

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 16, 2006 at 6:00 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:04 p.m.

Mayor Wozniak stated tonight's meeting start time is earlier due to the length of the meeting. Mayor Wozniak noted the public hearing will not begin before 6:30 p.m. due to posting requirements.

ROLL CALL

Councilmembers Bonnie Blum, Harriet LaMair, Scott Roswell, Russell Stewart, and Doug Tisdale were present on silent roll call. Also present were Finance Director Karen Proctor, Police Chief John Patterson, Interim City Manager Eric Ensey, City Attorney Thad Renaud, and City Clerk Jennifer Pettinger.

APPOINTMENT OF DISTRICT 5 CITY COUNCILMEMBER

Resolution 06-06; A Resolution Concerning the Appointment of the Vacant District 5 City Council Seat

Mayor Mike Wozniak presented Resolution 06-06; A Resolution Concerning the Appointment of the Vacant District 5 City Council Seat.

Councilmember LaMair moved, seconded by Councilmember Tisdale, to approve Resolution 06-06; A Resolution Concerning the Appointment of the Vacant District 5 City Council Seat with the insertion of Klasina VanderWerf's name.

The motion passed unanimously.

OATH OF OFFICE

City Clerk Jennifer Pettinger administered the Oath of Office to Councilmember Klasina VanderWerf.

APPOINTMENT OF BOARDS AND COMMISSIONS

Resolution 07-06; A Resolution Concerning the Appointment of Members to the Board of Adjustment and Appeals

Mayor Mike Wozniak presented Resolution 07-06; A Resolution Concerning the Appointment of Members to the Board of Adjustment and Appeals.

Councilmember Roswell moved, seconded by Councilmember Tisdale, to approve Resolution 07-06; A Resolution Concerning the Appointment of Members to the Board of Adjustment and Appeals with the insertion of the following names: Earl Hoellen and James Tarpey.

The motion passed unanimously.

Resolution 08-06; A Resolution Concerning the Appointment of Members to the Planning and Zoning Commission

Mayor Mike Wozniak presented Resolution 08-06; A Resolution Concerning the Appointment of Members to the Planning and Zoning Commission.

Councilmember Tisdale moved, seconded by Councilmember Blum, to approve Resolution 08-06; A Resolution Concerning the Appointment of Members to the Planning and Zoning Commission with the insertion of the following names: Ira Plotkin and Kevin Iverson.

The motion passed unanimously.

Resolution 09-06; A Resolution Concerning the Appointment of Members to the Parks, Trails and Recreation Commission

Mayor Mike Wozniak presented Resolution 09-06; A Resolution Concerning the Appointment of Members to the Parks, Trails and Recreation Commission. Mayor Wozniak noted there were no applicants from District 5.

Councilmember Roswell moved, seconded by Councilmember Tisdale, to approve Resolution 09-06; A Resolution Concerning the Appointment of Members to the Parks, Trails and Recreation Commission with the insertion of:

<u>Name</u>	<u>District</u>	<u>Term Expires</u>
Bill Callison	1	May 15, 2007
Jane Soderberg	2	May 15, 2007
Phyllis Hayutin	3	May 20, 2008
Theresa Gilpatrick	4	May 20, 2008
Alix Corboy	(District 1) in lieu of a District 5	May 19, 2009
Heidi Schmidt Hammel	6	May 19, 2009
Harriet LaMair	City Council	May 20, 2008

The motion passed unanimously.

Mayor Wozniak thanked everyone who applied as well as the candidates for their interest.

AUDIENCE PARTICIPATION PERIOD

Jim Fairbairn, 151 Summit Blvd., stated he wanted to address Council regarding agenda item 9a.

Mayor Wozniak asked to amend the agenda to hear agenda item 9a.

NEW BUSINESS

Revocable Encroachment License (Jim Fairbairn, 151 Summit Blvd.) to allow encroachment of a fence and shed within the public right-of-way

Jim Fairbairn, 151 Summit Blvd., explained to Council he had purchased his mother's home from her estate. Mr. Fairbairn further explained when he tore down 52' of fence he found out it wasn't his. Mr. Fairbairn asked for a resolution to this issue.

Councilmember LaMair asked for clarification regarding the location of the utilities and utility easements.

Councilmember Scott asked Mr. Fairbairn if the new fence would utilize the same post hole location as the old fence? Mr. Fairbairn said he is attempting to place the fence in the same location. Councilmember Scott asked if the placement has any effect on the existing utilities. Mr. Fairbairn stated it doesn't have any effect on the existing utilities.

Discussion was held.

Councilmember LaMair asked if the current 60' right-of-way was standard.

Mayor Wozniak asked Mr. Fairbairn whether he would like a revocable license or a vacation.

Councilmember Tisdale noted compensation for the land is required if the land is vacated.

Dave Little, attorney for the Fairbairn's, stated his concerns regarding the vacation.

Interim Public Works Director Jay Goldie presented the Revocable Encroachment License requested by Jim Fairbairn of 151 Summit Blvd. to allow encroachment of a fence and shed within the public right-of-way. Mr. Goldie stated staff could find no hardship and is recommending denial.

Discussion was held.

Mr. Goldie stated in his research he could locate no information regarding why there is a 60' right-of-way (ROW).

Councilmember LaMair stated her concerns about placement of trees in the easement.

Discussion was held.

City Attorney Thad Renaud stated there is a pretty broad indemnification clause in the revocable agreement.

Mayor Wozniak noted there are extraordinary circumstances with the implementation of the 60' ROW.

Councilmember LaMair also noted there have been five letters received, from neighbors in support of the Fairbairn's request.

Councilmember Tisdale suggested a statement of special circumstances, which includes the fact there is a historic pattern of three decades plus, and the grant is revocable. Councilmember Tisdale suggested the license have further revision by City Attorney regarding the revocable clause. Councilmember Tisdale also suggested requiring a survey. Councilmember Tisdale stated his concerns in regard to future residents of the property.

Discussion was held.

Councilmember Scott moved, seconded by Councilmember LaMair, to approve the request for a revocable encroachment license to Jim Fairbairn, 151 Summit Blvd. to allow encroachment of a fence and shed within the public right-of-way because of the existence of extenuating circumstances including the 36 year placement of the fence which has encroached into the 60' ROW, the ROW and location of the street is not consistent with the surrounding area. The owners are electing to replace of the fence in the same post hole location, design and construction as previously existed, the improvements upholds the character of the neighborhood.

Councilmember Tisdale suggested a friendly amendment to the motion to include that the form of revocable license would be amended pursuant to drafting by City Attorney in section 5b to the effect of "that a unilateral decision by the City Council that the City Right-of-way/Public Place is desired for or beneficial for any purpose". He also suggested striking the language "needed for a public purpose inconsistent with the Private Improvements." and the motion would include a requirement of a survey attachment as Exhibit A.

Councilmember Scott (first) and Councilmember LaMair (second) agreed to the amendment.

Councilmember Tisdale noted the Summit Blvd. ROW appears to be only 40'. Councilmember Tisdale also noted that staff has stated there is no anticipated or reasonably conceivable circumstance whereby a 60' row would be required for the area.

Councilmember Tisdale asked that those findings also be included in the determination in the grant of Revocable License. Council was in agreement.

The motion passed unanimously.

AUDIENCE PARTICIPATION PERIOD cont...

Edward Payne, 1900 E. Girard Pl. #1206, Englewood, CO, stated his concerns regarding the debris and clutter in the backyard of 43 Sunset Drive. Mr. Payne gave Council photos of the residence.

Debbie Welles, 3940 Sanford Circle West, asked the City to provide residents with a simple one page flow chart outlining the formal development review process.

Kyle Ferrell, 3955 S. Cherry St., stated the fence at 121 Summit Blvd. has been there for at least 48 years. Ms. Ferrell stated she lived there as a child. Ms. Ferrell spoke to Council about her concerns with increased traffic on Oxford, when the traffic calming measures are implemented on Dahlia Street.

Discussion was held.

PUBLIC HEARING

Floodplain Development Permit – To allow for the installation of a pond and road for the property located at 4501 S. Monroe Lane (Mary Scott)

Councilmember VanderWerf asked to recuse herself from this issue. Councilmember VanderWerf stated this matter came before the Parks & Trails Committee when she served on that committee. Mayor Wozniak questioned Councilmember VanderWerf if that would influence her ability to make an unbiased decision. Councilmember VanderWerf said she thought it might.

Councilmember VanderWerf recused herself and stepped down from the dais.

Councilmember LaMair made a disclosure about previous exposure to the property and general discussions she has had as a member of the Cherry Hills Land Preserve and the Blue Ribbon Panel. City Attorney Thad Renaud asked Councilmember LaMair if any of her prior experience and communications would prevent her from making an unbiased decision and her ability to decide this matter only on information based on the evidence presented during this public hearing. Councilmember LaMair said it would not.

Ned Giles, counsel for the Scott's, asked Ms. LaMair if she was involved in the discussions regarding the possible purchase of the property by the Cherry Hills Land Preserve.

Councilmember LaMair stated she had never discussed the possible purchase of the property.

Mr. Giles asked Ms. LaMair if her previous discussions would have an impact on her ability to decide the floodplain development application. Councilmember LaMair stated that she could put those general discussions behind her to move forward to evaluate the code issues and the application in front of her.

Councilmember Tisdale disclosed that Councilmember Blum, Mayor Wozniak and he were on Council when the City made an offer on the property prior Ms. Scott purchasing the property.

Interim City Manager Eric Ensey presented the Floodplain Development Permit to allow for the installation of a pond and road for the property located at 4501 S. Monroe Lane as requested by Mary Scott.

Mr. Ensey advised the notice of the City Council meeting was sent to all surrounding and adjacent neighbors via a certified mailing with return receipt requested and a reminder notice was sent to all adjacent neighbors after the P&Z meeting. Mr. Ensey also advised additionally, two signs were posted on the property and the public hearing was published in The Villager.

Mr. Ensey noted the City's floodplain management regulations are outlined in Article 17 of the zoning ordinance. Mr. Ensey also noted the staff memorandum provided a detailed analysis of the applicant's request compared with the various floodplain management regulations and includes staff's recommendation. Mr. Ensey advised there are a number of issues associated with this application that staff finds are not consistent with the City's floodplain management regulations.

Mr. Ensey stated in Section 16-17-60(c)(3) of the City Code "authorizations shall be issued only upon a determination that the same is the minimum necessary, considering the flood hazard, to afford relief." Mr. Ensey noted in this case, it is difficult for staff to understand what the applicant is being afforded relief from. Mr. Ensey also noted while the applicant may desire to have a pond on her property, the property is already developed and used for single family purposes and the existing single family use could be greatly expanded in it size without any need to alter the floodplain boundaries or otherwise develop within the floodplain.

Mr. Ensey also noted Section 16-17-60(c)(4) of the City Code which states that authorizations shall only be issued upon a showing of good and sufficient cause and a determination that failure to grant the authorization would result in exceptional hardship to the applicant. Mr. Ensey related that the applicant argues her hardship would be the potential loss of water rights and the reduction of mosquito breeding areas that would result in the construction of pond. Mr. Ensey noted however, staff finds the applicant has failed to establish that she has any water rights that would be lost, that whatever water rights she may have are sufficient to construct the pond she proposes, or that she has no other means of preserving her water rights, if any. Mr. Ensey also noted, staff finds the applicant has

provided no evidence to establish the construction of a pond of standing water will decrease the extent of mosquito breeding grounds from those that presently exist on the property. Mr. Ensey advised Council the applicant has not demonstrated the failure to grant the authorization will result in an exceptional hardship to the applicant. Mr. Ensey said as a result, staff questions whether good and sufficient cause has been demonstrated.

Mr. Ensey noted City Code in Section 16-17-40(d) states that "No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Article *and other applicable regulations.*" Mr. Ensey also noted furthermore in Section 16-17-50(c)(2) of the City's Code requires the City Manager "review of all development permit applications to determine that all necessary permits *have been obtained* from those federal, state or local governmental agencies from which prior approval is required." Mr. Ensey stated at this point, staff finds the applicant has not provided the necessary proof of sufficient water rights from the State of Colorado, through an approved augmentation plan or other method approved by the State, as well as other required state permits as outlined in the Exhibit F attachment to the May 16, 2006 staff memorandum provided by the City Attorney's Office.

Mr. Ensey recommended City Council deny the proposed floodplain development permit and boundary line adjustment based on the information provided by the applicant at this time.

Mr. Ensey advised Council the Planning and Zoning Commission had reviewed this request at their April 25, 2006 meeting and voted unanimously (6-0) to recommend denial of the proposed floodplain application to the City Council. Mr. Ensey noted the Commission's draft minutes are included as an exhibit to the staff report. Mr. Ensey also noted numerous residents, many of who are in attendance to tonight, spoke in opposition to the request. Mr. Ensey also related the Commission indicated the application was not consistent with the requirements of Chapter 16, Article 17 of the City Code in that the applicant did not sufficiently demonstrate the failure of the City to grant authorization of this application would result in an exceptional hardship to the applicant. Mr. Ensey noted, at that meeting, the applicant also requested the Commission consider a waiver of the hardship provision in the City Code. Mr. Ensey also noted the Commission's motion included a recommendation for denial of the waiver request due to the size of the proposed pond.

Councilmember Tisdale asked when the floodplain application was filed. Mr. Ensey stated the Conditional Letter of Map Revision (CLOMR) is dated February 27, 2006 and staff's response is dated March 31, 2006. Mr. Ensey noted there was an earlier submittal prior to March 31st when staff provided comments and the applicant did address those comments.

Mayor Wozniak asked for clarification regarding the placement of the road.

Discussion was held regarding the road and current trail placement.

Councilmember LaMair asked for clarification regarding the Scott's water rights. Mr. Ensey acknowledged the time and funds required to establish water rights. Mr. Ensey suggested Council could make the approval conditional on proving water rights.

Discussion was held regarding water rights.

Councilmember Tisdale asked for clarification regarding whether the applicant is asking for Council to either grant a condition relative to proving water rights or agree to give them a waiver. Councilmember Tisdale stated his concerns over Council, as a judicatory body, rendering advisory or declaratory opinions.

Mayor Wozniak confirmed that Council is not deciding a subdivision tonight, only a floodplain request. Mayor Wozniak noted that the CLOMR addresses the subdivision.

Mr. Ensey stated that was correct, the subdivision is not before Council this evening.

Mr. Ensey suggested if Council approves the application, a condition be placed in regard to the submittal of the CLOMR and withhold approvals until the water right's issues are settled. Mr. Ensey noted that the CLOMR expressly ties this request with the subdivision plan.

Councilmember Tisdale stated his concerns with holding an applicant by what their professionals might say appropriately or inappropriately. Councilmember Tisdale hoped the applicant could help by addressing these concerns.

Mary Scott, 4501 S. Monroe Lane, stated she purchased the property from Ms. Weckbaugh in November of 2004. Ms. Scott stated that she is before Council tonight for a floodplain development permit. Ms. Scott introduced her legal counsel, Mr. Ned Giles.

Mr. Ned Giles, 4555 S. Downing St., presented Council with a map of the proposed floodplain development. Mr. Giles clarified the application is not for a subdivision, but it is an application for construction of a pond and small road within the floodplain. Mr. Giles described the construction. Mr. Giles showed aerial photographs of the City, which depicted surrounding lakes and ponds. Mr. Giles noted there are 17 requirements to be met. Mr. Giles advised Council when the applicant appeared before the Planning & Zoning Commission, the Commission concluded the applicant had met 16 of the 17 requirements. Mr. Giles stated the one requirement the applicant had not met was whether the applicant had demonstrated an exceptional hardship. Mr. Giles related the applicant argued unsuccessfully the exceptional hardship was the potential loss of Ms. Scott's water rights. Mr. Giles stated he and the applicant believe the potential loss of water rights is an exceptional hardship. Councilmember Tisdale asked if the water rights were a general grant of water rights from a pertinent deed or an adjudicated water right. Mr. Giles stated they are talking about both. Mr. Giles stated the Hunzicker's were the owners of the property prior to the Weckbaugh's. Mr. Giles read from "The Hunzicker Deed".

Mayor Wozniak asked where the C.G. Richardson reservoir was located.

John K. Scott Jr., 4501 S. Monroe Lane, showed Council where the C.G. Richardson reservoir is located.

Mayor Wozniak asked if the water has been used. Mr. Giles stated he did not believe it was within the Council's obligation or responsibility to decide the water issue. Mr. Giles suggested approving the application, but making it contingent on proving the water rights. Mr. Giles explained water rights.

Councilmember Tisdale stated his concern the City Code requires, before a new pond is created in the floodplain, an exceptional hardship to be demonstrated. Councilmember Tisdale noted his concern if there is an exceptional hardship, the hardship needs to be demonstrated to the Council.

Councilmember Tisdale said he believes the applicant, in order to satisfy the exceptional hardship requirement, would need to establish that there is some kind of entitlement to the water and the risk of loss of the same.

Mr. Giles entered into the record "Exhibit "G" (The Hunzicker Deed)".

Mr. Giles stated Ms. Scott, under Colorado Water Law, will lose her water rights if she does not use them. Mayor Wozniak asked if the water rights were or had been used. Mr. Giles stated the applicant is not using the water rights and is unaware if they have been used in the past. Mr. Giles stated the applicant is not on the State abandonment list. Discussion was held concerning the abandonment list.

Mayor Wozniak asked what concerns the applicant has with proving up the water rights prior to getting approval. Mr. Giles stated the applicant feels the approval is the first step.

Discussion was held concerning the water rights.

Councilmember Tisdale stated his concern that evidence of a prior transfer has been given, but has not been demonstrated that the deed of grant to the Scott's contain the identical language concerning the water rights.

Mr. Giles entered into record "Bargain and Sale Deed" dated November 30, 2004; "Special Warranty Deed" dated November 30, 2004.

Councilmember Tisdale stated his concern there is a quick claim deed, which does not constitute a warranty.

Mr. Giles stated typically water rights in Colorado are not conveyed by warranty deeds.

Mayor Wozniak asked if the Scott's were able to irrigate with their water rights.

Mr. Giles said irrigation is possible, not practical. Mr. Giles noted the land has not been leveled.

Mayor Wozniak asked Mr. Giles to explain the exceptional hardship.

Mr. Giles said the first exceptional hardship is the possible loss of water rights if they can not utilize them in the pond. Mr. Giles stated the pond is the easiest way to use the water rights. Mr. Giles said the second exceptional hardship is the mosquito issue. Mr. Giles explained the current configuration of the gulch and where there is stagnant water and a fertile mosquito breeding area. Mr. Giles felt this is an issue that affects the Scott's and surrounding neighbors. Mr. Giles stated the pond would cover 90% of the stagnant water area and would be aerated and eliminate standing water.

Councilmember Blum asked how close the proposed pond is to the current pond in Glenmoor County Club.

Mr. Scott explained the location of the ponds.

Councilmember Tisdale asked if the 1' high dam would be located at the north end of the property. Mr. Giles stated the 1' rise would be located there.

Mr. Giles introduced John Ewy, Drexel Barrell & Co. and David Steinman, wildlife expert.

Discussion was held concerning water flow and table.

Mayor Wozniak asked to clarify the pond size.

John Ewy, Drexel Barrell & Co., stated the pond is 3.44 acres.

Councilmember LaMair asked if a study had been completed to prove that building a pond of 2-1/2 to 3 acres will deter breeding of mosquitoes.

David Steinmann, Professional Wetlands Consulting Inc., stated that there has been no formal study but in his professional opinion cattail wetlands with slow or stagnate water are prime for mosquito breeding and a larger pond as proposed with water flow inhibits mosquito breeding.

David Steinmann spoke about the affect the pond would have on wildlife. Discussion was held concerning the wildlife.

Discussion was held concerning water flow and table.

Mr. Giles stated placement of the pond will have no impact on downstream locations. Mr. Giles stated he felt much of the ordinance is relative to structures in the floodplain

and is not applicable to the construction of a pond. Mr. Giles presented Council with aerial photos from 1954. Mr. Giles noted, on the photographs, there are no ponds located downstream from the Scott property. He noted that most of the ponds currently located downstream have been built after 1954.

Mr. Giles related their request of staff for every floodplain permit. Mr. Giles stated staff provided 52 applications. Mr. Giles noted each permit was approved. Mr. Giles stated his concerns, if this pond is not approved, whether any pond would be able to be constructed in the Village. Mr. Giles said he felt if this application is rejected Council would be applying a different set of standards to this application. Mr. Giles stated they had reviewed seven recent applications that preceded their application. Mr. Giles noted, in Mark & Sally Murray's application, staff had concluded that good and sufficient cause exists given the intent of the floodplain regulation is to allow property owners reasonable use of their property. Mr. Giles also noted in David Johnson's application staff recommended a waiver to allow construction of a driveway, because the proposed work will not negatively impact the existing floodplain and does not impact the public health, safety, convenience or general welfare of properties either upstream or downstream of the proposed work. Mr. Giles noted in Terry and Kay Johnson's application for construction of a minor addition, staff concluded that good and sufficient cause exists given that the intent of the floodplain regulations is to allow property owners a reasonable use of their property and the proposed improvements are in character with the surrounding property.

Councilmember Tisdale asked if there was also a finding of hardship. Mr. Giles stated there was not. Councilmember Tisdale's recollection of past floodplain permits did take into account evaluation of hardship. Discussion was held concerning the prior applications.

Councilmember Wozniak asked what the hardship is concerning the construction of the road.

Mr. Scott stated the Scott's hay the property and are unable to move the equipment across their property.

Mr. Giles related in the City's request for a permit to dredge John Meade Park's pond staff recommended that many of the considerations applicable to floodplain development permit applications make sense only in the context of structures such as houses, barns, sheds etc... in the floodplain.

Mr. Giles stated Mr. Pizzichini, 3750 S. Clarkson St., was granted a floodplain development permit with no hardship shown.

Councilmember Tisdale advised that a portion of the record is not the complete finding of fact.

Mr. Giles stated if hardship is not found he suggested a waiver be granted as provided for in 16-17-60(d). Mr. Giles advised there is no public health or safety issue.

Mayor Wozniak opened the public hearing at 8:23 p.m.

Jason Matherly, 10 Random Road, stated he owns a 3-acre parcel north of the Scott's property. Mr. Matherly stated his property has a pond and wetlands. He also stated that over the past seven years he has not experienced any problems with mosquitoes, but expects there to be one if the 3-acre lake is approved. Mr. Matherly made several references to various sections of the Municipal Code, citing that the proposal is not compatible with the surrounding area. Mr. Matherly advised Council that he believes creating an artificial lake will destroy the meadowlands and wetlands. Mr. Matherly feels that a 3-acre artificial pond is not in keeping with the rural character as outlined in the City's Master Plan. Mr. Matherly expressed concern with the impact the pond will have on downstream users. He encouraged Council to reject the application. Mr. Matherly stated he felt defense is the principal function of government. He encouraged Council to spend money in defending the rural character of the Village. Mr. Matherly stated his concerns regarding Councilmember VanderWerf's recusal at the beginning of the meeting.

Mayor Wozniak explained conflict of interest.

Councilmember Tisdale asked the applicant to respond during the rebuttal what the impact would be in the event of a 100 year storm.

Alix Corboy, 2905 Cherryridge Rd., stated she would like to respond to some of the statements made by Mr. Giles. Ms. Corboy stated that Glenmoor County Club believes they own the upstream water rights. She also stated that Terry McKee from the State Corp of Engineers advised her Greenwood Gulch does not feed into the Platte River. Ms. Corboy related her frustration with the increase in the size of the pond.

Ms. Corboy stated that Brownell Bailey was unable to attend tonight's hearing and read his letter into the record.

Mr. Bailey's letter reflected he feels the application fails to consider the effect of changes in ground water saturation, the suitability of the site for the pond, the availability of water to the pond site, concerns he has regarding the expanded wetland edge, the excavation and site restoration, and the public safety issues regarding construction traffic. Mr. Bailey's letter encouraged Council to deny the request.

Ms. Corboy expressed her concerns regarding the pond and the proposed subdivision application. Ms. Corboy stated that "private" lake would not be enjoyed by the community. Ms. Corboy also stated her concerns regarding the pending litigation Ms. Scott's have with their neighbors. Ms. Corboy stated it is abundantly clear the citizen's of Cherry Hills support preservation of open land, mountain vistas and the rural landscape that exists. Ms. Corboy stated her concerns regarding the pending litigation and the Scott's water rights. Ms. Corboy encouraged Council to move forward in a thoughtful manner to preserve the character if the community.

Suzie Halle, 5310 Sanford Circle, asked Council to not approve the application until the water rights are proved. Ms. Halle stated her concerns the pond is an amenity for the proposed development. She also stated her concerns regarding the access issues to the property. Ms. Halle suggested the Scott's ask Rhea Miller for access when haying their property. Ms. Halle said she felt a trail winding through the wetland would be a benefit to the community not a pond. Ms. Halle stated her concerns regarding David Steinmann's classification of cattails as a useless weed. Ms. Halle also stated her concerns of a conflict of interest regarding Mr. Steinmann as a personal friend of Mr. Scott. She stated her concerns regarding the excavation of the site. Ms. Halle encouraged Council to uphold the code and respect the neighbor's request to deny the application.

Anne Carpenter, 9 Random Road, expressed her concerns regarding their well water. She also stated her concerns regarding loss of her well water. Ms. Carpenter stated she was concerned about the filtration and its affect on water quality.

Claire Mindock, 8 Random Road, stated she has concerns regarding the size of the pond as her property is three acres, which is the same size as the proposed pond. She expressed her concerns regarding the disturbance of wildlife. Ms. Mindock has resided in the area for 17 years. She feels it is the obligation of the citizens to maintain what little land remains. Ms. Mindock expressed her concern regarding the maintenance of the pond. She encouraged Council to defeat the application.

Peter Mindock, 8 Random Road, noted he was one of the first members to join Glenmoor County Club. Mr. Mindock shared his observation of the difficulty and problems in maintaining the lakes at Glenmoor Country Club. Mr. Mindock stated he felt the pond will attract mosquitoes and geese. Mr. Mindock stated his frustration at attending 10 hours of meetings.

Mayor Wozniak closed the public hearing at 9:01 p.m.

Mr. Kim Scott stated he and his wife purchased the property in November 2004. Mr. Scott stated they moved from Greenwood Village where they resided for 12 years. Mr. Scott rebutted personal attacks that have been stated about him. Mr. Scott stated they can leave the dirt or remove it from the site, whichever would be best. Mr. Scott explained the quiet title action. Mr. Scott expressed his frustration with trying to appease the neighbors. Mr. Scott stated the property is currently zoned for seven lots.

Mr. Scott asked Council if they would be willing to table and discuss the project with two Councilmembers in private. Mayor Scott explained the quasi judicial process.

Mr. Scott stated he does not want to spend money for augmentation plan if it is not approved. Mr. Scott stated he would be willing to do it prior to construction.

Mayor Wozniak asked for clarification regarding the quiet title suit. Mr. Scott and Mr. Giles explained the quiet title suit.

Mr. Ewy stated a 100 year rain is built into the model; there would be no change to the rate flow.

Councilmember Tisdale noted the ordinance requires all relative factors and pending application of subdivision be applied.

Mr. Giles stated the Scott's would like the installation of the pond whether or not the subdivision is approved.

Councilmember Tisdale asked Ms. Carpenter's concerns regarding her well water. Mr. Giles stated well water is tributary; the water has to be replaced.

Councilmember Tisdale stated his concerns about an exceptional hardship and his reluctance to grant a waiver.

Discussion was held concerning the application.

Mr. Steinmann clarified he has worked with Mr. Scott on several projects and has a professional relationship with him. Mr. Steinmann also clarified he has never stated cattails are a useless weed, he stated that many biologists consider cattails to be relatively useless. He stated that he feels they are of some benefit although not the highest quality wetland plant. Mr. Steinmann related that Greenwood Gulch is part of the South Platte River Basin, even though it does not flow directly into the South Platte River anymore, but flows into a series of irrigation ditches. Mr. Steinmann stated he feels the community would benefit from the placement of native grasses and increased bird migration with the pond. He feels the wildlife will return to the area and the pond is the most beneficial use for the water rights.

Councilmember Tisdale asked if the applicant would agree to table the application

Mr. Scott asked for a recess. Council was in agreement.

Mayor Wozniak adjourned the meeting for a brief recess at 9:31 p.m.

Mayor Wozniak reconvened the meeting at 9:37 p.m.

Discussion was held regarding the application.

Mr. Giles requested a continuance to the September 19, 2006 Council meeting.

Councilmember Tisdale moved, seconded by Councilmember Blum, to continue the requested Floodplain Development Permit and Floodplain Boundary Line Adjustment for

the property located at 4501 S. Monroe Lane as requested by Mary Scott to the September 19th City Council meeting.

Discussion was held.

The motion passed unanimously.

Mayor Wozniak adjourned the meeting for a brief recess at 10:05 p.m.

Mayor Wozniak reconvened the meeting at 10:08 p.m.

CONSENT AGENDA

Councilmember Tisdale moved, seconded by Councilmember Stewart, to approve the following items on the Consent Agenda:

- Approval of May 2, 2006 Minutes
- Approval of April 27, 2006 Minutes

The motion passed unanimously.

NEW BUSINESS cont...

CB 02-06; Approval of an Ordinance authorizing a supplemental appropriation of funds for the City's Master Plan project during the 2006 fiscal year (First Reading)

Councilmember Tisdale moved, seconded by Councilmember LaMair, to approve CB 02-06, A Bill for an Ordinance authorizing a supplemental appropriation of funds for the City's Master Plan project during the 2006 fiscal year on first reading.

Interim City Manager Eric Ensey presented CB 02-06, A Bill for an Ordinance authorizing a supplemental appropriation of funds for the City's Master Plan project during the 2006 fiscal year on first reading.

Kristy Schloss, 801 E. Radcliff Ave., and member of the Master Plan Interview Committee, explained to Council the need for the additional funds.

Councilmember Roswell stated his concerns with increasing the amount budgeted.

Discussion was held.

Debbie Welles, 3940 Sanford Circle West, shared her comments on the Master Plan process with Council. Ms. Welles recommended a Request for Qualifications (RFQ). Ms. Welles suggested an academic expert lead the master planning discussions prior to writing the RFQ.

Councilmember Tisdale suggested utilizing the Rocky Mountain Land Use Institute.

Discussion was held.

The following votes were recorded:

Harriet LaMair	yes
Doug Tisdale	yes
Bonnie Blum	yes
Russell Stewart	yes
Scott Roswell	no
Klasina VanderWerf	yes

The motion passed with a vote of 5 yes and 1 no.

CB03-06; Approval of an Ordinance concerning Section 18-10-10 of the City's Code concerning construction times (First Reading)

Mayor Wozniak presented CB03-06, A Bill for an Ordinance concerning Section 18-10-10 of the City's Code concerning construction times on first reading.

Mayor Wozniak stated his concerns regarding the exterior construction definition.

City Attorney Thad Renaud suggested amending 18-10-10 (2) second line to read "There shall be no construction activities outside fully enclosed areas of any kind..."

Discussion was held.

Councilmember Tisdale moved, seconded by Councilmember VanderWerf, to approve CB03-06, A Bill for an Ordinance concerning Section 18-10-10 of the City's Code concerning construction times on first reading with the amended language as suggested by City Attorney.

The following votes were recorded:

Klasina VanderWerf	yes
Harriet LaMair	yes
Doug Tisdale	yes
Bonnie Blum	yes
Russell Stewart	yes
Scott Roswell	yes

The motion passed unanimously.

REPORTS

Members of City Council

Councilmember Stewart advised Council the same developer is working on the Denver Seminary project and the Continuum project.

Councilmember Stewart advised Council he attended on May 5th the Colorado Municipal League (CML) training and has given Interim City Manager Eric Ensey the documentation in regard to open meetings and conflict of interest if anyone is interested.

Councilmember Stewart gave an update on the South Suburban litigation.

Councilmember Stewart related a community (Belle Meade, TN) is proposing adding design review provisions to their code.

Councilmember Tisdale related he met with Davis Partnership and was going to request an executive session to update Council, but given the lateness of the hour request the executive session at a later date.

Councilmember Tisdale stated he attended the DRCOG retreat and their monthly meeting will be tomorrow night. Councilmember Tisdale said he will give Interim City Manager Eric Ensey the documentation in regard to the Transit Oriented Developments if anyone is interested.

Councilmember LaMair stated she met with Chief Patterson and representatives from Kent Denver and Cherry Hills Village Elementary to discuss traffic concerns with Cherry Creek School times change next fall.

Councilmember LaMair related concerns residents in Mansfield Heights have concerning scrape offs and building heights.

Councilmember VanderWerf reminded Council the Community Fair is this Sunday.

Mayor's Report

Mayor Wozniak welcomed Councilmember VanderWerf.

Mayor Wozniak advised Council he will be attending a county wide planning session regarding the Avian Bird Flu on June 2nd from 7:30 a.m. until 5:00 p.m.

Mayor Wozniak gave an update on the Denver Communications Tower. He applauded Glenn Decker for his efforts.

Mayor Wozniak announced the implementation of an e-mail information list. Mayor Wozniak encouraged residents to sign up via the website.

Members of City Boards and Commissions

There was none.

City Manager & Staff

Departmental Monthly Reports

Departmental Monthly Reports were included in Council packets. There were no questions from members of the City Council.

Interim City Manager Eric Ensey reminded Council that the CML Conference will be held in June.

Interim City Manager Eric Ensey stated two applications have been received for the Citizens City Center Committee (CCCC). Mr. Ensey noted the deadline for the CCCC is this Friday.

Mayor Wozniak suggested Council review the requirements at the next Council meeting. Discussion was held concerning the CCCC.

City Attorney

There was none.

ADJOURNMENT

A motion was made by Councilmember Tisdale, seconded by Blum to adjourn the meeting at 11:00 p.m.

The motion passed unanimously.

The meeting adjourned at 11:00 p.m.

Michael J. Wozniak, Mayor

Jennifer Pettinger, CMC, City Clerk