

MEMBERS	PRESENT	ABSENT	EXCUSED
Carolyn Riggs, Chair	X		
Erik Niemeyer	X		
Erich Ferchau	X		
Andy Tocke	X		
Bob Beda	X		
Greg Larson	X		
Councilor Ellen Harriman	X		

OTHERS PRESENT: Community Development Director Steve Westbay, Planner Andie Ruggera and Planning Technician Pam Cunningham, Jerry Kowal, Julie Robinson, Heidi Daughan, Rhonda Connaway, and Julie Wiggin.

I. CALL TO ORDER AT 7:00 PM BY CHAIR CAROLYN RIGGS

II. PLEDGE OF ALLEGIANCE TO THE FLAG

III. UNSCHEDULED CITIZENS. There were none

IV. CONSIDERATION OF THE NOVEMBER 14, 2012 MEETING MINUTES. Councilor Harriman moved and Commissioner Larson seconded to approve the November 14, 2012 meeting minutes as corrected.

Roll Call Yes: Niemeyer, Ferchau, Tocke, Riggs, Beda, Larson, Harriman
 Roll Call No:
 Roll Call Abstain:
 Motion carried

V. STREET DEVIATION REQUEST FROM HABITAT FOR HUMANITY FOR THEIR PROJECT LOCATED AT 6TH STREET AND WEST NEW YORK AVENUE.

Staff Presentation. Director Westbay explained the process of reviewing development standards and read Section 15.110.010.F (Deviations) of the *LDC*. He explained that the interpretation of the phrase “may be granted by the City” is that City Council will be final authority. He further explained that neither the *Municipal Code* nor the *LDC* address procedures for deviations. (Because there is no procedure for deviations, this is not a public hearing.) He gave an overview of the Guerrieri addition, which was recorded in 1981.

Director Westbay summarized the staff review of the site assessment; referenced the *West Gunnison Neighborhood Plan*; gave a history of the drainage plan for West Gunnison; and reviewed the staff comments. He pointed out the Fire Marshal’s comments regarding the importance of alleys for fire control and emergency response. Director Westbay stated that the staff and applicant are both concerned with the cost of street and alley improvements.

Applicant Presentation. The applicant, Habitat for Humanity of Gunnison Valley Board (Habitat), is represented by Jerry Kowal. Dr. Kowal addressed the Commission. He stated that the applicant has equally valid concerns and alternative measures to address the City’s concerns. He stated that the property was acquired due to the generous support of both the City and County. He said that Habitat for Humanity has a history of being a housing provider for families in need. The Habitat communities are tight and community-based. They are green communities that include

green space for a sense of quiet. Dr. Kowal explained that although the property is zoned R3, they will be providing single-family housing with covenants and deed restrictions for single family housing in perpetuity.

Dr. Kowal acknowledged that alleys can be unsightly, but observed that streets can be unsightly as well. He said that Habitat doesn't just build houses and walk away—they stay in contact with the families. They have an attorney helping the families with estate planning. They try to enforce and renew covenants to address issues such as trash accumulation. He stated that a former City Councilman criticized Habitat properties for being trashy. This issue has been addressed by the covenants.

He then addressed the fire safety issue. He observed that there are communities and neighborhoods designed without alleys and Habitat feels they can do equally well.

Dr. Kowal stated that the Habitat for Humanity Board is not sure they would be getting a return for their money with the alley. Habitat does not do frills, they build basic well-built houses but they are considering the possibility of garages for this project. They won't have dumpsters on the street and residents will take trash out on trash day.

He made the following observations:

- green spaces create drainage problems and by paving the alley there will be the added issue of stormwater;
- the wild grass existing behind the Westhaven Condos is a source of emergency access;
- there is a gas line in the alley that consumes the 20 foot right-of-way by meandering through the alley;
- five feet along the rear property line will be a utility easement and unbuildable;
- the City Engineer says that they will have to remove the “muck” (topsoil) in the alley and replace it with Class 6 road base, which is an added expense.

Regarding staff's observation that the deviation would set a precedent, Dr. Kowal said that the decision should be based on the value or merit of the request. He would like for the Commission to look at the merit.

He then addressed City Manager Coleman's concern with the cost estimates for the alley and explained how the costs were arrived at.

Commission Questions.

Commissioner Ferchau asked if the proposal is to eliminate the alley and create green space. The applicant replied that it would be eventually. They are not asking for an alley vacation and it would be used as an easement anyway. Commissioner Ferchau compared it to the County affordable housing project which has no alleys and has green space in the middle. He said that the notion of not making improvements and keeping it attractive is an issue. Another issue is that the City has had to come back and make the improvements [for other projects]. He observed that the cost is large and it is a precedent—all developers have the issue of doing it affordably.

Commissioner Ferchau then asked about capitalizing the developing costs. Dr. Kowal explained that Habitat pays as they go, they don't want to be land developers. The County bought this property for affordable housing purposes. Habitat still has to address the alley, power, phone and gas.

Commissioner Ferchau asked Director Westbay about the developments in the Industrial District [where streets and alleys have not been paved]. Director Westbay explained that the City tried to make a Special Improvements District through a ballot initiative for the property owners in the Industrial district, but it failed. So, over the years the City has made those improvements out of City coffers. Commissioner Ferchau asked for clarification whether Habitat is being dealt with as a developer and Director Westbay replied that they are. Dr. Kowal stated that the Habitat board knew that they would be expected to "pay their way." He said their first project was on South 12th and the infrastructure was already there. They are just wondering if other alternatives are possible and if it can be done without an alley.

Councilor Harriman asked Director Westbay if the West Gunnison Neighborhood Plan addresses the drainage and Director Westbay replied that there is a detailed drainage plan.

Councilor Harriman then asked about the width of streets in West Gunnison in general. Director Westbay responded that the primary corridor is Thornton Way which has, for the most part, a 90 foot right-of-way. Sixth and 7th Street, San Juan and the portions of Bidwell that have not been vacated are 60 feet wide. The large parcel where the old movie theatre was is lot and blocks. He said that traffic volumes and street width don't affect the Habitat development. The *West Gunnison Neighborhood Plan* contemplated minimal development without curb and gutter.

Commissioner Beda asked about the width of New York by this property. Director Westbay replied that it decreases to about 40 feet in some areas. In the area of the Habitat property it is about 60 feet. Commissioner Beda asked if the alley is developed between 6th Street and 7th Street and Director Westbay replied that it was paved in a "phase 1" portion. Commissioner Beda asked why the West Haven developer wasn't required to put in alleys. Director Westbay responded that he does not know why; they should have been.

Councilor Harriman asked if the West Haven Condos could perhaps share the cost. Director Westbay responded that he didn't think the City could mandate it.

Dr. Kowal stated that the back rear decks on the West Haven Condos are eight feet off the alley and that an alley will be noisy for those people. He said that is not Habitat's issue, but it is Habitat's concern; they want to be good neighbors.

Commissioner Tocke summarized the merits of not putting in the alley—green space, drainage, cost, light development, quiet, uninterrupted space behind the houses. Dr. Kowal added that fire safety can be accommodated. Does the alley warrant the cost? They would like to look at other alternatives. He said that he has looked at how other cities have dealt with alleys. He said that in a neighborhood in Detroit they have landscaped the alleys. Habitat would rather not mess with the natural landscape. He has also looked at how the alley surface can be done inexpensively but the City Engineer says the top soil has to be removed. Commissioner Tocke asked if the applicants know any history of the alley behind West Haven being surfaced and Dr. Kowal responded that he is not sure, but it has been accessed by heavy equipment to put in the sewer line.

Chair Riggs observed that the property to the south is R3, and asked how many multi-family units could potentially be there in the future. Director Westbay responded that potentially 30 units could be there. Chair Riggs asked if there has been any contact with those property owners. Dr. Kowal responded that they have had some conversations with adjacent owners, but there are no immediate plans.

Commissioner Ferchau asked the applicant how many total units they are proposing. The response was that there will probably be nine homes with possibly 11 residences (two would be duplexes); there will be six in this phase and three in the next phase. He explained that the issue is the circumstances of the families. It could be someone with a disability, it could be the quality of housing they are in now, and sometimes it is a single individual with special circumstances.

Commissioner Larson asked if an individual bought the lot would they be required to develop the alley. Director Westbay replied that yes, if they are a block and a half removed from utilities they would be required to install the infrastructure before a building permit is issued. Director Westbay explained that Habitat could do a reimbursement agreement which would mean they would be reimbursed by future developers. It is a 15 year agreement, but there is no guarantee that someone will develop in that time.

Commissioner Beda asked if Habitat has talked to the West Haven HOA. Dr. Kowal replied that there was meeting but he was unable to attend, so others can speak to that.

Public Input. Chair Riggs asked for public comments.

Julie Wiggin (507 N. 8th St.) Ms. Wiggin stated that she has two rental units in the West Haven Condos and that she is also president of the West Haven HOA, however, she is here speaking for herself. She said that at the meeting they discussed that if the alley was not developed they would like to see the green space there, but some other issues have come up since then. Habitat sent Julie Robinson to speak at the meeting and she showed them the prospective development plans. Ms. Wiggin said that her concern is that if the alley is not developed it would eventually have to be put in, and then it would be gravel. She would like it to be paved if the alley is required. She said that the prospective plan showed garages for every house which would be accessed from 6th Street. She would be in support of that, but garages are not a given at this point. She would like to see a requirement for garages and driveways so it doesn't turn into the situation on 12th Street (the other Habitat property) where the back of the properties don't look good. She said that, down the road, if the alley isn't vacated, she doesn't want to be held financially liable for improving the alley.

Councilor Harriman asked Ms. Wiggin if the condo HOA has talked about what the impact of the alley would be. Ms. Wiggin replied that they don't like the idea of the alley—that was the consensus of the homeowners. They don't want to be financially responsible, and the decks will be close to the alley. She explained that most of the condos have a sliding glass door facing east, which faces the alley. They would rather see green space rather than an alley. She said that the green space was dug up to put in the sewer lines and they would like to see it replanted with native plants or grass. She also wonders how it will be maintained if it is not turned into an alley.

Commissioner Ferchau asked Ms. Wiggin if the condo association has considered buying 20 feet of property along their back boundary line and moving the alley.

Heidi Daughan (8355 Hwy 135). Ms. Daughan stated she attended the West Haven HOA meeting in October. She supports Habitat's ideals and ideas for the development. Their idea for keeping it green is a benefit for everyone—both Habitat and the condos. She said she understands rules and regulations and respects that, but every situation is unique. She said that the developments that have put creeks through what would have been alleys created a nice neighborhood. She said that, as an individual, she supports that. She continued, saying that, as a board member, the owners voted that they were in support of maintaining the green space as opposed to developing the alley. She said that "When I purchased the condo I had no expectations of anyone encroaching on the property that I thought I owned and see my dollars going down. When everyone purchased there, that was their understanding. Encroaching on decks creates a whole new living space for those people. I request the Planning Commission and the City to consider developing the alley in a different way than what you are accustomed to. Green space would be advantageous to everyone." She said she has not lived in the condo, but she has friends who have, and they enjoyed the greenery outside the decks. The alley will be an invasion.

Commissioner Tocke asked Ms. Daughan if they have had any issues of service in the alley. Ms. Daughan replied that they have not had any problems in the ten years she has owned the condo. She said that the 5th Street access to the condos is fairly adequate.

Commissioner Niemeyer inquired why an alley wasn't required at the time West Haven was developed and Director Westbay replied that it should have been and he is not sure why it wasn't.

Commissioner Larson asked why Westhaven won't be required to share the cost. Director Westbay said he would have to ask the City Attorney. In most cases, if there is a reimbursement agreement there is a mechanism to do that, but in this case there isn't such an agreement.

Commissioner Ferchau asked again about developing a lot away from utilities and gave the example of a gas line being put in and then lots along the line being developed later. If one of those lots chooses not to use gas, do they have to pay? Director Westbay said that is a good question. It is clearer in the case of a sewer line.

Ms. Daughan asked Commissioner Ferchau to explain his recommendation for West Haven. He explained that West Haven has a lot depth of 125 feet and the Habitat lots are 145 ft. He suggested taking buying 20 from the Habitat lot depth to add to the West Haven lot depth and that they help pay for construction of the alley that would be shifted 20 feet over. It would be a mutual benefit. He also suggested that maybe the Habitat houses could be built like the West Haven condos.

Dr. Kowal stated he liked the idea and it will create a lot of discussion.

Chair Riggs asked if there are any other Commissioner Comments.

Commissioner Beda asked what the procedure is if the item is tabled. Director Westbay said it could be opened again and reviewed and that there are no time constraints.

Chair Riggs asked the applicant if the discussion tonight has led to possible changed in the application. Dr. Kowal responded that there are all kinds of opportunities. He said, "From a personal standpoint, I like Erich's proposal. We are trying to find a fair solution. I would like to wait and see where this board goes and then we will discuss options."

Commissioner Niemeyer said, “At first I thought this was a slam dunk. In listening to the discussion, it makes me question that conclusion. Is there wiggle room? Can we ameliorate the fire safety and ask the Fire Marshal to reexamine the plat?” Director Westbay said, “Under the *International Fire Code*, it would probably meet code. I think it is a larger issue than fire safety. It is a service issue and future cost to the City—utility corridors, easy access to trash. The second is future cost. If this property is not required to develop the alley now, in the future the City may have to fund it with funds that come out of other services. Third, we spent a substantial amount of time on the *West Gunnison Plan* to design a neighborhood in context for the future. There are 120 acres that could accommodate up to 2,000 units and we had to come to terms with roads and utilities in a functional synchronized way. It is a blue print.” He continued by saying that the Rock Creek design is interesting, but those are private streets and open space areas. The City does not maintain them, the County does. They are substandard streets in the city.

Julie Wiggin pointed out that Rainbow Meadows doesn't have alleys. Director Westbay responded that area is a federal jurisdictional wetland but there is a utility easement in it. He said the owners there have been breaking federal law and building in the wetland.

Ms. Wiggin asked what the chances are of vacating the alley. Director Westbay responded that the City would not support that. He said the extension of this alley to the south has been contemplated. Ms. Wiggin replied that the first building was in the 1990's and there have been no access problems.

The applicant stated, “We aren't changing the design, the street pattern is the same. The alley would not be developed, but trash would be handled the same as the other neighbors. As far as fire access, there is better access around the back because it is R3 with single-family homes which gives more room on the sides for access.”

Director Westbay said that another issue is the urban trail system in West Gunnison. Having driveway curb cuts causes safety problems and Thornton Way is a major trail corridor.

Director Westbay said that he supports what Habitat for Humanity does, but it is his job to follow the *City Code*.

Commissioner Ferchau said, “We have been given the opportunity to make a decision that doesn't significantly burden one party (West Haven), we have the opportunity to redesign the block if we so choose. We didn't require it for West Haven. If we treat Habitat like a developer, then they should have the opportunity to reconfigure and address the issues. Given the circumstances, perhaps the City needs to reevaluate the fact that we have something that is dysfunctional and redesign the area.”

Director Westbay stated that the Commission would have to readdress the master plan, or they could reconfigure the neighborhood. That is a private discussion.”

Commissioner Ferchau said that owners of land to the south need to get involved. “The City needs to be flexible and not burden someone if we can.”

Commissioner Niemeyer said, “I agree with Erich, our role is to enforce and administer the *LDC*. Another role is to adjust it over time for the good of the community when the community

expresses a need. Erich suggests we look for a solution for betterment of all parties. I think we need to table this to get more information and provide an opportunity for alternative outcomes.”

Commissioner Beda observed, “This is the most interesting application I have seen. In this one, it is not a benefit to either party. As Erich brought up, there may be alternatives. I don’t see how we can go with it as a deviation; there may be other alternatives that are win/win for all.”

Commissioner Tocke said, “I think there are a whole bunch of options out there that could work.”

Dr. Kowal stated, “There are undiscovered options. Posing the question was my intent. I would like to leave things as they are. We feel that we have shown that, although it deviates from the plan. One of the big changes is that we have gone from 3- and 4-plexes to single family; I’m not sure it is the same situation in terms of fire access.” Director Westbay asked if it will be deed restricted. Dr. Kowal responded that it will be. “It is meant for families in need and can’t be passed on to heirs. We maintain that.”

Julie Robinson asked, “If we are only required to develop it [the alley] to where we own, how would the City get through there if there is no way out?” Director Westbay responded that it would be an alley to nowhere. Ms. Robinson asked, if there could be signs stating that it is for emergency vehicles only or a pedestrian path.

Commissioner Tocke said to the applicant, “Staff has made their comments, and you try to refute their position and their position is in terms of the *West Gunnison Plan*. I would like to see more effort toward new solutions.”

Director Westbay said, “What I would like to point out is that in West Gunnison we had no idea how it would develop. It had no streets or utility extensions. It could become blight in the future if it is developed half a block at a time. It has to be bigger than half a block development.” Commissioner Tocke said, “We need to search for the creativity that may be out there.” Director Westbay said, “I have no problem with an alternative, this is part of a whole.”

Commissioner Ferchau said, “I appreciate all the work that went into the document [*West Gunnison Neighborhood Plan*], but if something comes up sometime later we might have done it differently.” He then asked again about someone buying a lot on the corner and having to put in all of the improvements. Director Westbay said the City can’t tell them they have to put the alley all the way to San Juan. Commissioner Ferchau said, “So that would be an exception. It is contrary to your objective.”

Commissioner Larson said, “When I first read this, based on cost savings alone, it sets a bad precedent. There are a lot more issues than cost—the setback from condos, that could be a safety issue. Getting more information and tabling now is a good course of action.”

Director Westbay explained that if it is tabled the staff has some work to do and the P&Z has to make a decision [within a time frame]. He recommended that it be remanded.

Chair Riggs asked for a motion.

Motion. During their regular Planning and Zoning Commission meeting of November 28, 2012 Commissioner Larson moved and Commissioner Tocke seconded to remand the application back to the applicant.

Discussion

Director Westbay said that direction needs to be given to staff if it is remanded. He asked, "Are you asking for alternative configurations, that there be no alley, and how it would function in the confines in the neighborhood?"

Chair Riggs said, "I would like to see an alternative solution to the deviation, specifically a more concrete development plan of the lots proposed to give us a better idea of traffic flow, volume, access, and more information on possible partnerships and collaborations."

Commissioner Larson said, "I would like to see it encompass the area to the south and see what effects development might have to properties to the south."

Dr. Kowal suggested that a denial might be best. "That would let us come up with something new rather than an alternative."

Commissioner Niemeyer asked if there is a waiting period and Director Westbay responded that there is not.

Commissioner Beda asked what would happen if they withdraw. Director Westbay said they could do that and come back with a new plan.

Commissioner Ferchau said, "Given what Jerry was saying about being representatives, if we remand it, it tells Council we think there are alternatives that can be entertained by the City that would be beneficial to all. I think we proceed to remanding."

The applicant said, "We are trying to see where this takes us."

Chair Riggs said the remand provides more time.

Commissioner Beda said, "If we deny, it gives a stronger message. If we remand it says something else needs to be done." Commissioner Harriman said that if Council feels they have to support the Commission, they are more likely to deny.

Rhonda Connaway, from Habitat, asked if the Council meeting would still be scheduled for January. It would be. Councilor Harriman observed that a remand would give them the option of when to schedule the meeting.

Ms. Connaway said, "Steve has been clear that the staff recommendations are guided exclusively by the *West Gunnison Plan*. Our issue is not that, it is a good plan, I read it. What has surfaced is that it doesn't feel good to all of us. But we have to be clear what you are telling us. Are you telling us the *West Gunnison Plan* is it?"

Commissioner Larson said, "All documents are living documents; times and things change, so should the document. Staff is basing their recommendations on the plan. The P&Z and City Council have more latitude."

Director Westbay asked the Commission to provide direction if the application is remanded. He said he would like the Commission to consider withdrawing the motion and table it. Then he can draft some findings about how to proceed with the remand, for example, development of a more specific plan, addressing fire concerns, concerns with neighbors regarding the alley, and the effect that alterations of the alley would have on properties to the south. He could have finding at the next meeting.

Dr. Kowal stated that the guidelines would limit creativity and still force it into the relatively rigid community plan.

Commissioners Larson and Tocke withdrew the motion.

New Motion. During their regular Planning and Zoning Commission meeting of November 28, 2012 Commissioner Larson moved and Commissioner Niemeyer seconded to table the item until the December 12, 2012 meeting at 7:30 p.m.

Roll call Yes: Niemeyer, Ferchau, Tocke, Riggs, Beda, Larson, Harriman

Roll Call No:

Roll Call Abstain:

Motion Carried

Commissioner Niemeyer told the applicant, "This motion will help by giving you the structure the direction you need to go and tell you the things that may be negotiable."

Chair Riggs summarized that the next meeting is Dec 12th at 7:30 p.m. At that time the Commission will reconsider the application with the findings that staff will draw up.

Dr. Kowal thanked the Commission.

VI. COUNCIL UPDATE. Councilor Harriman updated the Commission on recent Council business. The Council:

- passed a resolution establishing annexation eligibility for the VanTuyl Ranch; December 12th is the date for the zoning public hearing;
- set the mil levy for the County at the same assessment it has been;
- adopted the City budget on first reading, budgeting flat at \$16,812,375;
- chose to spend an additional million from reserves on streets and alleys. She said that this is what will happen in West Gunnison. We all end up paying for someone else's streets and alleys. Commissioner Ferchau said one of the other considerations is the notion of deferring that requirement and enable them, as they sell properties, to escrow a proportionate amount so they don't have to be burdened at the front.
- Council also conducted the evaluation of the City Manager

Councilor Harriman also reported that:

- tomorrow is the deadline for applications for City Council to replace Mayor Houck;

- the Christmas tree will be lit on Friday; it was donated by Rocky Mountain Real Estate;
- equipment for wireless at the Community Center will be installed the second week of December.

VII. COMMISSIONER COMMENTS. There were none.

VIII. PLANNING STAFF UPDATE. Director Westbay updated the Commission on recent activity in the Community Development Department:

- Work on the Highway Access Control plan is ongoing.

IX. ADJOURN. Chair Riggs adjourned the meeting to at 9:25 p.m.

Carolyn Riggs, Chair

Attest:

Pam Cunningham, Secretary