PARKER
COLORADO

PLANNING COMMISSION MINUTES
October 13, 2022

Planning Commission Chairman Gary Poole called the meeting to order at 7:00 p.m.

The Planning Commission and audience joined in saying the Pledge of Allegiance.

Also present and seated were Commissioners Jane Lane, Roxy Colette, Ruth Ann Nelson, Erik Frandsen, Ira Shapiro, and Kim Rodell.

ADDITIONS TO OR DELETIONS FROM THE AGENDA
None

APPROVAL OF MINUTES
Commissioner Ruth Ann Nelson moved to approve the September 22, 2022, meeting minutes. Commissioner Erik Frandsen seconded; a vote was taken and passed unanimously.

PUBLIC HEARING OPENED: 7:02P.M. – A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.01.140, 13.04.240, 13.07.080, 13.07.090 AND 13.07.100 OF THE PARKER MUNICIPAL CODE CONCERNING EXPIRATIONS OF APPROVALS. The applicant, Town of Parker, proposes to amend the Parker Land Development Ordinance (the "LDO") to establish longer initial approval timelines, establish longer administrative extension timelines and create a formal extension approval process by Town Council with criteria.

Department: Community Development, Bryce Matthews

STAFF PRESENTATION
Bryce Matthews, Assistant Director - Planning, presented the staff report to propose changes to amend the Parker Land Development Ordinance (the "LDO") to establish longer initial approval timelines, establish longer administrative extension timelines and create a formal approval extension process by Town Council with criteria

Commissioners discussed with staff:

- Commissioner Ruth Ann Nelson asked about the criteria language in section 1.d of the ordinance and the lack of specificity when compared to the criteria language in other sections of the ordinance; *(staff said the criteria for Town Council extensions is the same but staff will consult with the Town attorney to ensure consistency).*

PUBLIC COMMENT OPENED
None.

PUBLIC HEARING CLOSED: 7:11 P.M. – A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.01.140, 13.04.240, 13.07.080, 13.07.090 AND 13.07.100 OF THE PARKER MUNICIPAL CODE CONCERNING EXPIRATIONS OF APPROVALS.

PLANNING COMMISION DISCUSSION

- Commissioner Erik Frandsen said the changes were straightforward in consideration of timing constraints of these types of items, felt the amendment addresses the issues and is in support.
- Commissioner Kim Rodell said in her experience working with land use permits that these changes are appropriate due to long timelines, appreciates staff recommended changes and is in support.
- Commissioner Ira Shapiro said the changes proposed are preferable to waiving the code, provides adequate timeframe extensions, is a great alternative and he is in support.
- Commissioner Ruth Ann Nelson thinks the changes are a commonsense thing to do, especially given the financial and structural things that developers are currently dealing with. Her only concern was the criteria for Town Council which provides good guardrails to decision making and is in support.
- Commissioner Roxy Colette said he is in support, feels the staff report presented the information effectively and that the change is timely especially with rising interest rates and difficulties obtaining building materials.
- Commissioner Jane Lane concurred with her fellow planning commissioners, thinks that staggered approvals are a good approach so that there is a standard to ensure people have enough time to work through the process when necessary.
- Commissioner Gary Poole agrees with the other planning commissioners and that it is a timely clean up the language.

Commissioner Erik Frandsen moved the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding expirations of approvals. Commissioner Roxy Colette seconded; a vote was taken and was passed unanimously.

PUBLIC HEARING OPENED: 7:15 P.M. – A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.10.090 OF THE PARKER MUNICIPAL CODE CONCERNING UTILITIES. The applicant, Town of Parker, proposed an ordinance that will amend the standards for Utilities in the Land Development Ordinance in response to a recent change by CORE of its policy and standards for utility easement location and design.

Department: Community Development, John Fussa

STAFF PRESENTATION

John Fussa, Community Development Director, presented the staff report to amend the Land Development Ordinance regarding utility easement and design. Mr. Fussa concluded with the determinations in the staff report that the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding Utilities to provide updated standards for the location and design of utility easements to individual lots in connection with new development applications.

Commissioners discussed with staff:

- Commissioner Ruth Ann Nelson asked if this amendment was for all utility easements or just easements for the electric company or other utility companies as well; *(staff said this amendment was written with general applicability).*
- Commissioner Ruth Ann Nelson asked if this amendment not only includes the above ground electrical equipment, but also utility poles and wires that would run the electricity: *(staff described the various types of electrical infrastructure: transmission, distribution and service, that about the proposal does not apply to large monopoles or lattice sky wires for transmission similar to Xcel's large east/west transmission corridor which runs through the center of Town, about the proposed code changes apply to infrastructure serving individual homes which is run underground except for the above ground equipment such as pedestals, transformers and meters).*
- Commissioner Kim Rodell asked if CORE did not change their policy; *(staff said they will ask CORE to address this question, that it was the Town's understanding that CORE had changed their policy and standards until a meeting with CORE representatives on October 12, 2022 when Town staff was told that was not the case. The Town recommends proceeding with the ordinance and code amendment approval to strengthen the standards, add clarity and that they reflect the Town's preferences and expectations).*
- Commissioner Ruth Ann Nelson asked if other municipalities in the surrounding area have code similar to what is being proposed tonight; *(staff said they are not aware of similar code in the vicinity of Parker, but that this issue is of concern to several other municipalities including Castle Pines, Castle Rock, Bennet, and Woodland Park, that the Town is coordinating review and comment on the topic of CORE utilities with these communities).*
- Commissioner Jane Lane asked if the existing practice regarding the location of above ground equipment in the utility easements was a standard and that we are now formally codifying this practice; *(staff said yes, that is correct).*
- Commissioner Jane Lane stated that in her opinion it is important to have a unified standard for Parker and asked if this is actually different from existing practices; *(staff said to refer to the meeting packet, section 13, A through I, which reflects the practice that the Town has followed with applicants, utility providers and partners with limitied variations and exceptions based on the uniqueness of the project or property).*

- Commissioner Jane Lane stated that that there have been prior exceptions, but generally this reflects existing Town practice; *(staff said yes, this codifies prior Town practice).*
- Commissioner Kim Rodell asked if there is a hardship or an applicant wants a variance, will that go through Planning Commission or to Town Council; *(staff said it will go to Town Council).*
- Commissioner Ira Shapiro asked if there were technical or safety reasons; *(staff said that this question should be deferred to CORE).*
- Commissioner Erik Frandsen asked if there is a setback requirement on the side yard that would prevent something being built there; *(staff explained that side and rear setbacks may overlap utility easements, but they are not the same, that utility easements are property rights that the utility providers use for the placement of their facilities. Staff summarized recent discussions with CORE concerning side and rear utility easements and what CORE will and will not allow to project into the utility easements such as window wells, stairs, etc.*
- Commissioner Erik Frandson asked if CORE's revised policy standards were published somewhere; *(staff said the Town does not publish other entities standards).*
- Commissioner Ruth Ann stated she knows staff is aware that there is very little room for utility easements between sets of patio homes; *(staff agreed, that staff will be on top of that, stated the design of residential and non-residential projects can be complex, and that this proposal can't possibly anticipate each project and unique circumstances).*

PUBLIC COMMENT OPENED

Mark Jurgemeyer, CORE engineering director, who resides at 5496 North U.S. Highway 85, Sedilia, CO. passed out handouts to the planning commissioners and said:

- CORE has a collaborative working relationship with the Town
- some of the issues are not new to the Town
- there was miscommunication on the part of CORE
- CORE needs to provide safe and reliable energy to the community
- the increased density in new residential development's side-lot easements which are becoming more difficult to use for access to CORE's equipment for maintenance, repair, and upgrades
- various photos in the handout represent equipment access issues
- CORE has always had regulations for front and rear lot installation, but CORE has changed its preference to go to front lot, and that CORE does not have a problem using side and rear easements as long as they are kept free
- CORE believes this is a narrow response to a broad issue, that the ordinance will not solve every problem, the ordinance as written is premature, poorly executed and has unintended consequences that will limit development in the Town
- CORE is not against rear and side lot easements if they are maintained

Lucas Schneider, with Stinson LLP, at 1144 15th Street, Denver, CO said:

- in response to Commissioner Jane Lane's comment concerning the codification of current practices, said that all utilities including gas, water, electric, etc. would now have to run in the rear of homes
- in response to Commissioner Erik Frandsen's comment regarding whether CORE changed its policies, Mr. Schneider said CORE updated its policies in August, but the updated policy allows for front, side, and rear installation with suggested side footage width to allow for CORE access to provide safe, reliable and maintainable electrical service
- in response to commissioner Ruth Ann Nelson's comment that she was unable to locate CORE's policy online, Mr. Schneider said it is online
- that he thinks of an acronym when he looks at this ordinance, S-A-L-E-E:
    - traffic signals will no longer be allowed to be installed in the front of homes
    - all utilities will need to be in the rear lots
    - streetlights will have to be in the rear of homes
    - the ordinance doesn't protect the easements along the side of homes for CORE's access
    - and the hardship exception becomes the rule meaning Town Council will regularly need to review plans that otherwise the Planning Commission would have

Commissioners discussed with staff:

- Staff asked if Commissioner Ira Shapiro's question concerning safety had been answered to his satisfaction; *(Commissioner Ira Shapiro said that he believes it wasn't a technical reason, but more of an access issue so that CORE could access and service their equipment via the side lot).*
- Commissioner Ruth Ann Nelson asked staff to address the attorney's issues that he raised concerning the placement of streetlights, sewer, and future water in backyards; *(staff said that they disagree with the attorney's evaluation of the proposal and staff has reviewed the proposal against municipal code for conflicts. For example, traffic lights are typically placed in the Town's right-of-way or a tract due to unusual circumstances, the code has a specific passage and provision for sewer and water that refers to other standards which are applicable to the Town's three water and sewer districts and providers, the Town disagrees with the attorney's enumerated conflicts, but acknowledges that every future circumstance can't be anticipated and that if future code amendments are necessary, they will be reviewed and brought back before the Planning Commission and Town Council).*
- Commissioner Ruth Ann Nelson referred to CORE's handout and the pictures contained in it and asked if the Town's code addressed access issues to CORE's equipment; *(staff said they support CORE enforcing their easement and obstructions within the easements that are post construction and post issuance of a certificate of occupancy and that this*

issue is not addressed in this amendment, discussed the Town's and outside agencies (including CORE) roles in reviewing and identifying alterations through site plan applications, plat approvals and building permits, but that it is not the Town's easement to enforce).

- Commissioner Erik Frandsen asked who pays for easement enforcement and who pays to remove something that is in the easement. Is it the property owner; *(staff said the homeowner, business owner or building tenant that is responsible for the easement infraction, violation or intrusion into the easement is responsible for removing it).*
- Commissioner Erik Frandsen asked if the amendment's language is too restrictive where the utilities would need to be in the front yard which would necessitate going back to Town Council; *(staff said after discussions with internal staff, CORE and Town Counsel regarding the waiver language which is deliberately narrow, that if an applicant is unable to meet the standard they could attempt to modify the design or attempt to demonstrate a hardship to Town Council).*
- Commissioner Ira Shapiro commented on the pictures in CORE's handout saying that only two pictures show new construction issues that could have being addressed by Town staff such as a window well that goes into the side setback and the other pictures are of owner induced problems; *(staff said they do not have a copy of the handout or pictures, but believes they know what the pictures depict or if they are from Parker and that the Town will continue to discuss and work with utility agencies including CORE to keep easements clear).*
- Commissioner Ira Shapiro asked if Parker has properties with utilities in the front yard; *(staff said yes, for example utilities were place in the front yard in Overlook at Cherry Creek due to steep sloping terrain).*
- Commissioner Jane Lane said that in her opinion the Town probably wants a good relationship with all the utilities and asked if its possible to meet with and discuss and come up with a mutual solution before enacting this ordinance; *(staff's recommendation is to proceed with the ordinance tonight and discussions with the utility agencies will continue which may result in additional amendments to the ordinance).*
- Commissioner Jane Lane understands staff's position and asked if it would be better to meet with the utility agencies, discuss and suggest amendments to the ordinance and adopt it at one time; *(staff said they recommend the Planning Commission proceed and staff will recommend Town Council proceed Monday evening).*
- Commissioner Kim Rodell asked if there is a code that states minimum distances between homes, do we really have a problem with CORE and can everything be put in the backyard; *(staff said assuming this ordinance passes, staff will need to analyze the ordinance's impact on development review and how it impacts staff administratively to respond to these standards and making sure easements are kept clear. Staff discussed setback standards, which based on market conditions a developers' desire to maximize unit and lot count in residential developments resulting in larger homes on smaller lots and building up to the minimum front, rear, and side setbacks).*

- Commissioner Kim Rodell said that if this amendment passes, and CORE can't safely put in utilities into the rear and side yards of a development, does CORE have the option to say they can't provide service; *(staff said they would defer this question to CORE).*
- Commissioner Roxy Colette asked about easement width and setback requirements in Parker and if they are sufficient for CORE's access requirements to equipment; *(staff reminded the commissioner that this question could be better answered by CORE).*

PUBLIC HEARING CLOSED: 8:19 P.M. – A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.10.090 OF THE PARKER MUNICIPAL CODE CONCERNING UTILITIES.

PLANNING COMMISION DISCUSSION

- Commissioner Jane lane asked if CORE's handout containing the pictures can be added to the public record, commented that at a title company she used to work at during closings, setbacks were pointed out on the survey, understands a utilities preference to make pedestals and transformers accessible, believes that it is CORE's responsibilities to enforce easements, that homeowner easement encroachment is not the Town's responsibility and likes the Town's preference to not locate aboveground utilities in the front yard.
- Commissioner Ira Shapiro supports the amendment, recognizes that this is administrative in nature, said all utilities have access to the plat maps to understand what is being built and where their equipment would be so that access issues can be addressed at that time and avoided.
- Commissioner Ruth Ann Nelson said that she and others were unable to find the CORE policy on their website. The question earlier about CORE's ability to refuse service is addressed in the proposed ordinance under section H.2 which states if the utility has refused to provide service and said decision is upheld by the Colorado Public Utilities Commission in that case, then it would be waived. The proposed ordinance also addresses the situation we have in the highly sloped terraced areas that would fall under the exception given under section H.1, which addresses exceptional topographic conditions or other extraordinary, exceptional situations. Other exceptional situations including properties that are close together could be addressed by this section. Commissioner Ruth Ann Nelson believes the ordinance is well written, that much of this can be handled through easement enforcement, that CORE should be able to perform an analysis of the design elements and let a developer know when something needs to be removed from the plans, like a window well in the easement for example, acknowledges that this ordinance may need to be amended, and that the passing of this ordinance will encourage additional communication between CORE and Town staff.
- Commissioner Kim Rodell said she believes CORE is not opposed to using front yard, side and backyard easements, but due to safety reasons or if there is not enough room in the backyard, she believes the ordinance is too restrictive and believes the ordinance could be revised to allow front and side easement options to be discussed with staff.
- Commissioner Ruth Ann Nelson pointed out that the ordinance addresses hardships related to exceptional narrowness, shallowness or shape of a specific piece of property in addition to the exceptional topographic conditions.

- Commissioner Erik Frandsen said that this discussion isn't necessarily between the Town and CORE, but between the Town and all utilities, that this amendment is about codifying standards that are already in place, that maintaining standards that allow for visually and esthetically pleasing neighborhoods is important.
- Commissioner Roxy Colette agrees with his fellow commissioners, is supportive of the amendment, that it is well written, believes it allows for situations of narrowness and topographical difficulties, that this amendment will encourage communications between the Town and the utility agencies and believes it is important to codify these standards that we know about Parker
- Commissioner Gary Poole has seen similar home owner created situations that were depicted in CORE's handout, has seen Xcel or CORE cut down trees and remove shrubs to gain access to their equipment, is in support of the utility agencies having access to the easements and is in support of this amendment.

Commissioner Eric Frandsen moved the Planning Commission recommend Town Council approve an ordinance to amend the Parker Municipal Code regarding Utilities to provide updated standards for the location and design of utility easements to individual lots in connection with new development applications. Commissioner Ruth Ann Nelson seconded; a vote was taken and was passed 6 – 1 with Commissioner Kim Rodell voting against the proposal.

PLANNING COMMISSION ITEMS

None.

STAFF ITEMS

Bryce Matthews, Assistant Director – Planning, reminded the Commissioners that for the October 27th meeting at 5:30 PM there will be ongoing education training and proposed park manual study session.

ADJOURNMENT

Commissioner Erik Frandsen moved that the meeting be adjourned. Commissioner Ruth Ann Nelson seconded the motion, and the motion was passed unanimously. The meeting was adjourned.

Jeff Miller
Recording Secretary

Gary Poole
Chair