

**RECORD OF PROCEEDINGS**

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, October 3, 2006 at 6:00 p.m.  
At the Village Center

**STUDY SESSION**

Study session with Sam Mamet, Executive Director, from the Colorado Municipal League held from 6:00 p.m. to 6:36 p.m.

Mayor Pro-Tem Doug Tisdale called the meeting to order at 6:39 p.m.

**ROLL CALL**

Councilmembers Scott Roswell, Harriet LaMair, Bonnie Blum, Russell Stewart and Klasina VanderWerf were present on silent roll call. Also present were Finance Director Karen Proctor, Police Chief John Patterson, Public Works Director Jay Goldie, Interim City Manager Eric Ensey, City Attorney Thad Renaud and Deputy City Clerk Jessica Day.

**AUDIENCE PARTICIPATION PERIOD**

Chester Sheperly, 5051 South Birch Street, spoke of his concern of the fence along the horse path on Birch Street. He and his neighbors had not been informed that a fence was going to be constructed. He wanted to know why a fence is necessary when the property has been open for 34 years. He and his neighbors do not want a fence to be constructed. He was told that the City is going to extend the fence from Belleview Avenue up to where a two rail fence is currently located. The new fence is going to be a three rail fence. Mr. Sheperly doesn't think a three rail fence would be aesthetically pleasing and goes against what the rest of the neighborhood is about. He asked the Council why the fence was being constructed.

Mayor Pro-Tem Tisdale answered by explaining that the audience participation period is a time for the Council to listen to the residents. If Council has an answer to the concern then it will be given, but they may need to take time to gather some information.

Mr. Sheperly explained that he heard about the fence for the first time that afternoon.

Mayor Pro-Tem Tisdale suggested the City Attorney talk to the people involved and get back to Mr. Sheperly once they have an informed answer.

Councilmember Roswell asked if the fence was currently being constructed.

Councilmember Blum asked if the City was doing the work.

City Attorney Thad Renaud confirmed that the City was doing the work, but was not able to discuss the matter more unless the Council wished to call an Executive Session.

Mayor Pro-Tem Tisdale told Mr. Sheperly that they would gather information and get back to him with a response.

Councilmember LaMair acknowledged Mr. Sheperly's concerns. She believes that it is unfair to build a fence next to someone's property without notifying the owner first. She agreed with Mayor Pro-Tem Tisdale in that they should meet with the City Attorney and get back to Mr. Sheperly with an appropriate response.

Mr. Sheperly questioned whether the construction of the fence would be halted until the Council had collected their information.

Mayor Pro-Tem Tisdale said Council may not be able to stop it, but would do what it could to get Mr. Sheperly the information before the next day and that construction may still commence.

Mr. Sheperly apologized for bringing his concerns before the Council. He also stated he and his wife have lived in the City for 34 years and have never had a problem. They have always been able to call the City and get it resolved.

Kevin Iverson, 1170 East Tufts Avenue, stated his is a Commissioner for the Cherry Hills Village Planning and Zoning Commission, but was not there in that capacity. His comments related to Agenda Item 6a concerning the construction practices. His neighborhood has seen a lot of construction in the last 5 years. He and his wife experience occasional parking issues due to construction, which could hamper an emergency vehicle in getting down the street. However parking issues do not only pertain to the construction vehicles, but also to resident vehicles due limited parking. He doesn't want to see the ordinance passed. He believes it is overall bad legislation. He believes that most of the complaints that were issued are violations of existing codes. He doesn't believe the City needs more rules, but need to enforce the existing rules and regulations. He is concerned by the fact that construction costs would most likely increase. He stated that the majority of the construction companies doing business in the City are owned by residents and before an ordinance is passed that could potentially raise their costs it should be given due consideration by the Council. He hopes the reason Council is addressing the parking issue is for safety. He believes that Council needs to look at the ordinance from a broader perspective. He recommended Council table the issue to see how effective a new full-time code enforcement officer is.

Mayor Pro-Tem Tisdale suggested Council not make any comments at this time because the issue Mr. Iverson brought up was on the agenda and would be discussed later in the meeting.

### **CONSENT AGENDA**

Councilmember VanderWerf requested removal of Item A.

Councilmember Stewart requested removal Item 4C.

Mayor Pro-Tem Tisdale asked for a motion on 4B.

Councilmember Blum moved for approval on Agenda Item 4B.

Councilmember Roswell seconded the motion.

There was no discussion and the motion was passed unanimously.

### **ITEMS REMOVED FROM CONSENT AGENDA**

Councilmember VanderWerf requested the minutes be amended to show that she was not at the council meeting on September 19, 2006.

Mayor Pro-Tem Tisdale noted that his name appeared on the minutes and stated he was also not present at the September 19, 2006 council meeting.

Councilmember LaMair made a motion to approve Agenda Item 4A with changes.

Councilmember Roswell seconded the motion.

There was no discussion and the motion passed unanimously.

Mayor Pro-Tem Tisdale moved on to Agenda Item 4C.

Councilmember Stewart indicated that he worked on the draft of the rules of procedure.

Councilmember LaMair explained that the Parks, Trails and Recreation Commission looked over the rules and made some changes, including changing the day they would hold their meetings.

Councilmember Blum thought there was a current ordinance in which trail vacations were already covered and wondered if listing it separately was redundant.

Mr. Renaud explained the intention is for it to be picked up under Item 10 of the Rules and does not need to be listed separately.

Councilmember Roswell questioned the reason for changing the purpose that was described in the ordinance.

Mr. Renaud noted that the purpose statement was different, but he didn't think the deviations would conflict with each other. The ordinance also says the Commission shall perform such other duties and tasks as assigned by the Council. He was comfortable because the list was close enough and the Council is authorized to give the Commission duties from time-to-time and it does nothing to negate the purposes expressed in the ordinance.

Councilmember Roswell stated the one that he noticed in particular was number 5 where the rules say to analyze the portions of the Master Plan, but the ordinance says to make recommendations to Planning and Zoning. One is prior and one is subsequent. He was unclear if the role for the Parks, Trails and Recreation Commission was being changed as pertains to the master plan.

Mr. Renaud acknowledged the change, but didn't see much difference in what the Commission is currently doing.

Councilmember LaMair stated the new Commission would like to be proactive not reactive with regards to the master plan.

Councilmember Roswell also had a concern about paragraph 2 that the word "parks" is there, but was left out of the Rules and he wondered if it should be included. He believes there is a difference between the word parks and what the City's obligation is for recreational needs.

A discussion ensued and it was determined that Councilmember Roswell's concerns were addressed in some of the other purpose items and it was stated differently than in the current ordinance.

Councilmember Stewart moved to approve Item 4C.

Councilmember Blum seconded the motion with the corrections in Article 2, Section 2 and Section 10.

There was no discussion and the motion passed unanimously.

### **UNFINISHED BUSINESS**

Mr. Ensey went over the revisions that were made to the proposed ordinance after the first reading on September 19, 2006, which were listed in his staff report.

Councilmember VanderWerf noted that Cherry Hills Village streets are not built for the weight and size of the construction vehicles and wondered if there was a way to make the construction companies liable for any damage done to the City streets. She made a response to Mr. Iverson's comments by stating she believes the number of complaints is probably higher, but residents may not have expressed their complaints directly to the City.

Councilmember Stewart stated construction is a big issue in his neighborhood, but can be enforced by the covenants in place there and it works for them. His major concern is enforcement, which is not clear in the ordinance. He believes that most contractors want simple, clear rules of what is expected before hand. He believed the issue Mr. Iverson raised about parking in the rights-of-way is a good issue, but feels it can be dealt with by the City Manager and the contractor before the construction begins.

Councilmember Blum agrees with Councilmember Stewart. She believes this ordinance is going to help make the contractor's job easier and will help get the job done faster without an added cost. She addressed Mr. Iverson's concern about parked vehicles blocking the road for emergency vehicles and believes it is a valid concern. She would like to check and see if there is something in the current code that addresses that issue.

Councilmember Roswell thought the City was going to check with other municipalities concerning landscape mitigation.

Mr. Ensey stated that issue was going to be handled in another section of the code and not specifically in this ordinance. He knows other municipalities have landscape mitigation and that would follow up on if Council desired.

Mr. Renaud agreed he was also under the impression the landscape mitigation issue was going to be addressed in a different ordinance.

Councilmember Roswell believes landscape mitigation is an important issue and would request staff continue to look into the issue so a future ordinance may be presented.

Councilmember Blum wondered if that issue could be included into the setback discussion that Council will have at the retreat that is going to be held later this month.

Mr. Ensey confirmed that it could be included at the retreat.

Councilmember Roswell was concerned with the construction noise. He referred to Article 7-1-30 in the code and wanted to see if noise could be better defined.

Mr. Renaud referenced the section in the code that outlines the decibel limits. He believes the Code section that Mr. Roswell addressed would be too ambiguous to enforce.

Councilmember Blum asked for clarification on what residents should do if they believe a construction site is violating the noise ordinance.

Mr. Renaud suggested they call the code enforcement officer. He suggested that if Council believes the decibel levels are too high then they should lower them.

A discussion ensued how decibel levels could be enforced and what should be considered a nuisance.

Councilmember Roswell stated he respectfully disagrees with Mr. Iverson with regards to construction. He believes this ordinance is a step in the right direction. He stated some of his neighbors would like to see this issue tabled so more study could be done, but he disagrees with that and supports this ordinance.

Councilmember LaMair believes it is important to balance the needs of the contractors with the residents. She sent the preliminary ordinance to some contractors. Mr. Renaud and Mr. Ensey addressed some of their concerns in the revised draft. She expressed concerns with the revised section 18-10-70 and requested clarification of the 24-hour notice period.

Mr. Ensey clarified by stating the 24-hour period would begin as soon as the contractor was notified by code enforcement on the site. He also stated a follow up letter would be sent to the property owner.

Councilmember LaMair stated the contractors have concerns with the 24-hour period. She asked if the City Manager would be able to view this period on a case by case basis in case the infraction cannot be taken care of in a 24-hour period. She believes the tracking of the mud issue is a bit much. She suggested the City staff have a conversation with the churches and schools to find out if contractors could use their parking lot for a fee.

Mr. Ensey believes the 24-hour time frame can be adjusted and the wording of the ordinance can be changed if there is a consensus among the Council.

Councilmember LaMair suggested the time frame should fit the infraction.

Mayor Pro-Tem Tisdale believes the contractors need to immediately commence steps to show they are going to comply.

Councilmember LaMair asked who is going to review the staging plan.

Mr. Ensey answered that it would be the Community Development Director along with code enforcement.

Councilmember LaMair asked if there was anything in the ordinance that could be removed.

Mr. Ensey answered that all the issues in the proposed ordinance are issues the City has to deal with on construction sites.

Councilmember Blum stated that a lot of the issues in the ordinance are at the City Manager's discretion.

Mayor Pro-Tem Tisdale observed the new ordinance was designed to inform the contractors what the rules are ahead of time. He wondered why section 18-10-30 Waiver of Escrow deposits was not included in the new ordinance.

Mr. Ensey answered by saying it was an old section and he and Mr. Renaud could not figure out why it was there.

Mayor Pro-Tem Tisdale asked for clarification on the portable toilet setback requirement.

Mr. Renaud explained that the concern was to get the portable toilet off the right of way with reasonable screening.

Mayor Pro-Tem Tisdale questioned the wording on section 18-10-70 and asked if wording could be changed to "Health, Safety and Welfare".

Mr. Renaud answered by saying their concern was that there still is an out clause in which no notice be provided. Mr. Renaud suggested removing the word timely from section 18-10-70(b), which would leave it to the discretion of staff. He would like the contractors to be concerned when they get notice from the City that they are not in compliance and try to get the issue resolved.

Mayor Pro-Tem Tisdale agreed that the removal of the word "timely" should resolve the issue. He discussed possibly tabling the proposed ordinance.

Councilmember VanderWerf reintroduced her concern regarding damage to City streets.

Mr. Renaud stated under the current code damage to the streets is not addressed.

Discussion ensued regarding possibilities of including a provision for damaging a City street during construction.

Mayor Pro-Tem Tisdale questioned Council and asked if there were any other issues pertaining to the proposed ordinance other than shared cost for damaged streets, removing the word "timely" and landscape mitigation.

Councilmember Stewart made a motion to table the issue for further discussion to the next Council meeting.

Councilmember LaMair seconded the motion.

The motion passed unanimously.

### **NEW BUSINESS**

Mr. Goldie introduced Mr. Green's preliminary petition for vacation of a portion of the South Clarkson Street right-of-way. Mr. Goldie stated that Mr. Green is asking the City to vacate a portion of the right-of-way on Clarkson Street to accommodate a redevelopment project he is considering. Mr. Goldie explained which part of Clarkson Mr. Green is requesting vacated. Mr. Goldie has recommended to Council to deny the preliminary proposal. The first reason being the City did not find anything in Mr. Green's proposal that would benefit the public interest. The second reason being the City is going through the master plan process and future plans for the portion of the trail along Clarkson in question have been yet to be determined.

Jim Green, 1220 E. Layton Avenue, stated he is the current owner of the properties at 4750 and 4780 Clarkson Street. He wanted to let Council know how pleased he was with the Village staff. He is very pleased with who is looking out for public interests. He

explained that the idea in extending the trail any further between Layton and Quincy would detract from the neighborhood more than it would benefit it. He doesn't believe the continuation of the path is necessary. He has been told by other people that they would much rather be on the interior of the City rather than the exterior. He suggested another alternative would be to provide some sort of path along the southern end of the property on East Layton Avenue. Another alternative would be for the City to lease the property to him so he can put in landscaping. He believes the public benefit is the fact that he is going to put in a berm with landscaping instead of putting in a wall to try to quiet the noise level and visual impact of Clarkson. The piece of land Mr. Green is asking to be vacated is 19 feet in width.

Councilmember LaMair asked for clarification on where the entrance to the three homes would be. She thought it is important to note that there is not going to be entry off Clarkson.

Mr. Green stated the master plan calls for the trail to come down Layton. In exchange for the Council allowing the vacation he would agree to put the trail on his property and it would travel from west to east on Layton Avenue.

Mr. Goldie showed the trail on the master plan map on the wall.

Councilmember LaMair asked if the trail was going to be gravel and who would maintain the trail.

Mr. Goldie stated if the trail were gravel then the City would maintain it. He believes it would be better for the trail to be part asphalt similar to what is on Colorado Blvd.

Mayor Pro-Tem Tisdale confirmed that if there were to be a swap of property the City would absorb the maintenance.

Councilmember Roswell asked Mr. Green how he would envision a lease with the City.

Mr. Goldie asked if Mr. Roswell was referring to a revocable permit. Where the City would keep the right-of-way but give Mr. Green the right to landscape in it.

Mayor Pro-Tem Tisdale discussed whether the proposal had merit and should go on to the Parks, Trails and Recreation Commission.

Mr. Green hopes that the proposal can go before the Parks, Trails and Recreation Commission so they can come up with a mutually beneficial decision.

Councilmember Roswell made a preliminary non-binding finding that the application has sufficient merit to justify further consideration by the Parks, Trails and Recreation Commission.

Councilmember LaMair seconded the motion.

The motion passed unanimously.

## **REPORTS**

### **MAYOR**

Mayor Pro-Tem Tisdale did not have anything to report as Mayor Pro-Tem except to note that he will be absent to the next meeting.

### **MEMBERS OF THE COUNCIL**

## RECORD OF PROCEEDINGS

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Councilmember VanderWerf was happy the open space resolution was passed at the last Council meeting. She also brought attention to the Kent Denver Art Center grand opening was coming up and Council was invited. She attended a meeting hosted by Arapahoe County called "Preserving the Platte". She spoke about what the project has been doing and what it is hoping to do in the future.

Councilmember Stewart stated that he spoke with Trina Rich and she was very happy about what happened at the Council meeting on September 19, 2006.

Councilmember Blum announced there will be a master plan meeting on Monday, October 9, 2006 and she will be out of town. She stated that she would like the meeting to move ahead without her so it doesn't slow the process down. She also thanked Mr. Ensey for everything he has done because he has put a lot of time and energy into the project.

Councilmember LaMair stated that the Parks, Trails and Recreation Commission unanimously elected Theresa Gilpatrick as their Chair and Jane Soderberg as Vice-Chair. They also passed their bylaws and are moving ahead.

Councilmember Roswell stated the 4C's Committee met and they elected David Cooper and Richard Diecidue as co-chairs of the Committee. They scheduled a meeting to inventory the documents the City has. They also agreed not to have formal meetings until they have done some research. He also asked Council for some dates from Council to meet with the other City Manager candidate.

It was suggested by Mayor Pro-Tem Tisdale to have the meeting before the scheduled retreat. It was agreed that the best day would be to meet before the retreat.

### MEMBERS OF CITY BOARDS AND COMMISSIONS

Mr. Iverson stated he did not have anything to report.

### CITY MANAGER AND STAFF

Mr. Ensey reminded Council that a Volunteer Recognition ceremony would be held on Friday, October 13, 2006 in appreciation for all the members of the boards and commissions.

Chief John Patterson stated he has a meeting Kent Denver, Cherry Hills Village Elementary and Saint Mary's in light of the recent school shootings to go over a plan for security issues.

### CITY ATTORNEY

Mr. Renaud did not have anything new to report.

Mayor Pro-Tem Tisdale questioned if there was a motion to go into Executive Session pursuant to C.R.S section 24-6-402(4)(b) relative to the discussion of legal advice concerning pending to legal.

Councilmember Blum made the motion.

Councilmember Roswell seconded the motion.

A roll call was taken by the Council members:

Scott Roswell	yes
Harriet LaMair	yes
Doug Tisdale	yes

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Bonnie Blum                    yes  
Russell Stewart                yes  
Klasina VanderWerf            yes

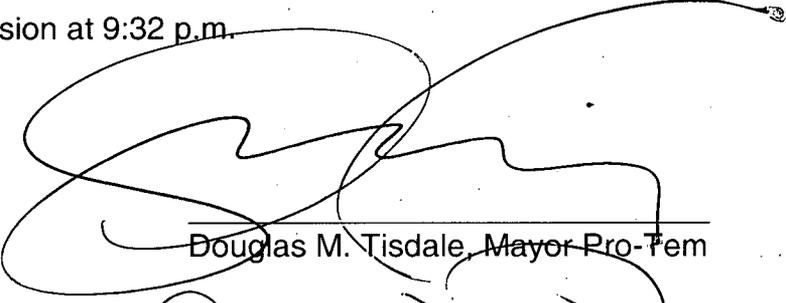
Mayor Pro-Tem Tisdale asked if there was a motion that upon conclusion of Executive Session Council would adjourn out of the Executive Session and into a Study Session.

The motion was seconded by Councilmember Blum.

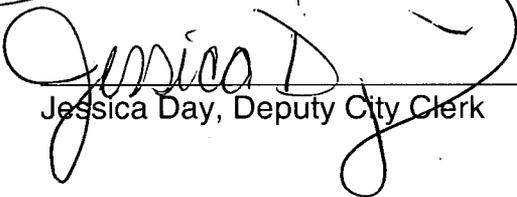
At 8:54 p.m. Council adjourned from Executive Session and went into a Budget Study Session.

**ADJOURNMENT**

Council adjourned their Study Session at 9:32 p.m.



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Douglas M. Tisdale, Mayor Pro-Tem



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Jessica Day, Deputy City Clerk