

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Rodney Allen

Michael Bertaux

Leigh Girvin

JB Katz

Jim Lamb

Dave Pringle arrived at 7:15 p.m.

Dan Schroder was absent.

APPROVAL OF MINUTES

With no changes, the minutes of the July 21, 2009 Planning Commission meeting were approved unanimously (4-0). Ms. Girvin abstained as she was absent on July 21st.

APPROVAL OF AGENDA

With no changes, the August 4, 2009 Planning Commission agenda was approved unanimously (5-0).

CONSENT CALENDAR:

1. Valette Residence Renewal, PC#2009034, 301 South French Street

Ms Girvin: There is nothing in a code that limits the amount of times an applicant can come back for vesting? (Mr. Neubecker: The code doesn't have a limit, but the town can place conditions and limits upon the project for extended vesting in the future.) It seems reasonable to place a limit as a condition for future vesting requests due to the plan not meeting current code requirements such as the heated driveway. In addition, there is a net loss of affordable housing in this project. Mr. Lamb agreed. Ms. Katz questioned if Town Council or the Town Attorney should make a decision on the matter. Ms. Girvin motioned to call-up the item. Ms. Katz seconded. Ms. Girvin proposed the following condition: "If this residence is not built as proposed within 18 months the project would be required to go back through the Class B process." Mr. Pringle questioned the requirement of the Class B process, but rather to just limit the permit for renewal to 18 months. Ms. Katz agreed. Mr. Lamb noted that the time limit might help to move the project along. Ms. Katz said that the Commission would be sending a message just by limiting the extension of the vesting. Mr. Grosshuesch noted that the applicant has an opportunity to make up for the negative points when they come back in 18 months. Mr. Neubecker noted that because it was a request for the extension of vesting, they are allowed to continue under the rules that applied in 2005. Mr. Grosshuesch noted that the heated driveway policy has not formally changed. Mr. Pringle asked whether or not the request was for extended development rights. Mr. Neubecker said that they are trying to extend their permit for a new 18 months which includes vesting. Planning Commission is willing to extend the permit this time, but would be hesitant to approve an additional vesting permit without updating to meet the new Development Code. Mr. Allen asked the Commission whether or not there was a motion other than staff's recommendation. No motions were made. Mr. Allen asked if Mr. Neubecker would add a condition. Mr. Neubecker recommended adding text to item 3 in the planning packet, identifying the Commissions concern and hesitancy for future extensions. Ms. Girvin noted that the recommendation was too specific, and Ms. Katz noted that just "sending the message" to the applicant might be better. Mr. Neubecker recommended that the condition be in writing in case the applicant should sell the property.

Ms. Girvin moved to approve Valette Residence Renewal, PC#2009034 along with the findings and conditions as presented in the staff report. Ms. Katz seconded. The motion passed unanimously (6-0).

COMBINED HEARINGS:

1. Valleybrook Site Plan, PC#2009030, 1100 Airport Road

Ms. Puester presented the site plan for the Valleybrook project. The proposal included 38 deed restricted townhomes (24 2-bedroom units and 14 3-bedroom units) and 4 deed restricted 2-bedroom carriage house units in 11 buildings located on a one way road. All units will have 2-car garages. There will also be an associated private open space and a public park and the asphalt bike path which connects to the Summit County bike path recently relocated by CDOT.

Changes from the Previous Worksession

Major changes since the February 17, 2009 Planning Commission worksession review:

- Detailed civil and topographic plans were included.

- Landscape plan has been included.
- The public park and private open space (in center of lot) are smaller.
- Slight shift in building locations due to grades.
- Front elevation of buildings/garage elevation change from side-by-side gable to new design.
- Roof pitches rose from 6:12 to 8:12 to allow for better solar panel placement and roof design.
- The addition of solar panels for 40 out of 42 units.
- Building will be LEED (Leadership in Energy and Environmental Design) Silver compatible.
- Building B elevation has been redesigned.
- Color scheme modification.
- Fence and sound wall design have been included.
- Applicant has included driveway snow plowing as part of the HOA duties.

The applicant has been working with Town staff during the Town project planning process to ensure the proposal abides with the Development Code in all possible ways.

The revisions in the submittal reflected the comments from the Planning Commission at the last worksession along with changes/corrections from the applicants, staff and the Housing Sub-Committee.

This project was classified as a “Town Project” under the Development Code. As such, Section 9-1-27 does not contemplate the normal review and approval process. Instead, it required the Town Council to “consult with and seek the advice and recommendation of the planning Commission in order that the proposed public improvement project shall conform to the Town’s master plan and ordinances insofar as practical.” At the conclusion of the Commission’s review of the proposed project, the Planning Commission was to submit its “recommendations and advice” to the Council.

The Planning Department recommended the Planning Commission uphold the Point Analysis showing a passing score of positive nine (+9) points and approve the Valleybrook Housing Project (Class A, Combined Hearing; PC#2009030), and that on that basis the Planning Commission recommend to the Town Council that the project as currently proposed be approved by the Council. Any additional comments the Commission may have concerning the proposed project will be forwarded to the Town Council along with the Commission’s ultimate recommendation concerning whether the project should be approved as currently proposed.

Mr. Chris Auxier presented for Mercy Housing. He presented the design team and vision for the plan, including that the housing units will be for an income level at 120% and 80% AMI. The exteriors have been designed the same for both types of homes, although the interiors differ in finishes. The addition of solar panels, durable materials and public road contribute to the ease and lower cost of maintenance. Focused on livability, including front and back patios, 2-car garages that are 43’ deep, incidental space (such as a loft), and open space in the center of the project, connectivity to transit (bus stop addition) and bike path, and storage space in both the garage and attics. The rain gardens in the landscaping contribute to the sustainability. We also worked with a LEED and energy efficiency consultant to ensure sustainability with this project and can obtain a LEED Silver qualification with the solar panels. We determined that solar-PV (photo-voltaic) would be best for this project, but studied other options for energy efficiency such as solar thermal and biomass. Renewable materials, low volatile organic compounds (VOCs) are also included. We worked to hit density while providing enough open space, including the buffering along Airport Road. We hope, while in the field, to save more of the mature as well as smaller existing trees than shown on the plans. The garages were updated to provide a more human scale. We did our best to minimize heat tape, but due to the density on site and unit types, there are some pinch points at the garages. The valleys in those locations will have heat tape and other areas will be pre-wired for it if the need is seen in the future. The driveway length along with the tandem garage with extra room for spacing provides adequate parking space for residents. The berm in the southeast corner will help to screen the sound wall. In addition there is some landscaping along the wall in the 5’ space. To place the meter banks on the walls Xcel Energy requires 4’ gables, which would pinch the setbacks further and look odd on the building. In addition the length of electric line would increase and would require additional transformers. The proposed solution will not have the meters visible from the road and will be screened by a simple wall and landscaping. We had worked with Namaste Solar (black solar panels) and Bella Energy and Innovative Energy (bluish black panels). The Innovative Energy solution provided 40 units with solar and the system sizes are 1.71-2.2 kilowatt systems. Some of the units will share roof space for the panel placement, and there will be an easement for those.

Mr. Allen opened the hearing to public comment.

Lindsey Shorthouse: Asked if the solar panels were going to be subsidized on the part of the taxpayers? How is it being paid for? (Mr. Allen asked that Mr. Auxier address the financial plan as well.) (Mr. Auxier noted that the solar is about \$6,500 per unit, net of federal and Xcel Energy rebates which can change so will want to get the application in to Xcel soon. The intention is to put that issue to the Town Council when the final budget is completed. It is a “relief valve” for the project. We will not obtain LEED Silver without the panels, but could likely still achieve a LEED rating. The total hard/soft cost budget is approximately \$12 million. We have \$1 million coming in from the state, as well as other grant sources that we are pursuing. The Town’s contribution is about \$2.2 million to cover the gap in addition to the free land. There is about \$8.7 million in sales revenue. We won’t know the final cost until final approval.)

There was no more public comment and the hearing was closed.

Commissioner Questions/Comments:

Mr. Lamb: Final Comments: I echo what Mr. Bertaux said regarding the 80% AMI. I am okay with the garage setback and pan length. I think the landscaping is good. I think that the meter boxes will be okay. We’ve been trying to define “effective” solar panels; the amount of kilowatts and money being spent seems effective here. I agree with the point analysis.

Ms. Katz: Do you have more information for the solar panels? Not concerned with the color of the panels, but more the energy provided to the units. (Ms. Puester provided information on the panels.) (Mr. Auxier, noted that they are 2.2 kilowatts and that he would follow up to provide information on the carbon offset.)

Final Comments: I think it is a great job, and also appreciate the 80% AMI. I agree with Mr. Lamb regarding the solar panels being effective. I think that the solar panels are a small cost for a big benefit, and will make a statement about the Town’s commitment to affordable housing. Hope that Council approves the money for the solar panels. I recommend approval.

Ms. Girvin: What is a rain garden? (Mr. Campie with DTJ Design described that the rain gardens are places where the drainage goes and more wet tolerant plants are located there, and the plants and soil helps to filter the storm water drainage. Little water will be retained in the area due to the rocky nature of the site.) Is this intended to be water that is collected on site or from the unit gutters? (Mr. Campie: Both.) Is the landscaping on the town property separate from the Valleybrook site? (Ms. Puester pointed out the location on the plan. Yes it is off site landscaping, but the trees count is included in this plan. There has been a concern of the view from Highway 9 so we have allowed the off site landscaping.) How will the folks that live here get to the rec path? (Ms. Puester pointed out the rec path easement will connect to the path on the property along the south side of the project from the roadway to the public park and onto the rec path.) I’m disappointed that so much of the existing vegetation will be removed for the detention pond. Are there requirements to maintain the detention pond free of weeds? (Ms. Puester noted that there is a noxious weed policy on the books and that the HOA will be responsible for maintenance of the ponds and landscaping.) Have you thought about a community garden here? (Mr. Campie said that it was discussed, but from a space requirement it didn’t fit and it was decided to let the homeowners decide over time. There is one planned on Block 11.) Valleybrook is the name of the cemetery, have you discussed changing the name? The name might come back to haunt you. (Ms. Best: The housing committee determined that the name should be Valleybrook.)

Final Comments: I think this is a very thoughtful project and a great addition to our community. I support recommendation of approval to Council.

Mr. Bertaux: How large is the berm? Will the berm plantings be irrigated? (Ms. Puester: Berm is 2’-5’ in height. Irrigation will be used, but there will not be plantings on the Xcel Energy high pressure gas line easement which is why we have allowed them to landscape on the Town’s river parcel to the east of the easement.) Is this an approval or a recommendation? (Ms. Puester: As this is a Town project process, the Commission will issue a recommendation that the Town Council approve or deny the project.)

Final Comments: I have an issue with the meters and the walls, which will be difficult for the meter readers to read if it is screened by landscaping. Thinks that Xcel Energy will not allow for so much

screening. I think that the Xcel easement needs to be revegetated with dirt and seed. I appreciate that you are going LEED Silver. How many of the units will be going to the 80%? (Ms. Harrington: 22 units.) Thank you for that, it is an underserved section of the community. Thank you for including the snow removal of the driveways by the HOA; that will help. I support the project.

Mr. Pringle: What kind of vegetation can you put on the Xcel easement? (Ms. Puester: We can plant grass but no trees.) Is there an issue with fences outside the historic district? (Mr. Puester: Not if the master plan locates them and they are approved through the process.) Isn't there a better solution than to plan to put heat tapes on the roof? Seems like the design is flawed if it calls for that. (Mr. O'Hara, KTG Architects: A cold roof was discussed with the town's third party reviewer who didn't think that it would effectively work in this environment. We were still able to achieve our LEED certification with the heat tape because they are not very energy consumptive and a small amount of tape. The heat tape is on a thermostat and timer.) (Mr. Auxier: It is actually the extruded aluminum panel, not the tape.) Is there a cap on resale? What about foreclosure? The Town should protect their investment. (Ms. Harrington: 3% per year or the percentage by which the AMI has changed.) (Lindsey Shorthouse: A short sale could be an option as a device before an FHA foreclosure.)
Final Comments: I like the changes to the elevations and layout. I think landscape looks good. I was nervous about the snow plowing and that has been addressed. I recommend Town Council approval. I agree with the point analysis.

Mr. Allen: Is a variance required for the length of the driveways? How long is 18'? Is it enough? (Ms. Puester: A variance is not required because the code section 9-1-27 does not require variances and allows for exemptions. Ms. Puester presented a street section showing the 14' ROW, 2' pan, and 18' minimum driveway section. A license agreement is required by Public Works and Engineering. There are guest spaces in the right-of-way in Wellington Neighborhood near the greens.) (Mr. Neubecker stated that 18' is the same length as a parking space.) What is the logic behind the HOA plowing the driveway? Is this something that can be left up to the HOA? I am concerned that the owners won't be able to decide this later and that it should be in the Rules and Regulations, rather than the Covenants. (Ms. Harrington, Mercy Housing: It is now in the declarations, but maybe it could be put in the rules and regulations so that it can be changed.) Where is the no overnight parking? (Ms. Harrington noted that it is not allowed in the guest spots during winter months for plowing reasons.)
Final Comments: I have a concern with the 18' driveway and think it will hurt the project later on. Give Town Council an analysis of the solar panels and an estimated percentage of energy use, for example 5% of the home's use or 90% of the home's use. If Council does not approve the solar panels, the points for that go away. I do not support putting snow plowing of the driveway in the declarations; it should be the HOA's decision on maintenance issues. It is a great project and I hope you're successful.

Mr. Pringle made a motion to recommend approval the point analysis for Valleybrook Site Plan, PC#2009030, 1100 Airport Road. Mr. Lamb seconded and the motion was approved unanimously (6-0).

Mr. Pringle made a motion to recommend the Town Council approve the Valleybrook Site Plan, PC#2009030, 1100 Airport Road, as presented. Ms. Katz seconded and the motion was approved unanimously (6-0).

WORKSESSIONS:

1. Medical Marijuana (CN)

Mr. Neubecker presented a memo. State law allows the sale of marijuana for medical purposes. Staff wanted to update the Commission on the progress of this issue. There has been an inquiry to open a dispensary in Breckenridge, but we have no zoning or policies in place. Council adopted a 90-day moratorium to give the staff time to research and write a policy concerning these businesses.

Commissioner Questions/Comments:

Mr. Lamb: I think that Council has this under control. It seems like something like this is not going to have its doors open, more of an appointment only type of place due to the number of clients in the County. I don't see it as a shop with its doors open on Main Street.

Ms. Katz: Concerned with the idea that the dispensaries cannot be located in the core of town – why not? It is hard to compare Colorado with California law and I would encourage people in Breckenridge to get information from other Colorado chiefs of police. The number of plants is a lot different here than in

California. The chief guy in the Front Range is named Warren Edson; he could provide some good input to the town. We have reasons to not locate dispensaries that cultivate in the core of town due to the odor, but maybe we just restrict cultivation in the town rather than fully restrict the sales. (Mr. Grosshuesch: The Town may not be able to regulate this per the state law.) This way we won't restrict dispensaries to one location in the Town. The places need good security, but I don't think that the increase of crime is anything other than robbery which happens everywhere. Signage isn't an issue for these types of uses, and that can be restricted. I will pass on sample ordinances from other attorneys if I get them.

Ms. Girvin: I ask the Town to not make it so restrictive that it cannot exist in our Town. The need exists to care for people who are ill. We are being uptight about the image issue; it should be that we provide compassion and care in our community. Second floor commercial buildings seem appropriate. Also I would not compare medical marijuana to liquor. What about bars on Main Street? Kids see those. As far as smells go, we've had complaints about a wood burning pizza oven. Look at the bigger picture.

Mr. Bertaux: I would not exclude the churches from the 500 foot setbacks.

Mr. Pringle: Do we have any control over who sells it? (Mr. Rossi: Yes, we can create a licensing authority similar to the liquor licensing authority, with regulations on who can sell it—we would require background checks and consider previous convictions, etc.) My concern is that if I get a prescription from a doctor, I go to a pharmacy; but I get medical marijuana from whomever? (Ms. Katz noted that you have to purchase from a certified caregiver.) Why can't it be in the pharmacy? (Mr. Neubecker: They might be able to someday, but medical marijuana does not fall into the same category as a pharmaceutical.) Can you sell medical marijuana along with other things, like t-shirts and things like that? (Mr. Neubecker noted that paraphernalia might be sold, but the draft ordinance as he has seen it didn't prohibit sales of t-shirts or things like that.) Why don't you just subject it to the same laws and rules as liquor or prescription drugs? (Mr. Neubecker noted that liquor is federally legal, unlike marijuana which is illegal. They are legally different, and the image is different for many people. It's unlikely that City Market, owned by Kroger, wants to be in the marijuana sales business.) Do you need to have a card to walk in the door or just to buy pot? (Mr. Rossi said that in California there are locations where you must have a card to walk in the door. We can also regulate what they sell in the stores.) If the ordinance passes can you just start walking down the street smoking? (Ms. Girvin: That would not be allowed in the possession ordinance petition that is currently circulating.) (Greg Morrison, Assistant Police Chief: It is "private use and possession", but private use isn't well defined.)

Mr. Allen: Do you mean just Main Street or Ridge where sales would be prohibited, and French also? (Mr. Rossi: We have to address the cultivating issue, and some of our buildings are really close together and odor could be an issue to adjacent buildings.) Are they allowed to cultivate? (Mr. Neubecker: By state law they are allowed to cultivate at their business, which some would do, rather than at their home.) Is this spacing treated differently than a liquor store? (Mr. Neubecker: We don't have any special setbacks in the Development Code about liquor stores.) (Mr. Grosshuesch: noted that the store will attract certain clientele that you may not want around children.) (Mr. Rossi: We didn't argue with it. We are trying to find a way to balance what the police chief says about potential increased crime with what the other side says which is that there is not.) I agree with Ms. Girvin. From a land use perspective, I think cultivation and dispensing are different issues. Cultivation seems like more of a light industrial use, whereas in commercial use areas it should be just sales. I think security is a huge issue, and if we can, we should mandate requiring people needing a card to get into the store. Possibly we can also eliminate cash sales on site. Signage should be the same rules as everyone else. I think the owners need to represent the medical side rather than the marijuana side. I think hours of operation should be the same as everyone else. Do we have an opportunity to tax it differently? (Mr. Neubecker: No, it is the same as everything else.) (Mr. Rossi: It would have to be voted on by the citizens for a change to the tax rate, per TABOR.)

2. Joint Town Council / Planning Commission Meeting Topics (CN)

Mr. Neubecker presented a memo asking the Commission what topics they would like to discuss with the Town Council.

Commissioner Questions/Comments:

- Ms. Katz: Energy. Extending vesting and open ended renewals is a topic from tonight we might talk about, but it might be okay as it is written – need staff advice. I would like to see the Arrabelle project in Vail to see the parking structure and underground deliveries, and it is close by.
- Ms. Girvin: How much time are we going to get with the Council and how much can we accomplish? (Mr. Neubecker: Usually 1.5 hours and we'll make sure to look into it.) I would like to talk about sustainability and energy and also the Neighborhood Preservation Policy. Maybe the Top 10 List. What about doing a field trip before we go meet with Council, because then we'll have some good ideas to discuss? We could go on a one day trip to Boulder or somewhere else?
- Mr. Bertaux: Last time we had only about 20 minutes with the Council. We need more time than that. Solar panels and collecting statistical information of approved projects that determines how much energy savings are actually accomplished with solar panels. Neighborhood Preservation Policy would be a top topic. Forest Health is still an issue, and maybe we could discuss that here instead of on the trip. Landscaping ordinance if that hasn't been passed should be discussed.
- Mr. Pringle: I agree with Mr. Bertaux's comments on energy. I have an issue with "sustainability" and what it can mean.
- Mr. Allen: Over-regulating might be a topic to discuss. Mr. Bertaux explained what we want to discuss for energy.

3. Planning Commission Fall Field Trip Topics (CN)

Mr. Neubecker presented a memo. We are looking into possible topics for the field trip. This trip would likely stay close to home. Maybe Front Range, or we could stay in Breckenridge. Possible date is September 11th, Friday.

Commissioner Questions/Comments:

- Ms. Katz: I don't think we have huge over-arching issues that require a field trip, especially in light of the current financial situation. Neighborhood Preservation sounds good.
- Ms. Girvin: Neighborhood Preservation sounds good. Didn't we talk about Boulder and what they've done with energy?
- Mr. Allen: Neighborhood Preservation sounds good. Boulder would also be a good choice.

TOWN COUNCIL REPORT:

Mr. Rossi: The repeal of the mandatory defensible space went through, and we did a first reading for the voluntary ordinance. Many people attended and it was a lively discussion regarding the emergency basis and insurance. (Mr. Pringle: How does the County face that issue?) It just isn't retroactive and the standards are different. The audience was concerned that the voluntary and mandatory ordinances had things in it that made people upset, such as wildflowers being cut back to 6". We got the voluntary ordinance so that people that wanted to follow it could.

Entrada Development got called up to Council, mainly due to removal of the access to highway 9.

Mr. Allen received a call from Tim Berry (Town Attorney) regarding the code and his vote at a previous meeting. Tim said that the vote has to go the same way the point analysis goes. Mr. Allen's point was that the point analysis can pass with the same vote as the approval. Mr. Berry's position is that the approval has to pass unanimously if the point analysis passes. Mr. Neubecker recommended that the Commissioners state that they don't have enough information to approve the project during the point analysis vote. That would explain why they are voting against their point analysis. Mr. Pringle noted that you need to make your point during the preliminary and master plan hearings, because once it comes final it will have a positive point analysis.

ADJOURNMENT

The meeting was adjourned at 10:35 p.m.

Rodney Allen, Chair