



**ARAPAHOE COUNTY  
PLANNING COMMISSION  
TUESDAY, OCTOBER 6, 2009**

**MEMBERS**

Paul Rosenberg, Chair  
Arnold Hayutin, Chair Pro Tem  
Brian Weiss  
Leah Martin  
Brett Larson  
Kim Herzfeldt  
Mark Brummel

**OTHERS PRESENT**

Jan Yeckes  
Ron Hovland  
Carol Kuhn  
Sue Liu  
Chuck Haskins  
Terri Maulik

**ADOPTION OF MINUTES**

**The motion to adopt the minutes from the September 15, 2009 Planning Commission hearing was made by Mr. Hayutin, duly seconded by Mr. Weiss.**

**The motion passed unanimously.**

**Mr. Herzfeldt arrived at 6:33pm.**

**OPENING COMMENTS**

Mr. Rosenberg introduced the members of the Planning Commission.

Ron Hovland reminded the Planning Commission Members about the Board of County Commissioner's volunteer appreciation reception to be held on October 19<sup>th</sup> at 5:00pm in the East Hearing Room. He encouraged all members to attend. He explained that this is the Board's chance to thank the Planning Commission Members for their hard work. He said there will be a light supper served. Mr. Hovland plans on attending as the Planning Commission's representative to the Board. Mr. Hovland spoke about the Open Space Department's public hearings for the Open Space Master Plan. He said they are having their first hearing this evening

at the South Metro Chamber of Commerce. Mr. Hovland said the Park Planner will be at the next regular meeting on October 20<sup>th</sup> to explain the Master Plan to the Board. He said there will be opportunities to ask a lot of questions. He further stated that another item on the October 20<sup>th</sup> agenda will be from the Engineering Services Division regarding grating, erosion, and sediment control manual amendments. He said that he and Jan Yeckes would like a little time at the end of today's meeting to discuss what this will mean to the Board. He said he will give the Board a schedule for the new Land Development Code and will provide some background information on the direction given to the Planning Commission, by the Board of County Commissioners. Mr. Hovland further stated that he would like to take with the Board time to discuss the Study Session and the revisions to the Land Development Code.

## **CONSENT AGENDA**

There were no Consent Agenda items.

## **REGULAR AGENDA ITEMS**

### **Item 1 – L09-002, The Hills at Cherry Creek Metropolitan District / Location and Extent**

Mr. Rosenberg reported that he had previously emailed the Members to disclose that he lives in The Hills at Cherry Creek neighborhood but that he has not been involved in this project in any capacity. He said today will be his first time hearing the case.

Carol Kuhn addressed the Board on behalf of the Planning Division regarding Case L09-002, The Hills at Cherry Creek, Filing No. 3, Tract A, Location and Extent Plan. She said the applicant has posted the property and has sent out the proper mail notifications thereby establishing jurisdiction. Mr. Kuhn reported that the project is located at the southeast corner of East Belleview Avenue and South Havana Street at 5367 South Havana Court. She further stated that the applicants, The Hills at Cherry Creek Metropolitan District, are requesting approval of a Location and Extent application for improvements to their existing 3.7 acre park site. She said the project includes the installation of a half basketball court and a putting green, in fulfillment of the County Open Space grant received in the fall of 2009. Ms. Kuhn said the site is an existing park site that has some existing improvements such as a tennis court, playground equipment, and landscaping. She said that until now, the applicant has not provided a Location and Extent plan to the County and so the staff has asked that the applicant memorialize the existing, as well as the proposed, improvements on the site. She said the only outstanding issues staff had during the review was the applicant has a lot of mature vegetation on the site but the overall park site does not comply with the County's Park Landscaping requirements which is one (1) tree and ten (10) shrubs for every 5,000 square feet of landscaped area or five (5) trees and no shrubs for every 5,000 square feet of area. She explained that based on the tree-only calculation, this renovation project would be required to provide twelve trees. The applicant is providing four (4) trees. Ms. Kuhn said the applicant has a combination that gets them close to meeting the landscaping requirements. She said if they choose the all-tree option they will be twelve (12) trees short of what is required. She further stated that the applicant currently has 101 shrubs and the trees that they do have are very mature, 30-year-old trees, so there are no small ornamental trees. Ms. Kuhn said staff felt that since the Planning Commission is trying to memorialize what has already been done, as well as consider the new site which is only 7.4% of the entire site, they feel that the landscaping is adequate. She said that Larry Jacobson is here to make a presentation on behalf of the The Hills at Cherry Creek Metropolitan District.

Larry Jacobson, 6270 South Carson Street, Centennial, Colorado, President of The Hills at Cherry Creek Metropolitan District (District) addressed the Board. He said the District formed five years ago to issue bonds to build a brick and masonry fence around the parameter of the neighborhood which was 8,000 lineal feet. At the time there were 370 homes in the neighborhood. He said the District also upgraded the playground equipment. He stated that in the process of looking at the park project, which was to take out developer-installed playground equipment left in poor condition, the District learned of the County's Open Space grant process. The District was able to obtain a grant for phase I of the park improvements. He said together with District funds they were able to upgrade the park to where it went from a seldom-used amenity to something that is used quite often. He reported that there are two separate and large playground areas, one for toddlers and one for the next age group up. He said the park has two tennis courts which have been there since inception. The rest of the park is comprised of mature landscaping and fields. Mr. Jacobson said the improvements were universally accepted and the District became very educated in the grant process so they determined to move forward with phase II of their improvements. Mr. Jacobson said the District came to the County Open Space with a design plan, which was originally a basketball and volleyball court, and received approval. He said the District publicized the plan and received a lot of negative feedback on the volleyball court so they considered alternatives. The District came up with installing a putting green instead of a volleyball court. Mr. Jacobson reported that they had to amend the grant and then the District had to go to the County to amend the scope and dollars of the grant. He reported that the Board of County Commissioners accepted the plan. He further stated that the grant was reallocated and after nearly two years the District comes before the Planning Commission for final approval. He stated that there are people at today's meeting who may be concerned about the proposed changes. Mr. Jacobson said he is sorry that residents are upset about the proposed changes; however, the District has been publicizing these changes for over two years. There have been eleven (11) HOA meetings where this topic was on the agenda. The District has held nine (9) metropolitan district meetings where this topic was on the agenda. Further, he stated the District has been to the Open Space Trails Advisory Board (OSTAB) three (3) times and before the Board of County Commissioners one (1) time. He said all of these steps were publicized and wished those people who were concerned had come forward earlier in the process. The District could have addressed those concerns earlier on. Mr. Jacobson identified the site proposed for the basketball court, which he believes is the controversy, on a site map for the Board. He reported the location for the basketball court is located between large trees which are 18-20 inch Caliper, Cottonwoods, and other trees that have been there since conception. He stated the original developer never did the Location and Extent which is why the District is here today. The proposed area is the most practical place in the park to put a basketball court due to grade, trees, and fields. Mr. Jacobson pointed out that the basketball court is a half court. He further stated that the District does not currently have an hours policy for the court in place. He said a resident was concerned with having to police the park after hours. Mr. Jacobson said the District will adopt basketball court hours so that as soon as it is dark, everybody is out of the park. Then, if there is a problem with people ignoring the posted signs, residents can call the authorities who can then enforce the park hours and remove the offenders.

Mr. Rosenberg stated that the District has 379 homes, yet the park, with open space funds is the County's. He said any resident can use the park.

Mr. Jacobson said that *anyone* can use the park; however, the District may regulate the park by establishing hours of use. He further stated that once you begin using District funds, as opposed to private funds, it becomes a public facility.

Mr. Herzfeldt asked if the putting green will be natural grass.

Mr. Jacobson said the putting green will be a synthetic material.

Mr. Herzfeldt asked if the basketball court would be lit.

Mr. Jacobson replied that the basketball court would not be lit.

Mr. Herzfeldt asked if there will be *any* lighting in the park.

Mr. Jacobson responded that there is general lighting in the park and that they use magnesium lights; however, the District is not proposing any additional lighting.

Mr. Rosenberg opened the public hearing.

Jamie Whyte, 5377 South Havana Court, played a rhythmic ticking sound in introduction and reported that the sound he is demonstrating is the recorded sound of a basketball. He said it is the sound that will be heard in his backyard. He explained that the sound is obnoxious and that it will interfere with his enjoyment. He speaks for the homeowners who are most impacted. He stated he is affected more than any of the District residents because his house backs up to the park. Mr. Whyte turned off the recorded sound of basketballs. He stated he had five quick points as to why he wants, at the very least, the Board to consider an extension of time to sit with the District and look at alternative locations for the basketball court. Mr. Whyte said he realizes not everyone supports an alternative location because it would impact the soccer fields. He said everyone is impacted when there is a significant change of use of the park. Mr. Whyte proposed his argument to the Board in speaking points as follows: (1) A basketball court is not the intended use of the park; (2) There are great alternatives within a half-mile radius of the neighborhood. There are six open basketball courts in the vicinity already which are open for public use. He said that one of the obligations of the Homeowner's Association (HOA) was the priority of avoidance of annoyance or nuisance to the neighborhood. Mr. Whyte believes the proposal violates the intended purpose of the HOA; (3) Security - Mr. Whyte stated that he has several newsletters from the neighborhood association. He said that nearly all of them state that there is a vandalism problem in the park. He said he lives next to the park and nobody knows more about the park, and the security of the park, than he does. Mr. Whyte said that he is the person who cleans up the park and calls the police when needed. He said he doesn't care what signs are posted because teenagers will not pay attention to the signs; (4) Mr. Whyte stated that there is a safety issue to consider. He said a basketball court will add to the safety issues the park faces. He said basketball is a contact sport and people get injured playing basketball whether it is a half court or a full court. He said he doesn't think the District has contemplated the additional safety risks of having such a significant change in the use of the park. He further stated that regardless of the location of the basketball court there will be increased parking all along Havana Street. He said he doesn't believe the police or County Sheriff has had a chance to weigh in on what impact that may have to people getting in and out of their cars, particularly when the vehicles driving by are going between 40 and 60 mph. He said he has watched it happen all the time due to his proximity to the park. He further stated that he knows what goes

on in the park during the day, and in the evening, because he is the one who is responsible for policing; (5) Mr. Whyte said that basketball attracts teenagers and adult men, not small children. He stated that there are two schools very near the park that have basketball courts if smaller children want to play. He said the language and contact is not conducive to small children who would be on the playground equipment nearby. He agrees there is good intent on the District's part. Mr. Whyte stated that to those who are in favor of the changes, the proposal makes sense. They enjoy the sport of basketball. Yet, when these people go home at night they forget about what goes on in the park after hours. He said he does not have the luxury of forgetting. Mr. Whyte asked the Board to deny the District's request, or at the very least to delay decision until more residents have time to respond or consider alternate court options. He demonstrated, on the site plans, where his home is located and stated that it is 50 yards from the proposed basketball court. He further explained that there is plenty of light to allow people to play basketball in the dark.

Ms. Martin asked Mr. Whyte if he attended the other public hearings or HOA meetings.

Mr. Whyte responded that he has not attended HOA meetings because he travels a lot.

Mr. Rosenberg told Mr. Whyte that this case was referred to the County Sheriff who had no response to it.

Mr. Whyte responded that he was not aware that the Sheriff had been notified but wonders if they considered the parking issue. He said that the only time people park on Havana are when there are early morning swim meets. However, now it will be a convenient access for cars to park there.

Mr. Rosenberg called David Powers to speak.

David Powers, 10783 E Berry Ave., former HOA Board President for The Hills at Cherry Creek and current Secretary for the Board of Directors of The Hills at Cherry Creek Metropolitan District, addressed the Board in favor of the proposed basketball court. He said the District originally planned the basketball and the now defunct volleyball court to be placed in the area that they are now trying to preserve. He reported that the District holds an annual picnic called the Hill's Hoot and in order to get feedback on the plans from the community they took a drawing to the picnic. The drawing was posted at the picnic and attendees were encouraged to give their feedback. Mr. Powers stated that most were in favor of everything except the volleyball court. He said a number of people told him that their children typically play field sports such as soccer and football on the level spot the District was proposing for the basketball and volleyball courts. He stated further that there were teams requesting reservations for the field space to play soccer. The District accommodated those requests. Mr. Powers reported that during the picnic the residents were against both the volleyball court and the placement of the proposed basketball court. The District moved everything as demonstrated on new plans. He said that it is his opinion it is safer for children to play on a nice level playing field than an angled driveway where a child could twist an ankle. He stated he has seen circumstances where removable basketball nets are placed in the road. There are issues with speeding in the neighborhood and we do not want kids playing in the streets. He proposes having the basketball court where it would be more beneficial for the local children to play safely. He commended Mr. Whyte for his presentation. Mr. Powers wanted to point out a couple of inconsistencies. He responded to a comment made about the pool. He explained that the pool wasn't permitted

because it could not be engineered. He said the tennis court is a lit area, even at night. Mr. Powers expressed his desire to have the basketball court installed as planned. He said he is open to facilitating a way to minimize the noise issues for Mr. Whyte if anyone has ideas.

Mr. Weiss asked what material is being used to build the basketball court.

Mr. Powers responded that they are using concrete.

Mr. Weiss asked if there was ever any thought to locating the basketball court next to the tennis courts on the east side of the site plan.

Mr. Powers referred to the plans to explain why the proposed site was chosen. He spoke of the flood plane. The County Planners specifically told the District they could not install anything in that area. He pointed out other areas on the site plan and explained there was heavy vegetation and landscaping that rules other areas of the park out as a potential location for the basketball court. Mr. Powers said they didn't want to install the court directly adjacent to a property, which ruled out another location. There is a creek that runs through the site and that occurrence rules out, yet another, location. He said that the basketball rim faces west in order to do less excavation and to avoid having users play into the sun. He further reported the District plans to install a clear acrylic back board that faces west and allows the sun through. He said this may prevent people from playing basketball in the late afternoon or early evening due to the glare from the sun.

Mr. Herzfeldt asked if Mr. Powers considered the park to be a drive-to park or bike and walk-to park.

Mr. Powers responded that most people walk or bike to the park. He said there are people who live far enough away from the park that they would choose to drive. He further stated that those people are usually there to play tennis. In general, anyone who plans to use the other amenities will walk or bike to the park.

Mr. Herzfeldt asked how many tennis courts are at the park.

Mr. Powers responded that there are two.

Mr. Larson asked if there is just one access into the park.

Mr. Powers pointed out the four various entrances on the site plan.

Mr. Rosenberg called Michael Elliott to speak.

Michael Elliott, 11336 East Berry Drive, Director on The Hills at Cherry Creek Metropolitan District Board of Directors, said he's been referred to as one of the miscreants who plays basketball. He stated further that he coaches his 7-year-old son and 5-year-old daughter in the sport. Mr. Elliott empathizes with Mr. Whyte and the teen-age issues. However, he does not feel that adding a basketball court would make the existing problem worse. He wants the basketball court away from the soccer area to give children choices. He agrees teenagers use bad language but said it does not matter if they're playing basketball or not. Mr. Elliott said he does not want the court put in the flat area of the site where kids play soccer, throw Frisbee, and throw

footballs. He said he would like to have something for his children to do when they graduate from swinging and playing on the playground to do. He believes the basketball court will be an addition that will help to teach kids to care about their park.

Mr. Rosenberg called Ms. Whyte to speak. She declined, deferring to her husband Jamie Whyte who had already had an opportunity to address the Board.

Greg Silva, 11456 E Cimmarron Dr, Englewood, Colorado, said that he has small kids, ages 3 and 6 who walk to the park. He stated that it is a more of a walk and bike type park. Mr. Silva stated that his kids play on the play equipment while he sits on the bench and watches. For him, he would be more entertained if he could take a ball and shoot a few hoops while his kids played. He reported that his son is already hitting baseballs in their backyard and soon he'll be hitting them over the fence so he'll need that flat open space to hit the balls a little bit further. Mr. Silva said that in regards to parking on Havana, he is a cyclist and there are signs posted that say no parking due to the bike lane. He said that with regard to the security issue there have been problems with vandalism in the park. Mr. Silva stated that the vandalism is typically graffiti and most of that had been done by bored teenagers just hanging around. He further stated that he used to be a park planner for the City of Los Angeles for many years and always looked for the best use of property. He believes the teens might tunnel energies into basketball instead of causing trouble. He further stated he was Board President for The Hills at Cherry Creek Metropolitan District for a couple of years and this has been an agenda item many times. He said that tonight is first objection to the site plans he has heard.

Mr. Rosenberg called Dennis Rich to speak.

Dennis Rich, 11087 E Crestline Cir, Englewood, said he has previously served on both the HOA and the District Boards. He said he spent a lot of time writing the grants for the park improvements. He stated further that he would have never spent that kind of time writing grants if the community wasn't in approval. Mr. Rich said the park is extremely popular now that all the improvements have been made. This is a public park and is well used. People come from all over the place to take advantage of the park. He said, regarding the second phase, the District Board sought out residents to research their perceptivity to the improvements. He said that nobody responded negatively. The Board, using the community's feedback, moved forward. He further stated that the HOA has all the minutes, agendas, notice of annual meeting, and the picnic. He said there were many opportunities for residents to talk about the proposed improvements. He cited quotes from various District meeting minutes which focused on park planning conversations amongst the Board. He reported that the basketball court was discussed in September 2008 and nearly every meeting since. He feels Mr. Jacobson is out of line bringing complaint against so many years of work to tonight's meeting. He said that Mr. Jacobson should have spoken up with his opinion much sooner in the process. Mr. Rich reported that everyone in the community is looking forward to the improvements.

Mr. Rosenberg called Sara Hittner to speak.

Sara Hittner, 5368 South Havana Court, said that a lot of people use the park, especially since the improvements have been made. She said it makes her happy to see people come and use the park for the appropriate purposes. She said the park playground equipment currently serves young children up to age 8 but beyond that there is nothing. She reported that her ten year old son was kicked off the tennis courts because the sign states that adults have priority over the

children. Ms. Hittner said that the park does not currently serve children over the age of 8. She believes the basketball court and putting green will give this age group something to do. She further stated that the only grown men who will be attracted to the basketball court will be fathers with their sons. She reported that she was at the park today and saw the perimeter lines for the court were spray painted. She stated the court size is too big and if it could be reduced in size then perhaps it could be relocated nearer the tennis courts. Ms. Hittner said that in her opinion the pros far outweigh the cons.

Mr. Larson mentioned age restriction on the tennis courts where adults have priority. He stated the kids have nowhere to go because the adults are taking over the courts. He said this could be a potential problem and asked Mr. Jacobson if the District would consider changing the signs so that adults do not have priority over the kids with regards to using the tennis courts.

Mr. Jacobson said that he agreed the signs should be changed. The Board can make reasonable regulations. He further stated that both the hours of operation and signs changing the priority of access to the tennis courts could be changed if the Board of the District is in agreement.

Mr. Weiss suggested time limits where the adults must notify kids that they have one hour to relinquish the court.

Mr. Rosenberg commented that signage and priority to the tennis courts is a District matter not a Planning Commission matter.

Mr. Larson said the focus is the kids and that adults should be secondary. He feels the kids should always have priority over the adults.

Mr. Jacobson said he didn't have any knowledge of the tennis court signs until tonight. There was discussion about possibly replacing tennis courts with basketball but tennis gets a lot of use.

Mr. Larson asked if the District could dual purpose the tennis courts as a tennis and basketball court.

Mr. Jacobson reported that the tennis court gets a lot of use. He said the District considered this in the beginning; however, the tennis courts get too much use and there could be potential conflicts between users. He stated the court is 41 'x 58'.

Mr. Rosenberg called Kyle Heaton to speak.

Kyle Heaton, 5370 S Kenton Court stated he was in favor of the proposed changes to the park. He reported that about seven years ago had small children and at his former house, backed up to a park. He said there was a lot of traffic but that his family elected to move from that home because it was not right for them. Mr. Heaton said they decided to move where there was a cul-de-sac. He said there were homes available along the park and they elected not to buy them. Mr. Heaton said we all have choices with regard to where we live. He said that when he was growing up he could call other kids of the neighborhood and invite them to meet at the park. The children were able to go to the park without adult supervision. He reported that his children are now ages 9 and 6 and the fact that they can eventually go to the park without adult supervision pleases him. Mr. Heaton reported that his wife is also in favor of the court and putting green because he'll be out of the house more.

Mr. Rosenberg stated that the sign-in sheet list has been exhausted and asked if anyone else wished to speak

Maureen Till, 5298 S Kenton Way, said that she has four children ages 13, 12, 10, and 6. She stated that she voted in favor of forming the District and in favor of the new playground equipment. She said she was aware, when she voted, that there would be a phase I and phase II and assumes the attendees here today were aware of this too. Ms. Till stated that residents knew what was coming. She said she has attended the HOA meetings over the past two years and has listened to the basketball court presentation and is in favor of it. She reported that her eldest son is 6' tall, 130 lbs and is a big basketball player. She said they live on a very busy corner in the neighborhood and that she chose to buy that house even though it was on a busy corner. Ms. Till said that it was a trade-off and Mr. Whyte chose to purchase along the park. She said the park is not meant only for little children. She believes the older kids need a place to go and be constructive and her children use that park all the time. Ms. Till said her children run to the park afterschool to play football and soccer. They use the flat spot. When she mentioned to her kids that the District was considering changing the basketball court location, the first things her kids said was "We're not going to be able to play soccer!" She stated that we all buy homes where we buy and things happen. Changes are made. She said she did not appreciate hearing that the park is only for the little kids.

Bill Curbin, President of The Hills at Cherry Creek Homeowners' Association, 5214 S Ironton Way, Englewood, Colorado, said they just had the HOA Annual Meeting but because they did not give proper notice the HOA will have it again on the 30<sup>th</sup> of October. He said his issue was on their meeting agenda and that David Powers gave a presentation. He reported there was one elderly gentleman who was probably over 80 years and who hadn't touched a basketball in many years who objected thinking the improvements might attract 'those people from Lakeview across the street.' Mr. Curbin said he can sympathize with Mr. Whyte but when you purchase a house by a park you need to understand that nothing, in today's world, remains unchanged forever. He said certain uses are going to be made of parks and he believes the proposed improvements are reasonable uses. The District placed the court reasonably far from Mr. Whyte's home. He explained that the court will be empty by dark and said if Mr. Whyte wants to enforce that rule by calling the District will try and enforce it as well. He said liability exists everywhere but on our street many of the driveways are sloped. He said kids are attempting to play basketball and the ball is always rolling down and into the street. The basketball court in the park will create a much safer place for kids to have their basketball. Mr. Curbin feels that the guys who like to play hard will go to the Orchard and Cherry Creek Drive Park which is full court. He said there is no parking along Havana on our street, it is all posted. Therefore, the park is primarily a bike and walk-to park and is used mostly by the neighborhood. He said this has been a long planning process and the District has had lots of exposure and for Mr. Whyte to come up at the last minute is not the way the process works. He stated that a lot of time and effort has been put into this project and he believes it is a great amenity for the kids and the neighborhood. Mr. Curbin does not think it will be a nuisance and the District does not want it to be a nuisance. In fact, the court will be surrounded by shrubs which will help mute some of the noise. He asked the Board to approve the project because it has been well thought out, well planned, and will be utilized substantially by the residents of our neighborhood.

Mr. Rosenberg asked if there were any other members of the public who wished to address the Board.

Rhonda Whyte, 5377 S. Havana Court, said she loves teenagers and the idea of basketball. She said what she doesn't love is the after hours activities that's going to encourage people who will drive there to play basketball. She stated that her biggest concern is that by adding more and more 'stuff' to the park we will encourage more after-hours destruction by teens. She admitted that she realized they were buying their home near the park. Ms. Whyte said that the first summer there were 100 kids at the park at midnight. She said she hates for the basketball court draw to become an additional nuisance. She feels the park is already beautiful and does not require additional improvements. She hates to have to keep calling the police.

Mr. Rosenberg asked if there were further public comments. There were no further comments. The public hearing was closed. He asked if the applicant, Mr. Jacobson, has any final comments for the Board.

Mr. Jacobson thanked Board. He said he didn't realize this was going to be so contentious and dramatic an issue. He said that he grew up on the east coast where driveways were bigger and lots were bigger. He said that is where he played basketball because the driveways were big and flat. Mr. Jacobson stated that in The Hills at Cherry Creek the driveways are smaller and because the lots are smaller the driveways are sloped. These conditions do not make it easy for kids to play basketball. He said one of the purposes of the improvements is to provide another amenity for the neighborhood kids to play some decent basketball. He thanked the Board for their time and consideration and asked them to approve the project.

Ms. Kuhn explained to the Board that there is a deadline for the grant money which the District could lose if this isn't approved in the near future and if they do not follow through with building project. She said the Open Space group told her the District could lose their grant funds.

Mr. Weiss asked the applicant if the District would consider optional court material i.e. rubber base which muffles the sound of play and is easier to maintain. He asked if the District would be willing to plant on the south side of the court to muffle some of sounds created by basketball court play and reminded the District they are short specified amounts of landscaping per the code.

Mr. Jacobson said the District has looked at other surfaces but there were cost and engineering issues because of the slope there will be some retaining wall. He said the concrete will act as footers and it is all part of the engineering plan and does not believe there is another viable alternative to concrete. He said they considered tiles but those were expensive and difficult to maintain. He reported that concrete was the low-cost and low-maintenance choice. Mr. Jacobson said as for the landscaping the District has a fixed budget but all of those dollars will go into landscaping. He said if they come in under budget the District Board would be amiable to installing the additional trees/shrubbery on the south side of the basketball court as suggested by the Board.

Mr. Larson reiterated this is intended for the kids. He said that the District needs to come up with restriction signs.

Mr. Jacobson said they currently have signs for skateboarders that actually worked to encourage skateboarders to stay on the sidewalks. He further stated the District could put up similar signs with the hours of the park. He wanted to reiterate that the District is definitely going to put hours

signs up at the park regardless of the Board's decision tonight. He wants the police to be able to enforce the park hours.

**The motion was made by Mr. Hayutin in Case No. L09-002, Tract A, The Hills at Cherry Creek Filing No. 3 – 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 3 including all plans and attachments as set forth in the staff report dated September 30, 2009, and vote to approve, subject to the following conditions:**

- a. That the applicant makes any minor modifications to the plan set, submitted on September 14, 2009, 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. That the applicants include additional landscaping on the south side of the basketball court, to the extent possible within the budget allowance.**

**Seconded by Mr. Weiss.**

Mr. Herzfeldt asked staff if the sight could be bermed at all. He feels that even a shallow berm that was landscaped might assist in redirecting the sound.

Mr. Rosenberg explained that the Board either agrees with the applicant or the plan is denied.

Sue Liu said she is concerned with Mr. Herzfeldt's idea due to drainage issues and the proximity to the flood plain.

Mr. Rosenberg said we the Planning Commission is not the first to see the District's proposal. He reported that the improvements have already been before the Open Space Board. .

**The motion passed unanimously.**

**The meeting adjourned at 7:38p.m.**

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**Paul Rosenberg, Chair**

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**Terri Maulik  
Assistant Clerk to the Board**