smaller houses was more advantageous. Bigger lots and alley homes were an important part of the approved FDP.

Mr. Evans stressed that the right-of-way dedication required on Taft and County Road 16, would remain with the city, just in case this property is developed in the future. He explained that McWhinney wishes to continue the farming practice on the property, as it exists today.

Mr. Middleton explained that water rights are a valuable, tradable commodity and asked if McWhinney would consider vacating the mineral rights to the city. He asked that the request be placed on the record for the consideration of City Council. **Mr. Evans** explained he wasn't able to provide an answer to the question, but would be happy to take it back to McWhinney for discussion.

Ms. Dowding asked about the detention pond. She stated that there was nothing on the agenda in the meeting tonight to address the questions or issues about the detention pond.

Mr. Evans responded that the size of the detention pond has been increased so that a drainage swale can be used in place of a pipe. He continued that the plans for the detention pond, as designed and approved with the Aspen Knolls project, would not be changed.

Mr. Paulsen clarified that the planning action that would re-plat Aspen Knolls into two outlots was not before the Commissioners, but stated that outlot A would be reserved for the regional detention facility.

Ms. Schmidt added that the new plat, to be administratively approved, would include a dedication of the detention pond in outlot A.

Chair Meyers asked if the recommendations were approved by the Planning Commission and went to City Council, if the water rights are therefore transferred, and a decision is made in the future to develop the property, would water rights need to be obtained from somewhere else in order for development to move forward. **Mr. Evans** responded that anytime a new

subdivision is proposed, regardless of the applicant, they would be required to purchase water rights at the current market price. **Chair Meyers** questioned city staff to determine if there were enough water credits spread through the city for doing these types of actions.

Mr. Greg Dewey, Civil Engineer for Water and Power, replied that Water and Power supported this request because it will not affect the city in a negative way for current or future customers. He explained that there are a number of credits in the city's water bank and that people paid for credits at the current cash and lieu rate, and in turn the city was able to use those funds and purchase CBT water for Green Glade Reservoir. He stated that if the water credits are moved off Aspen Knolls and used anywhere else the city serves customers, it's no different if they had stayed on the current property. He stated that the credits being reviewed at Aspen Knolls totaled 316.94 acre feet.

Chair Meyers opened the meeting for Public Hearing.

Mr. Walter Skowron, 2006 Frances Dr., Loveland, CO stated that some time ago he and his neighbors worked to get concessions for the Aspen Knolls subdivision. He is concerned because now that plans are under way to re-plat and rezone Aspen Knolls there has been no resolution about the county bridge on Taft Ave. He stated the bridge is inadequate for a major arterial like Taft Ave. He stated that Loveland has only two major north/south arterials and he believes there will come a time that Taft will need to be widened due to population increase. He asked the Planning Commission to look deeper into what the plans are for Taft Ave. and for Larimer County in regards to the two lane bridge in the next ten years and beyond. He also expressed concern about what might happen if the property is sold and questioned what future development plans might come into play.

Mr. Skowron shared that he understood that the McWhinney organization offered the Aspen Knolls property to the City of Loveland as a gift, which was eventually declined. He also thought the location would be a good location for a new fire station, putting his neighborhood in the 5 minute response time area.

Given there were no other citizen comments, **Chair Meyers** closed the Public Hearing.

Mr. Molloy stated that although the Commission was not making a decision on the re-plat, he questioned if there was a 70 foot buffer presented on Taft and a 40 foot buffer on 28th Street. **Mr. Evans** responded that they had to rezone the original Aspen Knolls Addition, which went out to the center line on Taft Ave, which is why the setback is needed. The bold line in the drawing represents the new property line, which will be a dedicated new right-of-way on Taft Ave and Hwy 16.

Mr. Prior asked **Mr. Bliss** to address the concessions that were originally planned for the Aspen Knolls Subdivision. **Mr. Bliss** stated that because this project was completed prior to him working at the city, he was unable to provide the information on issues or conditions to the Commission during the meeting. He stated the list of conditions could be found on the original, approved Final Development Plan.

Mr. Molloy questioned if the DR-Developing Resource zoning would require oil and drilling to go through Special Review prior to getting permitted to do so. He stated he understood that only administrative review would be required to allow drilling in the DR zone. **Mr. Bliss** responded that he was correct in his assumption.

Mr. Middleton shared with the Commission that he would not vote to support the applications for a vacation and rezoning. He explained that the original conditions were not brought to the Commission for review. He wants to understand what conditions the city is forfeiting with these application requests.

Chair Meyers asked **Mr. Evans** to clarify the offer of donating Aspen Knolls to the City of Loveland. **Mr. Evans** explained there was a dedication that was brought forth to the city. **Ms. Kim Perry, McWhinney**, added that there were previous offers of donation to both the City of Loveland and the Thompson Valley School District but both were declined.

Mr. Molloy stated that the PUD process frequently contains many conditions to coincide with the development around it. He explained if those development plans go away, then the conditions go away with it. He agreed with Mr. Skowron that the widening of Taft Ave. will need to be addressed in the future.

Mr. Paulsen explained that it was staff responsibility to provide the information to the Commission on the Final Development Plan and any requirements or conditions related to infrastructure for Aspen Knolls. He stated that conditions would have been designed for the purpose of development, and since the proposal before the Commission is to eliminate the development as a consideration, along with the vested rights in the zoning, staff did not anticipate that the Commissioners would have concerns about the previously established conditions.

Chair Meyers questioned **Commissioner Massaro** and asked if the Traffic Advisory Board, of which **Mr. Massaro** is a member of, had any plans on their agenda for Taft Ave. **Mr. Massaro** apologized for not having an answer in front of him in response to that question.

Mr. Middleton thanked **Mr. Paulsen** for his comments but reiterated his need to see the conditions in the original FDP and asked if **Mr. Paulsen** understood the conditions in the FDP. **Mr. Paulsen** explained that he was not the Current Planning Manager when the FDP was approved, but went on to say he didn't think McWhinney was attempting to hide or absolve themselves from conditions, and again shared that staff did not anticipate the request of Commissioners to review the conditions with the application under consideration. He stated he would be happy to provide the conditions to the Commission, and apologized that he would not be able to do so this evening.

Mr. Paulsen clarified that absent a development proposal, the city would have no ability to impose conditions on a property. The conditions were designed to address impacts of development.

Ms. Dowding commented that she had researched the history of Aspen Knolls, and found that when McWhinney took over the property there was concern over the handling of the water rights and stated there were some feelings in the community of special dispensations for the McWhinney's. She stated that she didn't see any special favors being asked for in the request up for consideration this evening, and stated that as the property owners, McWhinney were simply making decisions based on their business needs. She stated that the concern about the water rights were a moot point. She shared that she would be in favor of the vacation and rezoning requests.

Mr. Middleton explained that since the Commission was being asked to vote to vacate entitlements, he was concerned about what exactly was being vacated. He asked **Ms. Schmidt** if she was aware that McWhinney attempted to donate the Aspen Knolls property to the City of Loveland. **Ms. Schmidt** responded that she wasn't aware of the offer other than what **Ms. Perry** offered. **Mr. Middleton** asked if they were still willing to donate it to the city.

Mr. Molloy replied that the city made the decision not to acquire the property, most likely because it was determined there was no need for it.

Mr. Prior questioned **Mr. Paulsen** if he knew if the easements for the right-of-way are adequate for the long term plans for 28th St. and Taft Ave. **Mr. Paulsen** replied that he was confident that the transportation office reviewed the plans carefully and was satisfied. **Mr. Bliss** stated that the analysis done by the transportation department was specific to just the vacation of right-of-way, and based upon the right-of-way that would continue to be along Taft Ave. and County Road 16, it was considered to be adequate.

Mr. Molloy queried **Mr. Bliss** if the city could foresee what this property could be used for in the future. **Mr. Bliss** responded that the property would continue to be designated on the Comprehensive Master Plan with a designation of LDR-low density residential and the city would continue to envision the same in the future.

Chair Meyers stated he supports the changes and would be voting in favor of staff recommendation to approve the application requests. He agreed with Mr. Skowron that the issues surrounding Taft Ave. need to be addressed in the near future.

Ms. Dowding made a motion to make the findings listed in Section VIII of the Planning Commission staff report dated August 26, 2013 and, based on those findings, recommend that City Council approve the Aspen Knolls Vacation and Rezoning, subject to the conditions listed in Section IX, as amended on the record. **Mr. Prior** seconded the motion. After **Mr. Evans** verbally agreed to accept the conditions, the motion was approved 5-1 with **Mr. Middleton** voting no.

ADJOURNMENT

Commissioner Middleton made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by:


Buddy Meyers, Planning Commission Chairman


Kimber Kreutzer, Planning Commission Secretary