

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 21, 2007 at 6:30 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:34 p.m.

ROLL CALL

Councilmembers Bonnie Blum, Harriet LaMair, Scott Roswell, Russell Stewart, Doug Tisdale, and Klasina VanderWerf were present on silent roll call. Also present were Interim City Manager Eric Ensey, City Attorney Thad Renaud, Finance Director Karen Proctor, Police Chief John Patterson, Public Works Director Jay Goldie, Parks, Trails & Recreation Administrator Paul Burkholder, City Clerk Melissa Formby, and Deputy City Clerk Sarah Henderson.

AUDIENCE PARTICIPATION PERIOD

There was no one from the audience who wished to speak.

CONSENT AGENDA

Councilmember Blum moved, seconded by Councilmember Tisdale to approve the following item on the Consent Agenda:

Appointment of Melissa Formby to the position of City Clerk.

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

The following items were removed from the Consent Agenda:

Approval of August 7, 2007 Minutes

Councilmember VanderWerf requested "Segelke" be changed to "Salazar" on page one in the audience participation portion.

Councilmember Tisdale requested "public hearing" on page one be changed to "audience participation."

Councilmember Tisdale moved, seconded by Councilmember VanderWerf, to approve the August 7, 2007 minutes as amended.

The motion passed unanimously.

Approval of an amendment to the Administrative Manual concerning the City's vacation accrual policy

Councilmember VanderWerf asked if staff members are paid unused vacation time when they leave the City. Mr. Ensey stated they do get paid the full amount.

Councilmember Tisdale recommended a "give-back" policy if an employee leaves within their first year of employment. Councilmember Tisdale asked if the City had ever

considered or participated in a policy like this. Mr. Ensey stated they had not looked at that sort of program in the past.

Mr. Ensey offered to modify the policy and bring it back before the Council at the next meeting.

Mayor Wozniak asked for a motion to table the item until the next meeting and/or upon receiving more information.

Councilmember Tisdale moved, seconded by Councilmember VanderWerf, to table this item until the next meeting.

The motion passed unanimously.

UNFINISHED BUSINESS

Request by Lorraine Salazar (11 Blackmer Road) for approval of a variance to allow for a Minor Lot Adjustment in which one of the proposed lots does not comply with the minimum lot size in the R-1, 2 ½ Acre District and a variance to reduce the front setback of the lot from 75 feet to 50 feet as required in the R-1, 2 ½ Acre District (Item tabled from the August 7, 2007 meeting)

Mr. Ensey presented the request by Lorraine Salazar for approval of a variance. Mr. Ensey stated this item was tabled from the August 7, 2007 meeting for the purpose of obtaining more information about the property. Mr. Ensey said the covenants for the Homeowners Association (HOA) was dropped off at the end of the last meeting. Mr. Ensey also stated the title history had not been prepared by the applicant as they were concerned about the cost associated with that. Mr. Ensey said they provided a copy of their deed from the original purchase which took place in 1983 with the original building permit being issued in 1959. Mr. Ensey mentioned they were unable to find any information to show that the two lots were ever, at any point, consolidated into one lot. Mr. Ensey said there is a table included in the packet which describes the lot size. Mr. Ensey stated the net acreage would be 4.69, the gross acreage would be 4.99, both of which are less than the five acres required for the R1 zone district and to be able to subdivide the parcels. Mr. Ensey stated that staff believes there may have been a surveying error when the original plat was done. Mr. Ensey concluded by saying that staff, based on the provided information, recommends that the Council approve the requested variance to Section 17-6-50(3) of the City Code concerning standards for approval of a Minor Lot Adjustment to allow for the approval of a Minor Lot Adjustment in which the proposed Lot 1 does not comply with the minimum lot size in the R-1, 2-1/2-Acre Zone District

Councilmember Tisdale asked how close the property is to the Arapahoe tennis courts. Mr. Ensey stated the two properties are close to one another, but the exact dimensions and process of approval for the location of the tennis courts is unknown.

Councilmember Stewart asked Mr. Ensey if the Council has the authority to grant a variance under section 17-3-420(a). Mr. Renaud stated he would research the inquiry and get back to them. Mr. Ensey stated the information could be found in 17-650 subsection (3).

Mayor Wozniak stated when an applicant applies for a variance, they generally just submit what the changes they would like to make. Mayor Wozniak stated it is not the homeowners responsibility to figure out where the variance fits, it is the responsibility of City staff and City Council.

Councilmember LaMair stated that according to section 17-3-420 (d), in no case shall the variance or modification be more than a minimum change in the property and in no case shall it conflict with Chapter 16 of the Code. Additionally, Councilmember LaMair questioned whether both parties would have access to the Highline Canal.

Mr. Ensey stated that staff looked at various scenarios. He said that the lot presented was the most regularly shaped lot. At this point, staff feels it is more in line with what exists in the area in terms of the surrounding neighborhood.

Mayor Wozniak stated that the applicant's donation of land at the end of Dahlia could be an issue. Because of that donation, part of one of the lots that would have had access to Highline Canal was taken away.

Councilmember LaMair stated she is a member of the Arapahoe Tennis Club and, upon speaking with the president of the club, he told her they were aware of the application and the setback was not a concern. They were concerned with the increased traffic and parking at the canal. She and the other members encouraged staff and the Council to look at additional land for parking.

Mayor Wozniak stated a good share of those issues were discussed at the last meeting. He asked Mr. Renaud if there was any information available at this time regarding the Council's authority to administratively approve a setback variance.

Mr. Renaud stated he had not yet found any verbiage regarding administrative approval standards for the Council.

Mayor Wozniak asked whether this is a question for the Board of Adjustment (BOA).

Mr. Renaud stated it could be a Council question, though the setback variance issue is typical for the BOA.

Councilmember Tisdale stated his difficulty with this issue is the extent of the variance for Lot 1 because it should be a two and a half acre lot. Councilmember Tisdale stated the nature of the neighborhood is also an issue. He asked if there are any other two and a half acre zoned lots that have two acre lots. Mr. Ensey stated there are a number of those circumstances which are primarily located on the west side of the Village.

Mr. Renaud stated that one way to address Councilmember Tisdale's concern would require some conditions by the applicant. Mr. Renaud added that by adjusting the lot line between the two lots proposed and seeking the setback variances from the existing structure, one might be able to achieve two lots that are closer to being a standard lot.

Councilmember Tisdale stated if the setback was decreased from the eastern boundary of the western lot, it would give the City an opportunity to create a larger Lot 1 in the eastern lot without that much of a variance. He stated this application is troublesome because there is currently a structure there. He confirmed that the structure will remain on that lot and at some future time, Lot 1 would be sold.

Mr. Renaud stated another possibility would be to vary the rear setback line in the proposed Lot 1 so whatever impacts there might be would be a result of setback variance on the lot owned by the present occupant.

Mayor Wozniak stated he would not re-open the public hearing.

Mayor Wozniak asked the Council if they felt they could vote on the lot creation but not on the subdivision.

Councilmember Stewart does not believe that the Council has the authority to approve this request. Councilmember Stewart stated he would be more comfortable with the vote after a recommendation from the BOA.

Mayor Wozniak stated it is rare that the Council would defer taking action rather than sending something to a board that is appointed by the Council. Staff has directed the applicant through this process and he feels it is a little odd to disagree at this point.

Councilmember Stewart expressed concern that the Council does not have the authority on the issue. Mr. Renaud stated that the Council has authority on minimum lot size variance approvals. Mr. Renaud said that the code is ambiguous and subject to interpretation.

Councilmember Stewart asked if the City has ever changed a setback requirement through the subdivision process. Mayor Wozniak stated the Buell Subdivision setback was changed through the subdivision process.

Councilmember Tisdale stated the recent subdivision application for the property west of University and north of Quincy was a long narrow lot that was divided and there was an approval for that. Councilmember Tisdale said it was not approved as a variance, rather a subdivision application based on a redefinition of the setback.

Mr. Renaud stated there is a belief on the part of the Council that, regardless of the current language of the code, this section should allow for a variance. Mr. Renaud mentioned it could be reviewed again and come back another day.

Mayor Wozniak stated the request has already been tabled and he is reluctant to table the item again. He stated the applicant needs a decision from the Council no matter what the determination.

Councilmember Stewart stated the option to come back before the Council is still there even if it is denied.

Councilmember Tisdale clarified that what is being contemplated is the potential to grant the application for the lot line adjustment and then deny the portion of the application for the setback variance. This will give the applicant the right to go before the BOA for a setback variance or the Council could amend this ordinance relative to variances to clarify that setbacks are included.

Councilmember Blum recommended asking the applicant what they would prefer and to perhaps table the request again or go before the BOA. Mayor Wozniak stated it would take some time to table the item, between two readings and public hearings, which could take up to four months. Mr. Renaud stated the process could be expedited.

Mayor Wozniak was concerned that once Chapters 16 and 17 start getting changed there are a lot of ripples that could follow.

Councilmember Stewart asked whether the Council did have the authority and under what standards they would fall.

Mayor Wozniak stated he would like to think about whether the variance standard for this is the right one versus the variance standard in the BOA.

Councilmember Tisdale stated that he gives pause on this item because jurisdictionally the Council cannot proceed on the setback, and the City Attorney is not confident one

way or another on the authority question. He felt he needed a more clear answer to proceed.

Mr. Renaud thanked the Council for the time to research the question. Stated he would discuss it more during Executive Session as he was not comfortable doing it on the record.

Councilmember Tisdale clarified that the decision can be challenged by any person. Mr. Renaud added that the decision could be challenged within thirty days, not thereafter.

Mayor Wozniak asked if anyone was prepared to make a motion.

Councilmember Stewart moved, seconded by Councilmember Tisdale, to approve all parts of the application except the variance of the front setback.

Councilmember Tisdale made an amendment to the motion stating that the approval of the minor lot line adjustment variance would be final for all purposes. Councilmember Tisdale added that the denial of the variance for the setback would allow the applicant to go before the BOA and request a setback variance. The applicant may desire, depending upon the applicant's timing, to wait to see whether the Council proceeds with an amendment to the City's variance procedure.

The motion passed by a vote of 4 yes and 2 no. (Roswell and LaMair voted no)

Mr. Francis Salazar requested clarification that the lot line adjustment was passed and the reduction of the setback was denied. Mayor Wozniak stated that the Council would look at amending this ordinance to determine and to clarify the Council's authority to reduce setbacks.

Mr. Salazar further stated that he is not in any hurry and asked how long the process might take and when they would be informed of a decision. Mayor Wozniak stated the process could come up within two to three weeks and the agenda would be posted in advance of the meeting.

NEW BUSINESS

Resolution 06, Series 2007; A resolution establishing guidelines for donation and dedication of benches within Cherry Hills Village public spaces

Mr. Ensey presented Resolution 06-07. Mr. Ensey said that City staff has been working with the Parks, Trails and Recreation Commission in terms of establishing some general guidelines for the donations of park benches in the community. Currently there are no guidelines and the Parks, Trails and Recreation Commission and staff would like clarification and a starting point for citizens inquiring as to the process of donating park benches.

Mayor Wozniak asked if there is anything in the resolution to prevent the City from dedicating a bench. Mr. Ensey stated the City is not prevented from dedicating a bench.

Councilmember VanderWerf asked if there has been any discussion of location for the donated benches. Mr. Ensey stated this is just a general policy at this point and they would be looked at on a case-by-case basis.

Mayor Wozniak stated he liked the concept and the idea.

Councilmember Blum asked if the information would be put on the website.

Councilmember Tisdale moved, seconded by Councilmember LaMair, to approve Resolution 06-07, a resolution establishing guidelines for donation and dedication of benches within Cherry Hills Village public spaces.

The motion passed unanimously.

REPORTS

Mayor's Report

Mayor Wozniak stated the Master Plan meeting is being held on August 29, 2007 at Kent Denver School. Citizens will also be invited to speak with Eric regarding the Master Plan prior to the meeting itself. Mayor Wozniak said the website looks great and the effort to keep it up is appreciated. He stated that he and the Chief of Police would be meeting on the budget and asked others to start meeting with staff regarding their budgets. Mayor Wozniak recommended having an alternate to Councilmember LaMair's position on the Denver Regional Council of Governments (DRCOG) Board when Councilmember Tisdale is term-limited next year.

Members of City Council

Councilmember Blum stated she spoke with the president of Glenmoor Country Club and he mentioned they were interested in putting a stoplight in at Glenmoor. They might have some money left over from the assessment of their new building and would like to put the extra money into that fund. The Country Club and homeowners seem to be coming to an agreement.

Councilmember Blum also inquired about the number of citations given for off-leash dogs. Police Chief Patterson stated the Police Department has increased the enforcement of the leash law. They have not given many citations but when people see uniformed officers they tend to put their dogs back on the leash and comply with the law. Mayor Wozniak asked that Code Enforcement continue monitoring the leash law.

Councilmember LaMair stated her dog was assaulted by a coyote. Councilmember LaMair stated the police department is doing a great job, especially with the start of school. Councilmember LaMair will be attending the upcoming Parks, Trails and Recreation Commission meeting.

Councilmember Roswell stated that, Code Enforcement Officer, Jennifer Rosely, doing a great job and he has received positive feedback about her presence. Councilmember Roswell made the Police Department aware of a rash of break-ins in old Cherry Hills.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Departmental Monthly Reports

Mr. Ensey stated Departmental Monthly reports were provided in the packet.

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

Code provisions regarding door-to-door solicitation (Section 10-10-20)

Mr. Ensey stated there have been concerns regarding door-to-door solicitation and has included code provisions regarding door-to-door solicitation for the Council's review. Mr. Ensey made the Council aware of modifications to the code that could be made.

Mayor Wozniak asked that the Council be allowed to take time to review the provisions.

Mr. Renaud stated this code provision goes as far as legally possible.

Councilmember Tisdale stated there was a change to the section of the code regarding door-to-door solicitation approximately four years ago. Mayor Wozniak said that he believed that change was made for realtors.

Mr. Renaud clarified that people can leave paper but are not allowed to initiate contact with the homeowner.

EXECUTIVE SESSION

Councilmember Tisdale moved, seconded by Councilmember Blum, to:

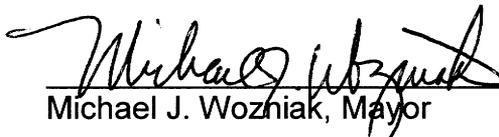
- Convene to Executive Session for the purpose of receiving legal advice from the City Attorney pursuant to the provisions of C.R.S. § 24-6-402(4)(b) regarding Code provisions concerning the enforcement of construction activities regulations, and furthermore for the separate subject under the same subdivision relative to receiving legal advice concerning adjustments to the variance procedures ordinance as the City Attorney had mentioned earlier, and to
- Adjourn the regular City Council meeting following the conclusion of the Executive Session.

The motion passed unanimously.

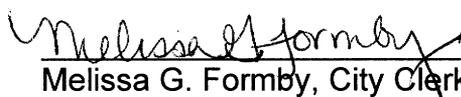
Council adjourned to Executive Session at 7:37 p.m.

ADJOURNMENT

The Executive Session and regular City Council meeting adjourned at 8:08 p.m.



Michael J. Wozniak, Mayor



Melissa G. Formby, City Clerk