

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
November 28, 2011**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on November 28, 2011 at 6:30 p.m. Members present: Chairman Molloy; Vice Chairman Meyers; and Commissioners Crescibene, Fancher, Leadbetter and Middleton. Commissioners Dowding, Krenning and Ray were absent. City Staff present: Troy Bliss, Current Planning; Robert Paulsen, Current Planning Manager; Greg George, Development Services Director; 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 REPORTS

Mr. Paulsen reported that City Council is scheduled to hear the Mariana Butte appeal at its December 6, 2011 meeting; he also indicated that the Waterfall Rezoning was adopted by Council on First Reading. He commented that the annual holiday dinner for the Planning Commission will be held on December 12, beginning at 5:15 in the City Manager's Office.

He reported that there were five applicants for the three Planning Commission vacancies and the interviews will be conducted in December.

ZONING BOARD OF ADJUSTMENT

Commissioner Crescibene reported on a recent variance he heard as the Zoning Board of Adjustment Hearing Officer. He stated that he ruled in favor of staff's recommendation for a lot width variance at 416 E. 27th Street. He reported Habitat for Humanity expressed concerns regarding non-payment of fees by the applicant on a different property, and stated those issues were not relevant to the variance request.

CONSENT AGENDA

1. **Extension of a Preliminary Plat for North Lincoln Avenue 2nd Subdivision to December 7, 2012.**

1 This is a request for an additional one year extension of the Planning Commission approval of
2 the North Lincoln Avenue 2nd Subdivision Preliminary Plat as stipulated in Chapter 18.41 of the
3 zoning code.

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5 *Commissioner Middleton made a motion to adopt the consent agenda. Upon a second by Vice*
6 *Chair Meyers the motion was unanimously adopted.*

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8 **REGULAR AGENDA**

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10 **1. Appeal of Administrative Determination Made by the Director of Development**
11 **Services.**

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13 This item is an appeal a determination regarding maintenance practices for designated open space
14 lands within the Garden Gate First Subdivision. This residential subdivision is located along the
15 south side of 1st Street to the west of Denver Avenue; the subdivision is zoned Planned Unit
16 Development (PUD) is subject to a Final Development Plan. The determination specifies the
17 required maintenance practices to be used for numerous tracts owned by the Garden Gate
18 Homeowners Association. Neighborhood resident and HOA member Bruce W. Cromwell has
19 appealed the determination contending that the determination does not properly interpret the
20 approved Final Development Plan.

21
22 **NATURE OF THE APPEAL**

23 **Robert Paulsen, Current Planning Manager**, outlined the appeal process for this hearing. He
24 provided background information regarding the neighborhood and the approved Final Development
25 Plan (FDP) for the neighborhood, indicating that the FDP was adopted in 2004. He also provided a
26 brief history of events that preceded the appeal. He stated that Development Services Director, Greg
27 George, in response to a request from the Garden Gate HOA Board, issued an administrative
28 determination regarding the required maintenance practices for specified open space areas within the
29 neighborhood. He stated that the FDP included a landscaping plan, but stated that the plan did not
30 specify how these open space areas were to be maintained.

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32 (*Secretary's Note: Mr. Cromwell passed out photos of the property to the Commission; the photos
33 have been marked as **Exhibit A**)

34
35 **APPELLANT'S PRESENTATION**

36 **Mr. Cromwell, appellant, residing at 267 Wrybill Avenue**, expressed his concerns about the
37 determination issued by Greg George, indicating that he did not believe that it represented a proper
38 interpretation of the Final Development Plan. He also expressed frustration regarding the condition
39 of open space properties within the Garden Gate neighborhood.. He stressed that there is a need to
40 create standards for the maintenance of open space areas under the HOA's control, but he indicated
41 that the determination by Mr. George had not gone far enough in order to ensure that these areas
42 would be properly maintained. He reported that his general concerns were:

- Lack of response from the Homeowner's Association regarding landscape maintenance, including maintenance of the detention pond
- Farmers ditch company did not adequately respond to his maintenance issues with the ditch area
- The Planning Department did not respond to his concern regarding loss of home value
- The lack of maintaining the weeds along the ditch area (which is adjacent to residential backyards) invites snakes and other vermin in to his backyard.
- Potential for fire for lack of irrigation

Mr. Cromwell stated that Director of Development Services, Greg George, came to look at the property conditions at his request. He stated that Mr. George believed that some areas needed to be sprayed for noxious weeds. He disagreed with staff's analysis that maintaining the property by trimming or mowing of native seed mixes would cause harm. He also disagreed that Section 7.18.030 of the Municipal Code that grants exception to the weed ordinance to dedicated public or private open lands. Overall, Mr. Cromwell indicated that he did not believe the open space properties in question were properly integrated into the neighborhood in terms of maintenance and greenery. He indicated that the landscape "unity" specified by the FDP required a more groomed and well-irrigated treatment of many of the open space areas.

OPPOSITION PRESENTATIONS

Mr. Paulsen handed out a timeline of events and actions which took place that preceded the appeal (**Exhibit B**). He explained that the timeline might help the Planning Commission better understand the sequence of events that led to the appeal.

Mr. Paulsen stated that issues concerning open space areas within the Garden Gate neighborhood were originally raised through code enforcement complaints. The complaints concerned the enforcement of the City's Weed Ordinance and compliance with the Final Development Plan (FDP)—which is the adopted zoning document for the neighborhood. He indicated that the determination rendered by Mr. George on September 2, 2011 was intended to clarify and resolve the issues of maintenance for specified open space tracts; he clarified that the determination did not address maintenance of all the tracts of land that are now owned by the HOA. Maintenance of the neighborhood park and the groomed buffer yards within the neighborhood are not subject to the determination.

Mr. Paulsen explained that staff conducted considerable research in assisting Mr. George with the determination. He stated the FDP has been reviewed thoroughly. The open space areas in question are generally planted with native seed mixes, trees and shrubs. Mr. Paulsen explained that while the trees and shrubs within these areas are to be irrigated with drip systems, the native grass areas are not specified to be irrigated. He explained that in the view of staff, these areas are not designed to be green, park-like areas. He further indicated that the FDP narrative indicates that such areas are to be left natural, and that best practices indicates that such areas should not be mowed regularly. He indicated that allowing the native grasses to grow to full height creates a more sustainable and

1 healthy condition, and also helps to reduce weed intrusion. He indicated that in July, staff walked
2 the area with the HOA members to look at the areas of concern and to evaluate the maintenance
3 practices. He clarified that the ditch area and other environmentally sensitive areas are not to be
4 groomed by the HOA or the residents. He clarified the ditch company is responsible for the ditch
5 and its easement.
6

7 **Mr. Paulsen** responded to weed maintenance and irrigation questions. He stated that staff looked at
8 maintenance issues stating that there is an approved landscape plan. He stated that the determination
9 by Mr. George was logical extension of the landscape planting scheme. . He stated that the noxious
10 weeds should be sprayed or removed, but that staff is recommending these natural, open space areas
11 not be mowed in order to keep grasses to an 8” height or less.
12

13 **Troy Bliss, Current Planning**, clarified the ditch company perimeter area is specified on the final
14 plat, and emphasized the ditch company will not allow the HOA to mow.
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17 **Rob Valland, 224 Sand Grouse Drive, Secretary of the HOA for Garden Gate**, spoke in
18 opposition to the appeal as a representative of the HOA board. Mr. Valland reviewed photos of the
19 Garden Gate area that were projected onto the viewing screen. He described the various open space
20 areas within the neighborhood and described the existing maintenance practices. He stated that the
21 HOA had received concerns from Mr. Cromwell and others and stated that the HOA would mow
22 approx. a 10 ft. strip behind the homes in order to reduce problems with weeds and rodents. He
23 stated the HOA used to regularly mow the native grass areas along the ditch, b but the grasses started
24 dying and drying out so they stopped.
25

26 After discussion, Mr. Valland commented there have been some meetings to discuss Mr. Cromwell
27 and other resident’s concerns regarding the weeds and trees and attempted to find ways to address his
28 concerns. He reported the maintenance companies contract specifies what is to be maintained and
29 clarified for the Commission that Mr. Cromwell lives on the side of the ditch that has been planted
30 with the native grass.
31

32 **PUBLIC COMMENT**

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34 **Richard Ferner, 2020 Sandhill Crane Circle**, spoke in support of Mr. Cromwell’s concerns. He
35 reported that he noticed the maintenance inconsistencies when the HOA hired a different
36 maintenance company. He reported that he has mowed the area behind his home to keep the thistle
37 and other noxious weeds down. He stated he wanted to see consistency with the maintenance
38 throughout the development and believed it was unsightly and posed a fire hazard. Like Mr.
39 Cromwell, Mr. Ferner said he supported a more regularly mowed and irrigated treatment of these
40 areas.
41

1 **Mr. Valland**, in response to questions, clarified the developer turned the property over to the HOA
2 in 2009.

3
4 **John Kampf, 2134 Sandhill Crane Circle**, spoke of the need to kill the noxious weeds without
5 killing the native grass. He stated he did not any issues with the maintenance of the area but agreed
6 that there needs to be consistency in the maintenance.

7
8 **Richard Ferner, 2026 Sandhill Crane Circle**, commented that he looked at photos online of the
9 development and it appeared that the chain link fence defines the subdivision boundary.

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11 **APPELLANT REBUTTAL**

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13 **Mr. Cromwell** commented on the following:

- 14 • He requested that someone contact the ditch company to determine where their boundary is
- 15 • The area to the east of the Farmers ditch used to be irrigated and the irrigation stopped when
- 16 the City told them they had to replace the trees that had died
- 17 • He stated that he brought issues to the HOA in January and he was told that they Board
- 18 would address his issues at the February meeting. He did not believe that the HOA
- 19 addressed the issues and indicated that if the maintenance issues had been properly
- 20 addressed in 2010 by the HOA, the Planning Commission would not be involved
- 21 • He stated that Mr. George expressed concerns regarding the condition and maintenance of
- 22 the property when he visited the site. Mr. Cromwell invited to the Commission to visit the
- 23 property
- 24 • He expressed his disappointment that when he moved to the development everything was
- 25 green and attractive, and the current lack of proper maintenance has made it unsightly
- 26 • He stated the city was involved with fixing the detention pond and they held the developer's
- 27 money in escrow until the pond was fixed correctly
- 28 • He felt there is a conflict between Mr. Paulsen and Mr. George and that conflict has not been
- 29 addressed. He re-emphasized that the east side of the Ditch was irrigated until the HOA
- 30 replaced the trees

31
32 **Chair Molloy** noted that when the city approves the FDP it's the HOA's responsibility to maintain
33 the integrity the FDP. He noted irrigation systems are installed in some areas so that when the
34 weather is dry the property can be irrigated. He further stated it is not the city's responsibility to
35 make sure the HOA is upholding the intent of the FDP.

36
37 **Commissioner Crescibene** clarified that the Commission needs to determine if the administrative
38 decision was correct and should be upheld.

39
40 **COMMISSIONER COMMENTS**

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42 **Commissioner Middleton** questioned if HOA members could file a suit against the HOA.

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2 **Ms. Schmidt** commented that HOA members may have disagreements which may be resolved
3 through civil means. She noted that she is not in a position of providing advice to third parties.
4

5 **Commissioner Middleton** stated the final plat specifically highlights what is to be planted and
6 where and believed that the appellant is trying to have the city uphold its responsibility.
7

8 **Vice Chairman Meyers** stated he supported the administrative decision and stated the city has done
9 its due diligence in investigating the complaint.
10

11 **Commissioner Crescibene** concurred with comments by Vice Chair Meyers and agreed that there
12 was not consistency in how the grounds are maintained but did not believe this was a matter
13 appropriate for the Planning Commission to hear.
14

15 **Commissioner Fancher** stated that the Commission is only to decide whether to deny or uphold Mr.
16 George's administrative decision and if that decision was applied correctly. She stated the weeds are
17 not maintenance free and need to be sprayed. She urged the HOA to develop a plan for the
18 maintenance of the weeds. She agreed that the weeds should not be exempt from the weed
19 ordinance.
20

21 **Mr. George**, in response to stated concerns, commented that his letter indicated he did support
22 spraying the noxious weeds and that it is a condition of determination in his letter.
23

24 **Commissioner Leadbetter** stated he supported the administrative determination and believed there
25 was a difference of opinion on how common areas are maintained and that the appellant and the
26 HOA need to work their issues out.
27

28 **Chair Molloy** supported the administrative decision and emphasized the need to maintain the
29 integrity of the FDP. He thanked Mr. Cromwell for bringing this issue before the Planning
30 Commission and stated it is important to everyone that all neighborhoods in Loveland are groomed
31 and maintained. He stressed the need for the HOA to be consistent with its maintenance of the
32 property.
33

34 He commented that native areas can be difficult to maintain and that the CSU Extension Office is a
35 good resource regarding native vegetation. He informed the audience that this item could be
36 appealed to the City Council. After a brief discussion it was the consensus of the commission that
37 the letter of administrative determination includes a condition that noxious weeds be controlled in all
38 areas of the PUD.
39

1 *Commissioner Middleton made a motion to uphold the administrative decision of the*
2 *Development Services Director concerning maintenance provisions in specified open space areas*
3 *of the Garden Gate First Subdivision, concluding that the Director properly interpreted and*
4 *applied applicable provisions of the Municipal Code, subject to the condition that noxious weeds*
5 *will be controlled by the Homeowners Association. Upon a second by Vice Chair Meyers the*
6 *motion was unanimously adopted.*

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8 **ADJOURNMENT**

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10 *Commissioner Fancher made a motion to adjourn. Upon a second by Commissioner Middleton*
11 *the motion was unanimously adopted.*
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15 Rob Molloy, Chair

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17 _____
18 Vicki Mesa, Secretary
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