



**ARAPAHOE COUNTY  
PLANNING COMMISSION  
TUESDAY, JUNE 16, 2009**

**MEMBERS PRESENT**

Arnold Hayutin  
Brian Weiss  
Leah Martin  
Brett Larson  
Kim Herzfeldt  
Paul Rosenberg  
Mark Brummel

**OTHERS IN ATTENDANCE**

Jan Yeckes  
Ron Hovland  
Carol Kuhn  
Irene Valenzuela  
Sherman Feher  
Tammy King  
Bill Skinner  
Tom McNish  
Gail Stumpo

**ADOPTION OF MINUTES**

**The motion to adopt the minutes from the May 19, 2009 Planning Commission hearing was made by Mr. Hayutin, duly seconded by Mr. Weiss.**

**The motion passed unanimously.**

**OPENING COMMENTS**

Ron Hovland, on behalf of Division Manager, Jan Yeckes, asked that the agenda be rearranged to help facilitate the public present. He said Item 1 is a public hearing for Strasburg Park & Recreation, which was continued from May 19th, and hopefully can be concluded this evening. He said if the Planning agrees, study session Item 4, Cherry Creek Academy Expansion, would follow pursuant to State Statute. He said the Planning Commission will discuss staff information and make a determination whether to send a correspondence to the Cherry Creek School Board. He said the study session is not an

opportunity for everyone in the audience for and against to vent about the Cherry Creek Academy. He said correspondence concerning the County Fair and the Open Space Department progress report has been distributed to the Board. He said the Open Space report includes what has been preserved in Arapahoe County and also what has been done with the ¼ of 1% sales tax revenue that has been collected in the last several years to preserve open space.

Jan Yeckes, Division Manager, thanked the Planning Commission and members of the public in attendance this evening. She discussed a memo from Commissioner Bockenfeld, Vice-Chair of the Board of Directors for the Denver Regional Council of Governments (DRCOG). She discussed a training opportunity for the Planning Commission specifically that is being sponsored by DRCOG. She said the memo explains what the track options are and encourages the Planning Commission to participate in the training opportunity. She said the training would be held on a Saturday from 8 to 3. She said the Planning Division is covering the cost of the training and any associated expenses. She said Sandi Bowen would handle the registration. She said the survey distributed to the Planning Commission could be done at their leisure. The survey is to learn how the Planning Division can be of better assistance to the Planning Commission in doing their job. She asked the Planning Commission to consider rearranging the agenda because there may be a number of people from the general public interested in the study session item.

#### **CONSENT AGENDA**

There were no Consent Agenda items.

#### **REGULAR AGENDA ITEMS**

##### **Item 1 – L08-004, Strasburg Park & Recreation/5 Acres Park/Location & Extent (Continued from May 19, 2009)**

Carol Kuhn, Senior Planner, said jurisdiction for the case was established on May 19th. She said that due to concerns related to the lighting plan the Planning Commission asked that the applicant revise the lighting plan and return at a public hearing on June 16<sup>th</sup>. She said there was no need to re-notice since the case was continued to a date certain. She said the applicant has addressed the lighting concerns by removing all lights except for the security lights as indicated in the staff report. She said staff has added an additional condition of approval that if any additional lighting, site lighting is needed or desired in the future, an amendment to the Location and Extent (L&E) case will need to be processed. She distributed five additional conditions of approval to the Planning Commission that address Tri-County Health Department concerns. She said the applicant was notified in an email of the concerns and must be addressed prior to final approval of any of the final mylars. She said building permits would not be issued until all issues have been addressed. She said a receipt from the last septic system pump inspection, evidence that the proposed use can be accommodated by the septic system, evidence that the use is allowed under the existing well permit and the estimated demand can be accommodated under the existing well permit. She said the applicant must also address

the food concession and beverage concerns raised in the December 3, 2008 correspondence from Tri-County Health and if the district wishes to use port-a-lets for events, the District must work with Tri-County Health to determine the correct number of port-a-lets and a note must be included on the plans that indicates that all events will require port-a-lets and the number and placement must be approved by Tri-County Health prior to the event.

Tony Wernsman, W.W. Enterprises Consulting Engineering, 2115 9<sup>th</sup> St. Limon, said the softball field lighting has been readdressed with Musco, the lighting contractor. He said a decision was made by the Strasburg Park and Recreation department to eliminate ball field lighting. He said the revised plan shows only the security lighting for the site. He said three lights are proposed. He said an existing light on the west side of the existing building will be replaced. He said two additional security lights will be located on the north in the center and between the parking lot and the park in the center. He said the property line on the north was reduced to 0.1 foot and the south side of the property line is at the maximum allowable 0.5 foot candles. He said the majority of the property is at zero. He said the septic tank must be pumped to address concerns of the Tri-County Health Department (TCHD). He said there are no records to determine when the septic tank was pumped. He said the existing bathroom facilities would be abandoned. He said the plans originally showed an optional drinking fountain, which will be removed. He said the well permit would pertain to irrigation purposes.

Mr. Brummel said that he lives in Strasburg Heights and passes the park daily. He said 2 years ago the park consisted of a ball diamond, shelter, picnic tables, restrooms, and playground equipment. He said volunteer labor was provided to build the park and it was used all the time. He said apparently some grant money became available from the County to repair the park. He said last summer everything was torn down and it is now a vacant lot. He said the Strasburg Recreation District and the County spent a colossal amount of money to demolish the park in two years and the new park will be the same as the park that was torn down except for better landscaping. He expressed frustration. He did not see that the new park would be anymore usable than the previous park. He said a lighted ball diamond is needed. He believes that money is being thrown away.

Mr. Wernsman said there is only one area that would accommodate a regulation size softball field on the property and where the lights would need to be placed just inside the property line.

Mr. Brummel said the ball diamond constraints come around the existing building, which houses restrooms that will not be used.

Mr. Wernsman understood that the restrooms were abandoned years ago.

Mr. Brummel again expressed frustration. He said the process has taken two years and there is no park for the children to play. He said the residents cannot play ball at night without the lights. He said it appears that the residents are chasing their tails. He said if the ball diamond is not lighted the utility of the park will be decreased to 60%.

Dave Spiller, President of the Strasburg Parks Department, 56800 E. 32<sup>nd</sup> Avenue, Strasburg discussed the frustration of the Strasburg Parks and Recreation Board. He said a grant was received from Open Space for improvements to the park. He said a variance was applied for through the Board of County Commissioners to avoid the process and make application and void the fees. He said the budget is \$289,000 a year and the cost for the park is above the total budget. He said a requirement for the lighting is more stringent than is required in Littleton. He said the Board met with Musco and GE and they cannot meet the lighting requirements with the standard lighting issues. He said that requires adapting lighting, which is more expensive that can be afforded. He said there is a concern at the site with the lighting as witnessed by the survey taken at the site. He said he attended a meeting where there was less than a 10% response from the residents in the Community. He said less than 10% of the residents are dictating the concern about the lighting. He said more than 10% of the residents are involved in Parks & Recreation. He said there is concern that the Musco lighting system has very little ambient light. He said the baseball field has with the new Musco lighting system, which is computer controlled. He said it was believed that the project for the new playground system, trail systems, relocating the baseball field for additional space, new basketball court and a native grassed area for soccer and football was very good. He said he shares the frustration and Planning is doing their job and what is required by legal issues.

Mr. Brummel asked if another lighted diamond is needed.

Mr. Spiller answered yes. He said a regional soft ball tournament, which will include five western states, will be hosted by Strasburg in July. He said the baseball field will be adapted to a softball field accommodate the needed space. He said the District may have to get a loan from the bank to complete the project, which is unfortunate, but the project must be completed to the best of their ability financially at this time. He said the Open Space grants will be lost if the project is not completed substantially by September.

Mr. Brummel said at the last Planning Commission meeting the neighbors in attendance did not object to the lighting. He said he understood that the BOCC voted against the lighting and asked that the District revise the lighting according to the County code. He said it has been determined that the request could not be completed where it is economically feasible.

Mr. Spiller said the lighting requirement code in Strasburg is more stringent than in Littleton.

Ms. Kuhn said the County does not govern over Littleton because it is an incorporated city.

Mr. Spiller understood that the foot candles were less in Strasburg than in other parks that have been approved.

Ms. Kuhn said the foot candles allowed in Strasburg are higher.

Mr. Wernsman said there is a rural vs. metro section in the code.

Ms. Kuhn clarified by reading, “The public recreation use for the eastern community planning areas gets 50 foot candles. The public and semi-public use in the urban service area gets 10 foot candles.

Mr. Wernsman said for ball field lighting.

Ms. Kuhn answered for public recreation use.

Mr. Wernsman said 10 foot candles for a baseball field.

Ms. Kuhn said 10 foot candles for public and semi-public use.

Mr. Wernsman said it is difficult to see the ball coming with 10 foot candles.

Ms. Kuhn said 50 foot candles are for public recreation use and 107,000 lumens sports field only. She said there is a different code and requirement for the rural area. She said for public and semi-public use 10 foot candles and building entries and parking lots 13,500 lumens for public and semi-public use in the urban service area. She said the sports field is only specified in the eastern community areas. She clarified that the Planning Commission asked that the lighting issue be looked at by the Park District Board in Strasburg, not eliminated to see if it was at all feasible and the solution was on the Park District’s behalf that they just eliminate the lighting.

Mr. Wernsman said after meeting with manufacturers it was determined that the requirements of the County for the foot candles could not be met.

Mr. Rosenberg asked if the requirements could not be met or was the cost the issue.

Mr. Wernsman said Musco did not have stock lighting to meet the requirements.

Mr. Rosenberg said the requirements could have been met.

Mr. Wernsman said there was no money to pay for custom lighting. He was not certain that the requirements could have been met.

Mr. Larson asked what would prevent the lighting issue from moving forward.

Mr. Wernsman said money and Musco said they could not accommodate the lighting.

Mr. Spiller said to continue the project it was decided to put the lighting on hold and use up the grant money.

Mr. Wernsman said it was decided to move forward with the project and put the lighting on hold because of the time limit on the Open Space grant.

Mr. Weiss said a suggestion made at the last Planning Commission meeting was to move everything 5 or 10 feet.

Mr. Wernsman said the existing building will shorten the soft ball fields and not be regulation size. He said the building is being used for storage and maintenance.

The Planning Commission briefly discussed the building.

Mr. Weiss asked if it would be difficult to move the building.

Mr. Wernsman did not know, but that disassembly and a new foundation would be costly and timely. He said there is no additional money available.

Mr. Weiss said he was disappointed when he read that the lights were being removed from the plan. He said he voted against removal of lights at the last Planning Commission meeting and hoped that for other ways to be in compliance.

Mr. Wernsman said the time constraints would not allow resolving the issue and to address the lighting at a later date.

There were no public comments.

**The motion was made by Mr. Hayutin in Case No. L08-004, Strasburg Park & Recreation/5 Acres Park/Location & Extent, that the Planning Commission has read the staff report and received testimony at the public hearing. The Planning Commission finds itself in agreement with staff findings 1 through 5 including all plans and attachments as set forth in the staff report dated June 8, 2009, and approves this case subject to the following conditions:**

- a. That the applicant makes any minor modifications to plans and plats, as requested by the Public Works and Development Department;**
- b. The applicant agrees to address all Land Development Services Division (Engineering) comments and concerns as identified within the attached report;**
- c. The applicant must provide a copy of the receipt from the last septic system pump and inspection;**
- d. The applicant must provide evidence that the use is allowed under the existing well permit and that the estimated demand can be accommodated under the existing well permit;**
- e. The applicant must address the food concession and beverage concerns raised the December 3, 2008 correspondence from Tri-County Health regarding the food concession and beverage service concerns;**
- f. If the district wishes to use port-a-lets for events, then the District must work with Tri-County Health to determine the correct number of port-a-lets and a note must be included on the plan set that indicates that all events will require port-a-lets and the number and placement must be approved by Tri-County Health prior to the event; and**

- g. The applicant must return to the Planning Commission if a decision is made to revisit the lighting at a future date.**

**Seconded by Mr. Larson**

Mr. Herzfeldt said he still uncomfortable with the site. He said it appears that the project is being rammed down the throats of the citizens. He said it is a park and will work, but it is not utilized to its fullest extent. He said he considered voting with the lights as initially presented. He said all the reasonableness has been entertained trying to get lighting at a cost that is effective without breaking the bank. He said he is uncomfortable approving something that in the long term may not meet their needs.

Mr. Weiss said the applicant could return next year and add lights.

Mr. Brummel said at what cost.

Mr. Weiss said at whatever cost is currently being saved.

**Vote:**

**For: Brummel, Larson, Herzfeldt, Weiss, Hayutin, Rosenberg**

**Absent: Martin**

**Item 2 – TA09-001, Cherry Creek Academy Expansion (Study Session)**

Mr. Rosenberg reminded the Planning Commission (Planning Commission) that this is a study session and the Planning Commission is not required to take testimony from the public. He asked the Planning Commission members if they would agree to anyone from the public speaking. The Planning Commission agreed.

Mr. Weiss stated for the record that he has had a professional relationship with the architect.

Mr. Rosenberg read a prepared statement into the record. “The Planning Commission is holding a study session related to the Cherry Creek Academy Charter School proposed expansion. Case TA09-001, Section 22-32-124 of the Colorado Revised Statutes leaves the facility decisions to the local school district. Local jurisdictions do not have zoning authority over charter schools. This study session is an informational meeting to inform the Planning Commission about the proposed school addition. The statute is clear that the Planning Commission cannot take any action on the related application. The State Statute does allow the Planning Commission to request a public hearing before the Cherry Creek School District Board of Education. Public comment will be allowed as agreed, however, please limit comments to three minutes if speaking as an individual or five minutes if representing a group. The purpose of the study session is to inform the Planning Commission. No action related to the application will be taken. Comments from speakers should not be repetitive. If you are addressing the Planning Commission, please do so at the podium and do not speak from the floor or shout comments or any formal rebuttal from the floor. The place to speak and make your input part of the study session process is at the podium.”

Ms. Kuhn said the Cherry Creek Academy Public Charter School is proposing an expansion. She said the school approached Planning and Engineering to schedule a pre-submittal meeting. The County Attorney's office confirmed that local jurisdictions do not have zoning authority over charter schools. She said Planning requested a courtesy copy of plans for staff to review, as there have been a number of comments and concerns raised by the local neighborhood regarding stacking and queuing for morning and afternoon carpool. She said this has been an ongoing concern. She said in 2007 and 2008, Tammy King, Zoning Administrator, the County Traffic Engineer, a representative from the Sheriff's office, Commissioner Dyer, and some of the concerned neighbors met to discuss the concerns about queuing and idling in the public right-of-way (ROW) in front of the charter school. She said staff is aware of the concern and neighborhood concerns have been ongoing. She said Planning has asked the school to try to address those concerns. She said Planning does not have zoning authority over the school and has asked them to address the concerns with the expansion. She said a representative from the school and a representative from the architectural firm working on the school expansion project have come prepared to make a presentation if requested by the Planning Commission, since the study session is informal. She said the school expansion is in progress. She said the plans do not look like standard plans that are submitted to the County because the school is not required to turn in plans that meet the County's requirements.

Ms. Kuhn stated that she prepared a draft memo to be signed by the Planning Commission chair if the Planning Commission desires to request a public hearing before the Board of Education. She distributed an email from Chip Kerkhove, South Metro Fire District stating that the expansion plans have been reviewed and that the fire district has no comments. She said it was noted that the new site updates to the south side of the building have improved emergency fire access. The drive way is wider and a fire truck would have no problem with the queuing.

Mark Gripenstraw, 5411 S. Dayton Ct., Greenwood Village, president of the Cherry Creek Academy School Board, said the school board is excited to move forward with the expansion. He said 5500 square feet are being added and most of the building is being remodeled because the school is short of space. He said the charter has been in place since 1995 and is one of the oldest charters in the state of Colorado and is one of the most successful. He said 450 students are enrolled in the school and there is no intention of changing that charter, as there is a 30 year charter with the 450 students. He said the addition of the new space will provide additional teaching space. He said several classrooms are run from a cart, for example, the Spanish teacher does not have a dedicated classroom and goes from room to room with a cart. He said the current cafeteria is used as an extra instruction room as well. He reviewed a rendering of the plan showing the new east wing with six classrooms, a new cafeteria/multi-purpose room, and said the administration offices will be relocated to the front of the building. He said the traffic and parking concerns have been a challenge in working with the neighbors. He said the school has been a very good neighbor and has made many changes to get the kids in and out safely. He said during 10-15 minutes in the morning and the evening the students need to be dropped off and picked up and as a result cars come in and out. He

said both the back and front lots are used for pick up and drop off. Mr. Gripenstraw said the pick up is staggered at 3:10 p.m. and 3:20 p.m. and that has worked very well. He said the Sheriff has commented favorably on what has been accomplished. He said the school has a very active group of parents who help make the traffic flow safe. He said signs are posted reminding parents not to do u-turns in the neighborhood or park in certain areas. He said there are approximately 800 homes in the area and the school typically hears from the same 10 to 15 neighbors.

Mr. Brummel if there is any bussing.

Mr. Gripenstraw replied no.

Mr. Brummel said all 450 kids are brought in by their parents.

Mr. Gripenstraw said that represents about 230 families, and a number of the families car pool. He said on a typical day, there are about 150 cars coming in and out.

Mr. Hayutin asked what grades are accommodated.

Mr. Gripenstraw said kindergarten through 8<sup>th</sup> grade.

Mr. Weiss asked how many cars the two parking lots could accommodate.

Mr. Gripenstraw said the front parking lot could accommodate 15 cars in the queue lane plus additional parking spaces. He said the back lot could accommodate 20 cars in the queue lane and additional parking. He said the traffic volunteers constantly move traffic along and do a good job.

Mr. Brummel asked if the parents respond.

Mr. Gripenstraw said absolutely. He explained that all parents are asked to volunteer a minimum of 40 hours per year and all parents have worked traffic and understand what a challenging job that can be. He said the school distributes a weekly newsletter that includes a traffic update. He said there is also information included in the packets that are sent to students at the beginning of the school year.

Mr. Rosenberg said the Planning Commission has pictures that show the traffic volunteers in the middle of the street and kids standing next to the public street to get in and out of cars. He said Cherry Creek High School does not have people letting kids out on the public streets; they're going into the parking lots. He agreed that there is a lot of traffic, but there are no elementary school kids being let out right in the front of the school. He asked why that is safe.

Mr. Gripenstraw said the kids are on the far side and are against the curb and only get out on the sidewalk. He said there is plenty of room for cars to pass, so when a car is stopped, it is never impeding the flow of traffic.

Ms. Kuhn stated that staff did not provide formal comments to the charter school because the school is not a formal applicant. She said comments were included in the staff report. She said staff has requested that the school provide a queuing lane along the southern property line to accommodate the morning and afternoon carpool traffic on school property rather than in the public right-of-way. She said regarding the existing parking lot on the north side of the property, staff believes that should be reworked to provide a more efficient and usable parking lot design. She said the current design appears to have a great deal of wasted space that could benefit from a redesign to maximize the parking area and provide for a greater number of parking stalls. She further stated that there is an engineering case associated with this project because the school must comply with the water quality requirements from the state and the Federal mandates.

### **Public Comments**

Julie Huun, 6019 S. Fulton Street, Englewood, thanked the Planning Commission for the opportunity to address the County. She said she is the acting president of ACCORD and is the president of the Cherry Creek Neighborhoods Association. She said this request has been unanimously supported by ACCORD and CCNA which represents the citizens that surround this school. She said the groups recognize that this project is unlike many plans that come before the Planning Commission because charter schools enjoy broad freedoms from typical planning procedures. She said her groups have met with the school on two occasions and the two entities are coming closer to a mutual agreeable plan. She said she was pleased to hear that the school is now considering the addition of a queuing lane on school property. She said the assistant superintendent for the school district is present and the district is supportive of having a queuing lane on school property. She said the group feels that a queuing lane and parking lot improvements are crucial. She said the groups concur with the staff recommendations and have no objections to the proposed addition or the storm water management. She said she would like to make a couple of points for the Planning Commission's consideration in regard to the traffic recommendations and the funding for this project. She commented that improving the parking lot and adding a queuing lane will help to bring the school closer to the standards of other district schools. She said for obvious reasons, the district makes a point of locating queuing lanes on school property and has a separate exit and entry for those lanes; this is not the case at Cherry Creek Academy. Ms. Huun said charter schools often chose the locations for school sites and it is widely agreed that this site is smaller than desirable for 450 students and has less than adequate road access. She said it then stands clear to reason that the community should expect the school to spend some of its capital funds to address property deficiencies that affect the surrounding communities. She said a queuing lane on school property is desperately needed so that residents can enter and exit their communities during drop-off and pick-up times. She said the capital funding the charter school receives is not their privately raised money. She said it is the public's tax money. She said \$2.5 million comes from a district-wide bond election and the school regularly receives both state and Federal money for capital improvements. She said the school may have broad rights in the planning arena, but their funding is public and their plans should have a public hearing. She said the only mechanism for a public hearing is through the district. She said on behalf of CCNA and ACCORD, she respectfully requested that the Planning Commission stands with the citizens and

recommend a hearing for this project before the Cherry Creek School District Board of Education.

Mr. Herzfeldt asked if she feels that there is adequate room for a queuing lane.

Ms. Huun said she believes that the school is working out the details of that and feels that there is room along Caley. She said the access is very limited and the improvements would not take away all traffic problems in that area. She said this is not an ideal site for a school, however, the access to this site has been exacerbated by a previous addition that unlinked the two parking lots. She said there is the ability to add a long queuing lane with two separate exit and entry ways along Caley. She said that seems to be the reasonable thing to do.

Mr. Herzfeldt asked if any of these proposals been discussed with the school.

Ms. Huun said the group has discussed this at length with Cherry Creek Academy to notify the neighborhood groups, which has been done. She said she has also spoken with the district superintendent. She said charter schools have a different relationship than normal public schools.

Mr. Herzfeldt asked if ACCORD has dealt with other charter schools.

Ms. Huun said she is not aware of any other charter school in this area. She said this is the only charter school in the Cherry Creek School District and all public schools in Cherry Creek are in ACCORD.

Mr. Gripenstraw said one of the proposals is a queuing lane that would run along Caley, which could hold up to five cars. He said the safety would have to be considered but other neighbors would also be affected by queue lanes, so the neighbors would have to be happy with that solution as well. He said the school is open to looking at ways to improve parking and traffic. He also clarified that this is the only charter school within the Cherry Creek School District.

Mark Lampert, 9022 E. Colorado Drive, representing 4 Square Mile (4SM) said this is a very interesting case. He said there is a problem with the process. He said the Planning Commission cannot correct the process with charter schools. He said the citizens have a problem and where we're going to go, we don't know. He said he supports what the Planning Commission just heard. He said this is not unique and there are corrections that can be made to this process. He said Christ the King in Denver is a private parochial school and have queuing going on in their process that is also part of their playground. He said that school limits certain times when kids are playing there so queuing can be used. He said that could be done here. He said the Planning Commission dealt with this type of case many years ago with the Denver Campus for Jewish Education. He said when the residents worked with that school, there was an identical situation. He said parents flagrantly violated the policy of parking on Wabash, and dropped kids off on both sides of Wabash. He said when that school expanded, it added a long line for queuing to eliminate that problem. He said the school was also moved quite a distance from Wabash

and through the parking lot there could be a tremendous amount of citizens that could park and queue and not block the traffic on Wabash. He further stated that Denver Academy is a private school and had the same situation because it is in a residential neighborhood. He said when that land was purchased, the school met with the residents in that neighborhood to make sure that their issues were addressed. He said that was never done in the beginning with CCA, which came in like a bull and started this process. He said the school is tremendous. He said Denver Academy has 450 students and is on a campus about three times the size of CCA and has multiple queuing lanes so the students are not dropped off on the streets. He said there is a way this can be worked out. He said this is a situation because there are neighbors that are irate; they see citizens drop off their students, pick up traffic cones, so they can park blocking driveways. He said it is not just pick-up and drop-off but also student assemblies. He said the problem is not the school but the parents. He said the parents must be educated. He said the Planning Commission might not have the force or the will to educate the parents, so the school has to do that and take this as a charter mandated to educate their students, educate their parents to follow through with that. He said parent volunteers are great but when the parent volunteer blocks a driveway to get out to do their duty of volunteering, which is great, but their the equal person that their trying to stop. He said we need to force the parties to sit down and work it out but he believes there is land to have a better process for queuing. Mr. Lampert said, "When you have a hundred and fifty cars extra five car parking here and queuing and an extra eighteen spaces, let me tell ya, makes Belleview during the time as the chair said, the queuing up of the cars. The issue is the safety of the students running out." He stated that there are students on Caley coming out on both sides, so don't let them tell you that they only drop off on one side. He said the kids get out, the parents then make a u-turn to get back to Dayton. He said someday there has to be more pressure put on for parents to understand this. He said we all don't want that responsibility of a child dying in an accident and the Sheriff does the same thing and so does South Metro. He said whatever you can do, you need to take it upon that and see that there is better traffic queuing in this project.

Scott Siegfried, Assistant Superintendent with Cherry Creek Schools, 4700 S. Yosemite, said he understands the process. He said the district has actively listened to the community and said the district is working with CCA to work through this issue. He said he has also observed the mornings and afternoons and has seen this issue. He said he has witnessed many school drop offs and he understands what those are like. He said everyone wants to resolve this in a way that makes sense and part of that is that there are 450 kids that range from six year olds to eighth grade. He said the kids deserve a playground but the school district wants to make sure the kids are safe when they are dropped off and get picked up. He said there would be some type of queuing along Caley. He referenced a letter from Ms. Kuhn and a letter from the community to the academy. He said the issue would have a public conversation later this summer and everyone will have a chance to look at this and have a conversation about what this will really do and what it will mean for the school. He said the district has committed to work with the academy to resolve this issue and the resolution would be in the middle where both sides can feel good about 450 kids coming to a place safely and getting a good experience.

Mr. Brummel said Cherry Creek is one of the richest school districts in the country. He said rooms are being added to the building because there are teachers walking around with carts and there are 450 kids shoehorned into this neighborhood. He asked why a school is not built somewhere. He said there must be other facilities that would be more suited to the size of this school.

Mr. Siegfried said Cherry Creek is building more schools, but because this is a charter school and they have their parent board that runs the school, they have the opportunity to look for different space and that was done. He said this school started in a building in the Tech Center and then moved to this property, which came through this commission with a hearing and had that process. He said if the charter school wanted to look for other space, they could do that.

Mr. Larson asked if the charter school is private.

Ms. Kuhn said no, this is a public school that is privately run.

Mr. Brummel said this school is funded but has special rules.

Mr. Siegfried said there is a 30-year mortgage payment on a charter with the school district and the funds do flow through the district. He said about 97% of the per pupil funding comes from the state and other services are purchased.

Mr. Rosenberg said before the comments, he felt that the Planning Commission should recommend that there be a public hearing before the school board, but he wondered if that is necessary.

Mr. Siegfried said the statute reads that the Planning Commission may request a hearing before the Board of Education. He said a queuing lane would be provided but the details need to be worked out and the community needs to be involved. He said the queuing lane addresses issues that were noted in letters from the community and concerns from staff. He further stated that all board meetings are public.

Mr. Hayutin asked how the public can get involved to voice their opinions.

Mr. Siegfried said the district would speak with Mr. Gripenstraw about proposals and drawings and then the community would be invited to discuss what this would look like. He said the first thing to do is to have the public conversation. He said that would be done in July or August.

Mr. Hayutin said if the public would be invited to participate, then the district and the school don't need anything from the Planning Commission.

Ms. Huun said she has a problem with that plan because the administration of the school district is working with the charter school and there would be no hearing before the elected board of education. She said there has been plenty of time for them to come to the table to get something at this point. She said they are talking about starting

construction in two weeks and she would like to have some public protection before the publicly elected school board members that says that the public would get a hearing before this and before the district approves the plans.

Mr. Hayutin asked how that could be done by the Planning Commission.

Mr. Rosenberg said the Planning Commission does not make any decisions in this case.

Mr. McNish agreed.

Stuart Coppedge, RTA Architects, 2484 Sierra Oak, Colorado Springs, said the traffic issue would not be changed with the construction. He said students would not be added and the drive lane would be improved. He said the drainage would be improved significantly but the traffic issue is not changing. He said the school is under severe time constraints regarding the phasing of the project and the construction costs of doing parts of the project when kids are in school and when kids are out of school. He said the foundation permit should arrive any day. He said the project has been bid and that contract is about to be signed; if the project gets delayed, there will be significant financial impacts and the ability of the general contractor to do the work that he's bid on will be hurt. He asked the Planning Commission to consider that. He said he is not saying that there shouldn't be a continuation of discussion in trying to work out the drop off lane, but the construction of the additional square footage does not change the number of kids in the school. He said that will provide a better facility for the same number of kids. He said regarding the safety of the kids, the administration is buried in the middle of the building and they cannot see the front door so the renovation makes the safety of the building better. He reiterated that the timing of the construction start is very important.

Mr. Herzfeldt proposed that the letter state that the Planning Commission gives the school permission related to the school's queuing lane improvement, not to interfere with the construction of the on-site improvements that. He said the Planning Commission should let them go forward with the construction because it has nothing to do with the queuing, but the Planning Commission could still ask for a public hearing that deals with improvements for queuing.

Mr. Weiss asked what impact a public hearing would have on construction.

Mr. McNish said the County doesn't issue the building permit.

It was clarified that the school can start construction without a public hearing but the traffic issue is separate.

Mr. Hayutin said the public should be involved because this is a public project.

Mr. Lampert asked that the entire memo be read into the minutes so the public knows what the Planning Commission is voting on. He said there is one statement that bothers him. He said the school has not acknowledged that there is a problem. He said the

architect just said there is no problem with the construction. He said if there is a problem with the parking, they haven't addressed that and that is the key issue. He said the Planning Commission is not the body that has the power to stop the construction but that is the problem with the process and he doesn't know how to fix that.

Ms. Kuhn read the memorandum into the public record.

Mr. Rosenberg asked that the two issues related to the parking lot and the queuing be included in the letter, as well as a statement stating that the building permit for the expansion not be affected because of those two issues.

The Planning Commission agreed to allow the chair to sign the letter.

Mr. Gripenstraw explained how charter schools are different. He said charter schools are public schools and there are about 150 charter schools in Colorado. He said Cherry Creek Academy was one of the first and was founded in 1995. He said a group of parents come together and ask for a charter to get their own school. He said the difference is that there is per pupil revenue that comes to the school, which is about \$7,000 from the state. He said that money comes through the district and the charter school gets about 97.5% of that. He said some of that money is given back to the school district for special services and special education. He said the financial challenge to the charter school is that the charter school has to purchase and maintain its own building. He said the mortgage on the current building is about \$30,000 per month. He said the charter pays for all utilities, all landscaping, all janitorial services and any other maintenance activity and that is a challenge to running a successful charter school. He said one thing that has made this charter school successful is that there are 40 elementary schools in this district and this charter school routinely ranks in the top five. He said the school is parent-run and parent-driven and there are many motivated parents. He said there is a waiting list and many parents in the district put their kids on the waiting list as soon as their children are born. He said the waiting list currently has about 1,500 kids on it. He said the school is very diverse and is a successful model. He said one of the challenges is making people understand that it is a public school.

### **Item 2 – W09-001, Land Development Code Amendments #1**

Tammy King, Zoning Administrator, stated that there are several different code amendments that have been done by different planners. She said each change would be reviewed and if there are questions, the planner would answer any questions. Jurisdiction was established.

The first amendment deals with masonry walls and the fence code. There were no comments received from referral agencies.

Mr. Weiss asked about Part C. He said a stone fence with another material on top of it would not be allowed. He said the wall would have to be entirely stone, entirely concrete, etc.

Mr. Hovland said that is not correct. He said the maximum height is 8 feet but if a builder wanted to use two or three materials that would be acceptable, as long as it is consistent along the entire frontage of the subdivision.

Mr. Weiss said that is not the impression he got when he read that. He said he thought the entire wall had to be one material.

Mr. Hovland said no.

Mr. Rosenberg agreed with Mr. Weiss. He said there are some neighborhoods that have brick columns between wood panels. He said the way this code reads, that would not be allowed.

Mr. Hovland provides for masonry along the entire boundary, if the builder chooses to do that. He said a wood fence would be allowed but would be limited to six feet in height. He said this is a new code that allows an 8-foot wall.

Mr. Weiss said some fences, architecturally, have different heights.

Mr. Hovland said on an arterial street, there would not be much difference in grade. He said the effect that the staff is worried about is that someone in the middle would not agree to the same fence and would want to build a six foot wood fence. He said this code amendment requires the same materials be used across the entire subdivision.

### **Public Comment**

Jerry Atencio, 1776 S. Uinta Way, said he also has a problem with Paragraph C. He said he is not sure subdivision is defined with regard to fences. He said within Mountain View Gardens, there are three sub-developments with private streets. He said near the intersection of Parker Road and Florida, that sub-development has a wood fence. He said further south on Parker Road the next sub-development has a different type of wood fence. He said on the same arterial there are different heights and materials. He said each of those property owners belong to a different homeowners association, but it is all in one area. He said he doesn't know how this change would affect each of those property owners. He said there are five different elements along Parker Road. He said this revision states that the walls must be the same height and none of those fences are the same height or design. He said he doesn't know if the planners would look at a subdivision as one entire area or if they would look at every sub-development that was built over time that is part of the greater community. He said he has some heartburn if this is adopted and those homeowners who have built their fences and have been there for years now have to create the same design with five different communities.

It was clarified that the code revision applies to new development.

Mr. Hovland said a subdivision is a recorded document that includes lots; some of those lots have frontage on an arterial street. He said on those lots, within that recorded subdivision, the same colors, materials and height shall apply. He said Mr. Atencio is

correct and someone did cut that area into pieces, but the County would not go back and create a standard theme for arterial streets throughout Arapahoe County.

Mr. Rosenberg said the Planning Commission's concern is how people are going to read the code.

Mr. Hayutin agreed that the revision should be reworded.

Mr. Hovland welcomed suggestions.

Ms. Yeckes explained that if someone requests an 8-foot masonry wall because they are adjacent to an arterial, the County would not go back to existing developments and mandate a new 8-foot wall that would match the new wall. She said the code revision applies to new construction. She said the revision prevents a change on a lot-by-lot basis. She said different subdivisions may not have the same design or color.

Mr. Hayutin said the code should be reworded so that point is made.

Ms. Yeckes said this code just defines what the standards are for an 8-foot masonry wall if someone should happen to apply for one. She said if no one applies, then this code never gets used. She said this code creates an option.

Mr. Rosenberg said his neighborhood installed a fence that was 8,000 feet long along multiple streets. He said the concern in the neighborhood was that one street happened to be Havana and across the street Greenwood Village put a 10-foot wall so there was noise bounce. He asked if the wall along Havana would have been 8-feet tall and then six feet tall in the other places.

Mr. Hovland said yes, as the height would have to be consistent on the one frontage.

Mr. Hayutin asked how that could be worded so that comes across.

Mr. Yeckes said the code specifically states "on a major collector or arterial street". She reiterated that this would be on a request basis.

Mr. Weiss asked if the Planning staff is aware of any properties within a certain HOA or community are in different subdivisions.

Mr. Hovland said that usually doesn't happen because the document that creates the HOA is always recorded subsequent to the subdivision.

Mr. Weiss said the example that was given before, where there are three different subdivisions, wouldn't apply in this case because they could each have their own style.

Mr. Hovland said each HOA has its own individual CC and R's and they may not be the same.

Mr. Rosenberg said there are seven different filings in his community. He asked if a filing could have asked for an 8-foot wall even though the other filings are under a different code.

Mr. Hovland said that is a subdivision and that is why they are numbered that way.

Mr. Rosenberg said it is possible that there could have been different fence heights because of different filings within the same neighborhood.

Mr. Hovland said it is possible. He explained that a subdivision could apply for a wall and the wall could be only six feet within other areas of the subdivision, as this code only applies to a frontage to the subdivision.

Mr. Rosenberg said technically, there could be different types of walls along a frontage if there are different filings or subdivisions.

Mr. Hovland agreed.

Mr. Atencio asked how that would be handled by the Planning Commission.

Mr. Hovland said if one filing wants six feet they can have six feet; if the next filing wants eight feet, they can have eight feet. He said if the filings don't want to work together and can't come to a compromise, then that is their choice, not the County's. He said the HOA would have the ability to work that out.

Mark Lampert, 9022 E. Colorado Drive, said the precast concrete is a great addition and is much needed because that has been a nebulous area. He asked if there are guidelines. He said there are different types of precast concrete. He said there was almost a "bait and switch" done at Prospect Village. He said the residents thought they were getting a thicker wall than what was delivered. He asked if there are requirements.

Mr. Hovland clarified that this is a definition and is not a performance standard.

Mr. Lampert asked if there are going to be guidelines in place.

Mr. Hovland said no. He said based on the height and material, the wall would have to be engineered.

**The Planning Commission voted unanimously to approve the revision to Section 1-4203.**

Ms. Kuhn then discussed mylars. She explained that staff had some concerns about the mylars not being permanent, they would bleed, they would flake off and a recent concern came up with a plat that did not meet the water test. She read the proposed amendment related to the content of the mylar.

Mr. Weiss asked if the minimum size could be changed to 24" x 36" minimum. He said in many cases the mylars are 30" x 42".

Ms. Kuhn said the County's code is 24" x 36" and that is a standard everywhere. She said that is already in the code, that is how the plans are submitted and that is how the mylars get hung. She also stated that the County could not get bigger mylar cabinets.

**The Planning Commission voted unanimously to approve the addition of the proposed text to various sections of the Land Development Code, as read into the record by Ms. Kuhn.**

Mr. Skinner stated that there have been amendments to Section 4800, which is the landscape design standard. He said until now, there was specific language that said the County would only give credit for trees and shrubs for plant quantities. He said there would be useful designs that used ornamental grasses which are popular and staff could not allow those because they were not listed in the code. He said there were a number of requests from the design community asking the County to accommodate that. He said ornamental grass is limited to a percentage and trees will still be required. He said there are some accommodations for smaller containers; typically the County wants 5-gallon containers. He said there are a wide variety of species of grass but not as many as the County had hoped for, so smaller containers would be allowed, but three would have to be used to count as one bigger container.

Mr. Skinner said there was one paragraph in Section 1-4806.01 that dealt with small lot size. He said there was a typing miscalculation so there were two categories that were supposed to be exclusive but overlapped, so the numbers were changed.

### **Public Comment**

Mr. Lampert said this comment comes from Cherry Creek Valley Water and Sanitation District (CCVWSD). He said the addition of ornamental grasses was great because they are now popular, but the concern from the District is that the County should look into having a landscape architect or some conservation expert to review the trees that are listed as acceptable because of the fact that there are trees that require a lot of water. He said there should be some trees that are not allowed.

Mr. Hovland said the County does have a landscape architect on staff and he is the person who wrote the revisions.

Mr. Skinner said there are additional revisions. He said in Section 1-4804 there is an addition that gives the Planning Division Manager additional discretion. He said the code stated that every lot had to have landscaping on all four property lines, but that is not possible with attached townhomes. He said staff wanted those types of cases to be considered by the manager. He said Section 1-4808.04 gives the design community the possibility to do substitutions and there should be an explanation as to why the substitution is necessary. He said regarding the species of trees, many of the species people propose serve a particular purpose. He said there may be a group of water intensive plants that are really good at providing dense foliage and a visual block. He

said there might not be a drought-tolerant plant that can do the same thing. He said the markets shift from season to season and the growers focus on one market or another. He said the palette is much smaller for drought tolerant plants. He said if any plant that requires typical irrigation was removed from the code, there could be unusual results. He said it is an option but he would not recommend it. He said no other municipalities in Arapahoe County are doing that. He said areas such as Phoenix take an aggressive stand on that, but Denver isn't that water poor.

Jerry Atencio concurred with Mr. Skinner's recommendation. He said there are parts of Arapahoe County that have very wet soils and the other palette is needed.

Mr. Rosenberg asked how the Planning Commission could encourage people to be water conscious.

Mr. Weiss said the trend is leaning towards restrictions now.

There was debate regarding restrictions.

Mr. Skinner said drought tolerant plants are an option that is available, but there would be a portion of the public that doesn't want them, no matter what. He said they could be required, but the backlash would be more that the County would want to deal with. He said some jurisdictions take an aggressive stance, and others leave it up to the local water utilities. He said if the developer has to hold on to property for any amount of time, they would be inclined to go for something that is a little more drought tolerant and there are some communities that are drought tolerant and that is a market choice, but that is not something the County would regulate.

**The Planning Commission unanimously agreed to adopt the amendments to Section 1-4800 of the Land Development Code.**

Sherman Feher discussed the request for an administrative building height amendment in Section 5306. He explained that over the years the County has had various applicants that wanted to "tweak" the height of their proposed building administratively. He said the current regulations have no provision other than for mechanical appurtenances to take that into account. He said this revision evolved over time; in general, for an administrative amendment, 10% was usually the percentage allowed. He said the staff felt that the height would get exaggerated the taller the building was. He said it was decided that staff would propose that a cap be set at three stories or 45 feet tall for administrative amendments only. He said anything below that height could be increased administratively up to 10%. He said if a developer desires a higher amendment, then the developer would have to go through a full amendment process.

Mr. Rosenberg said this change has never been discussed.

Ms. Kuhn said this issue was discussed during the water treatment plant case. She said staff brought the case to the Planning Commission and the Planning Commission asked

for the amendment to the Code. She said that case was for Inverness Water and Sanitation District water plant off of Jordan Road.

Ms. Yeckes said that was an odd situation; there was a utility building that was in “no man’s land” and the district needed a very small height adjustment; the administrative amendment process specifically said “no building height increases”. She said the district was unhappy that they had to go through the full amendment process. She said staff brought that issue to the Planning Commission, which staff doesn’t like to do, but in this circumstance, it didn’t seem like the intent of the code was to restrict something like that. She said that was a very limited increase in height of a very small utility building in a very obscure location. She said staff asked the Planning Commission whether or not the Planning Commission was comfortable with staff moving forward and doing that administratively and at that time, it was determined that this might be a change to the code to make the County’s processes more user friendly. She said since that time, the staff spoke with the Board of County Commissioners about ways to make the development process more user-friendly and more efficient and more cost effective. She said this was an example that was specifically cited. She further stated that the Board directed staff to proceed and that is where this height amendment came from. Ms. Yeckes said this amendment is intended to be very minor and very limited. She said this would not be used in cases where sections of the building are more than three stories and the height limit is no more than 45 feet. She said this amendment would be for buildings that would not exceed limitations specified in a PDP or as a requirement of the zoning district.

Mr. Rosenberg said he has a problem with this. He said the Planning Commission members that have been here long enough, have had areas of disagreement in the 4SM area that is sometimes just inches. He said it could be a foot or two feet on a 40-foot building and to administratively allow changes is asking for trouble. He said he cannot vote for this.

Ms. Yeckes said staff proposed this change because it could be a potential solution to problems that are brought to staff’s attention. She said the Planning Commission should take into account what staff presents and what the Planning Commission hears from the public and what the Planning Commission has already experienced as a Planning Commissioner for Arapahoe County and make the best recommendation. She said staff doesn’t expect the Planning Commission to always agree and sometimes issues are brought to the Planning Commission because it is a way for staff to respond to a request. She said sometimes the public comes to staff with an issue and the only way staff can address that issue is to take it through the public process.

Ms. Kuhn said in the previous case, the request was for an additional two feet; the zone allowed for a 50-foot building and the existing building was 23 feet tall.

Ms. Yeckes said even with that height increase, the applicant was going to be half the height of the zone district allowance. She said the Planning staff crafted the details of the proposal but the Planning Commission is welcome to make revisions to the draft. She said the Planning Commission can also recommend denial.

Mr. Weiss said in the case that was given as an example, if there is a controversy, the case would be brought to the Planning Commission anyway. He said if the project is controversial, there would be more issues that just raising the building one or two feet. He said there would be greater issues. He said with all code issues and all code wording there would always be some exception to the rule and common sense would be key. He said he could pick apart any code but if common sense is used, he feels comfortable giving staff the authority to do an administrative amendment.

Ms. Yeckes discussed the process for an administrative amendment. She explained that the criteria are in the LDC. She said if an administrative amendment is requested, staff meets with the applicant and reviews the criteria one by one. If the application meets all criteria, staff is hard-pressed to deny the request. She said the public has talked to staff about concerns over the administrative process. She said staff has tried to be more responsive to those concerns; if the project is in a neighborhood where concerns are anticipated, staff tells people up front that the case would be sent to an external referral. She said staff is not required to do that but would, and these types of cases are always sent to the fire districts for review. She said when external referrals are done, that extends the 30-day process. She said a group such as the 4 Square Mile Association or ACCORD have an opportunity to look at the application and give feedback. She said if staff feels that there are issues that would not make an administrative approval appropriate, the applicant is told up front that those comments might escalate the level of review. She said if that is challenged and the applicant doesn't agree, the County Attorney would get involved. She said staff tries to accommodate the public in these processes. She said she cannot say that there are zero risks, but Mr. Weiss is correct that the code is not perfect. She said staff appreciates the Planning Commission's review and recommendation.

### **Public Comment**

Mr. Lampert said the whole concept is not a bad issue. He said the word "administrative" has got to change. He said it is a great process and the 4SM group and ACCORD have a great rapport with staff but he wondered if these groups are "the sticky, oily person that can't get out of your hair?" He wondered what happens to those who are not here to speak. He said if the word "administrative" with "external referrals if necessary". The word administrative is just a scary thing. He said it was done once in Lambright and the public had no input and the public cannot go back and change that. He said a few words can be added to make it what the County wants and also what the public wants.

Mr. Atencio said he is very impressed with the involvement that this Planning staff provides to the community. He said what scares him is exactly what Ms. Yeckes said—there could be a change in County Commissioners and the LDC says one thing and that's the way it's going to be handled. She said that tells him that he has a benevolent government that involves him and the way this language is written, that's the way it would be because there could be a change in the County Commissioners and the policy would be different and it could still be Jan Yeckes who is the head of the Planning Commission, but she has to follow her orders. He respectfully requested that the

language be changed because this language would be part of the code and the public would not be involved if we didn't have a benevolent government.

Mr. Hayutin said the amendment should be sent back for rewording so the Planning Commission doesn't have to worry about the concerns that the citizens have.

Mr. Herzfeldt agreed.

Mr. Feher asked for clarification. He asked is the discussion about the entire administrative process or is it just about an administrative amendment for height?

Mr. Rosenberg said he would vote no on this section because it opens up risk.

Ms. Yeckes said the question is whether there is ever an administrative review or should a public process be required for absolutely everything, and if not, then where is the line drawn? She said currently, under the administrative amendment process, the intent is to provide an abbreviated amendment process for minor modifications to preliminary master development plan final and/or subdivision development plans that do not substantially alter approved development standards. The administrative amendment must preserve the intent of the original preliminary final subdivision or master development plan that it modifies. This administrative amendment process is intended to be accomplished within 30 business day period, however, this time frame may vary depending upon the circumstances of each individual case. She said the code established some basic requirements and criteria the manager must follow in making the administrative designation. She said the code states that, "Increases to the approved building heights on preliminary final master and/or subdivision development plans shall not be allowed under this administrative amendment process and must be applied for through the formal PUD amendment process, however, increases in building heights required only to accommodate mechanical appurtenances may be processed administratively." She said if a developer realized that the rooftop air conditioners were a little taller than expected, the staff can make that adjustment. She said the code is pretty restrictive as it is written with no building height increases other than mechanical.

Mr. Weiss said under that wording, the parapet cannot be increased to cover the mechanical.

Ms. Yeckes said that could be done because the code talks about increases in building heights required only to accommodate mechanical appurtenances. She said if the County requires that those be screened, then the height could be increased.

Mr. Weiss asked if heights are taken as an average.

Ms. Yeckes said in the Planning Commission's materials, there is a diagram showing how height is calculated. She said it is complex enough that the staff is asking that the diagram be incorporated into the code. She said the average deals with the grade of the property and measurements must be taken at key points. She reviewed the chart.

**The Planning Commission agreed with the proposed amendments to Section 1-5306.**

**Vote:**

**For: Brummel; Larson; Herzfeldt; Weiss; Hayutin**

**Against: Rosenberg**

Ms. King said the next discussion addresses some wording changes; these changes were requested by the County mapping supervisor and the County surveyor. There were no public comments submitted by the referral agencies.

**The Planning Commission unanimously agreed with the proposed amendments to Section 2-305.**

Ms. King discussed a drawing that helps the developer determine the average height of the building. She explained that each elevation is measured in five-foot increments and the average is found for each side of the building. The total is then averaged. She asked that this drawing be included under the definition of building height in the Definitions section so that it is clear to everyone. There were no public comments submitted.

**Public Comment**

Mr. Lampert said this is sorely needed because this picture is what was used by Prospect Village because of the elevation problems that that parcel had by being on an unlevel property. He said 4SM is in favor of this.

**The Planning Commission unanimously agreed with the proposed addition to the Definitions.**

Ms. King then discussed the proposed amendments to the definition of “Pets”. She said this issue has been before the Planning Commission in the past, and the Planning Commission asked staff to continue working on the definition. She said instead of defining animals that were wild or exotic, staff added “defined as by the State Division of Wildlife as prohibited.” She explained that if the State’s regulations change, the County doesn’t have to change the code again and the County would be consistent with the State. She said staff worked very hard with the 4SM area to word the snakes and reptiles to prohibit any poisonous animals. She said constrictor snakes would be measured from the tip of the nose to the tip of the tail; anything larger than three feet is prohibited in a residential area. She said this applies to residential zones only, not commercial pet stores.

**Public Comment**

Ray Patrick, 3900 S. County Road 137, Bennett, asked why the rural residents are always the last ones that get to talk. He said he lives 28 miles from here and he counted six houses the first six miles and from there on its all open. He said he lives eight and a half miles outside of Bennett and he is out in the country. He said there are cats and dogs that people from town have dumped. He said he always catches them because he hates to see them starve to death. He stated that he has six cats that have been neutered and spayed and he would be glad to bring them here and the County can take the ones it wants. He

said he would like to know who would enforce this code. He said these animals are not his pets.

Ms. King clarified that this regulation is for residential zoning only, not agricultural. She said that applies to single-family in-town lots. She said when Mr. Patrick spoke at the last hearing, staff took what he said to heart and so did the Board, so there were no changes to the Agricultural zone. She said the rural areas had to be notified of the proposed changes because they are part of the County.

Mr. Patrick said he was concerned because he has one cat he's been trying to catch for six months. He said he'd have to shoot the cat soon if he can't catch it.

Jerry Atencio thanked the Planning Commission for providing the time, space, and opportunity to work with the Planning Commission to change this definition. He said the 4SM area supports the change.

Lafayette Blair, 3555 S. CR 137, asked what the code really means when it states "pets" and "agricultural". He said, "the resident is a resident" and he has a problem with that.

Mr. Brummel said it is based on the zoning.

Mr. Blair said that language could somehow be amended to put it into the document. He said there will be a problem in the future.

Ms. Yeckes agreed that the code is hard to read but said the agricultural zones have language that deals with this separately and the agricultural zone language is more specific than definitions, which are very general.

Mr. Blair said the house is a residence.

Mr. Brummel said the land is zoned agriculture.

Ms. Yeckes asked what zoning Mr. Blair has on his property.

Mr. Blair said A-1.

Mr. Brummel said Mr. Blair's land is zoned agricultural and it is based on the zoning.

Mr. Blair said that should be clarified. He said he would hate to have someone come to his home and count the number of cats.

Mr. Larson said that would not happen because a residential zone is different from an agricultural zone. He said if the property is classified as agricultural, then this code would not pertain.

Mr. Blair said at the last hearing he suggested that the rural areas be excluded.

Mr. Hayutin clarified that Mr. Blair is excluded.

Mr. Blair reiterated that this code should be clarified so when someone sends him a letter he doesn't have to come to the County and argue about what is a resident.

Ms. Yeckes suggested a change to the language. She said it gets risky to start cross referencing sections, but that is a possibility.

Ms. King said that has been done. She said the pet definition would be added to each of the residential zone districts so that it is clear. She said the code could not be misconstrued because it would be in every R zone category. Ms. King said she does not feel that it is a risk.

Ms. Yeckes asked if the agricultural section uses the term pet.

Ms. King said yes, but it is under "Accessory Use".

Ms. Yeckes wondered if, under the general definition of Pets, the text following "and not raised for commercial purposes" should be removed and the rest of that definition be placed as additional clarification within each of the residential zone categories because if there is a reference to pets in the agricultural zones, people would still look at the definition. She said staff doesn't like to have regulations in the definitions, but sometimes there is not a section of the code to handle it. She said that could be done in this case. She suggested taking the definition of pets in the general LDC definitions and stop at the end of the phrase "and not raised for commercial purposes". She said pets could then be listed as an accessory use in each of the residential zones. She read the proposed change into the record. She said that takes the phrase about the combination of three dogs, cats, small animals and moves that to the individual residential zone sections. She said taking that out of the general definition makes it less confusing. Ms. Yeckes said staff could rewrite the definition in accordance with the Planning Commission's motion and send that to the BOCC for review.

Mr. Hayutin and Mr. Rosenberg asked to see the revision before sending it to the Board.

**The Planning Commission unanimously agreed to the proposed amendment.**

Mr. Lampert said this is a great compromise.

The proposed changes to inoperable vehicles were discussed. Ms. King said the proposed change will address some comments from the 4SM area and from an East Planning Advisory commissioner, Mr. Hollingsworth. She said was concerned with the definition of "maintained".

Ms. Yeckes said staff wants to keep the terms related to vehicle together in the code so people will see both pieces. She said the term "vehicle, inoperable" has been recommended for changes. She said current tags must be attached to the vehicle. She said previously some suggested language was added and the Planning Commission asked

staff to meet with Mr. Atencio and Mr. Lampert to discuss their concerns. She said changes were made but there were also concerns about farming and ranching. She said read the proposed language into the record. She said if there is an old pickup truck way out on the farm, the County staff would not drive into the field and see if the truck has current tags it is a ranching vehicle. She clarified that an inoperable vehicle could not be stored under a car port. She said sometimes inoperable vehicles don't have wheels or they have flat tires or could be in a state of disassembly, but it is difficult to write a perfect code that applies to every situation. She said if the vehicle is inside an enclosed building, the vehicle is exempt. She said the County is not in a position to say that the vehicle doesn't have to be licensed with the State but for zoning purposes the County is not going to worry about those vehicles. She said staff had proposed adding a new term. She said there were some concerns regarding language in "vehicle, operable" that indicated that the vehicle had to be registered to a resident residing on the property, a family member, or a visitor. She said staff was trying to be inclusive to address concerns that came up regarding a relative that visited for a month or a relative that was leaving to serve in the military and didn't have anywhere to leave his car. She said staff is trying to prevent situations where people are storing boats, trailers, or work trucks not belonging to them on large lot residences. She said that becomes storage of vehicles as a use not accessory to the principle permitted use on the property, which is a residence or an agricultural use. She read the proposed definition of "vehicle, operable" into the record. She said this is another situation where staff would prefer not to have the regulatory information in the definition and would like to just say that this is a vehicle that can be legally operated and has current tags attached; the other issues would show up somewhere else in the code. She said it could be handled in a way similar to what was done with "pets" and each affected zone could be amended. She said staff has tried to cover the bases for multiple situations.

Ms. Yeckes explained that "parked on a lot zoned or used for residential use or residential/agricultural purposes" is being included because sometimes property might be zoned residential, but might not have a house built on it and could be a vacant residentially zoned lot. She said in that case, the County doesn't want that property used for outdoor storage. She said in a situation where the property isn't zoned residential, but it has always been used as a home and continues to be used as a home as the principle use, the County doesn't want to infringe on the principle use of the property as a home and start combining that with vehicle storage and turning it into a business. She said if the owners want to turn it into a business they need to turn it into a business property and not combine that use with the residential use. She said that is why that sentence was included. She said the parking of all vehicles including those for farming and ranching on the same property is exempt from these requirements. She said there was a situation where someone had an agriculturally zoned lot in an urban area with a home on it but it wasn't farmed any more. The property is surrounded by urban development and that person said that he could park farming and ranching equipment on his property. She said that would be true if the equipment belonged to the owner and he was using it for his purposes, but the owner was parking other people's equipment and renting that space and that is considered outdoor storage. She said the County was getting complaints from the surrounding development. She said staff has tried to address issues that have been a problem. She said the language is a little cumbersome, but staff tried to get it as clean as

possible. She said one of the examples given was a person who is assigned a vehicle to take home and that vehicle is not registered to the home owner or a family member. She said that was somewhat problematic. She said the other concern that came up was that there was the term “on a maintained surface”. She said staff doesn’t have a code that absolutely requires a paved parking surface or a gravel parking surface for all types of residential and agricultural development. She said where there is an urban home and the front yard is clearly defined, that is not a surface intended or maintained for parking. She said the County needs code language that can be enforceable and enable staff to use professional judgment. She said the County is developing a new code that will fix a whole list of problems, but this is the proposal for the current code.

Mr. Weiss said there was a recent case that is now zoned B-1 that had a lot of vehicles on the property that were not pertinent to the business, which were parked on grass.

Ms. Yeckes said that property is being proposed for rezoning from Residential to Business.

Mr. Weiss asked about all the vehicles, trailers, and RVs that would not be covered under this section.

Ms. Yeckes explained that this amendment only talks about properties that are zoned or used for residential or agricultural purposes. She said once that property is zoned to B-4 that would be a permitted use.

Mr. Weiss said the issue is still the same.

Ms. Yeckes said if that property remained residential, the County would enforce the code and the vehicles would have to be moved.

Mr. Weiss said the issue is the same whether it is residential or for a business or industrial. He said the issue was that if this was a residential lot, and the neighbors were complaining because of all the vehicles that were parked on grass, it is still the same issue now whether it is residential or business to the neighbors.

Ms. Yeckes disagreed. She said assuming the rezoning is approved, the land would now be a business use and the storage of vehicles is now a permitted use within that zone and the owner would have to provide screening required for outdoor storage. She further stated that the owner would have to install a screening fence and install landscaping to visually screen that storage. She said on a residential property, if the owner is storing other people’s vehicles, the owner is essentially running a business.

### **Public Comment**

Mr. Blair said the paragraph was improved considerably but he still has a problem. He stated that parking on a maintained parking surface doesn’t occur on agricultural land. He asked about the enforcement and said he has been held up for 30 years because of the language and he had to go back and prove that he went through all the steps earlier. He

said this is not the only time he's had to go back over the years and get the language straight before he was subject to a fine.

Mr. Larson asked if Mr. Blair lives on a farm.

Mr. Blair answered yes.

Mr. Larson said any vehicle used for farming or ranching would be exempt.

Mr. Blair said the paragraph before that says "agricultural/residential must be parked on a parking surface". He said it doesn't say exempt there.

Mr. Larson agreed that that language is confusing.

Mr. Blair said that creates havoc in the future.

The Planning Commission members agreed.

Ms. Yeckes said she would look at that while the Planning Commission hears more public comments. She said the surface maintained for parking is the Achilles heel for this issue. She said there has been discussion about a weed-free surface, but there was discussion about parking on a lawn that had no weeds. She said the point was that agricultural areas might have an area that is used to park cars and it could be mowed. She said it is very hard to write one code that applies to everyone.

Mr. Weiss asked if there was discussion in the past about writing something about the cars being visible from a public right-of-way.

Ms. Yeckes said out east there is a lot visible from the public right-of-way and that would be hard to enforce. She said the question is if the vehicle is parked on an agriculturally-zoned lot and the vehicle has weeds growing around it but the tags are current, would the Planning Commission care. She said some of the neighbors would.

Mr. Lampert said the 4SM area is trying to clean up the area and the wording works well, but the concern is for the citizens in the rural area. He said you can't make one thing fit for every area. He wondered if this is something that could specifically be placed in the residential zoning codes and do it separately for the agricultural areas. He said the concern is the parking on the maintained surface. He said he doesn't like to see regulations that cannot be enforced. He said another concern was the phrasing "current tags" because someone's vehicle could be considered inoperable if he is a little late on paying his registration. He said if a neighbor feud starts and there is a resident that wants to turn in a neighbor, that neighbor with a late registration would be in violation of the zoning code because of the words "current tags." He said it seems like the State already has the requirement that all vehicles that are operating on public streets have to be licensed. He asked where does the State versus the County come in to the enforcement of current tags, and why put something in that's going to be very hard for Ms. King to enforce. He said going back to the issue he brought up, is it not possible to

break it down into specific zones as was done for the pets definition. He said there are some RA lots in 4SM, so some of these issues are a concern for these neighborhoods.

Mr. Larson said the code states “used for farming or ranching” so if there is not a farm or a ranch on an agriculturally zoned lot, the owner cannot have that type of equipment.

Mr. Larson said the concern is the extra vehicles. He said if there is an RA lot in an urbanized corridor, the owner can park a variety of vehicles there if they are properly licensed. He said the question is how many and that is different in an urbanized area compared to a rural area.

Mr. Rosenberg asked if six tractors can be parked on a RA lot in the 4SM area if there is not a farm.

Ms. King said yes, according to the current regulation. She said if the proposed amendments are implemented, that would not be allowed. She said tractors don’t have to be licensed.

Mr. Lampert said there are RA lots that have tractors on them and they are used to cut the weeds, but it is not considered a farm or a ranch.

Mr. Larson said those properties are in violation. He said the way it reads, the code should address Mr. Lampert’s concern.

Mr. Rosenberg said no.

Mr. Larson said a farm tractor is not allowed unless the property is being farmed.

Mr. Lampert said if the land is not being farmed, but the tractor is needed to cut the weeds down. He said a clarification is needed.

Mr. Rosenberg asked the Planning Commission if they agree on the “operable vehicle”.

Mr. Atencio said the Planning Commission cannot approve one and not the other because they are linked. He agreed that the parking surface is the Achilles heel.

Mr. Rosenberg stated that that applies to the “vehicle, operable” section. He said he is trying to narrow down to the issues and it seems that the “vehicle, operable” is where there are concerns. He said the proposed amendments to “vehicle, inoperable” are ready for a vote.

Mr. Atencio said with regard to the B-4 zoning, that is a commercial property, and that owner could erect a fence and park an inoperable vehicle on a weedy surface and there is no recourse to the surrounding neighbors. He said a resident, under this definition, could park behind a screened six-foot fence, but it would be a violation of the code because the car is not in an attached garage. He said a resident is being held to a higher standard, because he owns a house, than the commercial property that is surrounded by residences.

He said they are being treated differently and there is still an issue. He said the situation is the same but it would be a violation for a residence under the proposed amendment.

Mr. Rosenberg asked Mr. Atencio if he would have liked this code to be in place when he had issues and problems.

Mr. Atencio said many of his neighbors that have lived there for 30 years have stored inoperable vehicles on their property, but he bought his property there after they lived there and he assumed that risk when he lived in unincorporated Arapahoe County and they have the right to park a car without tags on their property that doesn't have a fence around it because they've been using it that way for years. He said the Planning Commission is taking away one of their rights by the revision of this code. He acknowledged that this hearing was published in the newspaper, but many people still don't know about it and he thinks they should continue to have the right to continue to park their vehicle, if that is how they've used the land for the past 30 years. He said he has made his feelings known to Jan Yeckes and he has made the identities of those neighbors known. He said some are very wealthy and some are not, so it has nothing to do with wealth but everything to do with how they use their property. He said they moved into unincorporated Arapahoe County because they didn't want all the regulations of living in the city.

Ms. Yeckes said the Planning Commission asked about moving forward on inoperable vehicle without dealing with operable. She said the County already has a definition for inoperable vehicle, so if the Planning Commission wants to act on staff's amendments to that term, that could be done separately because it already exists. She said the addition of operable vehicle was intended as a companion and clarification. She said the language the Planning Commission received this evening talks about licensed operable vehicles parked on a lot zoned or used for residential or agricultural purposes, and says vehicles used for farming or ranching on the same property are exempt from these requirements; the distinguishing thing there is the family car. She said even if a property is zoned agricultural, the way it's written right now, the family car has to be in an area that is maintained as parking, what ever that means, and that could be difficult for the County to enforce and difficult for people to understand what it means. She said farming and ranching equipment are different. She said there have been good questions raised. She said staff mentioned farming and ranching on the same property so that people don't start renting storage space for vehicles on their property. She said sometimes in big agricultural operations, equipment is shared between ranches or farms, and she doesn't know if that is an issue for the County or not. She said the other example is someone who has an agricultural zoning but doesn't actively farm the land, but keeps a tractor on hand to maintain the land. She said another option would be to separate some of the language and place it in the zone districts.

Mr. Rosenberg asked if this issue could be continued to another hearing because there is more review needed.

Ms. Yeckes said that is at the Planning Commission's discretion.

**The Planning Commission unanimously agreed to continue this portion of the Code revision to another date.**

Ms. Yeckes said staff would welcome input from the Planning Commission.

Mr. Weiss said it would always be possible to find an exception. He suggested that the language be divided between residential and the different zoning districts.

The Planning Commission agreed.

**Item 3 – W09-002, Land Development Code Amendments #2**

Carol Kuhn said these LDC revisions didn't make it in with the first set of revisions so they have a separate case number. She established jurisdiction. She said the Regional Transportation Improvement Fee (RTIF) Area note is being added; the RTIF fee has been in place since 1995. She said this is not a new fee, but it is collected with the building permits. She said this note would be added to all plans and plats in an RTIF area.

There were no public comments.

Irene Valenzuela, Engineering, clarified that the RTIF fee has been temporarily suspended for single family use categories by the Board of County Commissioners on May 5, 2009, effective May 15<sup>th</sup>, 2009. She explained that the fee was suspended for six months and would reconsider the fee in November. She said staff would like it included because it has been included in all the plats and plans. She referenced the map of the RTIF area, which is east of Parker Road, south of Hampden Avenue, west of Gun Club Road and north of the Arapahoe County / Douglas County line.

**The Planning Commissioner unanimously agreed to the proposed amendment to Section 3-100.**

Ms. Valenzuela said the next change is on the drainage master plan note. She said the revision is to use the current stormwater management manual rather than the old criteria. She said staff is asking that maintenance be included as part of the description within the tracts on the final plat and a section should be added for the easements. She said staff typically asks for an easement chart on the plats and this section will clarify what that chart should look like and what it should include.

There was no public comment.

Ms. Kuhn stated that there was one public comment during the referral process regarding the RTIF, "Not a good time to be adding extra fees to any project". Ms. Kuhn reminded the Planning Commission that the fee has been in place since 1995 and has been suspended.

**The Planning Commission unanimously agreed to the proposed amendments to the Drainage Master Plan Note.**

**Item 5 – Consideration of amendments to the Planning Commission By-Laws (Continued from June 2, 2009)**

Mr. Hovland said the Planning Commission has been considering changes to the by-laws for a couple of months now. He said at the last meeting the Planning Commission made a recommendation that 75% attendance at all required and scheduled meetings. He said with regard to the teleconferencing, that section would be left in just in case it is ever needed in the future.

Mr. Brummel said he doesn't like that. He said the purpose the Planning Commission serves it to provide a public forum and if we don't show up and we dial in, the people that are here to represent their cases spend a lot of money getting the case to the Planning Commission, and if there are only two planning commissioners because the rest are calling in, the Planning Commission isn't doing its job. He said the Planning Commission members were put on this commission to provide a public forum. He said the member should show up.

Mr. Weiss said he missed a couple of very important votes concerning his area when he broke his leg and it would have been nice to participate because he was willing to do so. He said he had all the paperwork.

Mr. Brummel said he is concerned about abuse.

Mr. Rosenberg said conference calling is allowed now and wondered why Mr. Weiss didn't use it then.

Mr. Weiss said he didn't know about it. He said it would be an acceptable practice with guidelines.

Mr. Hovland said video conferencing is not possible at this time. He said teleconferencing is possible, but it is tough to participate.

Mr. Hayutin said he has been on the Planning Commission for nine years and the people that have come through the Planning Commission are people who want to be here.

Mr. Weiss said the County might not have the technology now, but if the Planning Commission votes to take the section out of the by-laws, it would be gone for good when the technology comes along.

Mr. Hovland disagreed and said the by-laws can be changed. He said the only requirements to change the by-laws is that there be two weeks between the decision and vote from the time the revision is proposed.

Section II.D.4 was read into the record.

**Public Comment**

Mr. Lampert said it is the Planning Commission's duty to face the public and until video conferencing is available, it should be stricken and when that time comes, then this section can be reinstated. He said one of the issues that was mentioned was that sometimes things are not presented until just before the hearing. He said if the Planning Commission cannot see the materials, how can the Planning Commission member be sure he is doing his duty? He said he doesn't have issues with the members that could not be present to listen in, but that person should not be allowed to vote.

**The motion was made by Mr. Brummel, duly seconded by Mr. Herzfeldt to remove Section II.D.4 from the by-laws.**

**The motion passed 4-2.**

**The motion to adopt the revisions to the by-laws was made by Mr. Hayutin, duly seconded by Mr. Herzfeldt. The motion passed 5-1, Mr. Weiss opposed.**

**The meeting was adjourned at 10:15 p.m.**

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**Paul Rosenberg, Chair**

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**Gail Stumpo, Recording Secretary**