

6:30 p.m. – Reception Wheat Ridge Business District 10th Anniversary

6:45 p.m. Pre-Meeting

AGENDA

**CITY COUNCIL MEETING
CITY OF WHEAT RIDGE, COLORADO
7500 WEST 29TH AVENUE, MUNICIPAL BUILDING**

September 10, 2012

7:00 p.m.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Heather Geyer, Public Information Officer, at 303-235-2826 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL OF MEMBERS

APPROVAL OF MINUTES OF August 27, 2012

PROCLAMATIONS AND CEREMONIES

Wheat Ridge Business District 10th Anniversary

CITIZENS' RIGHT TO SPEAK

- a. Citizens, who wish, may speak on any matter not on the Agenda for a maximum of 3 Minutes and sign the Public Comment Roster.
- b. Citizens who wish to speak on Agenda Items, please sign the GENERAL AGENDA ROSTER or appropriate PUBLIC HEARING ROSTER before the item is called to be heard.

APPROVAL OF AGENDA

PUBLIC HEARING AND ORDINANCES ON SECOND READING

1. Council Bill No. 17-2012 – An Ordinance adding a new Section 26-638 to Chapter 26 of the Wheat Ridge Code of Laws, concerning Zoning, to define Occupancy Limits and authorize the enforcement of such limits as a Civil Matter

PUBLIC HEARING AND ORDINANCES ON SECOND READING con't

2. Council Bill No. 18-2012 - An Ordinance amending Subsection 4-34(E) of the Wheat Ridge Code of Laws, concerning Kennel License requirements, to prohibit Variances that conflict with the City's Zoning Regulations
3. Council Bill No. 19-2012 - An Ordinance amending Section 24-51 of the Wheat Ridge Code of Laws, concerning Weed and Tall Grass Control, to authorize Abatement of Violations thereof and Abatement Cost Recovery through Nuisance Enforcement and Administrative Enforcement
4. Resolution 44-2012 – A Resolution approving a Special Use Permit to allow reconstruction of a Quasi-Public Facility and a Major Haul Operation with variances in a Residential-One (R-1) Zone District located at 2901 Fenton Street (Case No. Sup-12-03/Ashland Reservoir)

DECISIONS, RESOLUTIONS AND MOTIONS

5. Resolution 45-2012 – A Resolution approving an Intergovernmental Agreement with the City and County of Denver regarding Denver Water's Ashland Reservoir

CITY MANAGER'S MATTERS

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS

ADJOURNMENT to Special Study Session

CITY COUNCIL MINUTES

**CITY OF WHEAT RIDGE, COLORADO
WHEAT RIDGE MUNICIPAL BUILDING
7500 W. 29TH AVENUE**

August 27, 2012

Mayor DiTullio called the Regular City Council Meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL OF MEMBERS

Davis Reinhart
Bud Starker
Joyce Jay
Mike Stites
George Pond
Joseph DeMott
Tracy Langworthy
Kristi Davis

Also present: City Clerk, Janelle Shaver; City Attorney, Gerald Dahl; City Manager, Patrick Goff; Acting Police Chief, Joe Cassa; Public Works Director, Tim Paranto; interested parties and interested citizens.

CITIZENS' RIGHT TO SPEAK

Bob Doyle, member of the Colorado Tobacco Prevention Education Alliance and Breathe Easy Wheat Ridge, spoke against the hookah lounge that is scheduled to open in Wheat Ridge. He believes this type of establishment is not good for our community because it entices youth with tobacco of multiple flavors.

John Odom, Wheat Ridge resident and surgeon, listed the negative medical effects of smoke from hookah lounges. He wishes Wheat Ridge had tighter laws on smoking.

Laurie Odom, Wheat Ridge resident and physician, spoke against the hookah lounge. She implored Council to try to make Wheat Ridge the healthiest community in this region and pass local laws that prohibit hookah lounges from operating in the city.

Sarah Davis, chair of Breathe Easy Wheat Ridge, spoke about how surrounding cities have closed the loopholes to prevent hookah lounges from coming in.

Michael Snow spoke against the hookah lounge. He thinks it's a deplorable business that is not healthy and not attractive to strong families. He believes it's Council's job to protect the health, safety and public welfare of its citizens and noted that surveys say restricting smoking will not harm businesses.

Tom Slattery of Wheat Ridge United Neighborhoods requested the use of Council Chambers on Thursday, September 27 from 7 – 10 PM for the election preview forum they always conduct. The back-up date would be September 28th.

Cheri Jahn came to thank the City of Wheat Ridge for all their efforts for the Carnation Festival – especially Joyce Manwaring and her staff and the Police Department. The great success of this year's festival would not have happened without them. She also reported a record crowd this year – estimated at 25,000 - 30,000 for the two nights.

Gina Hallisey, promoter for the Zoppe Circus, thanked the City and all the sponsors for their support. This is the best attendance and participation this circus has ever had and they are excited to return next year. She will have a full report for Council in the near future.

John Marriott, chair of Wheat Ridge Business District, spoke on several things:
1) He thanked Joyce Manwaring for keeping the outdoor pool open while the Rec Center pool is being cleaned, 2) Last week there was talk of crafting a muffler ordinance. He researched Denver's muffler ordinance and since it was enacted they have written 4, 5, and 0 tickets each year. He suggested that such an ordinance in Wheat Ridge would be a feel good/do nothing ordinance that won't be enforced, 3) He doesn't think an anti-smoking ordinance is necessary. He thinks it's a feel good ordinance and that state law is adequate. He's never had an issue with second hand smoke in a park, and 4) Regarding hookah lounges, they should just follow state law.

Connie Mauldin from unincorporated Jefferson County immediately west of Wheat Ridge spoke against the new animated sign at Good Times. It's lit up 24 hours a day and is very annoying to nearby residents at night. The neighbors wish that Good Times would have to turn off the sign when they close for the night. Code Enforcement has been very cooperative, but the owners of Good Times aren't. It appears that a different ordinance is necessary to govern animated signs.

Motion by Joe DeMott to direct staff to work with Wheat Ridge United Neighborhoods to allow and fund if necessary on September 27 their 2012 candidate forum as they have done so well in the past; seconded by Mr. Reinhart; carried 8-0.

APPROVAL OF MINUTES OF August 13, 2012

Motion by Mr. Stites to approve the minutes of August 13, 2012; seconded by Mr. Starker; carried 7-0, with Mr. Reinhart abstaining.

APPROVAL OF AGENDA

Mrs. Jay introduced the Consent Agenda.

1. CONSENT AGENDA

- A. Motion to approve payment to Insight Public Sector, Inc. in the amount of \$51,618.51 for the annual renewal of the Microsoft Enterprise Agreement
- B. Motion to accept Independence Street right-of-way from the City of Arvada
- C. Motion to award RFB-12-28- On-Call Traffic Signal Maintenance & Repair Services to W.L. Contractors, Inc. of Arvada, Colorado, in an amount not to exceed \$55,000

Motion by Mrs. Jay to approve the Consent Agenda; seconded by Mr. Stites and Mr. DeMott; carried 8-0

PUBLIC HEARING AND ORDINANCES ON SECOND READING

2. Council Bill No. 14-2012 – An Ordinance amending Section 26-603 of Chapter 26 of the Wheat Ridge Code of Laws, concerning regulation of sight distance triangles and swimming pool fences (Case No. ZOA-11-06)

Mayor DiTullio opened the public hearing.

Mr. Pond introduced Council Bill No. 14-2012.

Current regulations to sight distance triangles are difficult to apply, enforce, and explain. In the same section of the zoning code, requirements for swimming pool fences do not correspond with adopted versions if the building code.

Clerk Shaver assigned Ordinance No. 1518

Lauren Mikulak gave the staff presentation. She entered into the record the case file, the draft ordinance and the contents of the digital presentation, and documented that public noticing requirements for this hearing had been met. This change is brought forward because it has been difficult to locate sight distance triangles in the field. Several departments of the City (Publics Works, Police, Code Enforcement, Parks and Rec and Community Development) have given input to the proposal.

It will:

- Move the sight triangle out towards the street to the true corner
- Improve the ability to explain and field locate sight distance triangles
- Provide ease of enforcement and relieve the burden on the property owners

- Put us more in line with national standards
- Raise the upper limits of the clear zone to accommodate truck drivers
- Upgrade diagrams
- Align zoning and building codes related to swimming pool fences
- Reorganize the fence code section
- Defer to the International Building Code for pool fences

The Mayor closed the public hearing.

Motion by Mr. Pond to approve Council Bill No. 14-2012, an Ordinance amending Section 26-603 of Chapter 26 of the Wheat Ridge Code of Laws, concerning regulation of sight distance triangles and swimming pool fences on second reading and that it take effect 15 days after final publication; seconded by Mr. Stites; carried 8-0

3. Council Bill No. 15-2012 – An Ordinance submitting a proposed amendment of the Wheat Ridge Home Rule Charter to the voters of the City pursuant to Charter section 16.8 (b), setting the ballot title for same.

Mayor DiTullio opened the public hearing

Ms. Davis introduced Council Bill No. 15-2012 . This Charter amendment would provide that all elected officials be elected by the most votes cast.

Mr. Dahl clarified the content of the ballot wording.

Mrs. Shaver thanked the current Election Commission members, Lloyd Levy and Wanda Sang, for their work leading to the recommendation of this charter change – which was unanimous. She also thanked former City Clerk Michael Snow for his valuable input since he was the one who conducted the runoff election last fall, and also former Commission Member, Peter Marks.

Lloyd Levy addressed the proposed charter change that the Election Commission is recommending. Last fall the regular election on November 1 cost the City \$7,500 because we were/are able to piggy-back on the county's election process. The run-off election that followed, which the City had to conduct and fund entirely on its own, cost around \$37,000. The suggested change would have all elected officials chosen by popular vote (whoever gets the most votes wins), thereby eliminating the possibility of any future, expensive run-off elections. He assured the public and the Council that adopting this process does not violate any principles of fairness, openness, or the representative process.

Clerk Shaver assigned Ordinance No. 1519.

The Mayor closed the public hearing.

Motion by Ms. Davis to approve Council Bill No. 15-2012 – An Ordinance submitting a proposed amendment of the Wheat Ridge Home Rule Charter to the voters of the City pursuant to charter section 16.8 (b), and setting the ballot title for same on second reading and have it take effect upon adoption. Seconded by Mr. DeMott; carried 8-0

4. Council Bill No. 16-2012 – An Ordinance amending Section 16-103 of the Wheat Ridge Code of Laws concerning unreasonable noise and providing for a special events permit for amplified sound on private property

Mayor DiTullio opened the public hearing.

Mr. DeMott introduced Council Bill No. 16-2012. This amendment to the code would provide for a special use permit process for amplified sound events.

Clerk Shaver assigned Ordinance No. 1520.

Staff: Mr. Dahl noted he added the Mixed Use zone district since first reading.

Public comment:

Moe Keller had a handout and updated Council on the current attitude of the Iris Street neighborhood. They prefer that the current noise ordinance remain unamended, that it is adequate for enforcement and they do not want the noise levels raised. If Council still wants to approve this ordinance she suggested these issues be addressed first:

- There is no time limit for the special event permit. They suggest 4 hours.
- Applicants have an appeal process, but neighbors don't.
- Address the impacts on surrounding neighborhoods, including adequate parking and excessive traffic volume. Public safety is a concern.

Laura Jenkins, of Iris Street, added her support for not having a special use permit in the noise ordinance. She thinks loopholes will be used.

Steve Keller said the neighborhood doesn't see a pressing need to approve a special events permit. If council plans to approve the permit process he added further:

- Limit the number of events per year. Four is good, but allow more if there are no complaints, fewer if there are complaints.
- The application be posted *prior* to being granted so neighbors are aware of it.

Mayor DiTullio closed the public hearing.

Motion by Mr. DeMott to postpone indefinitely Council Bill No. 16-2012 an ordinance amending Section 16-103 of the Wheat Ridge Code of Laws concerning unreasonable noise and providing for a special events permit for amplified sound on private property for the following reasons: Some confusion still exists and we have a little bit more work to do on it; seconded by Mr. Langworthy; carried 8-0

ORDINANCES ON FIRST READING

- 5.** Council Bill No. 17-2012 - An Ordinance adding a new Section 26-638 to Chapter 26 of the Wheat Ridge Code of Laws, concerning zoning, to define occupancy limits and authorize the enforcement of such limits as a civil matter

Mr. Starker introduced Council Bill No. 17-2012.

This ordinance would provide for one single code section to govern residential occupancy limits. It will help public understanding of what is permitted and prohibited, as well as facilitate City enforcement.

Motion by Mr. Starker to approve Council Bill No. 17-2012 - An Ordinance adding a new

Section 26-638 to Chapter 26 of the Wheat Ridge Code of Laws, concerning zoning, to define occupancy limits and authorize the enforcement of such limits as a civil matter, on first reading, order it published, public hearing set for Monday, September 10, 2012 at 7 .m. in the City Hall Council Chambers, and that it take effect 15 days after final publication. Seconded by Mr. Pond ; carried 8-0.

- 6.** Council Bill No. 18-2012 - An Ordinance amending Subsection 4-34(e) of the Wheat Ridge Code of Laws, concerning kennel license requirements, to prohibit variances that conflict with the City's zoning regulations

Mr. Stites introduced Council Bill No. 18-2012

This ordinance would prohibit the Police Chief from granting variances under Section 4-34 that proposes a use of land prohibited by the City's zoning regulations in Chapter 26.

Motion by Mr. Stites to approve Council Bill No. 18-2012, an ordinance amending subsection 4-34(e) of the Wheat Ridge Code of Laws, concerning kennel license requirements, to prohibit variances that conflict with the City's zoning regulations, on first reading, order it published, public hearing set for Monday, September 10, 2012 at 7 p.m. in the City Hall Council Chambers, and that it take effect 15 days after final publication; seconded by Mr. DeMott; carried 8-0

- 7.** Council Bill No. 19-2012 - An Ordinance amending Section 24-51 of the Wheat Ridge Code of Laws, concerning weed and tall grass control, to authorize abatement of violations thereof and abatement cost recovery through nuisance enforcement and administrative enforcement

Mrs. Langworthy introduced Council Bill No. 19-2012.

This ordinance would provide property owners with the opportunity for a pre-abatement hearing (due process), and make the abatement cost recovery process and administrative fees consistent with other abatement actions.

Motion by Mrs. Langworthy to approve Council Bill No. 19-2012, an ordinance amending section 24-51 of the Wheat Ridge Code of Laws, concerning weed and tall grass control, to authorize abatement of violations thereof through nuisance enforcement and administrative enforcement, on first reading, order it published, public hearing set for Monday, September 10, 2012 at 7 p.m. in the City Hall Council Chambers, and that it take effect 15 days after final publication; seconded by Mr. Starker; carried 8-0.

DECISIONS, RESOLUTIONS AND MOTIONS

8. Resolution 42-2012 – authorizing the execution of an agreement allowing Walrus 5560 LLC to participate in the Wheat Ridge Business Development Zone Program and for the rebate of eligible City fees, charges and taxes in an amount not to exceed \$25,500 in association with the demolition and remodel of a facility at 5560 W. 29th Ave.

Mr. Starker, being the owner of Walrus 5560 and applicant for this rebate, recused himself and left the room.

Mr. Reinhart introduced Resolution 42-2012.

Motion by Mr. Reinhart to approve Resolution 42-2012, a resolution authorizing the execution of an agreement allowing Walrus 5560 LLC to participate in the Wheat Ridge Business Development Zone Program and for the rebate of building use tax in an amount not to exceed \$25,500 in association with the demolition and remodel of a facility at 5560 W. 29th Avenue in Wheat Ridge; seconded by Mrs. Jay.

Mr. Dahl noted that in this context a majority vote of the entire Council is required for passage. Even though Mr. Starker will not be voting -- five votes are still required.

Bud Starker is requesting to enter into the recently formed Business District Zone (BDZ) program for the rebate of eligible City fees, charges and taxes in association with a proposed partial demolition and remodel of a facility at 5560 W. 29th Avenue. The improvement cost of this demolition and remodel will generate approximately \$25,500 in building use tax. The financial impact to the City will be the rebate of 100% of the building use tax, not to exceed \$25,500.

Issues were raised about whether this is appropriate. Historically only long standing businesses such as King Soopers, or non-profits such as Head Start and the Seniors Resource Center have received 100% rebates like this. Mr. Starker is also receiving grants from WR 2020 and the 38th Avenue Merchants' Group (\$13,000). It looks like a

good plan, but this business is not even open yet. We didn't see this at a study session. Can we find another way to help these kinds of start-ups? These rebates have never been given to restaurants or new business. Approving this would set a precedent.

Mr. Dahl noted the dollar amount or the percentage could be changed.

Mr. Goff explained that only building use tax would be rebated. Other fees will be collected. Rebates are given only after the Certificate of Occupancy is granted. Code allows Council to give the rebate at a different time if they wish, or change the percentage; in this case staff is recommending 100%. Another alternative would be an ESTIP grant.

Considerable discussion followed and there was general agreement that this needed to come to a study session so there could be some discussion. This will affect future applicants with similar circumstances and setting a precedent tonight, without discussion, was not a good way to proceed.

Motion by Davis Reinhart to continue Resolution 42-2012 to the September 10th Study Session; seconded by Mrs. Jay; carried 7-0

Mr. Starker returned to the Council Chambers.

9. Resolution 43-2012 – concerning the Jefferson County School District R-1's bond issue and mill levy override issue on the November 6, 2012 general election ballot

Mr. Pond introduced Resolution 43-2012 and listed reasons why the Jefferson County School Board is bringing a mill levy override and a bond issue to the voters.

Motion by Mr. Pond to approve Resolution 43-2012, a resolution of the Wheat Ridge City Council concerning that Jefferson County School District R-1's bond issue and mill levy override on the November 6, 2012 general election ballot; seconded by Mrs. Langworthy.

Jonna Levine of Arvada addressed the Council in support of the School Board's ballot issues. The school district has a good record of success, but money from the state has been cut severely the last three years, as well as cuts from the school district. The School Board's position is that these ballot measures are necessary to ensure a quality level of education continues. She asked the Council to endorse the ballot issues.

All of the Council members gave their opinions about the ballot issue.

Motion carried 5-3, with Council members DeMott, Stites, and Davis voting no.

CITY MANAGER'S MATTERS

Mr. Goff reminded the public that the Rec Center is closed this week for annual maintenance, but folks can use the Golden Rec Center. He's added he's proud of staff's work to make the Carnation Festival and the Zoppe Circus successful.

CITY ATTORNEY'S MATTERS none

ELECTED OFFICIALS' MATTERS

Mrs. Shaver said she loved the circus and hope it comes back next year.

Mr. DeMott commented on how much fun the festival was and the circus. It was all a great success.

Mrs. Jay mentioned a woman she saw madly pulling weeds on Wadsworth in the vicinity of 44th & Wadsworth. She credited Councilmember Stites for this.

Ms. Davis thanked the city and volunteers for their work on the Carnation Festival. She also gave a shout out to her neighborhood for the successful block party they had. She thanked the police department for their help and encouraged other neighborhoods to do the same because it really brings your neighborhood together. She volunteered to help any neighborhood that wants to have one.

Mrs. Langworthy said she volunteered on the festival shuttle busses. They weren't very full and she encouraged folks to use them next year.


Mr. Starker also thanked the staff, the Police and the Parks people who helped with the Carnation Festival and the Circus. He thanked the citizens who came out to watch the parade and attend the festival and the circus.

Mayor DiTullio thanked people for their work and support for the Circus, and offered congratulations to the Carnation Festival.

ADJOURNMENT

The meeting adjourned at 8:54 p.m.

Mike Stites, Council President




Janelle Shaver, City Clerk

REQUEST FOR CITY COUNCIL ACTION

TITLE: COUNCIL BILL NO. 17-2012 – AN ORDINANCE ADDING A NEW SECTION 26-638 TO CHAPTER 26 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING ZONING, TO DEFINE OCCUPANCY LIMITS AND AUTHORIZE THE ENFORCEMENT OF SUCH LIMITS AS A CIVIL MATTER

- | | |
|--|---|
| <input checked="" type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING (08/27/2012) |
| <input type="checkbox"/> BIDS/MOTIONS | <input checked="" type="checkbox"/> ORDINANCES FOR 2 ND READING (09/10/2012) |
| <input type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO

Chief of Police

City Manager**ISSUE:**

The City's zoning regulations, found in Chapter 26 of the Wheat Ridge Code of Laws ("Code"), currently limit the number of unrelated individuals who may reside in a residential dwelling unit, by virtue of the definitions of "family" and "dwelling unit," and the use schedules and tables located in various sections throughout the Chapter. This Ordinance adopts a single Code section concerning residential occupancy limits. Staff believes this amendment will facilitate public understanding of what is permitted and prohibited, as well as facilitate City enforcement.

This Ordinance also designates a violation of its requirements as a civil matter, for which violators may *not* be sentenced to jail, and for which the City's burden of proof is by a preponderance of the evidence. Staff believes these civil standards are more appropriate for occupancy limit enforcement than criminal standards (potential jail time and proof beyond a reasonable doubt).

PRIOR ACTION:

This ordinance was reviewed with the City Council at the August 20, 2012 Study Session, and again on First Reading on August 27, 2012.

FINANCIAL IMPACT:

None

BACKGROUND:

The enforcement of residential occupancy limitations presents several challenges for Community Service Officers (CSOs) under current Code language. The preparation of a thorough citation or summons for a violation of such limitations involves referencing and citing several different Code sections. As such, the potential for technical error in preparing these citations is greater than with other types of citations. The Code does not contain one stand-alone section that defines occupancy limits and requires compliance with the same. Staff believes that adopting such a singular Code section will facilitate the preparation of valid citations by CSOs as well as clarify occupancy limitations for the public.

Another challenge presented by occupancy limit enforcement is the gathering of evidence sufficient to prove violations beyond a reasonable doubt. To meet that burden of proof in regard to who lives in a particular home requires regular, round-the-clock observation of the home over a period of time. It is impossible for the Police Department to devote resources to such a task. It is unrealistic to expect a complaining neighbor or other citizens to collect and provide this level of evidence. If occupancy limit violations were designated as a civil matter, violators would not be subject to jail time and the City’s burden of proof would be by a preponderance of the evidence. Staff believes that both the lower classification of penalty and lower burden of proof are more appropriate than the criminal standard for occupancy limit violations.

RECOMMENDATIONS:

Staff recommends approval of the ordinance.

RECOMMENDED MOTION:

“I move to approve Council Bill No. 17-2012, an ordinance adding a new section 26-638 to chapter 26 of the Wheat Ridge Code of Laws, concerning zoning, to define occupancy limits and authorize the enforcement of such limits as a civil matter, on second reading, and that it takes effect 15 days after final publication.”

Or,

“I move to postpone indefinitely Council Bill No. 17-2012, an ordinance adding a new section 26-638 to chapter 26 of the Wheat Ridge Code of Laws, concerning zoning, to define occupancy limits and authorize the enforcement of such limits as a civil matter for the following reason(s)
_____.”

REPORT PREPARED/REVIEWED BY:

Daniel G. Brennan, Chief of Police

ATTACHMENTS:

1. Council Bill No. 17- 2012

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STARKER
Council Bill No. 17
Ordinance No. _____
Series of 2012

TITLE: AN ORDINANCE ADDING A NEW SECTION 26-638 TO CHAPTER 26 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING ZONING, TO DEFINE OCCUPANCY LIMITS AND AUTHORIZE THE ENFORCEMENT OF SUCH LIMITS AS A CIVIL MATTER

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and Article 23 of Title 31 of the Colorado Revised Statutes, the City, acting through its City Council (the "Council"), previously adopted planning and zoning regulations, codified as Chapter 26 of the Wheat Ridge Code of Laws (the "Code"); and

WHEREAS, the City's zoning regulations currently limit the number of unrelated individuals who may reside in a residential dwelling unit by virtue of the definitions of "family," "dwelling unit," and the permitted use schedule and table codified in various sections throughout Chapter 26 of the Code; and

WHEREAS, the Council finds that adopting a single Code section concerning occupancy limits in regards to dwelling units would facilitate public understanding of what is permitted and prohibited as well as facilitate the City's enforcement of the occupancy limits; and

WHEREAS, the Council further finds that it is appropriate and desirable to designate a violation of such occupancy limits as a civil matter, for which violators may not be sentenced to jail and for which the City's burden of proof is by a preponderance of the evidence.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Article VI of Chapter 26 of the Wheat Ridge Code of Laws, concerning zoning supplementary regulations, is hereby amended by the addition of a new Section 26-638, to read in its entirety as follows:

Sec. 26-638. Occupancy Limits.

A. Except as provided in subsections B. and E. hereof, the maximum occupancy allowed per dwelling unit in a one-family, two-family or multi-family dwelling shall be either:

1. One (1) family, as defined by Section 26-123 of this Code, and not more than one (1) additional person; or
2. Two (2) adults and their dependents, if any, and not more than one (1) additional person.

B. *Exceptions.* The following shall be exempt from the maximum occupancy limit established in Subsection A above:

1. Residential group homes that conform to the requirements of Section 26-612 of this Code; and
2. Dwellings owned and operated by a nonprofit organization incorporated under the laws of this state for the purpose of providing housing to victims of domestic violence as such is defined in C.R.S. § 18-6-800.03.

C. A violation of this Section shall be proven by a preponderance of the evidence. The owner and any other person responsible for the management or control of a dwelling unit shall be liable for allowing occupancy in excess of this Section if he or she knew, or through reasonable diligence should have known, that a violation of this Section was occurring.

D. *Definitions.* The following words, terms and phrases, when used in this Section, shall have the following meanings:

1. *Adult* shall mean any person eighteen (18) years of age or older who is not a dependent.
2. *Dependent* shall mean the biological child of an adult occupying a dwelling unit, or a person related to an adult by reason of adoption, guardianship or other duly authorized custodial relationship, who receives financial support from the adult and who resides with the adult in the dwelling unit at least three (3) calendar months in a calendar year.
3. *Occupancy* or *occupy* shall mean the use of a dwelling unit or any portion thereof for living and sleeping purposes by a person acting in any of the following capacities:
 - a. As an owner of the unit;
 - b. As a tenant under an express or implied lease or sublease of the unit or of any portion thereof;
 - c. As the dependent of such an owner or tenant; or
 - d. As a guest or invitee of the owner, property manager, lessee or sublessee of the unit or of the dependent of any of the same, if such guest or invitee stays overnight at the unit for a total of thirty (30) or more days within any twelve-month period.

E. Nothing in this Section shall operate to amend, abrogate or otherwise affect the validity of occupancy limitations as applied to building standards and regulations of the City, as set forth in Chapter 5 of this Code, including all technical codes adopted by reference therein. In the event of a conflict between two applicable occupancy standards, the stricter (lower) occupancy limit shall apply.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 27th day of August, 2012, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for September 10, 2012, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2012.

SIGNED by the Mayor on this _____ day of _____, 2012.

Jerry DiTullio, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

First Publication: August 30, 2012
Second Publication:
Wheat Ridge Transcript
Effective Date:

REQUEST FOR CITY COUNCIL ACTION

TITLE: COUNCIL BILL NO. 18-2012 – AN ORDINANCE AMENDING SUBSECTION 4-34(E) OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING KENNEL LICENSE REQUIREMENTS, TO PROHIBIT VARIANCES THAT CONFLICT WITH THE CITY’S ZONING REGULATIONS

- PUBLIC HEARING
 BIDS/MOTIONS
 RESOLUTIONS

- ORDINANCES FOR 1ST READING (08/27/2012)
 ORDINANCES FOR 2ND READING (09/10/2012)

QUASI-JUDICIAL: YES

NO



Chief of Police



City Manager

ISSUE:

Section 4-34 of the Wheat Ridge Code of Laws (“Code”) requires a person who wishes to keep more than three dogs or four cats or who wishes to operate a commercial kennel business to obtain a kennel license from the Chief of Police. The Chief is further authorized to grant variances from this Section.

The current language of the Code does not authorize the Chief to consider whether a requested variance is consistent with the City’s zoning regulations, found in Chapter 26 of the Code. As a result, the Chief could potentially approve a kennel license variance to keep a certain number of animals, or to conduct a business that is nonetheless prohibited in its proposed location by the City’s zoning regulations.

This Ordinance prohibits the Chief from granting a variance under Section 4-34 that proposes a use of land prohibited by the City’s zoning regulations, Chapter 26.

PRIOR ACTION:

This ordinance was reviewed with the City Council at the August 20, 2012 Study Session, and again on First Reading on August 27, 2012.

FINANCIAL IMPACT:

None

BACKGROUND:

Section 4-34 of the Wheat Ridge Code of Laws (“Code”) requires any person who wishes to do the following to obtain a kennel license from the Chief of Police: (1) Keep more than three dogs or four cats of more than six months of age; or (2) Conduct a commercial business of breeding, buying, selling, trading, training or boarding cats or dogs. Subsection (e) of this Section authorizes the Chief of Police to grant variances from the requirements of Section 4-34.

Chapter 26 of the Code, concerning zoning, prohibits the keeping of more than three dogs or four cats in residential zone districts. These zoning regulations are separate from, and independent of, the kennel licensing requirements of Section 4-34. The provisions of Chapter 26 are valid and enforceable against a property, regardless of the occupant’s compliance with Section 4-34. For example, a resident could obtain a variance from the Chief to keep more than three dogs or four cats without a kennel license, but that use of land is still prohibited in residential districts under the City’s zoning regulations. Similarly, a business could apply for a variance from the Chief to operate a kennel business without a kennel license. If the proposed commercial kennel is located in a residential district, that use of land would be prohibited by Chapter 26, even if the Chief grants a license variance under Chapter 4.

Staff recommends this Code amendment to harmonize the provisions of Chapters 4 and 26 of the Code.

RECOMMENDATIONS:

Staff recommends approval of the ordinance.

RECOMMENDED MOTION:

“I move to approve Council Bill No. 18-2012, an ordinance amending subsection 4-34(e) of the Wheat Ridge Code of Laws, concerning kennel license requirements, to prohibit variances that conflict with the City’s zoning regulations, on second reading, and that it takes effect 15 days after final publication.”

Or,

“I move to postpone indefinitely Council Bill No. 18-2012, an ordinance amending subsection 4-34(e) of the Wheat Ridge Code of Laws, concerning kennel license requirements, to prohibit variances that conflict with the City’s zoning regulations, for the following reason(s) _____”

REPORT PREPARED/REVIEWED BY:

Daniel G. Brennan, Chief of Police

ATTACHMENTS:

1. Council Bill No. 18-2012

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STITES
Council Bill No. 18
Ordinance No. _____
Series of 2012

**TITLE: AN ORDINANCE AMENDING SUBSECTION 4-34(E) OF THE
WHEAT RIDGE CODE OF LAWS, CONCERNING KENNEL
LICENSE REQUIREMENTS, TO PROHIBIT VARIANCES THAT
CONFLICT WITH THE CITY'S ZONING REGULATIONS**

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401(1)(m), the City, acting through its City Council (the "Council"), is authorized to regulate the keeping of animals within the City; and

WHEREAS, pursuant to this authority, the Council previously adopted dog and cat kennel license requirements, including the imposition of a maximum number of dogs and cats permitted, codified as Section 4-34 of the Wheat Ridge Code of Laws ("Code");

WHEREAS, Code Subsection 4-34(e) authorizes the Chief of Police to grant variances from the requirements of Section 4-34; and

WHEREAS, in rendering a decision on such a variance application, Code Subsection 4-34(e) does not currently authorize the Chief of Police to consider whether the keeping of animals proposed by the variance is permitted or prohibited by the City's zoning regulations, codified as Chapter 26 of the Code; and

WHEREAS, as a result, the Chief of Police could grant a kennel license variance application that authorizes a use of property that is prohibited by another portion of the Code; and

WHEREAS, while the City's zoning regulations are valid and enforceable against a property regardless of action taken by the Chief of Police on a kennel license variance application for the same property, City staff believes it would provide clarity and consistency to the Code to prohibit Chapter 4 variances that conflict with the City's zoning regulations.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
WHEAT RIDGE, COLORADO:**

Section 1. Subsection 4-34(e) of the Wheat Ridge Code of Laws, concerning kennel license requirements, is hereby amended as follows:

- (e) This section shall not apply to and will not be construed to require a kennel license for any pet shop which sells animals of less than six (6) months of age.

Any person or business applying for or holding a kennel license must be currently licensed by the State of Colorado. Pursuant to the Pet Animal Care and Facilities Act, C.R.S. §§ 35-80-101—35-80-117.

The issuance of a new kennel license shall be based on the following minimum requirements:

Application for a new kennel license or for transfer of an existing license shall be made to and a recommendation of approval obtained from the ANIMAL WELFARE AND CONTROL commission. The application shall include a detailed description of the property to be licensed.

The ANIMAL WELFARE AND CONTROL commission may require a public hearing before a new kennel license is recommended for approval. The hearing shall be posted and published in the same manner as in section 26-6.

The animal welfare and control commission shall have the authority to conduct a hearing to consider whether to recommend that the chief of police grant a variance to subsection (a) above as to the number of animals permitted and the ANIMAL WELFARE AND CONTROL commission shall inform the chief of police of its decision.

The recommendation of the ANIMAL WELFARE AND CONTROL commission shall be forwarded to the chief of police, who shall act to approve, approve with conditions, or deny the application within thirty (30) days of the ANIMAL WELFARE AND CONTROL commission's recommendation. **THE CHIEF OF POLICE SHALL NOT APPROVE A VARIANCE APPLICATION THAT PROPOSES THE USE OF PROPERTY IN VIOLATION OF CHAPTER 26 OF THIS CODE.**

The chief of police may promulgate rules and regulations to establish minimum standards for the care and treatment of animals at any facility licensed under this section, after review and approval by the animal welfare and control commission.

Community service officers or any agent of the chief of police have the authority to inspect any licensed facility under this section during normal posted business hours.

Violations of any of this section may be brought before the animal welfare and control commission for review, and a hearing may be initiated by the ANIMAL WELFARE AND CONTROL commission for suspension, revocation or nonrenewal of the kennel license. The animal welfare and control commission may recommend, and the chief of police may revoke, suspend or not renew a license for failure to comply with any of the requirements of this section. No such action may be taken without prior notice to the licensee and an opportunity for the licensee to present evidence and testify. No decision by the chief of police under this section shall bind, alter, or affect a subsequent decision on a subsequent application, either for a new kennel license or for renewal of an existing license. Nothing in this section shall affect the independent authority of appropriate city officials to take action with respect to vicious animals, threats to public safety, or the enforcement of any other provision of this Code of Laws.

Section 2. **Safety Clause.** The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 27th day of August, 2012, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for September 10, 2012, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2012.

SIGNED by the Mayor on this _____ day of _____, 2012.

Jerry DiTullio, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

First Publication: August 30, 2012
Second Publication:
Wheat Ridge Transcript
Effective Date:

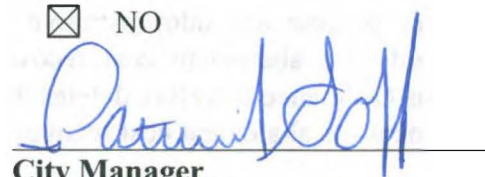
REQUEST FOR CITY COUNCIL ACTION

TITLE: COUNCIL BILL NO. 19-2012 – AN ORDINANCE AMENDING SECTION 24-51 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING WEED AND TALL GRASS CONTROL, TO AUTHORIZE ABATEMENT OF VIOLATIONS THEREOF AND ABATEMENT COST RECOVERY THROUGH NUISANCE ENFORCEMENT AND ADMINISTRATIVE ENFORCEMENT

- | | |
|--|---|
| <input checked="" type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING (08/27/2012) |
| <input type="checkbox"/> BIDS/MOTIONS | <input checked="" type="checkbox"/> ORDINANCES FOR 2 ND READING (09/10/2012) |
| <input type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO

City Attorney



City Manager

ISSUE:

The weed and tall grass abatement process currently set forth in Section 24-51 of the Wheat Ridge Code of Laws (“Code”) authorizes the City to enter property for abatement purposes upon seven (7) days’ notice by posting or mailing. The City Attorney’s Office and Police Department have consulted and recommend that this process be amended, and abatement pursued under the existing nuisance enforcement and administrative enforcement processes found elsewhere in the Code. This Ordinance makes those recommended changes.

PRIOR ACTION:

This ordinance was reviewed with City Council at the August 20, 2012 Study Session., , and again on First Reading on August 27, 2012.

FINANCIAL IMPACT:

No financial impacts are anticipated with these amendments. The recommended changes to abatement cost recovery and administrative fee provisions are consistent with current business practices.

BACKGROUND:

Code Section 24-51 requires property owners and occupants to control the growth of weeds and tall grass upon their properties. If a property contains grass or weeds that violate the requirements of Section 24-51, current Code language authorizes the City to enter the property to cut the weeds and grass after providing seven (7) days' notice. The notice may be either posted on the property or mailed to the owner and occupant.

The City Attorney's office reviewed Code Section 24-51, at the request of the Police Department, for purposes of evaluating this abatement process. The City Attorney's office recommended amending this Code section to provide an owner or occupant the opportunity for a hearing, before the City enters his or her property to cut weeds or grass. Providing an opportunity for a hearing provides each owner and occupant with due process.

Two separate portions of the Code currently contain enforcement processes that include an opportunity for a pre-abatement hearing: Chapter 2, concerning administrative enforcement; and Chapter 15, concerning nuisance enforcement. The Police Department and City Attorney's office conferred to determine that the most efficient way to provide a pre-abatement hearing opportunity for Code Section 24-51 violations is to cross-reference the existing administrative enforcement process in Chapter 2 of the Code. An emergency situation that presents imminent danger to the public health, safety or welfare could be immediately abated by the City, without a hearing, under the provisions of Code Section 15-9. Staff further recommends that the abatement cost recovery process and administrative fees for abatement actions under Section 24-51 be consistent with the abatement cost recovery process and fees in place for other abatement actions. This Ordinance therefore deletes the current reference to fees in Code Section 24-51 and cross-references the abatement cost recovery process and fees located in Code Section 15-11.

RECOMMENDATIONS:

Staff recommends approval of this Ordinance.

RECOMMENDED MOTION:

"I move to approve Council Bill No. 19-2012, an ordinance amending section 24-51 of the Wheat Ridge Code of Laws, concerning weed and tall grass control, to authorize abatement of violations thereof through nuisance enforcement and administrative enforcement, on second reading, and that it takes effect 15 days after final publication."

Or

"I move to postpone indefinitely Council Bill No. 19-2012, an ordinance amending Section 24-51 of the Wheat Ridge Code of Laws, concerning weed and tall grass control, to authorize abatement of violations thereof through nuisance enforcement and administrative enforcement of the following reasons(s) _____."

REPORT PREPARED BY:

Carmen Beery, City Attorney's Office
Daniel G. Brennan, Chief of Police

ATTACHMENTS:

1. Council Bill No. 19-2011
2. Staff Report – 24-51 Amendment.

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER LANGWORTHY
Council Bill No. 19
Ordinance No. _____
Series of 2012

TITLE: AN ORDINANCE AMENDING SECTION 24-51 OF THE WHEAT RIDGE CODE OF LAWS, CONCERNING WEED AND TALL GRASS CONTROL, TO AUTHORIZE ABATEMENT OF VIOLATIONS THEREOF AND ABATEMENT COST RECOVERY THROUGH NUISANCE ENFORCEMENT AND ADMINISTRATIVE ENFORCEMENT

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City, acting through its City Council (the "Council"), is authorized to declare and abate nuisances and to declare as unlawful and prohibit activity that is detrimental to the public health, safety and welfare; and

WHEREAS, pursuant to this authority, the Council previously adopted certain requirements concerning the control of weeds and tall grass upon properties within the City, codified as Section 24-51 of the Wheat Ridge Code of Laws ("Code"), and declared certain violations thereof to be a nuisance; and

WHEREAS, Code Section 24-51 currently authorizes the City to summarily abate weeds and tall grass upon private property after providing the owners and occupants of such property seven (7) days' written notice; and

WHEREAS, Chapter 2 of the Code, concerning administrative enforcement, provides property owners with a ten (10) day period to abate certain Code violations, including violations of Chapter 24; and

WHEREAS, the Council finds that, in the interests of consistency, it is desirable to amend Code Section 24-51 to eliminate the current seven (7) day notice period and to reference the administrative enforcement process, including a ten (10) day notice period, already available to enforce such violations under Chapter 2 of the Code; and

WHEREAS, the Council finds that it is equitable and desirable to provide property owners and occupants an opportunity to have a hearing on an alleged violation of Code Section 24-51 prior to the City's abatement of any such violation; and

WHEREAS, the Council therefore finds it additionally desirable and internally consistent to reference the administrative enforcement process of Chapter 2, which includes an opportunity for a hearing, in Code Section 24-51; and

WHEREAS, the Council further desires to authorize the City to recover its costs to abate violations of Code Section 24-51 in accordance with the nuisance abatement cost recovery process set forth in Section 15-11 of the Code.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 24-51 of the Wheat Ridge Code of Laws, concerning weed and tall grass control, is hereby amended as follows:

Sec. 24-51. - Weed and tall grass control.

- (a) All owners and occupants of land shall prevent property owned or occupied by them from becoming overgrown with weeds or tall grass.
- (b) It shall be unlawful for the owner or occupant of any undeveloped property zoned as agricultural, excluding the city's owned or leased greenbelt natural areas, to permit weeds or tall grass to grow on such property to a height of more than twelve (12) inches within a distance of one hundred (100) feet from any public street, highway or park, or within a distance of one hundred (100) feet from property lines adjoining any residential, commercial, industrial or open zone or use.
- (c) Weeds and tall grass shall be controlled by cutting, spraying or other lawful and suitable method of control. Such methods shall include ~~irradiation~~ ERADICATION, containment and/or suppression, as appropriate and as deemed by the city to be consistent with 35-5.5-101 et seq., C.R.S.
- (d) It shall be unlawful and shall be deemed a nuisance for the owner of any property, regardless of its zoning, to allow weeds or tall grass in excess of twelve (12) inches height to grow on the adjacent street or right-of-way, OR TO VIOLATE ANY OTHER SUBSECTION OF THIS SECTION.
- (e) The city may ENFORCE AND ABATE ANY VIOLATION OF THIS SECTION AS AUTHORIZED BY ARTICLE V OF CHAPTER 2 OF THIS CODE AND RECOVER ITS ABATEMENT COSTS AS AUTHORIZED BY ARTICLE II OF CHAPTER 15 OF THIS CODE. THE ENFORCEMENT PROCESS SET FORTH IN ARTICLE V OF CHAPTER 2 OF THE CODE INCLUDES A TEN (10) DAY PERIOD TO CURE VIOLATIONS AND AN OPPORTUNITY FOR A HEARING. THE CITY IS AUTHORIZED TO FOLLOW THE ABATEMENT COST RECOVERY PROCESS SET FORTH IN SECTION 15-11 OF THE CODE TO RECOVER ITS ABATEMENT COSTS AND FEES FOR VIOLATIONS OF THIS SECTION. ~~notify property owners and occupants in violation of this section either by posting the property, or by first class or certified mail, at the city's option. Such notice shall be dated and shall include a statement directing that failure to cut and remove the weeds or tall grass within seven (7) days of the notice will result in the city cutting such weeds or tall grass and the actual cost of the cutting and/or removal, plus administrative fees of twenty five (25) percent for the first cut, fifty (50) percent for the second cut and seventy five (75) percent for the third cut within the same growing season, plus a fifteen (15) percent fee if not paid within thirty (30) days, charged to the owner notwithstanding the provisions of section 15-11(a).~~ SUCH ABATEMENT COSTS AND FEES ARE RECOVERABLE IN ADDITION TO ANY ADMINISTRATIVE FINE, FEE OR CHARGE IMPOSED FOR THE SAME VIOLATION PURSUANT TO CHAPTER 2 OF THE CODE.

~~(f) If the owner or occupants shall fail to cut weeds or tall grass, as required by this section, within seven (7) days after being notified to do so, the city may direct that the weeds or tall grass be cut and charge the cost thereof to the owner in the manner permitted by section 24-10~~

(Fg) This section shall not apply to:

- (1) Lots or parcels zoned for and also used for agricultural operations, or
- (2) Lots or parcels larger than twelve thousand, five hundred (12,500) square feet, under a single ownership, used for the growing and harvesting of agricultural crops, regardless of the zoning of the lots or parcels.

(Gh) The city may pursue the remedies set forth herein with or without also filing a complaint in the municipal court, at the city's sole discretion.

(Hi) For the purposes of this section, the following terms shall be defined:

Agricultural crop. Cultivated grain and non-grain plants grown for food or fiber, including vegetables, fruits, nuts, and nursery plants.

Agricultural operation. A purpose related to the production, harvest, exhibition, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 27th day of August, 2012, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for September 10, 2012, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2012.

SIGNED by the Mayor on this _____ day of _____, 2012.

Jerry DiTullio, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

First Publication: August 30, 2012
Second Publication:
Wheat Ridge Transcript
Effective Date:



Memorandum

TO: Mayor DiTullio and City Council

THROUGH: Patrick Goff, City Manager
Daniel Brennan, Chief of Police

FROM: Mary McKenna, Community Services Supervisor

DATE: August 20, 2012

SUBJECT: Staff Report - Ordinance Amending Section 24-51 of the Code of Laws

The Community Services Team is empowered with enforcing provisions of Section 24-51, Vegetation, of the Wheat Ridge Code of Laws. There are two challenges that have arisen regarding this code. First, there is no opportunity for property owners or occupants to appeal the enforcement or abatement provisions related to Section 24-51. Secondly, the time given to property owners to address code violations conflict with the requirements found in Article V of Chapter 2.

Chapter 24-51 encourages property owners or occupants to promptly control the growth of weeds and grass on their property by cutting, spraying, or any suitable method of control. Tall grass and weeds in excess of twelve (12) inches are considered a nuisance. The ordinance states the property-owner/occupant shall be issued a notice of violation with a seven (7) day compliance date. If the owner or occupant fails to cut the weeds or tall grass, as required by the code, the city may order the abatement of property. The property owner or occupant is then charged the actual cost of the abatement, plus administrative fees. The code does not currently provide the owner or occupant the opportunity to appeal, and sets forth a different number of days in which to comply.

The Code of Laws currently contains two enforcement processes that include the opportunity for a pre-abatement hearing: Article V of Chapter 2, Administrative Enforcement and Chapter 15, Nuisances, provide an opportunity to appeal and request a hearing. Chapter 2, Administrative Enforcement, currently references Chapter 24 in providing administrative penalties that may be imposed for a violation. In addition, Article V of Chapter 2 sets forth a requirement for a property owner to comply with a notice of violation or administrative violation at ten (10) days, not seven (7).

In reviewing this ordinance, staff recommends the attached revision to Section 24-51, to provide property owners or occupants with the opportunity to appeal and request a hearing. Providing an opportunity for a hearing provides property owners and occupants with due process.

There is no financial impact associated with these proposed changes.

Attachment: Draft revision to Section 24-51

REQUEST FOR CITY COUNCIL ACTION

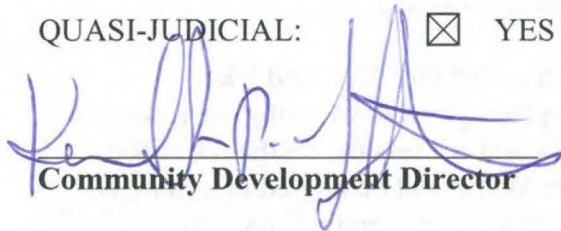
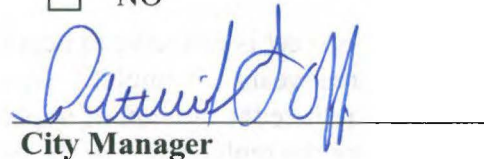
TITLE: RESOLUTION NO. 44-2012 – A RESOLUTION APPROVING A SPECIAL USE PERMIT TO ALLOW RECONSTRUCTION OF A QUASI-PUBLIC FACILITY AND A MAJOR HAUL OPERATION WITH VARIANCES IN A RESIDENTIAL-ONE (R-1) ZONE DISTRICT LOCATED AT 2901 FENTON STREET (CASE NO. SUP-12-03/ASHLAND RESERVOIR)

- PUBLIC HEARING
 BIDS/MOTIONS
 RESOLUTIONS

- ORDINANCES FOR 1ST READING
 ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: YES

NO


Community Development Director
City Manager**ISSUE:**

The applicant is requesting approval of a Special Use Permit (SUP) to allow reconstruction of the Ashland Reservoir. Included with this request is approval of a major haul operation and variances from various provisions of the zoning and development code. The property is zoned Residential-One (R-1) and is located at 2901 Fenton Street.

This case was initiated as an administrative review; however, written comments/objections to the application were received during the public notice period. When objections are received, the special use is required to be considered by City Council at a public hearing.

PRIOR ACTION:

There has been no previous action by the City concerning the property.

FINANCIAL IMPACT:

One-time fees in the amount of \$2,784 were submitted with the application. There will also be building permit fees charged and use tax on the materials being used for the project.

BACKGROUND:

The site contains Denver Water's Ashland Reservoir Facility which has two underground reservoirs with a combined storage capacity of 41 million gallons of water (19 million and 22 million, respectively). The site has been home to a treated water facility since the late 1800's. A series of upgrades have occurred over the last 100 years, including the installation of a precast concrete roofing system in the 1970s. This roofing system exists today and covers a majority of the site.

The property is bounded by 29th Avenue on the south, Fenton Street on east and 30th Avenue on the north. The elevation of W. 30th Avenue is nearly 20 feet higher than W. 29th Avenue. Steep berms run along the south and west property lines, and a retaining wall has been constructed along Fenton to accommodate the topography of the site. A small well house is located on the south side of the property. A chain link fence surrounds the entire property, and the primary vehicular access point is from W. 30th Avenue.

The applicant, Denver Water, is requesting a Special Use Permit to allow reconstruction of the Ashland Reservoir which is considered a quasi-public use. As part of the reconstruction, a major haul operation into and out of the site will be occurring. Various sections of the zoning and development code require variances to allow construction as proposed.

The replacement project is expected to begin construction in October 2012 and take approximately three years to complete. In addition to replacing and downsizing the reservoirs, the redesign will reduce the amount of impervious surface and address the aesthetics of the facility. Following the replacement of the basins, Denver Water will be upgrading piping and drain lines within surrounding rights-of-way, including Gray Street, Fenton Street, and W. 29th Avenue to Sheridan.

The property is zoned Residential-One (R-1) and has residential neighborhoods on the three sides. Along Fenton is the Wheat Ridge Manor Nursing facility. Two commercial businesses are located to the southeast.

This case has been through a standard referral process. The applicant continues to work with all referral agencies and adjacent cities to resolve issues associated with the reconstruction.

A detailed staff report with an application binder and exhibits are included for additional background on this application.

A super-majority vote of City Council is required to approve the variance portion of this request. A simple majority vote is required to approve the Special Use Permit.

RECOMMENDED MOTION:
VARIANCES

"I move to approve requests for variances for building coverage, front yard setback, fence height, residential screening and construction days and hours associated with Case No. SUP-12-03 for the following reasons:

1. There are unique circumstances relative to property use and site configuration.
2. Given the size of the property, the variances should not be discernible.
3. The variances are required to accommodate site configuration, functionality and safety of the operation and construction requirements.
4. Once construction is finished, there will be no negative impact on the health, safety and welfare of the area.
5. The criteria used to evaluate a variance support the request."

Or,

"I move to postpone indefinitely requests for variances for building coverage, front yard setback, fence height, residential screening and construction days and hours associated with Case No. SUP-12-03 for the following reasons:

- 1.
- 2.
- 3."

SPECIAL USE PERMIT

"I move to approve Resolution No. 44-2012 - a resolution approving a Special Use Permit to allow reconstruction of a quasi-public facility and a major haul operation in a Residential-One (R-1) zone district located at 2901 Fenton Street, (Case No. SUP-12-03) for the following reasons:

1. There will be a public benefit as a result of the reconstruction.
2. The proposed SUP will not contribute to blight in the neighborhood.
3. There will be benefits due to increased landscaping and pedestrian connections.
4. There will be no negative impact to utilities, parks, schools or other public facilities and services.
5. The criteria used to evaluate a Special Use Permit support the request.

With the following conditions:

1. All representations made during public hearing testimony and as detailed in the case file shall be adhered to.
2. Denver Water will keep citizens apprised of the project status through a regularly mailed newsletter.

3. Project status meetings will be held with City office personnel as needed.
4. The monitoring station be redesigned to emulate the existing well house on the property including but not limited to shape, materials used, and glazing or the well house be rebuilt somewhere else on the site.
5. Perimeter fencing be modified to have upright masonry pillars every 100'.
6. Additional plantings be shown on the western side of the access drive from W. 29th Avenue.”

Or,

"I move to postpone indefinitely Resolution No. **44-2012**, a resolution approving a request for a special use permit to allow reconstruction of a quasi-public facility and a major haul operation in a Residential-One (R-1) zone district located at 2901 Fenton Street (Case No. SUP-12-03), for the following reasons:

- 1.
- 2.
- 3.”

REPORT PREPARED BY:

Meredith Reckert, Senior Planner

Kenneth Johnstone, Community Development Director

ATTACHMENTS:

1. Resolution No. **44-2012**
2. Staff report with exhibits

CITY OF WHEAT RIDGE, COLORADO

Resolution No. 44

Series 2012

TITLE: A RESOLUTION APPROVING A SPECIAL USE PERMIT TO ALLOW RECONSTRUCTION OF A QUASI-PUBLIC FACILITY AND A MAJOR HAUL OPERATION WITH VARIANCES IN A RESIDENTIAL-ONE (R-1) ZONE DISTRICT LOCATED AT 2901 FENTON STREET (CASE NO. SUP-12-03/ASHLAND RESERVOIR)

WHEREAS, Chapter 26, Article I of the Wheat Ridge Code of Laws establishes the procedures for the City's review and approval of Special Use Permits; and

WHEREAS, an application for a Special Use Permit has been received from Denver Water to allow reconstruction of the Ashland Reservoir on property located at 2901 Fenton Street in an R-1 zone district; and,

WHEREAS, such construction will take three years to complete and is considered a major haul operation; and,

WHEREAS, there are variances requested related to several sections of the Zoning and Development code; and,

WHEREAS, the request for Special Use Permit began as an administrative process which registered written comments/objections during the 10-day posting and notification period triggering a City Council public hearing; and,

WHEREAS, all required publishing, posting and notification requirements for a September 10, 2012 City Council public hearing have been met.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows

A SPECIAL USE PERMIT TO ALLOW RECONSTRUCTION OF A QUASI-PUBLIC FACILITY AND A MAJOR HAUL OPERATION WITH VARIANCES IN A RESIDENTIAL-ONE (R-1) ZONE DISTRICT IS HEREBY APPROVED FOR THE FOLLOWING REASONS:

1. There will be a public benefit as a result of the reconstruction.
2. The proposed SUP will not contribute to blight in the neighborhood.
3. There will be benefits due to increased landscaping and pedestrian connections.
4. There will be no negative impact to utilities, parks, schools or other public facilities and services.

5. The criteria used to evaluate a Special Use Permit support the request.

With the following conditions:

1. All representations made during public hearing testimony and as detailed in the case file shall be adhered to.
2. Denver Water will keep citizens apprised of the project status through a regularly mailed newsletter.
3. Project status meetings will be held with City office personnel as needed.
4. The monitoring station be redesigned to emulate the existing well house on the property including but not limited to shape, materials used, and glazing or the well house be rebuilt somewhere else on the site.
5. Perimeter fencing be modified to have upright masonry pillars every 100'.
6. Additional plantings be shown on the western side of the access drive from W. 29th Avenue.

DONE AND RESOLVED by the City Council this 10th day of September, 2012.

By: _____
Jerry DiTullio, Mayor

ATTEST:

Janelle Shaver, City Clerk

**CITY OF WHEAT RIDGE
PLANNING DIVISION STAFF REPORT**

TO: City Council **CASE MANAGER:** Meredith Reckert

DATE: August 7, 2012

CASE NO. & NAME: SUP-12-03/ Ashland Reservoir

ACTION REQUESTED: Special Use Permit for reconstruction of the Ashland Reservoir and a major haul operation with variances

LOCATION OF REQUEST: 2901 Fenton Street
APPLICANT: Martin Garcia for Denver Water
APPROXIMATE AREA: 8.7 acres

PRESENT ZONING: Residential-One (R-1)

ENTER INTO RECORD:

(X) CASE FILE
(X) ZONING ORDINANCE (X) Digital presentation



All notification and posting requirements have been met; therefore, there is jurisdiction to make a decision regarding this request.

I. REQUEST

The applicant has prepared application binders for reference by City Council which include information pertinent to this request (*Exhibit 1, Application binder*). Throughout this report, there will be references to the different components of the request which are arranged by tabs in the application binder. There are also several other exhibits attached separately which will also be referenced in the report.

The site is zoned Residential-One (R-1), a zone district that provides for high quality, safe, quiet, stable, and low-density residential neighborhoods, and prohibits activities of any nature which are incompatible with the low-density residential character. Quasi-governmental uses are permitted in the R-1 zone district, but quasi-governmental uses with outside storage require a Special Use Permit (SUP).

The Special Use Permit is also required based on the scope of the excavation and fill operations for construction. The SUP and variance requests are being processed simultaneously. The variances will be addressed separately from the Special Use Permit (*Application Binder – Tab A, Letter of Intent*).

Section 26-114. (Special uses) of the Zoning and Development code defines the purpose of special uses as follows: “Special uses are discretionary uses which, if properly designed, developed, operated and maintained, may be approved for any specific location within a zone district wherein the special use is enumerated. The primary issues to be addressed are those related to justification of need and special design and operational considerations which mitigate potential detrimental impacts of a special use on surrounding land uses, the street system, or public services or facilities. In order to protect the public interest, a special use may be approved, approved with modifications or denied.”

This request started as an administrative application considered by the Community Development Director but because written concerns/objections were received during the administrative noticing period, it is being forwarded to City Council for a public hearing (*Exhibit 2, correspondence received*).

II. PROPERTY DESCRIPTION/HISTORY

The property is zoned Residential-One (R-1) and is almost entirely surrounded by residential neighborhoods. To the north and west are properties zoned Residential-Three (R-3). To the south is a single-family neighborhood zoned Residential-One C (R-1C). Across Fenton are properties zoned R-3, R-3A, and Commercial-One (C-1); these lots include the Wheat Ridge Manor Nursing Home, a gas station, and an auto repair shop. To the southwest across W. 29th Avenue are properties outside the boundary of the City of Wheat Ridge in the City of Edgewater.

The site contains Denver Water’s Ashland Facility which includes two underground reservoirs with a combined storage capacity of 41 million gallons of water (19 million and 22 million, respectively). The site has been home to a treated water facility since the late 1800’s. A series of upgrades have occurred over the last 100 years, including the installation of a precast concrete roofing system in the 1970s. This roofing system exists today and covers a majority of the site.

The elevation of W. 30th Avenue is nearly 20 feet higher than W. 29th Avenue. Steep berms run along the south and west property lines, and a retaining wall has been constructed along Fenton to accommodate the topography of the site. A small well house is located on the south side of the property. A chain link fence surrounds the entire property, and the primary vehicular access point is from W. 30th Avenue.

The Ashland Facility is one of only a few reservoirs in the north end of the region. Ashland is primarily fed by Denver Water's Moffat Treatment Plant at W. 20th Avenue and Quail Street. There is no pump station on the subject property and the water is transported by gravity flow east to Denver.

The property is currently nonconforming relative to structure setbacks, building coverage, landscaped coverage and fencing with barbed wire along the top. A site plan showing the existing conditions is included under *Tab E (Application Binder - Tab E, Sheet 2 of 21, existing site plan)*.

III. CASE ANALYSIS

Site Plan

The applicant, Denver Water, is proposing to demolish the existing reservoirs and construct two concrete water tanks that are 256 feet in diameter. Each tank will accommodate 10 million gallons of water; they will be 28-30 feet deep, but only one to two feet will be visible above grade. The existing facility is deteriorating and has reached the end of its useful life. In addition, the existing reservoirs provide excessive storage capacity, which when combined with degradation has created water quality concerns.

The replacement project is expected to begin construction in October 2012 and take approximately three years to complete. In addition to replacing and downsizing the reservoirs, the redesign will reduce the amount of impervious surface and address the aesthetics of the facility. The basins will consume the northern two-thirds of the site and the southern portion will be landscaped to more gradually accommodate the change in elevation. A detention pond will be located at grade at the intersection of W. 29th Avenue and Fenton with a small pull-off parking area for maintenance visits. An unmanned water quality facility is planned to be located on the northern portion of the site in proximity to 30th Avenue. The existing chain link fence is proposed to be replaced with a more decorative eight-foot high wrought-iron fence (*Application Binder, Tab E, Sheet 3 of 21, proposed site plan*).

Primary vehicular access to the water tanks will still come from W. 30th Avenue, and a driving path will encircle the two basins.

Following the replacement of the basins, Denver Water also seeks to upgrade piping and drain lines within surrounding rights-of-way, including Gray Street, Fenton Street, and W. 29th Avenue to Sheridan.

Landscaping

Section 26-502 of the zoning code establishes landscape standards for nonresidential development. The proposed site plan shows that roughly 55% of the site will be covered with live landscaping which exceeds the 25% minimum coverage for non-residential construction. The site plan also meets the requirement for numbers of trees and shrubs required. An eight-foot high wrought-iron fence will

surround the property. It has been suggested that the fence be upgraded with brick columns; however, Denver Water views this as a safety concern (*Exhibit 3, Austin letter*).

Well house/monitoring station

There is an existing well house/monitoring station on the southern side of the property. It is octagonal in shape with a river rock foundation, brick construction with windows/glazing on each of the eight facades and a red shingled roof. With 256 square feet of area, it appears to have been built sometime in the early 20th century. This structure is proposed to be demolished as part of the project.

A new structure is proposed for the northern portion of the site. With 380 square feet of area, it is denoted on sheet three of the site plan as a water quality building. The area of the structure includes valve vaults which comprise a total of 870 square feet. This proposed structure facade can be viewed on sheet 11 of the site plan package. It is proposed to be split-faced and smooth-faced concrete block with a shed-style roof. High windows are proposed at the offset roofline facing east (*Application binder – Tab E, Sheet 11 of 21, building elevations*).

Staff concludes that the proposed new structure is functionally designed with no interesting attributes. Although it is a relatively small building in an unusual context (public utility structure), the monitoring station is required to meet the standards of the Architectural and Site Design Manual (ASDM). As designed, it is inconsistent with the ASDM in the following areas: façade articulation, materials used and transparency/glazing. It is interesting to note that the existing well house with varied materials, attractive design details, windows and historic appearance is in conformance with the ASDM. Staff is recommending as a condition of the motion that the new structure be redesigned to emulate the existing well house in shape and materials to provide a reference to the historical significance of the property. An alternative would be to rebuild the existing structure somewhere else on the property, even if it is not functional.



View of well- house from W. 30th Avenue

Public improvements installation

Denver Water will be responsible for installation of new six-foot wide detached sidewalks and six-foot tree lawns with street trees along both Fenton and 30th Avenue. West 29th Avenue currently veers slightly south as it approaches the Fenton Street intersection. A small portion of right-of-way will be dedicated and the street reconstructed in this area to straighten it out which will include installation of new curb, gutter and detached sidewalk with street trees planted at 35-foot intervals.

Timeframe for construction/ Hours of construction operation

Construction is expected to commence in October of 2012 and be finished in the summer of 2015. Timeframes may shift slightly as the work progresses (*Application Binder – Tab D, Construction Timeline*).

Hours of operation are expected to be Monday-Friday from 7 AM to 5 PM. There are certain critical milestones in the construction process which will require a variance from Section 26-623 (Excavation and Deposit Control) of the zoning and development code relative to days and hours of construction. The milestones are related to the concrete placements for the large floor slab and roof deck for each tank. Specific dates are not identified until further along in the construction process. Impacted neighbors will be notified in advance of when these milestones will occur. It is expected that the pours will take 14 consecutive hours each and it is anticipated that this will require work on the weekends.

Temporary employee parking

The majority of the employee parking will be off-site from the project location. One of the proposed locations is the Sons of Italy Lodge located at 5925 W. 32nd Avenue. The Lodge is a fraternal organization which is located two blocks north of the construction site at the northeast corner of 32nd and Gray Street. Most activities at the lodge, which has over 100 parking spaces, occur either at night or on the weekends allowing ample room for daytime parking for the construction workers. There are sidewalks along both Gray and Harlan Street providing safe pedestrian access to and from the site.

Three construction trailers are anticipated to be parked along the south side of West 30th Avenue on the northern end of the site. Only a few construction management personnel will be allowed to park personal vehicles in this area. Adequate room will be available for two lanes of traffic and parking on the north side of 30th Avenue (*Application Binder – Tab G, 30th Avenue during construction*).

Hauling routes

There are several primary construction operations during the project which will impact adjacent streets. Due to concern from impact on surrounding public streets, the haul operation routes have been confined as much as possible to state highways; avoiding streets owned by Wheat Ridge, Edgewater and Lakewood.

The first component of the construction process is removal of debris excavated during demolition. The debris trucks will exit the site east via West 29th Avenue, turn right (south) on Sheridan, proceed west on Colfax to Kipling, north to 20th Avenue, and west to the Moffat YMCA Park site at Quail (*Application Binder – Tab G, Excavated Fill Haul Route*).

Inbound trucks carrying fill back to the site will be coming south on Sheridan, turning right (west) on 29th Avenue and proceeding to the project site. Empty vehicles leaving the site will travel east on 29th Avenue, turn south on Sheridan to Colfax where they will proceed west and turn north on Wadsworth (*Application Binder – Tab G, Imported Fill Haul Route*).

The final haul routes will accommodate ready mixed concrete deliveries southbound on Sheridan to either 29th Avenue or 30th Avenue, and upon delivery, will exit again to Sheridan, south to Colfax and north on Wadsworth (*Application Binder – Tab G, Ready Mix Haul Route*).

The City will require traffic control where necessary and will evaluate the pre-construction street conditions with post conditions for any damage occurring during the construction process.

IV. VARIANCE CRITERIA

The existing reservoir structure was originally built in the late 1890's and has been modified over the years with the last major investment being the concrete roofing system installed in the 1970's. To facilitate reconstruction with the proposed site plan, a number of variances are required as illustrated in the following chart.

R-1 Development Standards	Required	Proposed
Max. coverage by buildings:	25% maximum	29.9%
Min. landscaped coverage:	20%	55.36%
Min. fence height	6'	8'
Min. front setback	30' – Fenton Street	25'-9"
Min. side setback:	15' – west side 30' – 29 th Avenue side	50'-1" 276'-4"
Min. rear setback:	30' – W. 30 th Avenue side	69'-11"
Residential Screening	6' high solid fence or hedge or 15' wide landscaped area with plantings	All sides – 8' high wrought iron fence with plantings and berming where feasible
Construction hours of operation	Monday – Friday 7 AM to 5 PM	Longer hours and weekend work at four critical points in the construction process to be determined
Resulting variance requests:		4.9% building coverage 4'-3" front yard setback 2' high fence variance Variance to residential screening Variance to construction days and hours

Description of variance requests

Building coverage

The property is zoned R-1 which is the largest lot single family zoning designation in the City of Wheat Ridge. For single family development, the minimum lot size in the R-1 is 12,500 square feet with lot coverage maximum of 25%. Quasi-public uses in R-1 are required to have a minimum lot size of one acre and must also follow the 25% building coverage maximum. The Ashland property is over eight acres so it seems reasonable that the increase in building coverage variance is proportionate and will not be discernible. Even with a variance, the reduction of building coverage from current conditions is 60%.

Front setback reduction

The minimum front yard setback in the R-1 zone district is 30 feet. The front setback on a property is determined by the public street from which access is gained. If a property is a corner lot, the 30-foot setback is required from both street frontages. Because the Ashland property has three street

frontages, (29th, Fenton and 30th), the 30-foot setback is required on all three sides. The applicant is requesting a setback variance from Fenton of 4 foot, 3 inches relative to the east tank location.

Fence height

The maximum fence height in the City’s zone districts is six feet.. The existing fence is a six-foot chain-link with barbed wire on the top, lending a prison-like appearance. The applicant is requesting an eight-foot high fence for security purposes with upgraded fence materials (wrought iron). Staff is recommending the brick or masonry columns be interspersed every 100’ similar to the fence around the Moffat Treatment Plant at 20th and Oak. Denver Water views these columns as safety hazards.



Detail of perimeter fence at Moffatt Water Treatment plant at 20th/ Oak

Residential Screening

Section 26-502 (Landscaping) of the zoning and development code requires residential buffering by either a six-foot high solid fence or landscaped hedge or a 15-foot wide strip of landscaping with one shrub or tree for every two linear feet. Adjacent residential development abuts the development site on the south and western sides. Both of these residential areas are substantially lower with slopes between the homes and the top of the subject property. While there is at least 15 feet of landscaping adjacent to the residential neighbors, the slopes eliminate the option of tree and shrub installation. For security purposes, a solid fence does not meet the standards for Denver Water properties. Staff concludes that the change of grade provides adequate buffering for adjacent residential properties. Staff recommends that additional plantings be shown on the western side of the access drive from W. 29th Avenue.

Construction hours

Section 26-623 of the zoning and development code regulates excavation and deposit control operations. One of the performance standards which all operations must comply with are hours of operation from 7 AM to 5 PM on weekdays. Operations are restricted from occurring on Saturdays, Sundays and holidays.

There are several times during the construction period when these hours need to be extended to complete critical pours of the roof slabs and floor decks for each tank. This could include work after hours and on weekends.

Variance criteria

In order to approve a variance, City Council must determine that the majority of the criteria for review listed in Section 26-115.C.4 of the City Code have been met. Staff provides the following review and analysis of the variance criteria (*Application binder – Tab C, Applicant's responses to variance criteria*).

- 1. The property in question would not yield a reasonable return in use, service, or income if permitted to be used only under the conditions allowed by regulation for the district in which it is located.**

The reservoir could either remain as a deteriorating structure or be rebuilt. The proposed variances are primarily due to the unusual nature of the structure being built and the site characteristics. According to Denver Water, the reservoir is a critical component of water service to the Denver metro area which may mean that there may not be viable alternatives other than rebuilding the facility. The variances requested are based on the site configuration, functionality and safety of the operation and construction requirements.

Staff finds that this criterion *has* been met.

- 2. The variance would not alter the essential character of the locality.**

The issues of variances on their own will not alter the character of the locality and may not be discernible to the public eye. This is an area where most of the home construction occurred from the 1920's through the 1950's. A cursory review of case history in the area since incorporation indicates that there have been numerous variances granted in the past including front, side and rear setback variances, fence height variances, lot area variances and lot coverage variances. There are also properties in the immediate area which are nonconforming relative to use and parking.

Staff finds that this criterion *has* been met.

- 3. The applicant is proposing a substantial investment in the property with this application, which would not be possible without the variance.**

This project represents substantial capital investment in the property which may not be cost effective or may require substantial redesign without the variances. Denver Water is the primary water provider in the metropolitan area; uninterrupted water service is expected by the citizenry and property owners. The proposed reconstruction will ensure continued provision of this service.

Staff finds this criterion *has* been met.

- 4. The particular physical surrounding, shape or topographical condition of the specific property involved results in a particular and unique hardship (upon the owner) as**

distinguished from a mere inconvenience if the strict letter of the regulations were carried out.

The property has three street frontages which require 30-foot setbacks on each side. There is also a substantial grade change on the property with a 20-foot drop from the northwest corner of the site to the southeast. There are unique conditions relating to the existing site configuration and the quasi-public utility land use that supports the variance request.

Staff finds this criterion *has* been met.

5. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.

All structures deteriorate through time. The existing structure has been in place since the early 1900's. While upgrades and modifications have occurred on and off throughout the years, the threat of structural failure, while not eminent, is a fact that cannot be ignored. Reconstruction of the reservoir which is at the end of its useful life is being proactive rather than reactive.

Staff finds this criterion *has* been met.

6. The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, by, among other things, substantially or permanently impairing the appropriate use or development of adjacent property, impairing the adequate supply of light and air to adjacent property, substantially increasing the congestion in public streets or increasing the danger of fire or endangering the public safety, or substantially diminishing or impairing property values within the neighborhood.

Once completed the reservoir will benefit the public welfare and should be an improvement for neighboring properties. It would not hinder or impair the development of adjacent properties. The adequate supply of air and light would not be compromised as a result of the construction. Once constructed, the facility would not increase the congestion in the streets. The request will most likely not have a negative effect on property values in the neighborhood. The aesthetics of the property will be greatly improved (*Application Binder – Tab F, photo simulations*).

Staff finds that this criterion *has* been met.

7. The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.

The circumstances are unique to the property. When the use of the property for water storage and maintenance purposes began in the 1890's, it was probably thought of as being in the country side. Although subdivisions to the east were approved in the late 1890's and early 20th century, residential areas to the south, north and west are more contemporary, having been subdivided in the 1940's and '50's. As Wheat Ridge continued to suburbanize, the reservoir became more entrenched in this primarily single family neighborhood.

Staff finds that this criterion *has not* been met.

8. Granting of the variance would result in a reasonable accommodation of a person with disabilities.

Approval of the subject variances would not result in a reasonable accommodation of a person with disabilities.

Staff finds that this criterion is *not applicable*.

9. The application is in substantial compliance with the applicable standards set forth in the Architectural and Site Design Manual.

Many of the proposed improvements on the site are consistent with the goals identified in the ASDM. Those would be increased pedestrian connectivity and upgraded landscaping. However, the proposed monitoring station is unattractive, is inconsistent with several building design standards and does not reflect the historical significance of the property.

Staff finds that this criterion *has not* been met.

IV. SPECIAL USE PERMIT CRITERIA

Before a special use application is approved, the applicant shall show and the City Council shall find that the majority of the proposed special use criteria have been met. Staff provides the following review and analysis of the SUP criteria (*Application binder – Tab B, Applicant's responses to SUP criteria*).

1. The special use will not have a detrimental effect upon the general health, welfare, safety and convenience of persons residing or working in the neighborhood.

According to the applicant, reconstruction of the reservoir which is deteriorating is critical for the safety of area residents and the greater metropolitan area. Because of the advanced age and excess capacity of the tanks, maintenance of good drinking water has proved to be a challenge. Since Ashland is one of the only water reservoirs on the north side of the metro area, the need for the reservoir is critical for the Denver Water service system.

The convenience of the neighborhood will be disrupted with the construction which will take three years to complete. However, the public benefits of construction and the health, safety and welfare of the public outweigh the neighborhood inconvenience. Proper care must be taken by the applicant during construction to minimize negative impacts operations.

Staff concludes that this criterion has been met.

2. The special use will not create or contribute to blight in the neighborhood by virtue of physical or operational characteristics.

The property is currently an eyesore due to its physical appearance and lack of maintenance. Of the 8.7 acres, almost 75% is covered with unattractive concrete. What landscaping there is around the perimeter is comprised of “native grass” with unmaintained bushes and sucker trees. A chainlink fence with barbed wire encompasses the site giving it a “prisonlike” appearance. The proposed site modifications will greatly increase the aesthetics of the property (*Application Binder – Tab F, Photo simulations*).

Staff concludes that this criterion has been met.

3. The special use will not create adverse impacts greater than allowed under existing zoning for the property.

The property is zoned R-1 which allows single family residential development on properties with a minimum lot size of 12,500 square feet. Approximately 25 homes could be accommodated on the site, which would require installation of an internal public street system. A loose rule of thumb is that each residence generates 10-12 trips per day. Given these standards, roughly 250-300 additional trips will be generated each day by the single family development.

During construction there will be impacts to the adjacent neighborhoods. Once construction is completed, there will be little impact from the public utility use.

Staff concludes that this criterion has been met.

4. The special use will not result in undue traffic congestion or traffic hazards, or unsafe parking, loading, service of internal traffic conflicts to the detriment of persons whether on or off the site.

Parking accommodations for most employees will occur off-site which will reduce impact to the adjacent neighborhood streets. The approved haul routes focus primarily on state highways outside of the Wheat Ridge City limit lines. Construction trailer siting will be located on the northern portion of the site maintaining clear access on 30th Avenue. Care must be taken by the contractor to maintain free access on other adjacent streets.

The reservoir is a long-standing presence in the neighborhood and is generally a low traffic generator. Once the facility reconstruction is completed, there will be very minimal traffic generated by the site.

Staff concludes that this criterion has been met.

5. The property is appropriately designed, including setbacks, heights, parking, bulk, buffering, screening and landscaping, so as to be in harmony and compatible with the character of the surrounding areas and neighborhood, especially with adjacent properties.

Once completed, the property should have a positive impact on the neighborhood due to the increase in landscaped coverage, plant materials and reduction in impervious surface. While it is considered a public utility, which could be considered inconsistent with a residential neighborhood, the landscape treatments, including berms, mitigate the visual impact.

Staff concludes that this criterion has been met.

6. The special use will not overburden the capacities of the existing streets, utilities, parks, schools and other public facilities and services.

There will be impacts on the surrounding public streets during construction although the applicant has tried to mitigate these impacts as much as possible. There will be no impact to utilities, parks, schools or other public facilities and services.

Staff concludes that this criterion has been met.

7. There is a history of compliance by the applicant and/or property owner with Code requirements and prior conditions, if any, regarding the subject property.

No history was found regarding code requirements or violation of prior conditions of approval on the subject property.

Staff concludes that this criterion has been met.

8. The application is in substantial compliance with the applicable standards set forth in the Architectural and Site Design Manual.

Many of the proposed improvements on the site are consistent with the goals identified in the ASDM. Those would be increased pedestrian connectivity and upgraded landscaping. However, the proposed monitoring station is unattractive, is inconsistent with several building design standards and does not reflect the historical significance of the property.

Staff finds that this criterion *has not* been met.

V. NEIGHBORHOOD MEETING

A meeting for neighborhood input required by the SUP application was held on February 21, 2012. A summary of the meeting and attendance sheets are attached (*Exhibit 4 and 5, neighborhood meeting recap and sign-up sheets*).

VI. AGENCY REFERRALS

Referrals were sent to impacted agencies with responses below.

City of Edgewater: Commented on potential traffic impacts and interruption of water serve. Applicant has met with Edgewater to discuss haul routes and roadway condition; documentation will be required.

Xcel Energy: Owns and operates existing natural gas and electric distribution facilities in the project area which must be accommodated.

Wheat Ridge Sanitation District: An existing sanitary sewer line on site must be abandoned. Piping plan upgrades have been added to the plan.

Wheat Ridge Fire Protection District: Has requested advanced notice of any road closures during construction. An additional fire hydrant will be required at the northeast corner of Ingalls Street and W. 29th Avenue.

Wheat Ridge Building Division: Has conversed with the contractor regarding the building permit review process.

Wheat Ridge Police: No concerns.

Wheat Ridge Public Works: Has reviewed drainage report and traffic mitigation plans. Has worked with applicant on the proposed IGA.

Contacted but not responding: AT &T Broadband, Wheat Ridge Water District, Qwest Communications, CDOT and Wheat Ridge Building Division.

VII. STAFF RECOMMENDATION

Staff concludes that there are unique circumstances due to the quasi-public use and unusual site characteristics. The fact that the property is entrenched in a low-density residential neighborhood makes it particularly important that proposed traffic and construction impacts be mitigated. Staff concludes that once the structure is completed, there will be very little traffic generated by the site and there should be a substantial improvement in the aesthetics of the property.

Staff further concludes that the applicant has addressed as many of the negative impacts as possible. For these reasons, staff is recommending approval of both the variances and the Special Use Permit, with recommended conditions listed in the Council Action Form.

Memorandum

TO: Case No. SUP-12-3/Ashland Reservoir
FROM: Meredith Reckert, Senior Planner
DATE: August 8, 2012
SUBJECT: Comment letters received

The following are written comments received as a result of the administrative posting. Deadline for objection was Monday, August 6 at 5:00 PM.

Carl Zarlengo, administrator of Wheat Ridge Manor Nursing Home – 2920 Fenton Street

Date of contact: August 6 at 3 PM

Concerns: ease of access to the property located on the east side of Fenton Street – 60 or so residents with 120 employees, need for 24-hour emergency response accessibility, potential disruption of utility service, aesthetics/impacts of three year project, dust and noise from on-site demolition

Applicant came in to discuss on August 6

Bud Starker

Date of contact: August 6; written comments received August 6 at 5:31 PM

Area property owner at 3019 Eaton Street

Concerns: Would like to see perimeter fence upgraded to have brick pillars. Denver Water has responded that this is a safety concern for people trying to climb it and providing “cover” for vandals – Written rationale from applicant was provided to Mr. Starker. Also, whether the southern access from W. 29th Avenue is confined with curb and gutter.

Mary White, board member of Largo Condo Association at 2890 Harlan Street (14 unit condo in city of Edgewater)

Date of contact: July 17, August 7 (both via email)

Concerns: Wondered whether there will be impact on them. Also, potential gas line replacement around 28th/Harlan

David and Dawn Kueter – 5837 W. 29th Avenue (directly to the south of reservoir)

Date of contact: Undated letter dropped off to KJ – no date stamp. Also indicates it was emailed. Was not taken in through Clerk’s office

Concerns: As adjacent property owners, would like to see “hill” on south side of property left in place during reconstruction; would like work hours limited to specific hours and no work on weekends; would like to see routing of traffic down Gray to 26th to reduce impacts on 29th; not objecting to project but would like impacts minimized.



received
8-6-12

August 6, 2012

City Of Wheat Ridge
7500 West 29th Avenue
Wheat Ridge, Colorado 80033-8001

Case No. SUP-12-03, Approval for a Special Use Permit
RE: Denver Water Ashland Reservoir Replacement Project

As requested in your letter dated July 27, 2012, as Administrator of Wheatridge Manor Care Center, I would like to address some significant concerns and ask for clarifications with regard to the Ashland Reservoir Project.

At Wheatridge Manor Care Center, our success depends on a multitude of variables, many of which will be affected during this project.

*Ease of access to our property by Residents, Family, Friends, Employees and Potential Residents- The core of our business revolves around providing service to 60+ elderly Residents, making it extremely important that we have close-in handicap parking, as well as close and convenient Family and Visitor parking available at all times. We have 120 employees who depend on the use of Fenton Street for parking. For us to continually develop and grow our business there must be a certain level of convenience for those shoppers who are considering putting their loved ones in Wheatridge Manor. We must retain our ability to provide ease of access, and an inviting "First Impression". Congestion and limiting of use on Fenton Street will directly impact our ability to generate new business. We must continue to offer an appealing and easily accessible setting. How can we achieve this during the various construction phases?

*The ability for 24-hour access for any and all Emergency Responders- Given the population we serve, we must be guaranteed 24-hour access for any and all Emergency Responders without exception. On any given day, we will have an ambulance visit 2 to 3 times. How can we be assured of uninterrupted emergency access?

*Disruption of Services- During construction, any disruption of service affects 100+ people at a time. The prospect of going any length of time without water or sewer services is unimaginable and there must be back-up plans in place for these situations. What are some options you can propose?

*A pleasant living environment for our Residents- Along with the quality care we provide our Residents, another appealing aspect of Wheatridge Manor is our quiet neighborhood setting. There is a calm that people experience both within our building as well as throughout our exterior grounds. Construction is bound to result in dust, noise, trash, debris, and large volume of truck traffic in the area. What can be done to minimize these concerns?

*The projected duration for this project is approximately 3 years. Is there a time table available so we can see what exactly the phases of the project will be to give us a better idea what times will be more challenging to us than others.

One of the concerns addressed by the Denver Water Board was dealing with the aftermath of leaking gasoline tanks on the south side of our property. A proposed solution is to build a "Grout Curtain". Could you clarify what exactly that is and where it would be located and how construction would affect us?

Other proposed improvements that potentially can have an effect on us are

- Replacement of Filling Valve on 30th and Fenton
- Replacement of off-site transmission piping south on Fenton and east on 29th
- Construction of storm sewer improvements

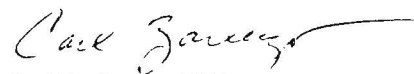
It was mentioned that this project will require an off-site staging location for stockpiling and storage. Has it been determined where this location might be? Will the haul routes have an impact on us?

Will there be on-site processing of demolished concrete? If so, what part of the site will it be located on? How much dust and noise will be generated?

As the City Council is aware, Wheatridge Manor Care Center has been serving the Wheat Ridge community since 1971 and has earned a reputation for quality care and services. An ongoing concern we have faced throughout the years is that of adequate parking. With the entire west side of Fenton Street being reconstructed and designed, we respectfully ask that improved parking for that side be considered, in the form of indented diagonal parking spaces. This is a perfect opportunity for this to be considered. Over the last 40 years of dedicated service, Wheatridge Manor has touched the lives of so many in the community one way or another, and we will continue to do so for many years to come. We are proud of our location and the contributions we have made to the community.

Thank you for your time and consideration.

Respectfully,



Carl Zarlengo, NHA

Wheatridge Manor Care Center

Meredith Reckert

From: William J. Starker <wstarker@starker.net>
Sent: Monday, August 06, 2012 5:31 PM
To: Meredith Reckert
Cc: Davis B. Reinhart
Subject: Ashland Reservoir SUP

Meredith,

I have two concerns with respect to the special use permit for Denver Water Department on the Ashland Reservoir project:

1. We discussed during the early stages of this project the installation of brick piers in conjunction with the installation of the 8' security fence around the perimeter of this facility, similar to the fence installation at their Moffat treatment plant. I understand the security concerns outlined in their memo of 6/5/12 but feel the brick piers could be designed so as not to have hand and/or foot holds. The installation of an 8' steel bar security fence without some architectural detail is not in keeping with the residential character of the neighborhood.
2. The south side of the property has an asphalt parking and/or staging area. From the design I remember for this area, I do not recall the perimeter of this area being confined with concrete curb and gutter. I believe a paved area of this nature should have perimeter concrete curb and gutter confinement to protect the edge of the asphalt.

Thank you very much for your consideration of these comments. Please feel free to contact me if you have any questions.

Sincerely yours,

William "Bud" Starker
Wheat Ridge City Council
District 1
(303) 598-9671
bstarker@ci.wheatridge.co.us

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Meredith Reckert

From: Meredith Reckert
Sent: Tuesday, August 07, 2012 10:00 AM
To: 'Mary White'
Subject: RE: Question

Hi, Mary

I am not aware of any gas line improvements as part of the project; only the water line replacements in 29th Avenue and Gray Street.

Meredith

Meredith Reckert, AICP
Senior Planner
Office Phone: 303-235-2848



From: Mary White [<mailto:mwhite2090@comcast.net>]
Sent: Tuesday, August 07, 2012 8:39 AM
To: Meredith Reckert
Subject: RE: Question

Thank you for the response. Are there any plans to replace gas lines around 28th and Harlan Street? Someone mentioned this and I just wanted to get the facts straight. Thank you!

From: Meredith Reckert [<mailto:mreckert@ci.wheatridge.co.us>]
Sent: Tuesday, July 17, 2012 8:38 AM
To: Mary White
Subject: RE: Question

Hi, Mary

Thanks for your inquiry. I wouldn't think that you condos would be impacted from a traffic standpoint. The major haul route to move things in and out is limited to 29th and Sheridan. However, the project is expected to take three years. I would think that in the early demolition stages there will be noise impacts and of course, the sound of trucks entering and leaving the site.

WE are still in the process of reviewing the application for special use but it should be set for administrative noticing in the next couple of weeks. Adjacent property owners are noticed and posting signs are put on the property for ten days for input and comments. If we do not receive complaints, it can be approved administratively; if we received legitimate complaints it will be set for City Council public hearing.

If you have any more questions, please let me know. The full application package is available for viewing in our offices. If you'd like to come in, please let me know if advance so I can have the file ready.

Meredith

From: Mary White [mailto:mwhite2090@comcast.net]
Sent: Tuesday, July 17, 2012 8:27 AM
To: Meredith Reckert
Subject: Question

Will this have any effect on 28th and Harlan Street? I am on the board for the Largo Condo Association located at 2890 Harlan Street.

Thank you.

**Southeast Water and
Drainage Projects
Ashland Reservoir**

Denver Water is planning to replace the existing large reservoir located at the northwest corner of 29th Avenue and Fenton Street with two smaller round water storage tanks. They are also upgrading and replacing much of the underground pipe system immediately adjacent to the site.

Denver Water is required to process a special use permit prior to commencement of construction, which is expected to begin this October and will last for three years. A pre-application neighborhood meeting was conducted in February, and residents were given the opportunity to discuss the project with Denver Water's design team and City staff.

The application for special use is expected to be filed later this month.

For more information, contact Senior Planner Meredith Reckert, visit the City website at www.wheatridge.co.us, or visit the Denver Water website at www.denverwater.org/ConstructionProjects/ConstructionWorkAffectingCustomers/Ashland/

David L. Kueter
Dawn L. Kral-Kueter
5837 West 29th Avenue
Wheat Ridge, Colorado 80214
303.433.0829
david@kralkueter.com

VIA E-MAIL/ORIGINAL BY HAND DELIVERY

Ken Johnstone, AICP
Community Development Director
City of Wheat Ridge
7500 West 29th Avenue, 2nd Floor
Wheat Ridge, Colorado 80033

RE: CASE NO. SUP-12-03, SPECIAL USE PERMIT FOR ASHLAND RESERVOIR

Dear Mr. Johnstone:

We live at 5837 West 29th Avenue in Wheat Ridge. The Ashland Reservoir site abuts our back fence, and we appreciate the opportunity to comment on the request for approval of Special Use Permit in Case No. SUP-12-03.

Due to the limited timeframe for public comment, we have not yet had the opportunity to review the application filed with the City of Wheat Ridge by Denver Water for the reconstruction of the Ashland Reservoir water tanks. However, we have been in regular communication with representatives of Denver Water, and have attended informational meetings regarding the project conducted by Denver Water and by our representatives on City Council.

Since our property is immediately adjacent to the proposed site, it will come as no surprise that we have concerns regarding the impact of the proposed reconstruction on our property and on our day-to-day lives. These include concerns regarding noise, dust, truck traffic, and damage to our property due to reconstruction operations.

Based on these meetings and conversations, we support the imposition of terms and conditions minimizing the impact to neighboring properties, including:

1. Denver Water's proposal to leave the existing hill on the south side of the property in place during reconstruction as a buffer to neighboring properties;
2. Limiting the work on the site to specific hours of the day, and restricting operations on weekends; and
3. Routing truck traffic down Gray Street to 26th Avenue to reduce traffic impacts on 29th Avenue.

August 3, 2012
Page 2

In conclusion, based on the plans we have seen and our discussions with representatives from Denver Water, we believe that the final reconstruction of the Ashland Reservoir water tanks and associated reclamation of the overlying property will be a significant improvement, both to our property, and to the City as a whole. We also understand that no project of this scale can occur without some adverse impact to the surrounding area. We are relying on the City's review process to help minimize those impacts to the extent possible.

Thank you again for the opportunity to provide comments. We would appreciate if you could notify us of any future hearings which may be held on this application, and any additional opportunities for public comment.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Kueter", written in a cursive style.

David L. Kueter

A handwritten signature in black ink, appearing to read "Dawn L. Kral-Kueter", written in a cursive style.

Dawn L. Kral-Kueter

Meredith Reckert

From: William J. Starker <wstarker@starker.net>
Sent: Monday, August 06, 2012 5:31 PM
To: Meredith Reckert
Cc: Davis B. Reinhart
Subject: Ashland Reservoir SUP

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Thank you very much for your consideration of these comments. Please feel free to contact me if you have any questions.

Sincerely yours,

William "Bud" Starker
Wheat Ridge City Council
District 1
(303) 598-9671
bstarker@ci.wheatridge.co.us

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DENVER WATER

1600 West 12th Avenue • Denver, Colorado 80204-3412
Phone 303-671-4000 • Fax No. 303-620-6199 • www.denverwater.org

TO: Whom it May Concern

FROM: Craig Austin, Manager of Safety & Security

DATE: June 5, 2012

SUBJECT: Perimeter Security - Ashland Reservoir

Dear Sir/Madame,

As you are aware, Denver Water (DW) is in the final design stages of the Ashland Reservoir facility, which will be located at 2901 Fenton St. When complete, this facility will consist of two (2) 10 Million Gallon Potable Drinking Water Reservoirs and associated Water Quality Monitoring Station facilities. The facility will support the service of drinking water to the approximately 1.2 million drinking water customers in and around the City & County of Denver, and just as importantly, the facility will support Critical services such as firefighting, health care (hospitals and clinics), and other dependent and interdependent vital functions that would suffer negative impacts from a denial of water service from this facility.

The Department of Homeland Security (DHS) has identified the drinking water sector as one of 17 National Critical Infrastructure/Key Resources (CI/KRs). The decision to include the water sector is based on the fact that the drinking water sector is vulnerable to a variety of potential attacks, including contamination with deadly agents, and physical and cyber attacks. If these attacks were to occur, the result could be large numbers of illnesses or casualties or denial of service that would also affect public health and economic vitality.

Therefore, as we went about designing the facility we wanted to be sure to include security concepts and features that provide the level of security commensurate with the importance of a facility of this nature. In doing so we followed the guidance provided in the DHS National Infrastructure Protection Plan, the DHS Water Sector Specific Plan, as well as industry-specific "Guidelines for the Physical Security at Water Utilities". With regards to security vulnerabilities, we also had the benefit of learning from risk assessments at many similar facilities to include those in DW's inventory.

With all that being said, we wanted to address your specific request to have "brick pillars" integrated into the perimeter fencing for aesthetics purposes. While we agree that brick pillars do present an aesthetically pleasing appearance, they do not fit in with any of the primary purposes of a perimeter fence, especially as it applies to this type of facility. To the contrary, they would provide an attractive and easy method for an adversary to compromise the perimeter by scaling the pillar(s) using the hand and foot holds naturally provided in the structures. Additionally, they also provide areas (potentially 24) that cannot be observed from the inner perimeter. As such an adversary or some number of adversaries could use the area behind the pillars to provide cover of their activities or to hide or stage materials for later use.



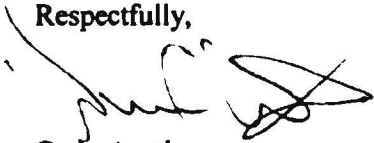
CONSERVE

EXHIBIT 3

In 2004 DW installed new perimeter fence at two locations and included these structures in a portion of those perimeters. Subsequently, we've had several independent security risk assessments conducted at these facilities, and this aspect of the perimeter fence has been quickly and easily identified as a vulnerability that an adversary would likely take advantage of. Further, although DW has subsequently completed several new and/or existing fencing improvement projects we have not used this design feature, nor do we intend to, based primarily on the clear vulnerability it presents.

In closing, we believe you will be equally pleased by the fence product included in the design. It is marketed as presenting an aesthetically pleasing appearance that fits well even in a residential setting as well as meeting the very important need of providing an effective security feature. As a neighbor we appreciate your input and look forward to working with you as we complete the design and begin construction. Please call or email if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Craig Austin', with a stylized flourish at the end.

Craig Austin
Manager of Safety & Security
Denver Water

NEIGHBORHOOD MEETING NOTES

Date: February 21, 2012

City Staff Present: Meredith Reckert, Senior Planner
Tim Paranto, Director of Public Works
Wade Hammond, Wheat Ridge Police Department
Kevin Armstrong, Wheat Ridge Police Department

Others present: Bud Starker, District I Council representative
Kelly Brooks, Wheat Ridge Fire Protection District

Location of meeting: Sons of Italy Lodge
5925 W. 32nd Avenue
Wheat Ridge, CO 80033

Property location: Northwest corner of 29th and Fenton (5801 W. 29th Avenue)

Applicants : Denver Water

Property owners: Same

Property Owner(s) present? Yes

Existing Zoning: Residential-One, R-1

Comprehensive Plan Designation: Neighborhood

Members of the public present: See attached sign- up sheet

Applicant's Proposal:

The applicant, Denver Water, is proposing to demolish the existing reservoirs and construct two concrete water tanks that are 256 feet in diameter. Each tank will accommodate 10 million gallons of water; they will be 28-30 feet deep, but only 1-2 feet will be visible above grade. The existing facility is deteriorating and has reached the end of its useful life. In addition, the existing reservoirs provide excessive storage capacity, which combined with degradation has created water quality concerns.

The replacement project is expected to begin construction in October 2012 and take approximately three (3) years to complete. In addition to replacing and downsizing the reservoirs, the redesign will reduce the amount of impervious surface. The basins will consume the northern two-thirds of the site and the southern portion will be landscaped to more gradually accommodate the change in elevation. A detention pond will be located at grade at the intersection of W. 29th Avenue and Fenton. A parking area and unmanned water quality facility are also planned to be located on the W. 29th Avenue frontage. The existing chain link fence is proposed to be replaced with a more decorative 8-foot high wrought-iron fence.

Vehicular access to the water tanks will still come from W. 30th Avenue, and a driving path will encircle the two basins. The project team is evaluating the feasibility of providing a hydropower facility on site somewhere along the north side of the property.

Following the replacement of the basins, Denver Water also seeks to upgrade piping and drain lines within surrounding rights-of-way, including West 29th Avenue and Gray Street.

Denver Water will be required to apply for a special use permit to allow reconstruction of the reservoir.

Existing Conditions:

The property is located on six (6) acres north of W. 29th Avenue, west of Fenton Street, and south of W. 30th Avenue. The parcel does not have an assigned street address.

The property is zoned Residential-One (R-1) and is almost entirely surrounded by residential neighborhoods. To the north and west are properties zoned Residential-Three (R-3). To the south is a single-family neighborhood zoned Residential-One C (R-1C). Across Fenton are properties zoned R-3, R-3A, and Commercial-One (C-1); these lots include the Wheat Ridge Manor Nursing Home, a gas station, and an auto repair shop. To the southwest across W. 29th Avenue are properties outside the boundary of the City of Wheat Ridge in the City of Edgewater.

The site contains Denver Water's Ashland Facility which includes two (2) underground reservoirs with a combined storage capacity of 41 million gallons of water (19 million and 22 million, respectively). The site has been home to a treated water facility since the late 1800's. A series of upgrades have occurred over the last 100 years, including the installation of a precast concrete roofing system in the 1970s. This roofing system exists today and covers much of the site.

The elevation of W. 30th Avenue is nearly 20 feet higher than W. 29th Avenue. Steep berms run along the south and west property lines, and a retaining wall has been constructed along Fenton to address the topography of the site. A small well house is located on the south side of the property. A chain link fence surrounds the entire property, and the primary vehicular access point is from W. 30th Avenue.

The Ashland Facility is one of only a few reservoirs in the north end of the region. Ashland is primarily fed by Denver Water's Moffat Treatment Plant at W. 20th Avenue and Quail Street. There is no pump station on the subject property; the water is transported by gravity flow east to Denver.

The following issues were discussed:

Will Denver Water be required to go through any city processes to allow for the reconstruction?

Yes, they will be required to apply for a Special Use Permit to allow a construction of a public utility structure with major impacts. A Special Use Permit can be approved administratively; however, it will most likely require a public hearing in front of City Council. The neighborhood meeting being held this evening is the first step of the SUP process.

Will it be necessary to interrupt water service to the neighbors? *Water service will be uninterrupted to the neighborhood, unless there is an accidental water main break.*

Where will parking occur for construction personnel? *That is still being worked out – they are considering have parking at the Moffat station at 20th and Quail with shuttles running back and forth to the site.*

What will be the impact on the City's streets? *All contractors working on the project must be*

licensed and bonded. Also, the City will enter into an IGA with Denver Water outlining construction responsibilities. There will be pre and post- construction inspections to ensure the streets are brought up to pre-construction conditions.

Will the project be phased? *No.*

Why is the capacity of the tanks being reduced from 40 million gallons down to 20 million gallons? *20 million gallons of capacity is all they need at Ashland due to improvements elsewhere in the water delivery system. If the reservoirs are oversized and contain too much water there can be resultant water quality issues. There have been no water quality issues at Ashland due to active management by Denver Water to control the volume of water stored in the reservoirs.*

What will be the hours of operation for construction activity? *Typically, 7 AM through 5 PM Monday through Friday. They may ask for extended hours based on certain trigger points in the construction process such as during large concrete pours for the floor and lid.*

How will noise be mitigated? *Most noise will occur during the demolition period. The demo on the first tank is expected to take about seven weeks. Once that is complete the work will take place below grade in the "hole". Although Denver Water doesn't typically notify the neighbors regarding when the most noise will occur, there will be information on the construction schedule on Denver Water's website.*

How will storm drainage from the site be addressed? *During the construction process silt fences and hay bales will be used to help control run-off. A new detention pond is being constructed at the southeast corner of the property to serve as permanent detention for the site.*

Will Denver Water maintain the landscaping? *Yes. This should include trash pick-up of debris caught in the fence.*

Will a security fence be built around the site similar to the Moffat facility? *The plan is for erection of an 8' high wrought iron fence. No brick pillars are being proposed.*

Who will be inspecting the site construction? *City of Wheat Ridge public works' inspectors will be performing inspection in the rights-of-way. The City may use contract inspectors for inspections required on private property.*

What public improvements are expected to be installed? *West 29th Avenue currently has a curve in it and will be straightened out as part of the public improvements requirements. This will include installation of curb, gutter and sidewalk with a tree lawn and new detached sidewalk. The existing retaining wall along Fenton will remain with new detached walk and tree lawn will be installed. It is possible that once the improvements are constructed, the traffic signal at the 29th and Fenton intersection may not be needed due to increased sight distance.*

How will dust be controlled? *Using construction industry best management practices such as water spray.*

How will the city of Wheat Ridge benefit from the construction? *The improvements constructed along 29th Avenue will be a benefit, as will visual benefits from the reduction of concrete and increase in landscaped coverage. There will also be fees required for building permit review and use tax on materials.*

ASHLAND RESERVOIR MEETING SIGN-IN SHEET

Meeting Date: February 21, 2012

Please sign in to receive updates on the proposed project

Name	E-Mail	Address (optional)
James D. Boettcher		3830 Weber Rd Wheat Ridge, Co. 80033
STAN BRALEY	BEYONDSOLUTIONSX@YAHOO.COM	3005 FENTON ST.
Eileen Thode		Mailing address 9605 W. 51st Pl. Arvada 80002 3109 Fenton St
Matt & Shannon Rhoades	houseofrhoades@gmail.com	2825 Fenton St 80214
KELLY BROOKS	KBROOKS@WRFIRE.ORG	3800 UPHAM ST 80033
Stephen P FLUG		2845 EATON ST 80214
BUD STARKER	WSTARKER@STARKER.NET	3019 EATON ST 80214

EXHIBIT 5

ASHLAND RESERVOIR MEETING SIGN-IN SHEET

Meeting Date: February 21, 2012

Please sign in to receive updates on the proposed project

Name	E-Mail	Address (optional)
Evelyn Merriott	emmerriott@msn.com	6115 W. 38 th Ave Wheat Ridge CO 80214
RON BERGREN	RONBER@LAKEWOOD.ORG	6109 W. 29 th AVE WHEATRIDGE CO 80214
Lynn Noguchi	LANOGUCHI@comcast.net	3000 Ingalls St Wheat Ridge, CO 80214
Jean Schellenj	Pettyduke@aol.com	3009 Repew St Wheat Ridge CO 80214
TROY PHELPS	SLJQ365@GMAIL.COM	2931 DEPEW ST 80214

ASHLAND RESERVOIR MEETING SIGN-IN SHEET

Meeting Date: February 21, 2012

Please sign in to receive updates on the proposed project

Name	E-Mail	Address (optional)
David Kueter Dawn Kral-Kueter	david@kralkueter.com	5837 W 29 th Ave 80214

REQUEST FOR CITY COUNCIL ACTION**TITLE: RESOLUTION NO. 45-2012 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY AND COUNTY OF DENVER REGARDING DENVER WATER'S ASHLAND RESERVOIR**

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING (mm/dd/yyyy) |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING (mm/dd/yyyy) |
| <input checked="" type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: YES NO

Director of Public Works

City Manager**ISSUE:**

Denver Water has plans to replace the Ashland Reservoir at 29th Avenue and Fenton Street. An intergovernmental agreement is proposed to address the many issues of this impactful project. The agreement addresses the City's land use requirements, possible damage of the City streets, right-of-way dedication and possible use by the City of a water line Denver Water will be taking out of service.

PRIOR ACTION:

Denver Water made a presentation to City Council at the December 19, 2011 Study Session.

FINANCIAL IMPACT:

Permit fees and use taxes will be collected.

BACKGROUND:

The City of Denver has maintained water storage reservoirs at the Ashland site since the 1890s. The current reservoirs leak and the roof sections have developed cracks. The existing 41-million gallon reservoirs will be replaced with two 10-million gallon concrete tanks. The reservoir replacement project is expected to take approximately three years and require more than 20,000 heavy dump truck trips over City streets.

An intergovernmental agreement has been negotiated to insure that Denver Water repairs any damage to the streets resulting from the project. The agreement also requires that Denver Water apply for a Special Use Permit and Building Permit, pay applicable use taxes and dedicate right-of-way along 29th Avenue.

Denver Water has two delivery water mains on 29th Avenue, east of the Ashland Reservoir. Recent analysis has determined that only one pipeline is needed to serve customers and a 42-inch main will be taken out of service early next year. City Staff has determined that the soon-to-be-abandoned Denver Water line can be converted to a City storm sewer and incorporated into the current project being designed to address some of the drainage issues in the south-east part of the City. The agreement allows the City to acquire the pipeline, without cost, upon inspection in February, 2013.

RECOMMENDATIONS:

Staff recommends approving the intergovernmental agreement with the City and County of Denver regarding the Ashland Reservoir replacement project.

RECOMMENDED MOTION:

I move to approve Resolution No. 45-2012, a resolution approving an intergovernmental agreement with the City and County of Denver regarding Denver Water's Ashland Reservoir."

Or:

"I move to table indefinitely Resolution No. 45-2012, a resolution approving an intergovernmental agreement with the City and County of Denver regarding Denver Water's Ashland Reservoir for the following reason(s)

REPORT PREPARED BY:

Tim Paranto, Director of Public Works

ATTACHMENTS:

1. Resolution No. 45-2012
2. Denver Water IGA

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 45

Series of 2012

TITLE: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY AND COUNTY OF DENVER REGARDING DENVER WATER'S ASHLAND RESERVOIR

WHEREAS, Denver Water owns and operates its Ashland Reservoir in the City of Wheat Ridge; and

WHEREAS, Denver Water is in the process of replacing and improving its Ashland Reservoir facilities; and

WHEREAS, the City has ordinances and processes that require Denver Water to undertake certain obligations;

NOW, THEREFORE, BE IT RESOLVED by the Wheat Ridge City Council, that:

Section 1. Agreement Approved.

The Intergovernmental Agreement with the City and County of Denver Regarding Denver Water's Ashland Reservoir is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2. Effective Date _____.

This Resolution shall be effective immediately upon adoption.

DONE AND RESOLVED this _____ day of _____, 2012.

Jerry DiTullio, Mayor

ATTEST:

Janelle Shaver, City Clerk

**INTERGOVERNMENTAL AGREEMENT
REGARDING DENVER WATER'S ASHLAND RESERVOIR**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), dated this _____ day of August, 2012, is made and entered into by and between the CITY OF WHEAT RIDGE, STATE OF COLORADO, a home rule municipality of the State of Colorado (the "City"), and the CITY AND COUNTY OF DENVER, acting by and through its Board of Water Commissioners ("Denver Water") a home rule municipality of the State of Colorado.

RECITALS

1. Denver Water owns and operates its Ashland Reservoir in the City of Wheat Ridge, Colorado.
2. Denver Water is in the process of replacing and improving its Ashland Reservoir facilities as described generally below (the "Project").
3. Denver Water may modify its water distribution pipe system and stormwater drainage system in conjunction with the Project.
4. The City's ordinances and processes require that Denver Water undertake certain obligations as part of the Project.
5. The Parties would like to set forth their understanding of these requirements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. The Parties agree that the Project is generally described and intended as follows.
 - a. The Project will reduce Denver Water's storage capacity at the Ashland Reservoir site from 42 million gallons in two reservoirs to 20 million gallons in two underground tanks. The Project's replacement of the existing storage reservoirs will result in long-term improvements to Denver Water's water quality and on-site facilities.
 - b. The Project may result in damage to City streets. Prior to commencement of the Project, and upon completion of the Project, Denver Water shall have an independent engineering firm, approved by the City, perform a pavement condition analysis, with the form of analysis approved by the City, on City streets that are along the Project's truck haul routes and work areas. Denver Water will repair the subject streets, as determined by this pavement condition analysis, to their pre-Project condition. The required street repairs shall be made within six (6) months of the completion of the Project. Denver Water will repair any structural damage and perform any major maintenance of the subject streets that may be necessary during the construction of the Project.
 - c. The Project will provide an approximately 24-foot strip of Denver Water property along the West 29th Avenue frontage for public right-of-way in order to achieve the City's desired 61-foot right-of-way so that the City can straighten West 29th Avenue.

- i. The City will provide technical assistance as requested to Denver Water concerning design of the widening of West 29th Avenue adjacent to the Ashland Reservoir site.
 - ii. Denver Water shall include the construction of the improvements described above in its construction contract for the Project.
 - iii. The City shall be responsible for the design and construction of any additional improvements to West 29th Avenue south of the existing centerline of West 29th Avenue or on West 29th Avenue east of Fenton Street and west of Gray Street. The City shall be responsible for any traffic signal modifications at the intersection of W. 29th Avenue and Fenton Street.
 - iv. Denver Water shall convey the right-of-way by quit-claim deed.
2. Denver Water may stage three (3) construction trailers along the south side of 30th Avenue in the City right-of-way immediately east of Harlan Street. The trailers shall be placed entirely south of the south curb of the street with the trailer side doors facing south towards the Project site.
3. The Parties further agree to the following Project-related items.
 - a. Denver Water has sent out an initial notice to neighbors of the Ashland site informing them of the Project. An introductory presentation has also been made at a study session of the City Council. More information and photo simulations are available for viewing on Denver Water's website.
 - b. Denver Water and its construction manager will continue to provide public relations efforts including setting up viewing areas around the perimeter of the site during large concrete placement events.
 - c. Denver Water has been in contact with the homeowner at 5831 West 29th Avenue adjacent to the site's construction entrance regarding special provisions necessary to maintain access to and protect their property during construction.
 - d. Denver Water is taking its 42" Conduit No. 23 in West 29th Avenue from Fenton Street to Sheridan Boulevard permanently out of service during February, 2013. The City will examine the pipeline condition, when Denver Water makes such investigation possible, to determine possible use of the pipeline for a storm sewer. Denver Water shall grant by quitclaim the pipeline to the City at no cost to the City, if the City makes such a request. Any such conveyance shall be in an as-is condition and shall release Denver Water from any further liability for such facilities.
 - e. Denver Water or its contractor shall develop a materials management plan for review by CDPHE as necessary for handling of petroleum contaminated soil and groundwater east of the site.
 - f. Denver Water or its contractor will identify potential sites for off-site storage and staging.
 - g. Denver Water shall invite City personnel to attend the regularly scheduled construction progress meetings on site. The parties expect that these meetings will occur

weekly at the beginning of the Project and become less frequent toward the end of the Project.

- h. The Parties agree that Denver Water will participate in an upcoming City of Wheat Ridge permitting process.
- i. Denver Water will apply for a Special Use Permit (for use of the property for water storage tanks and for the Project's volume of excavation and haul). Accordingly, Denver Water will comply with the City's Special Use Permit application processes.
- j. Denver Water or its contractor will obtain a Building Permit for the Project.
- k. Denver Water or its contractor will pay the City's established use tax.
- l. Denver Water or its contractor will obtain all City permits for work performed in the City street rights-of-way.
- m. Denver Water and its contractor will comply with all appropriate performance standards, performance bond and insurance requirements.

GENERAL PROVISIONS

1. Authorized Representatives. The City designates Steve Nguyen as the City Representative under this Agreement. Denver Water designates Martin Garcia as Denver Water's Representative under this Agreement. Each party shall be notified of any change by the other in its authorized representatives.
2. Release and Indemnification. Each party agrees to the extent permitted by law and subject to all immunities, defenses and other protections afforded it pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et seq, C.R.S. to indemnify and hold harmless the other party and its employees from and against any and all claims from third parties for damages, loss, injuries, liabilities and expenses for personal injury or property damage, including reasonable attorney's fees, relating to or arising out of any act of omission of the indemnifying party or its agents or employees with respect to the implementation of this Agreement.
3. Governing Law and Venue. This Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the City and County of Denver, State of Colorado.
4. Non-Appropriation. The payments of either party's obligations in fiscal years subsequent to the current year are contingent upon funds for this Agreement being appropriated and budgeted. If funds for this Agreement are not appropriated and budgeted in any subsequent year, this Agreement shall terminate. As of the date of execution of this Agreement, it is the intent and expectation of the parties to budget and appropriate the funds required for its full and complete performance.
5. Notices. Any notice or communication given pursuant to this Agreement shall be given in writing, either in person or by certified mail, return receipt requested. If given in person, notice shall be deemed given when actually given. If given by certified mail, notice shall be deemed given at the time indicated in the duly completed return receipt.

Notice to Denver Water shall be delivered or mailed to:

Denver Water Engineering

Attn: Martin Garcia

1600 W 12th Avenue

Denver, CO 80204-3412

Notice to the City shall be delivered or mailed to:

Steve Nguyen

City of Wheat Ridge

7500 West 29th Avenue

Wheat Ridge, CO 80033

6. Signing Authority. The parties hereby stipulate and represent that all procedures necessary to authorize the execution of this Agreement have been performed and that the persons signing for each of the parties have been authorized to do so.

7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement.

CITY OF WHEAT RIDGE

ATTEST:

Janelle Shaver, City Clerk

By: _____
Jerry DiTullio, Mayor

Date: _____

APPROVED AS TO FORM:

By: _____
Gerald E. Dahl, City Attorney

{ S E A L }

**CITY AND COUNTY OF DENVER,
acting by and through its BOARD OF
WATER COMMISSIONERS**

ATTESTED AND APPROVED:

By: _____
James Lochhead, CEO/ Manager

By: _____
Robert J. Mahoney, Director of Engineering

Date: _____

REGISTERED AND COUNTERSIGNED

APPROVED AS TO FORM:

By: _____
Auditor

Legal Division

{ S E A L }