

**MINUTES OF A REGULAR MEETING
OF THE COUNCIL OF THE
CITY OF LONE TREE
HELD
February 17, 2015**

A regular meeting of the Council of the City of Lone Tree was held on Tuesday, February 17, 2015, at 6:00 p.m., at the Lone Tree City Council Chambers located at 8527 Lone Tree Parkway, Lone Tree, Colorado 80124.

Attendance

In attendance were:

James D. Gunning, Mayor
Jacqueline Millet, Mayor Pro Tem
Harold Anderson, Council Member
Kim Monson, Council Member
Susan Squyer, Council Member

Also in attendance were:

Seth Hoffman, City Manager
Jennifer Pettinger, City Clerk
Steve Hebert, Deputy City Manager
Jeff Holwell, Economic Development Director
Chief Jeffery Streeter, Lone Tree Police Department
Kristin Baumgartner, Finance Director
Kelly First, Community Development Director
Lisa Rigsby Peterson, Lone Tree Arts Center Director
Neil Rutledge, City Attorney, White, Bear and Ankele, P.C.
John Cotten, Public Works Director, TTG Corp.

Call to Order

Mayor Gunning called the meeting to order at 6:00 p.m., and observed that a quorum was present.

Executive Session

Mayor Gunning stated City Council will convene in Executive Session. Neil Rutledge, City Attorney, stated the Executive Session is for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) regarding construction defects. Council Member Anderson moved, seconded by Council Member Squyer, for City Council to recess and convene in Executive Session for the reasons stated. The motion passed with a vote of 5-0.

Council adjourned to an Executive Session at 6:10 p.m.

The Executive Session was adjourned at 6:37 p.m.

Mayor Gunning reconvened the meeting in Regular Session at 7:04 p.m., following a short recess.

Pledge of Allegiance

Mayor Gunning led those assembled in reciting the Pledge of Allegiance.

Amendments to the Agenda

There were no amendments to the agenda.

Conflict of Interest

There was no conflict of interest.

Public Comment

There was no public comment.

Announcements

Patrick Britti, Youth Commissioner, gave Council an update on the Youth Commission.

Mayor Gunning announced upcoming events.

Presentations

Mayor Gunning read the Arbor Day Proclamation.

Consent Agenda

Mayor Gunning noted the following items on the Consent Agenda, which consisted of:

- *Minutes of the February 3, 2015 Regular Meeting*
- *Claims for the period of January 26 –February 9, 2015*
- *Treasurer’s Report for December 2014*

Mayor Pro Tem Millet moved, Council Member Squyer seconded, to approve the Consent Agenda. The motion passed with a vote of 5-0.

Executive Session

Mayor Gunning stated City Council needs to convene in another Executive Session. Neil Rutledge, City Attorney, stated the Executive Session is for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) regarding construction defects. Mayor Pro Tem Millet moved, seconded by Council Member Squyer, for City Council to recess and convene in Executive Session for the reasons stated. The motion passed with a vote of 5-0.

Council adjourned to an Executive Session at 7:13 p.m.

The Executive Session was adjourned at 7:37 p.m.

Mayor Gunning reconvened the meeting in Regular Session at 7:37 p.m.

Administrative Matters

Public Hearing: Ordinance 15-01, ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS (Second Reading)

Mayor Gunning opened the public hearing at 7:38 p.m.

Seth Hoffman, City Manager and Neil Rutledge, City Attorney, introduced the item. Mr. Rutledge suggested the following amendments:

1. Section 18-12-20 Definitions: amend the definitions of Homeowner and Homeowners Association to read:

Homeowner means any person who owns a unit in a condominium or cooperative, but shall not include any Declarant or any person having an interest in a unit solely as security for an obligation.

Homeowners Association means a unit owners' association formed to represent the interests of Homeowners owning units in a condominium or cooperative.

Delete the definition for Planned Community.

2. Section. 18-12-90 Alternative Dispute Resolution Provisions: in the last line, delete the last four words and replace with "previously discovered" so the last line will read: "Consequently, a subsequent amendment to the declaration, bylaws or rules and regulations that removes or amends the mediation or arbitration requirement shall not be effective in regard to any Construction Defect claim that is based on an alleged act or omission previously discovered."
3. Amend Article 7 – Effective date to have the ordinance take effect April 1, 2015.

Mayor Gunning opened the public hearing for comment at 7:57 p.m.

Dee Wolfe, 11138 W. Ontario Ave., Littleton, stated she currently serves on a legislative action committee for communities. She shared her concerns with the ordinance and specifically with the process by which homeowners are notified in section 18-12-100. Ms. Wolfe encouraged Council to vote no on the ordinance.

Heidi Storz, 7324 N. 83rd St., Niwot, shared the findings of an economic study that she believes is driving the low demand for condominium housing, which is the lifestyle of Millennials and their choice to not purchase homes. She urged Council to vote no also.

Stephen Mikolajczak, 7561 Powderhorn Dr., Lone Tree, stated he is a realtor and a Lone Tree resident and is in support of the ordinance. He shared that he feels condos provide an alternative to affordable home ownership for the younger and senior generations. He also stated he feels condos help to keep lease rates down. Mr. Mikolajczak said according to MLS-REColorado.com there were only 950 attached single family homes for sale at the end of January this year compared with 1,384 for January 2014. He shared that condo construction is down to 4% or so from over 20% in the mid-2000s. Mr. Mikolajczak stated that at many seminars he attends, all have based the decline on the fact insurance companies are imposing a significantly higher premium on condo projects due to current legislation. He supports the right to repair and requiring a majority approval of the community property owners to enter into litigation as values are affected by the inability to sell/buy while under a lawsuit.

Silvia Gregory, 27 Inverness Drive East, Englewood, stated she is currently an association business manager. She shared her personal experiences and impacts regarding construction defects. Ms. Gregory also shared her concerns that the ordinance takes away the HOA's right to a jury trial. She asked Council to vote no.

William Short, 5197 S. Boston St., Greenwood Village, stated he practices law as general counsel for homeowner associations. Mr. Short shared his concerns with the ordinance and self-determination. He encouraged Council to vote no.

Jennifer Sudman, 2257 S. Hoyt Ct., Lakewood, stated she is an attorney who represents homeowner associations who have construction defects. She shared that she believes the Construction Defect Action Reform Act (CDARA) already has the same requirements found in Ordinance 15-01 but that the ordinance would create a patchwork of conflicting requirements with CDARA. Ms. Sudman also said Colorado currently has the shortest timeframe and noted the notice in the ordinance effectively shortens the statute of limitations.

Jonathan Harris, 2550 Washington St. #309, Denver, is a President of a homeowners association. Mr. Harris read a letter from a former Lone Tree resident, Jack Bergey. Mr. Bergey in his letter shared his concerns with supporting developers and the impact on the community. He encouraged Council to vote no.

Liberty Lewis, 5158 Raleigh St., Denver, stated she works for Solutions Before, Solutions After and one of their clients is Commonwealth Heights. She stated her concerns that the ordinance places the burden on the homeowners rather than the builders. Ms. Lewis stated she believes the current system does take time but works.

Dave Kirchner, 7931 Eagle Feather, Lone Tree, stated he is also a realtor. He shared he has seen firsthand the impact of the current situation from the 2001 legislation and concurs with Mr. Mikolajczak. Mr. Kirchner shared his concerns with the current legislation and the fact three people can determine the fate of all the owners. He believes the ordinance is well thought out and is a step in the right direction and applauds Council for taking action.

Michael Barclay, 12349 Turquoise St., Castle Pines, stated he is a 25year contractor and currently does reconstruction. He said he felt passing a bill like this misses the mark. Mr. Barclay shared he believes construction defects are created by builders who are trying to get their homes built quickly. He shared his concerns the ordinance limits good building. Mr. Barclay encouraged Council to vote no.

Jeffrey Kerrane, 14169 Whitney Circle, Broomfield, stated he is an attorney for property owners with construction defects. He encouraged Council to remove Section 18-12-90. He stated his concerns with the ordinance and what he perceives as a bias to the builder and encouraged Council to vote no.

The public hearing was closed at 8:26 p.m.

Council Member Monson moved, Council Member Anderson seconded, to approve **Ordinance 15-01, ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS** as amended with amendments as noted earlier by Neil Rutledge on Second Reading. The motion passed with a vote of 5-0.

Adjournment

There being no further business, Mayor Gunning adjourned the meeting at 8:47 p.m.

Respectfully submitted,

Jennifer Pettinger, CMC, City Clerk