

## **Arvada City Council Meeting, November 3, 2014**

Notes taken by Susan Shirley

### *Interesting Questions Raised About Scope of Council Powers; Rocky Flats Stewardship Council Unanimously Opposes Controlled Burn*

There was an executive session prior to the meeting, which ran long and was reconvened after the public portion of the meeting. The public portion began at 6:14.

In attendance were Mayor Marc Williams, Mayor Pro Tem Mark McGoff, and Councilmembers Don Allard, Bob Dyer, Bob Fifer, Jerry Marks, and John Marriott.

At 6 p.m., attendance by citizens was about 32, and at 6:45 it was about 9.

Minutes from the October 20, 2014 meeting were approved with no changes.

#### Recognitions:

The League of American Bicyclists is a nonprofit organization dedicated to promoting bicycling for fun, fitness, and transportation. Communities can apply for designation as bicycle-friendly. The League assesses the community and awards a designation. Arvada has been designated a Silver-Level bicycle-friendly community. This recognizes that Arvada has made bicycles a priority, and, says the city's website, "has made significant strides toward addressing the five E's: Engineering, Education, Encouragement, Enforcement, and Evaluation.

#### Public Comment:

Judith Denham spoke about the upcoming event, Wines for the Holidays, to be held November 14 from 6 to 9 p.m., at a new location. This year's wine tasting, which benefits the Arvada Food Bank, will be at the Lamar Street Center, 5889 Lamar Street. There will be samples of 120 wines donated by nine Front Range wineries, and food donated by ten caterers and restaurants. In addition, a silent auction features such items as western slope getaways and high-end hotel getaways here in the Denver area, clothing, jewelry, and fine art. Invitations are going fast, so if you're hoping to attend, make reservations soon at [arvadafestivals.com](http://arvadafestivals.com).

Mark Atwater presented a \$873 check to Sandy Martin, Executive Director of the Arvada Food Bank. The money, as well as 137 pounds of canned food, was raised at the October 20 Scarecrow Festival. Martin said that the Food Bank is currently serving almost 1200 households a month, so the funds will be put to good use.

#### Consent Agenda:

R14-149 is to request a \$200,000 grant from Jefferson County Open Space for completion of the Van Bibber trail connection to the Kipling Underpass. Arvada has budgeted funds to match the grant. A part of the money will be designated for improvements to the Stenger-Lutz complex.

R14-150 authorizes a budget amendment for \$75,000 to be spent on concrete work between Kipling and Miller Streets.

R14-151 is to authorize a \$128,045 agreement between the City and Denver-based Kumar and Associates for materials testing for the construction in the Olde Town transit area.

R14-152 is for a sidewalk construction contract between the City and Sedalia-based KECI Colorado, Inc. The sidewalks will cross the Union Pacific tracks at Pierce, Kipling, West 72nd, and Simms.

R14-153 accepts an annexation petition, and sets a public hearing for December 15 at 6:30 p.m. The petition is for Sunset Mesa Two at 11701 W. 80th Ave. in order to develop 18 single-family lots.

All items were approved, 7 to 0.

Ordinances, First Reading: Public Hearings for these items will be November 17 at 6:30 p.m.

CB14-045 is to rezone the properties at 5650 and 5660 W. 60th Avenue, which is on the south side of W. 60th just west of Depew Street. The purpose is to allow a recreational vehicle storage facility there. The Planning Commission voted 4 in favor, with 3 absent.

CB14-046 would allow US Bank a conditional use permit for a drive-through at their facility at 9590 W. 58th, on the southeast corner of their site. The existing drive-through will be demolished to make way for the Walmart which is scheduled to be built at Arvada Plaza. The Planning Commission voted 4 in favor, with 3 absent.

CB14-047 is to approve vacating part of a right-of-way so that Leyden Properties can build an emergency access for Leyden Ranch East. The Planning Commission voted 7 to 0 in favor.

CB14-048 is to allow a drive-through at a proposed fast food facility, Kneaders Bakery, to be built at 7945 Wadsworth Boulevard, formerly the location of a Denny's Restaurant which is closed and expected to be demolished. The Planning Commission voted 4 in favor, with 3 absent.

All items were approved, 7 to 0.

Public Hearings:

CB14-044 is to impose an 18-month moratorium on the opening of any "Cyber Sweepstakes Cafes" in Arvada. These are not ordinary internet cafes, but include specially-programmed computers which operate in about the same way as slot machines. They are such a new kind of business that they are not regulated by either the State of Colorado, or the City. The moratorium is to allow time to study the nature and potential impact of these businesses, as well as to determine what amount of regulation or prohibition would be appropriate.

Attorney Mike Polk said that the Colorado Attorney General has opined that the cafes do violate gambling laws; however, he said, as persuasive as that might be, the Attorney General's opinion is not law, yet.

There was no public testimony.

The vote to impose the moratorium passed, 7 to 0. Mayor Marc Williams remarked that Arvada has had no applications for this type of business, but that it will be good to have time to really look at the issue and be able to make intelligent decisions.

The next item turned out to uncover some interesting angles relative to what powers belong to City Council in cases where a public hearing is held. Some of tonight's discussion, including one vote, seems fairly convoluted, and I encourage anyone who is confused by the following to watch the actual broadcast of the meeting to see if it makes better sense.

CB14-037 is a reconsideration of an action taken by City Council on September 15, 2014, in its approval of a permit for use of a parking lot by the A-Line. The permit was allowed, but with amendments, and the applicant is requesting Council to consider approving the permit without the amendments. Here are notes from that meeting:

"Following further discussion about lighting, maintenance, the lack of restroom facilities, and whether there is enough room in that lot, Councilmember Dyer made a motion to approve the permit, with a change in the language to say that the property will be used as a "private parking lot operation." (Period.) This drew strenuous objections from City Attorney Chris Daly, who pointed out the nature of this public hearing as being quasi-judicial; to have advertised it under one set of conditions (shuttles going to DIA only) and then change those conditions during the hearing and then vote on the new set of conditions without giving notice to citizens, could be a problem. Daly cautioned Council, saying, "There's a reason for the process, which is so the people have notice" of what is being voted on, and said the change being considered was "significant."

"Mayor Williams said in his opinion, "It's still parking cars, not selling ice cream."

"Councilmember Dyer said, "I appreciate the City Attorney's position, but would vociferously argue that it is not a significant change, that whether the shuttles go to the Federal Center or DIA doesn't matter."

"Councilmember Mark McGoff said that he accepted the caution from Daly and said that it doesn't make sense to have a public hearing based on a certain set of documents and then change the conditions without public input; he said he would not support the permit without the condition of DIA as a destination.

"Mayor Williams said this is a conditional use permit, meaning that it can be revisited. A vote was taken to allow the permit with the condition changed to being only a private shuttle parking lot operation.

"The item passed, 6 to 1, with Councilmember McGoff casting the "no" vote." (City Council meeting notes by Susan Shirley, September 15, 2014.)

So, the amendments were in order to allow the A-Line shuttles to have other destinations besides DIA. In tonight's meeting, there was no additional public testimony allowed. There was extensive discussion among councilmembers over whether to reconsider or not; it's interesting, and well worth the time to watch just that part of tonight's meeting, I think, so I won't include all of it here. A vote was taken to approve the original wording, that is, to add back in the condition of DIA as the destination for the shuttle operation. That was approved on a 6 to 1 vote, with Councilmember Bob Fifer dissenting.

The bigger question, and maybe the more interesting angle here, came up during one part of the discussion and has to do with what happens when a public hearing is advertised as being about one set of facts, but in the course of a meeting the set of facts is changed. So that, if the public had been made aware of that second set of facts, it sometimes would be true that more people would have appeared and commented or written letters or made phone calls based on those newer conditions. Basically, that's what the City Attorney, Chris Daly, had said in the September 15 meeting.

Tonight, Councilmembers requested research from the City Attorney's office, as to whether City Council has the authority to change conditions, or only add to conditions already in an ordinance. Councilmember Dyer wondered what is the difference. Councilmember Fifer and Mayor Williams said they believe the question goes beyond only what happens with conditional use permits. Councilmembers asked to have an opinion in writing before the next public hearing.

Public Comment: None

Reports from City Council: On the subject of the proposed U.S. Fish and Wildlife 700-acre controlled burn at Rocky Flats, City Manager Mark Deven said that the Rocky Flats Stewardship Council is opposed to the burn, but that Fish & Wildlife has the ultimate authority on that. Deven said he wanted to bring it to City Council's attention, as it is making nearby residents nervous. A previous burn, in 2000, was "very troubling" to the community, Deven said.

Councilmember McGoff continued by saying that he is the city's representative to the Stewardship Council, which is made up of elected officials from all 11 communities adjacent or contiguous to Rocky Flats. The Stewardship Council is unanimous in opposition to the burn, and says there are other ways to mitigate the fire danger there. McGoff said the 2000 burn was very difficult to explain to the public, and turned out to be a public relations nightmare.

Mayor Mark Williams said that our U.S. Senator and Representative should be contacted, and Councilmember McGoff said they have been.

Councilmember Bob Fifer spoke about the Pumpkin Splat at Vanderhoof, which his kids were able to participate in for the first time. He thanked the Arvada Fire department for providing a great time for the kids. Also, Mayor Williams and Councilmember Fifer were the "prizes" for some fortunate students at Parr Elementary, who raised about \$4,000 for technology for their school library. 22 students were treated to pizza with Williams and Fifer.

Reports from City Manager: Next week's City Council workshop will cover the 2015 pay plan and benefits renewal, interpretive signage at the three TOD stations, and an overview of the City's efforts to create an Organizational Development Program.

The public portion of the meeting ended at 7 p.m., and councilmembers returned to their Executive Session to discuss instructions to negotiators, regarding the Jefferson Parkway.