

**LAKWOOD PLANNING COMMISSION
PUBLIC MEETING
MINUTES**

June 3, 2009

COMMISSIONERS PRESENT:

George Brown III
Julia Burroughs
Jerald Golley
Carrie Mesch
Rich Urbanowski

STAFF PRESENT:

Jay Hutchison, Director, Public Works
Dieter Magin, Engineer III, Public Works
Ken Hargrave, Engineer III, Public Works
John Padon, Traffic, Public Works
Tim Cox, City Attorney, City Manager
Timothy Gelston, Manager, Development Review
Paul Rice, Principal Planner, Development Review
Kara Mueller, Associate Planner, Development Review
Alexis Moore, Associate Planner, Comprehensive Planning and Research
Walter Jauch, Secretary to the Planning Commission

Following are the minutes of June 3, 2009 Lakewood Planning Commission Public Meeting.
A permanent set of these minutes is retained in the office of the City Clerk.

ITEM 1: ROLL CALL

The roll having been called, a quorum was declared and the following business was conducted:

ITEM 2: RZ-08-004 – Suppa Retail, The applicant is requesting to rezone the property from Planned Development (PD) to Planned Development (PD) to permit retail, office, and residential land uses.

MR. ROBERT DAVIS, Representing the Applicant Ray Suppa, Studio DH Architecture, 280 S. Yarrow Street, Lakewood, CO, presented information about the request to rezone. The

subject property has been vacant since 1978 with a current zoning of PD and the First Federal Savings and Loan had it zoned to build the same building that is currently a Bank of the West located just north on Wadsworth Boulevard. However, they decided not to build on this lot. The current PD limits uses to a bank with a drive-through and is not cohesive with the Alameda Overlay District.

Changes were made to the proposed Site Plan from the numerous neighborhood meetings and they changed the location of the building from the west side of the lot to the east, closer to Wadsworth Boulevard and made it pedestrian-friendly. The new PD is based on the 2-C zone district and prohibits the uses that are not consistent with the planned uses for the applicant.

COMMISSIONER URBANOWSKI made disclosure that he has worked with Mr. Davis in the past, but this will have no affect on his opinion or decision making in this case.

MR. PAUL RICE requested to enter in the record the staff report, case files, plans, reports, pictures, Lakewood Zoning Ordinance and Subdivision Ordinance, the Comprehensive Plan, Community Resources Master Plan, all amendments, neighborhood and corridor plans and all associated materials.

COMMISSIONER RICH URBANOWSKI accepted.

MR. RICE stated that the proposal and it's standards are consistent with the Alameda Overlay District and consistent with existing zoning conditions. The West Alameda Heights Neighborhood Association was contacted regarding the proposal and two neighborhood meetings were held. The proposal is consistent with the City of Lakewood Comprehensive Plan and the Alameda Cornerstone Plan. A material change in the neighborhood warrants the rezoning request.

Public Comment OPENED at 7:18 p.m.
No comments were received.
Public Comment CLOSED at 7:19 p.m.

COMMISSIONER GEORGE BROWN asked about the impact on traffic from this proposal.

MR. JOHN PADON answered that the original use planned for 16,500 square feet (s.f.) of office space with a bank and drive-through which is a high trip-generating use. The existing Official Development Plan (ODP) would have about 1,000 trips per day. The proposed use will have approximately 730 trips per day, a decrease from the current allowed use.

COMMISSIONER JULIA BURROUGHS asked about the impact of the lighting to the residential neighbors.

MR. DAVIS responded that they would work with the neighborhood association regarding signage and it's lighting to create identification signage that is acceptable.

MR. RICE further responded that downcast and shielded site lighting is required and this applicant will have to meet the City requirements.

COMMISSIONER CARRIE MESCH asked if the entire building would be two stories and that the square footage for both stories are showing as being identical on page 3 of the plans.

MR. DAVIS responded that 5,000 s.f. will be two-story on the southwest corner, closest to Alameda Avenue. The rest of the building will be single story, with the lower elevation closest to the neighbors. The plans do have an error on page 3 that will be corrected.

COMMISSIONER JERRY GOLLEY asked if, since this case is a rezoning, the applicant could bring forward a completely different site plan. He also asked if the allowed uses of this PD are consistent with the Alameda Overlay District.

MR. RICE responded that the applicant could submit a completely different site plan. Also, the land uses are consistent with the Alameda Overlay District.

COMMISSIONER URBANOWSKI asked the comparative sizes of buildings between the current zoning and the proposed zoning.

MR. RICE responded that the previous plan would have a building smaller in footprint, but taller, and it would sit more centrally located in the property.

COMMISSIONER GOLLEY made a MOTION for APPROVAL of the Case RZ-08-004.

COMMISSIONER GOLLEY stated that because of the building placement, public access, and pedestrian needs this proposal meets the intention of the Alameda Overlay District requirements and he supports this proposal.

COMMISSIONER MESCH agreed with Commissioner Golley's statement.

COMMISSIONER URBANOWSKI also agreed with Commissioner Golley's statement. In addition, the application of the pedestrian friendliness, parking and building placement impresses him and he will also be supporting this proposal.

Motion was SECONDED by COMMISSIONER BROWN.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Golley, Mesch, and Urbanowski.

Zero Nays.

One Absent – Commissioner Plotkin.

MOTION PASSED.

COMMISSIONER URBANOWSKI advised everyone that the next three cases, MO-09-002, MO-09-001, and VS-09-001 are all inter-related and will be heard concurrently. However, each would require a separate motion and vote.

ITEM 3: MO-09-002 – Solterra Centre Official Development Plan, The applicant is requesting to modify the existing Red Rocks Business Park Official Development Plan (ODP) to include an R-1A (One Acre Residential) zone parcel and Areas B and C of the Lakewood West ODP to allow for a mix of retail, office, institutional, and residential uses. This modification will be known as the Solterra Centre ODP.

MR. CHRIS BREMNER, Representative for the Applicant, Carma Lakewood, LLC, 188 Inverness Drive West, Suite 150, Englewood, CO 80112, presented information for the three cases in the Rooney Valley west of Solterra. He wished to explain why Carma is presenting on behalf of another entity. He stated that Carma and Solterra have a community interest and they are a large part of the Rooney Valley. They want the Rooney Valley to be the best it can be. They also have a financial interest in the Rooney Valley due to building a significant portion of infrastructure and owning a portion of the property being considered tonight.

Previous zoning was strictly for office use and they are now introducing more mixed-uses such as: retail, large office, clean manufacturing, and a new concept called Agriburbia™ where the use allows an agriculture use to supply the area with grown goods. They approached the North American Industrial and Office Park organization (NAIOP) regarding their competition between real estate departments of Denver University and the University of Colorado to use the Solterra Centre as a case study. It was accepted and it culminated with two presiding plans for which Carma incorporated elements and ideas from each of them into the proposal being considered.

The proposal originally included up to 11 million square feet of office space, but this has been changed to approximately 4 million square feet in of retail and office. Some residential use has been introduced into the proposal, too. Density is being increased for Carma owned parcel with Area A of the Lakewood West ODP to be compatible with the adjacent Area Carma currently has in Solterra.

They are asking for a vesting request of 25 years due to the current economic times. In addition, mixed-uses do have a slower buildout model, and this model indicates a 15 – 25 year time frame.

MS. KARA MUELLER requested to enter in the record the staff report, case files, plans, reports, pictures, Lakewood Zoning Ordinance and Subdivision Ordinance, the Comprehensive Plan, Community Resources Master Plan, all amendments, neighborhood and corridor plans, the Inter-Governmental Agreement (IGA), the Joint Rooney Valley Master Plan, the Joint Rooney Valley Development Standards, and all associated materials.

COMMISSIONER RICH URBANOWSKI accepted.

MS. MUELLER stated that the Solterra Centre ODP will allow for a mix of uses including the new Agriburbia™ use which is defined as being centered on an agrarian concept where traditional suburban landscaping and open space is replaced with orchards, vineyards, or other perennial crops for the benefit of neighborhood, local businesses, and surrounding communities.

She noted that the Cases MO-09-001 and MO-09-002 are contingent upon one another and the vesting case VS-09-001 is contingent upon approval of the Site-Specific Development Plan under the MO-09-002 modification.

The proposals meet the requirements of Section 17-17-7 of the Lakewood Zoning Ordinance. Required notifications did occur and a formal neighborhood meeting was held on December 4, 2008 where no property owners or citizens attended. A later contact from Terry Bartholomew who owns land in proposed Planning Area #6 was received. He would like to see the bike path moved from the western boundary to the eastern boundary of open space and the applicant is receptive to this move. The proposal includes up to 4 million s.f. of non-residential use and 1,814 residential units.

Public Comment OPENED at 8:00 p.m.

MR. MIKE MULLER, Ward 4, stated that the original plan was accepted and the neighbors were assured that there would not be much high-density housing because of the traffic problems along West Alameda Parkway and Bear Creek Boulevard. The agreement was that the densities would stay the same. He is afraid the densities will continue to get higher and higher and wanted to be assured that the densities will no longer continue to be increased.

MR. JACOB PARKER, 185 S. Zang Way, Lakewood, CO wanted to state for the record that the notification regarding the amendment for non-conforming uses was sent on May 20, 2009 and property owners did not receive notice until May 23, 2009...(interruption by COMMISSIONER URBANOWSKI)

COMMISSIONER URBANOWSKI explained to Mr. Parker that the public comment period at this time was for the three cases of MO-09-001, MO-09-002, and VS-09-001 and that there will be a specific comment period for the case for which Mr. Parker was referring.

Public Comment CLOSED at 8:02 p.m.

COMMISSIONER GOLLEY asked for information about the traffic impacts from the increased density of one of the proposals.

MR. PADON responded that since these proposals change the total square footage of non-residential uses from 11 million to 4 million, there would be a corresponding decrease in trips by approximately 88,000 per day. The addition of residential density of 1,814 units will result in 18,000 trips per day. The total number of trips of all uses will drop by approximately 70,000 trips per day.

COMMISSIONER GOLLEY asked where the most likely access and traffic patterns would be.

MR. PADON responded that there are two major highways, C-470 and State Highway 8 (Morrison Road), a four-lane, underutilized road. West Alameda Parkway is a two-lane arterial roadway, which will be increased to six lanes from the new South McIntyre Street to C-470 and four lanes from South McIntyre Street to Bear Creek Boulevard. The infrastructure in existence with the recommended changes from the traffic study and Public Improvement Agreement (PIA) will be increased as the project develops.

COMMISSIONER GOLLEY asked if the Joint Project Review Committee (JPRC) will also hear these cases and if the sequence of the hearings matter.

MS. MUELLER responded that the JPRC would not hear the vesting or modification cases per the IGA requirement that the individual municipalities handle this.

MS. BECKY CLARK also stated that the vesting could be submitted in a variety of ways. It could have come to the Planning Commission simultaneously with the JPRC. The final development plan would go to the JPRC.

COMMISSIONER GOLLEY asked if the site plans would be handled administratively or through the JPRC.

MS. CLARK responded that it would go to the JPRC for a review per the IGA.

COMMISSIONER MESCH asked if, on page 5 of 6 of the Staff Report under D – Analysis, this should read December 4, 2008.

MS. MUELLER answered yes and it would be corrected.

COMMISSIONER MESCH asked if there is a need to include the definition for Agriburbia™.

MS. CLARK responded that we do not have a definition of this use in the Zoning Ordinance at this time and this is why we have specifically defined the term.

COMMISSIONER BURROUGHS asked if there would be an issue between the IGA vesting time of 3 years and the proposed 25 years.

MR. TIM COX responded that the IGA language entitles three years without need for a public hearing. It is not clear whether the intent was to prohibit any longer vesting period; therefore, an amendment to the IGA would be required at some point to explicitly allow for longer vesting. Preliminary discussions with the Town of Morrison about this issue have been held.

COMMISSIONER URBANOWSKI spoke to the issue made by Mr. Muller regarding increase of residential density. He stated that the increase in residential density was only a very small and specific portion of this proposal.

MS. CLARK concurred and further stated that density for the recent rezonings by the Town of Morrison have also been reduced from 8 million s.f. to 4 million s.f. Overall, between the Town of Morrison and City of Lakewood there have been significant decreases in density in the Rooney Valley.

COMMISSIONER GOLLEY made a MOTION for APPROVAL of the Case MO-09-002.

Motion was SECONDED by COMMISSIONER BROWN.

COMMISSIONER GOLLEY commented that at first glance these cases seem complex with a large volume of information. As he continued his review it became apparent that the cases are very straightforward. It is basically asking for approval of a very high level plan in which details will be added as the project moves forward into the future. He strongly recommends that the Commission approve these three cases.

COMMISSIONER BURROUGHS is pleased that Carma and the city looked at and incorporated elements of the NAIOP challenge in this proposal. She believes that the new and innovated ideas from this challenge will result in a very cohesive community.

COMMISSIONER URBANOWSKI commented that the staff did a great job in gathering the large amount of information and presenting it in a clear and understandable fashion. He is pleased with the respect given to the natural topography, open space, and drainage.

COMMISSIONER BROWN stated he is interested in the Agriburbia™ use and the possible future results of this concept.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Golley, Mesch, and Urbanowski

Zero Nays.

One Absent – Commissioner Plotkin.

MOTION PASSED.

ITEM 4: MO-09-001 – Lakewood West Official Development Plan Modification No. 1, The applicant is requesting to modify the existing Lakewood West Official Development Plan (ODP) to exclude Areas B and C that are to be included within the Solterra Centre ODP; increase the density of Area A of the Lakewood West ODP to a maximum of 15 dwelling units per acre as long as the net density does not exceed 11 dwelling units per acre; and to update the language within the ODP to clarify the language and to be consistent with current standards.

COMMISSIONER GOLLEY made a MOTION for APPROVAL of the MO-09-001.

Motion was SECONDED by COMMISSIONER BROWN.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Golley, Mesch, and Urbanowski

Zero Nays.

One Absent – Commissioner Plotkin.

MOTION PASSED.

ITEM 5: VS-09-001 – Vesting of Solterra Centre ODP for 25 Years, Per Section 17-18-7 of the Lakewood Zoning Ordinance the applicant is requesting that the City enter into a Development Agreement with CDN Canada Development Inc. to provide for a vested property right for a period of 25 years. The Site Specific Development Plan to be vested is the Solterra Centre Official Development Plan (ODP).

COMMISSIONER BURROUGHS made a MOTION for APPROVAL of the Case VS-09-001.

Motion was SECONDED by COMMISSIONER MESCH.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Golley, Mesch, and Urbanowski

Zero Nays.

One Absent – Commissioner Plotkin.

MOTION PASSED.

ITEM 6: PL-08-007 – North Wadsworth Boulevard Corridor Plan, Staff recommends that Planning Commission adopt the North Wadsworth Boulevard Corridor Plan as an amendment to the Lakewood Comprehensive Plan.

MS. ALEXIS MOORE requested to enter in the record the staff report, case files, plans, reports, pictures, Lakewood Zoning Ordinance and Subdivision Ordinance, the Comprehensive Plan, Community Resources Master Plan, all amendments, neighborhood and corridor plans and all associated materials.

COMMISSIONER RICH URBANOWSKI accepted.

MS. MOORE advised the Commission that the plan has been developed over the past 1½ years with input from a Citizen's Advisory Committee and extensive input from the citizens of Lakewood. There is an existing 1997 plan, the Wadsworth Boulevard Strategic Plan, and there have been a lot changes to the corridor during this time. Also, the Light Rail station at 13th

Avenue presents an opportunity to look at what is occurring in the area and to identify the community's future vision for the area.

The study area extends from 26th Avenue in the north to Yale Avenue in the south. The east and west boundaries are typically one parcel deep with the exception of the proposed node areas, which are wider areas along the corridor where commercial, multi-family, and mixed-use development is envisioned. This plan will be adopted as an amendment to the Comprehensive Plan and will replace the existing 1997 Wadsworth Boulevard Strategic Plan. She wished to reinforce that this plan is not a roadway design document but is a land use document and vision for the corridor.

The planning process consisted of a Kick-Off meeting in January of 2008 with the Citizen's Advisory Committee., Over 100 stakeholders from along the corridor were contacted and invited to participate, including representatives from registered Neighborhood Organizations and Business Associations along Wadsworth. About 13 meetings were held with the Advisory Committee and this committee is composed of members of City Council, Planning Commissioners, residents and neighborhood associations along the corridor, interested citizens, business owners, City of Lakewood staff, City of Denver staff, and stakeholder agencies like the Colorado Department of Transportation (CDOT). The public process was successful and numerous opportunities for citizens and stakeholders were available to provide information, receive information, and provide information about what they would like changed.

A survey was performed with a great response rate; 1,273 surveys were mailed and available online and 354 were completed and returned. The four main themes heard were: congestion and increased traffic along Wadsworth Boulevard; the need to improve the aesthetics and character of the corridor; the need to improve the pedestrian, bicycle, and transit environment; and the impacts of future road widening or light rail and other projects and how these impact the neighborhoods and corridor.

The plan is a land use document and will guide decisions related to transportation, land use, urban design, and streetscape as properties develop or redevelop along Wadsworth Boulevard or as roadway projects occur.

Public Comment OPENED at 8:46 p.m.

MS. TONI LYNN, 7575 W 23rd Avenue, Lakewood, CO 80214, has an ongoing problem with flooding. She worked with the Edgewood Association when they asked them to identify flood areas. She is wondering if this flooding can be managed when this corridor plan is implemented. She suggested that the runoff be funneled from Wadsworth Boulevard down to the retention pond on 25th.

Public Comment CLOSED at 8:48 p.m.

COMMISSIONER BURROUGHS commented the flood areas were discussed and the committee did accept comments from the associations and neighbors in the areas. The committee did apply the comments to the plan document.

COMMISSIONER GOLLEY asked if flooding is addressed in this plan.

MS. MOORE responded that on page 52 under Land Use area LU5-5 it states that we do recognize that floodplain does cross the Wadsworth corridor and those adjacent developments should not negatively impact the areas with their designs. There are existing programs in place to implement changes to areas prone to flooding.

COMMISSIONER URBANOWSKI requested elaboration on when the plan is enacted.

MS. MOORE stated that the plan is a vision document to guide decisions related to future land uses for the corridor as individuals develop or re-develop their properties. It is not a design or engineering document in terms of widening Wadsworth Boulevard. Flooding would need to be addressed through CDOT.

COMMISSIONER URBANOWSKI further commented that the plan identifies that drainage is an issue in certain locations and needs to be accommodated. Actual design is beyond the scope of what is being addressed with this document and hearing. He recommended that Ms. Lynn discuss her specific flooding issue with the Public Works Department.

COMMISSIONER GOLLEY made a MOTION for APPROVAL of the Case PL-08-007.

Motion was SECONDED by COMMISSIONER BURROUGHS.

COMMISSIONER URBANOWSKI is very impressed with the plan and commended staff, the Advisory Committee, and the citizens for their hard work and the resulting plan.

COMMISSIONER MESCH commented that the plan is a well-thought out, creative, and solution-oriented plan.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Golley, Mesch, and Urbanowski

Zero Nays.

One Absent – Commissioner Plotkin.

MOTION PASSED.

ITEM 7: OA-09-002 – Amending Section 17-16-9 – Regarding Property Acquired for a Public Use. Staff requests that the Planning Commission recommends that the City Council amend Section 17-16-9 Regarding Property Acquired for a Public Use.

MR. TIM GELSTON requested to enter in the record the staff report, case files, plans, reports, pictures, Lakewood Zoning Ordinance and Subdivision Ordinance, the Comprehensive Plan, Community Resources Master Plan, all amendments, neighborhood and corridor plans and all associated materials.

COMMISSIONER RICH URBANOWSKI accepted.

MR. GELSTON explained that the City recognizes that criteria such as lot size, lot width, setbacks, etc. in the Zoning Ordinance can be affected by acquisitions for a public project. The existing ordinance, Section 17-16-9, deals with non-conforming conditions due to public projects. Staff has looked at the existing ordinance and discovered that there is opportunity to make improvements.

The existing code section has a threshold based on the amount of impact from a project. A two-tiered system is in place where if a public project impacts a specific property by 20% or less of a zoning criteria, then the affected property owner would need to go to the Board of Adjustment (BOA) at public hearing and the board must grant a variance for legal conforming status.

If the criteria are affected by more than 20%, then the property owner would need to go to a BOA meeting and the BOA may grant a variance for a legal non-conforming status. Staff believes this process to be bureaucratic and burdensome. In addition, there seems to be a disconnect between the threshold criteria and the criteria the BOA needs to use in its decision-making. Finally, if the property is of the more than 20% threshold variety and the BOA does not grant a variance the status of the property is not defined.

Staff embarked on improving this part of the ordinance with the following goals:

- Improve the certainty for property owners. Get the property owner information sooner and with increased clarity regarding the status of their property.
- Avoid additional time and expense.
- Allow for future change on the property.
- Anticipate future rezonings.

The proposed amendment will achieve the above goals and eliminate any “non-conforming” status. It removes the arbitrary 20% threshold. Furthermore, it eliminates the requirement for a property owner to go to a public hearing and allows standards to change automatically. The proposed ordinance allows property to be added on to or otherwise remodeled subject to a threshold that is applied similarly and consistently as other sections of the ordinance. When greater than 60% of the structure value is intentionally destroyed, redevelopment must comply with then current zoning. Finally, the proposed ordinance ensures new zoning requirements, at the time of such rezoning, are met if a property is rezoned.

This amendment is not preparation for any rezoning. It is being proposed to meet the goals previously outlined. It is recommended that this amendment should be considered as an Emergency Ordinance due to current projects by RTD.

MR. COX pointed out that there has been modifications based on input from various sources and the final version is being supplied tonight.

COMMISSIONER URBANOWSKI asked if this version is the same as what was e-mailed earlier this evening.

MR. GELSTON responded that it is the same version.

Public Comment OPENED at 9:12 p.m.

MR. JACOB PARKER, 185 S. Zang Way, Lakewood, CO made a comment that he believes proposal to be rushed and does not understand why it is being rushed like this.

MR. GABRIEL SCHWARTZ, Attorney representing Standard Restaurant Supply Company, 1420 Oak Street, Lakewood, CO 80215, believes that the language of the proposed amendment needs to be very clear and specific regarding the new standard applied to a parcel. He requested that language be added specifying that the changed standard is the new standard for a parcel. He also urged the Commission to set some type of objective standard for what is considered unsafe and hazardous on a property.

His client has grave concerns for his property being rezoned by the City and he is not alone in his concern. He asked the Commission what plans there are for rezoning.

MR. MICHAEL GOODMAN, 1295 Estes Street, Lakewood, CO 80215 is here as he thought the notification letter was not very clear about what was being heard tonight. He has solar panels on his property near his fence along the light rail line and is acceptable per the current zoning ordinance. Since RTD will be taking some of his property, he has questions about whether he will have to move his panels or is the ordinance saying he does not have to move them. He is not clear about these issues.

MS. LAURA GEISER, 1310 Estes Street, Lakewood, CO 80215, owns a childcare center on a property with a partial acquisition by RTD. She has two buildings on the property that are part of the childcare activities. She does not know what non-conforming means. She does not understand or know if her business is compliant with the State of Colorado rules nor does she necessarily want a legal non-conforming status. She wants to know how the City will determine a hazardous situation for children. She believes this hearing is quick and rushed and also wants to know what and who benefits from this amendment. She also wants to know what studies have been done about the impact on these properties. She also asked what would happen to a property owner on one of these impacted parcels if a storm were to wipe out their home and if they would be allowed to rebuild in conformance.

MR. ROBERT HENNESSEY, 1135 Everett Court, Lakewood CO, 80215 he believes that this document removes the responsibility of notifications to associations or citizens and asked who was notified for this case. He stated that this amendment affects the entire City and not just those along 13th Avenue. He stated that this completely removes public input and allows the City to be the complete and total arbiter of any rezoning being done on any property,

anywhere. The first time a property owner knows is when the bulldozers pull up and begin knocking things down. He believes this is outrageous.

CHAIR URBANOWSKI reinforced that clapping is inappropriate behavior in this meeting.

MR. MIKE MULLER, Ward 4, stated that the City is notorious for short or lack of notice. He stated that one of the worst things allowed by the City is administrative rezoning and believes that rezonings happen with a great ease. He has not even been able to read the amendment supplied tonight, let alone understand it, before it is acted on and stated it is ludicrous that the document is submitted tonight. He believes that 90% of the City does not know about this case. His understanding of this amendment is that RTD can take property and the owner is out of luck. He stated that the Commission is here to protect property rights, not to destroy values or take away their rights.

MR. JAMES ESTEBAN, 9425 W 12th Place, Lakewood, CO thought that this was a benevolent ordinance and believes that it is reasonable to make properties conforming without having to go to a hearing. He wanted it known that by not discussing or avoiding the negative aspects there is a possible court battle to take away the need for a condemning authority. He stated that this places the City in an interesting position because being benevolent and co-petitioners raises the question of who they are being benevolent to.

Public Comment CLOSED at 9:28 p.m.

COMMISSIONER URBANOWSKI explained the intent of this case, as he believes there is a significant misunderstanding of this amendment. First, the timing of this case is because of the current RTD acquisition and properties have a real and immediate need for the ordinance amendment.

The overall intent of the ordinance amendment is that if a public project is taking part of a property, and that taking changes the conforming or non-conforming status a property owner does not suffer any further burden. The City is taking a pro-active approach to amend the ordinance so that a specific property affected by a public project has a status change take place automatically without further burden or action by the property owner or BOA. Further, there is no requirement for notification to adjacent property owners since it is for a specific property and the owner has not taken an action to create this situation.

He also wished to reinforce that these status changes would be for specific properties and does not happen for other rezonings or the like. These rezonings have their own process.

COMMISSIONER GOLLEY stated that he understands the intent of this amendment to be good for the property owners, but asked if the City is creating an unintended negative burden by removing the requirement for a public hearing.

MR. COX responded that currently if there is a taking of less than 20% of a property the property owner would get an automatic status of legal non-conforming. However, they would be required to go to a BOA hearing and the BOA is obligated to grant this status. This requires

the owner to apply to the BOA and pay an application fee. It takes significant time to complete the whole process. This amendment will remove these burdens and automatically grant a legal conforming status without need for the process.

If there were a scenario where a property owner does not want legal conforming status this would be determined through the acquisition process. The presumption is that people would rather have conforming status rather than non-conforming status.

COMMISSIONER GOLLEY asked who makes the decision about the determination of impact to the property owner and does the removal of the public hearing remove an opportunity for a property owner to voice their concern that going out of compliance reduces the property value.

MR. COX stated that the current public hearing process does present an opportunity to voice those types of concerns, but it would not change the outcome; the property owner gets the declaration of legal conforming status through the BOA, which has no choice but to grant the status of legal conforming if the change is under the 20% threshold. We are dealing with local zoning: a property owner is deemed compliant because the standard has been affected by a partial acquisition and the City is adjusting the standard for that property.

COMMISSIONER GOLLEY asked who is determining the value of the property after an acquisition.

MR. COX answered that this is accomplished through the appraisal process. The City is not part of that process unless the City is acquiring the property.

COMMISSIONER GOLLEY asked what recourse does a property owner have to dispute a determination of the value.

MR. COX explained that he is not in the position of being able to provide advice relative to eminent domain issues such as the determination of value. The City is involved if it is a City project, otherwise this process is between the entity performing the acquisition and the property owner.

COMMISSIONER GOLLEY asked if, regarding the person who spoke at public comment about their solar panels, they would automatically be in compliance without any question.

MR. COX believed it to be yes, but explained that when dealing with legal non-conformities there are two main categories; structures and land use. If a person has a permitted use now and a portion is taken which reduces one or more of the standards, under this proposed ordinance they would be in compliance.

MR. GELSTON agreed with Mr. Cox's statement.

COMMISSIONER GOLLEY asked who and what studies have been done about the impact to the property values because of the Light Rail project.

MR. JAY HUTCHISON responded that is RTD and not the City.

COMMISSIONER URBANOWSKI stated that this is beyond the scope of what is being heard at this meeting.

COMMISSIONER BURROUGHS stated that there is a fee to apply for a hearing by the BOA and asked if this fee is waived under the amendment.

MR. GELSTON answered that there is no provision to waive a fee in the existing ordinance and added that the proposed amendment does not require either fee or a hearing.

COMMISSIONER BURROUGHS asked if a clearer definition of a hazard is available.

MR. HUTCHISON stated that a hazard would be to the general public. Expansion of a building to a roadway so close as to impact visibility would be an example.

MR. COX answered that under the current ordinance a determination is made at the time of acquisition. If the standard is affected more than 20% the case goes to the BOA and they have to decide whether the resulting condition of the property creates a hazardous situation or is otherwise unreasonable. Any zoning determination can be appealed to the BOA and this an opportunity for the property owner to state that the Director has acted arbitrarily in his or her hazard determination.

COMMISSIONER BURROUGHS asked if this case has anything to do with administrative rezoning or rezoning any property.

MR. COX answered that the amendment has nothing to do with rezonings, administrative or otherwise.

MR. HUTCHISON added that this amendment does not affect uses and only approaches structure and parcel issues.

COMMISSIONER MESCH asked if a taking could create a hazard and if this is addressed at acquisition.

MR. COX responded that is correct. An entity cannot leave a hazardous situation on a property and must accommodate the property owner somehow through the acquisition process before it ever gets to the City's determination of conformance.

COMMISSIONER MESCH asked if there is any foreseen consequence where a property owner has lost the potential for better reimbursement, and she understands it to be a value vs. use component.

MR. COX responded that staff did anticipate that issue when crafting this amendment. The Property Management division did look into this issue and spoke with appraisers who indicated

that they would not be able to reduce the value of a property based on the change of status that this proposed amendment would make.

COMMISSIONER BROWN asked if this amendment removes notification.

MR. GELSTON stated that, for a BOA hearing a notification would need to be done to adjacent property owners. Since there would be no hearing, a notification is not required.

MR. COX stated that there would still be a record of the changes to a property; staff is working on procedures so that property owners have this history.

COMMISSIONER BROWN stated that he believes that this is the first time in his sitting on the Commission something coming through as an emergency.

MR. COX stated that the normal process has an ordinance amendment take effect 30 days after approval by City Council. An emergency declaration results in the ordinance becoming law immediately after City Council approval and the Mayor signs it but there is still a first and second reading. It also requires a super majority of eight affirmative votes of the Council to pass.

COMMISSIONER BROWN asked who benefits from this ordinance amendment.

MR. HUTCHISON responded that the City was beginning to hear from property owners affected by the takings of RTD with their status being non-conforming and the property owners benefit from this amendment and it was triggered by the citizens contacting the City.

COMMISSIONER BROWN asked if this amendment has anything to do with property values or zoning.

MR. HUTCHISON respond that it does not determine property values and that process is separate and independent of this amendment. It ensures that properties and the structures on those properties remain conforming during the public project process rather than becoming non-conforming. It only changes the minimum amount necessary to ensure a property is still in compliance with the Zoning Ordinance.

COMMISSIONER URBANOWSKI stated that typically a non-conforming property exists and an intentional change or series of intentional changes to the structure result in more than 60% change then the owner would need to comply with any new regulations.

MR. GELSTON answered this to be the case and this is the standard the current ordinance uses for non-conforming structures. He also added that under the provisions of this new ordinance if an unintentional event resulted in more than 60% destruction it would be allowed to be rebuilt in the same footprint, making the property owner whole again.

COMMISSIONER BROWN asked about the phrase “the adjustment shall be effective upon completion of the property acquisition and/or construction that would have made the structure non-conforming.” He asked if this means with the construction ends or starts.

MR. HUTCHISON responded that this means when construction is concluded.

COMMISSIONER MESCH asked about the phrase “rezoned after the public project occurs” and asked if this means after the adjustment occurs.

MR. COX responded that the current ordinance only contemplates the acquisition process. In addition, staff acknowledged that there is a second scenario in which a road gets widened but there is no taking of property i.e. a setback line is moved. So if a property is being affected by an acquisition it is when the acquisition is completed. If it is a construction project, it is when that construction is completed.

MR. HUTHCHISON wanted to thank the folks in the audience and the time they have taken to make an appearance and participate in the process.

COMMISSIONER GOLLEY made a MOTION for APPROVAL of the Case OA-09-002.

Motion was SECONDED by COMMISSIONER MESCH.

COMMISSIONER GOLLEY stated that if the acquisition had happened to him he would be upset just as other citizens are. The City recognizes the problems and this amendment is here to make it easier and to ease the burden affected property owners are dealing with. In his opinion, this amendment does not remove any rights of a property owner.

COMMISSIONER BROWN stated that, in his judgment, this amendment is a win/win situation. He concurs with Commissioner Golley and he cannot find any large negatives to this proposal.

VOTE TAKEN -

Five Ayes - Commissioners Brown, Burroughs, Golley, Mesch, and Urbanowski

Zero Nays.

One Absent – Commissioner Plotkin.

MOTION PASSED.

APPROVAL OF MINUTES

Minutes from the Regular Meeting of May 20, 2009 approved by unanimous voice vote.


GENERAL BUSINESS:

A reminder that there is a Meet and Greet for the Lakewood Zoning Improvement on Tuesday, June 9, 2009 at 6:00 p.m.

ADJOURNMENT

Meeting adjourned at 10:15 PM.

October 7, 2009
Date Approved



Walter M. Jauch, Secretary
to the Planning Commission