

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, September 18, 2007 at 6:30 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:32 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, Open Space & Recreation Administrator Paul Burkholder, and City Clerk Melissa Formby.

Mayor Wozniak recognized Animal Control Officer, Michelle Edwardson. Ms. Edwardson witnessed a burglar exiting a resident's home and was able to get Police Officers on the scene right away.

AUDIENCE PARTICIPATION PERIOD

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

CONSENT AGENDA

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

- Expenditure of Contract for Street Striping
- Intergovernmental Agreement - 2007 Grant of Arapahoe County Open Space Program Funds for the Big Dry Creek Trail Project
- Expenditure of Funds – Bar Code Inventory Control System

Vote on the Consent Agenda: 6 yes. 0 no. The motion carried.

ITEMS REMOVED FROM CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Approval of August 7, 2007 Minutes
- Amendment to the Administrative Manual concerning the City's vacation accrual policy

Approval of August 7, 2007 Minutes

Councilmember Blum stated the no votes on page six of the minutes were incorrect. The correct no votes were from Councilmembers LaMair and Roswell.

Councilmember Stewart moved, seconded by Councilmember Blum, to approve the August 7, 2007 minutes as amended.

Vote on the Approval of August 7, 2007 Minutes: 6 yes. 0 no. The motion carried.

Amendment to the Administrative Manual concerning the City's vacation accrual policy

Councilmember VanderWerf questioned whether a new employee should begin accruing vacation beginning on day one.

Director of Finance and Administration, Karen Proctor, stated there is not a lot of employee turnover in the first year and it is a nice benefit for new employees. She also added that it is competitive with other jurisdictions.

Councilmember Tisdale moved, seconded by Councilmember LaMair, to approve the Amendment to the Administrative Manual concerning the City's vacation accrual policy.

Vote on the Amendment to the Administrative Manual concerning the City's vacation accrual policy: 6 yes. 0 no. The motion carried.

OLD BUSINESS

None.

NEW BUSINESS

CB 9-07, A bill for an ordinance repealing and re-enacting Article II of Chapter 5 of the Municipal Code, to approve a Gas and Electric Franchise Agreement by and between the Public Service Company of Colorado, d/b/a Xcel Energy and the City of Cherry Hills Village (first reading)

Interim City Manager, Eric Ensey, presented CB 9-07, A Bill for an Ordinance on First Reading.

Mr. Ensey stated CB 9-07 is being presented for the purpose of approving a new gas and electric franchise for Xcel Energy. The term of the current franchise will expire on October 31st of this year. City staff has been negotiating the terms of the new franchise with representatives from Xcel. As a result of the negotiations, staff believes the proposed franchise is consistent with other franchise agreements between Xcel and other local municipalities.

The proposed franchise provides a term of 20 years and payment of 3% of Xcel's revenues for service provided within the City. Xcel shall comply with the City's Code requirements for work within right-of-ways and will set up a fund of 1% of the revenues for service provided within the City for undergrounding projects. Xcel has also provided a letter agreement stating the City shall have the right of the first purchase of any property owned by Xcel within the City.

Mr. Ensey introduced Tom Ashburn, representative for Xcel Energy.

Mayor Wozniak asked if the current franchise has a payment of 1% and clarified the agreement end date of October 31st.

Mr. Ensey stated the current franchise payment is 1%.

Representative for Xcel Energy, Tom Ashburn, stated this agreement is very similar to other cities; including the City and County of Denver. He stated the proposed franchise agreement would be very beneficial to the City and requested City Council move forward with the agreement.

Mr. Ensey clarified that the second reading for CB 9-07 will be held at the second meeting in October.

Councilmember Tisdale moved, seconded by Councilmember Blum, to approve CB 9-07, A bill for an ordinance repealing and re-enacting Article II of Chapter 5 of the Municipal Code, to approve a Gas and Electric Franchise Agreement by and between the Public Service Company of Colorado, d/b/a Xcel Energy and the City of Cherry Hills Village on first reading.

Vote on CB 9-07: 6 yes. 0 no. The motion carried.

CB 10-07, A bill for an ordinance amending Chapter 18 of the Municipal Code, concerning Building Regulations, by amending Section 18-10-70, concerning enforcement of the provisions of Chapter 18 that regulate construction practices (first reading)

Mr. Ensey presented CB 10-07, A Bill for an Ordinance on First Reading.

Mr. Ensey stated the proposed bill clarifies the issue of stop work orders on a construction site by requiring a written plan to be reviewed and approved by the City Manager, when a stop work order has been issued on a construction site. In addition, the proposed bill specifies mandatory minimum fines of \$250 for first offenses, \$500 for second offenses and \$1000 for third and greater fines for violations to construction activities.

Councilmember Tisdale stated the Council Bill (on page 2, section C, in line 7) should read "upon approval" or "upon its approval."

Councilmember Stewart stated this is a good practice to enforce. He asked how the process of pre-construction plans is working.

Mr. Ensey reported the process is working well. Residents have mentioned that construction sites are more organized than what they have been previously.

Councilmember Blum asked if the City may have trouble enforcing the Council Bill and inquired as to how many new homes are being built right now.

Mr. Ensey answered there have been approximately (20) permits this year and the new homes are all under the pre-construction plan. He stated large renovations have to go through the same process.

Councilmember LaMair asked if there have been less complaints from citizens and if there have been any compliments.

Mr. Ensey stated there have been fewer complaints from homeowners. There have not been too many compliments on the process.

Councilmember LaMair stated it would be a great benefit to the homeowner.

Councilmember Roswell commented he has heard many compliments about the presence of police.

Councilmember Stewart moved, seconded by Councilmember Roswell, to approve CB 10-07, A bill for an ordinance amending Chapter 18 of the Municipal Code, concerning Building Regulations, by amending Section 18-10-70, concerning enforcement of the provisions of Chapter 18 that regulate construction practices on first reading.

Roll Call on CB 10-07: 6 yes. 0 no. The motion carried.

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

CB 11-07, A bill for an ordinance amending Chapter 17 of the Municipal Code, concerning Subdivisions, by amending Section 17-3-420, concerning Variance Procedures (first reading)

City Attorney Thad Renaud, presented CB 11-07, A Bill for an Ordinance on First Reading.

Mr. Renaud stated CB 11-07 is for the purpose of clarifying the Council's authority to grant a variance under the variance provisions set forth in the Code chapter regarding subdivisions. Under the proposed ordinance, Council has the express authority to provide a variance as to the minimum lot area requirements of Chapter 16 and, if such a variance is granted, additional authority to grant a variance as to the minimum yard area requirements of Chapter 16. In addition, alternative language is proposed which, if adopted, would provide for the application of more stringent criteria by which a variance of lot or yard area requirements would be judged.

Staff is also proposing a change to subsection 17-3-420(d) of the Code that is intended to prevent this variance process from being used as a means by which to make an illegal nonconforming lot legal.

Mayor Wozniak asked for the Council's thoughts and opinions on variance adjustments.

Councilmember LaMair asked what would happen if a previous owner precipitated the need for a variance due to acting recklessly and/or intentionally. She stated the applicant should know what they are getting into when they bought the property.

Mayor Wozniak said it is a tough call because not everyone can know what the previous owner had done.

Councilmember LaMair stated the "intentional" piece of the Council Bill is what is concerning to her.

Mayor Wozniak stated it is a policy choice. If it were attributed back into the chain, once someone has done something recklessly, it would never be a variance. The house would never be touched because you could never meet the standards.

Councilmember LaMair stated that technically the information should be reported in the title of the home.

Councilmember Blum added that if an applicant really doesn't know, they could go to the board and the board could get sued. She added that the people who are considering requests should question if the applicant is totally unaware or if they knew when they bought the property.

Mayor Wozniak stated these situations have been a rare occurrence. He commented he likes Councilmember Blum's idea that it is the job of the board to determine if the

applicant knew or not. He suggested the Council explore where that decision would take them.

Councilmember Tisdale suggested the question that should be asked, when looking at more stringent criteria is, to what extent is it appropriate for the Council to hamstring itself. He questioned if it is not better from a policy point of view that Council have the discretion to do things to push the envelope within a general structure. One of the reasons we were undertaking this change was due to ambiguity and lack of clarity. The language comes from a section of the code that was adopted by the Council to make certain the Board of Adjustment (BOA) would not take unto itself powers and the discretion that the elected body should have. He stated he is hesitant due to the possibility of hamstringing the Council and he is never happy about taking discretion away from the Council.

Mayor Wozniak said the Council struggled a little bit at the last meeting because it was so broad.

Councilmember Roswell commented he is struggling with this. He agreed with some of the comments Councilmember Tisdale made. Taking away discretion from the Council takes away from what this body is about.

Councilmember Blum agreed with the other concerns. The Council body needs to be able to make a decision. She asked if the information provided on page two would allow the Council to make the variance decision.

Councilmember Stewart answered this will allow the Council to waive the minimum yard requirements.

Mayor Wozniak stated there is still discretion there because there are still variances that are granted through the BOA.

Councilmember VanderWerf said she agrees with what has been said by the other Councilors. She questioned if there is any middle ground.

Mayor Wozniak stated it seems the consensus is that this is too strict for this body. He asked if everyone was comfortable with the first clause of standard C. He stated the language has pretty significant discretion and asked if this discretion is what the Council would like.

Councilmember Tisdale recommended broadening the discretion even more. He stated he would argue that the Council deserves their ultimate purpose because the Council is the single body in the City that represents the constituents.

Mayor Wozniak asked if the topographical clause should be left in so it would be even broader.

Councilmember Tisdale said the verbiage reads "or" not "and" and does not see it as being problematic.

Councilmember Blum stated she is concerned with the word "exceptional."

Mayor Wozniak recommended leaving the word "exceptional" in the language.

Councilmember Stewart asked if they would be able to work with some of the language. He asked if the Council could pass on the item now and table it to next meeting.

Mayor Wozniak stated they do not have to decide right now. He requested Mr. Renaud modify the language to include the deletion of the bold and underscored language at the bottom of pages one and two and recommended the item be tabled to next meeting.

Councilmember LaMair commented she is not comfortable with the language in (c).

Mr. Renaud stated the language was intended to provide some degree of discretion on the part of the Council. Ultimately, the Council would be able to decide what the intent of the language is.

Councilmember LaMair added that the way this has played out since she has been on Council has been that they search the law to find out what they can say yes or no to. She stated she would be more comfortable if some additional directing language would be added.

Mr. Renaud asked if the Council would like to add a hardship exception in the criteria.

Councilmember Tisdale said exceptional circumstance means, for example, that a person may not be able to subdivide a sub dividable lot. In that situation a person may not be suffering a hardship but they would have the benefit of having two lots. Lack of potential gain is not a hardship but it is a benefit.

Mr. Renaud recommended creating a list of the criteria items to be reviewed.

Councilmember Tisdale stated if there is no general impact on the public, but an impact on a neighbor, it would be worth looking at.

Councilmember LaMair said number seven is important to review.

Councilmember Blum recommended five, six and seven be reviewed. She stated she does not want hardship in the language. Councilmember Tisdale stated that number six almost begs the Council to say yes. Councilmember Blum suggested number six may be consistent with what could come forward with the Master Plan.

Councilmember Tisdale stated number eight was problematic because Council should have discretion on issues of inconvenience or aesthetics.

Councilmember Tisdale moved, seconded by Councilmember Roswell, to table CB 11-07 for further review and revision

Roll Call to table CB-11 for further review and revision: 6 yes. 0 no. The motion carried.

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

Resolution 7-07, A resolution amending the City's Recreation Reimbursement Program to allow residents the ability to donate their reimbursement to the City's Land Donation Fund

Ms. Proctor presented Resolution 7-07, A resolution amending the City's Recreation Reimbursement Program to allow residents the ability to donate their reimbursement to the City's Land Donation Fund.

Ms. Proctor stated the proposed resolution amends the City's Recreation Reimbursement Program to allow residents participating in the program the ability to donate all or a portion of their reimbursement to the City's Land Donation Fund. The donation would be tax deductible and the City would provide the resident the necessary receipt for tax purposes. Staff has added a box on the reimbursement form where the residents can make the election to donate to the Land Donation Fund. Staff is also clarifying that recreation reimbursement requests must be submitted by January 31 for the previous year's reimbursement, with no exceptions.

Councilmember LaMair asked how much money is in the City's Land Donation Fund and what type of requirements and limitations are there for the Land Donation Fund.

Ms. Proctor stated the City's Land Donation Fund currently has a balance of \$146,000. The fund is earmarked for Parks, Trails and Recreation and other public improvements.

Councilmember LaMair moved, seconded by Councilmember Roswell, to approve R 7-07, A resolution amending the City's Recreation Reimbursement Program to allow residents the ability to donate their reimbursement to the City's Land Donation Fund.

Vote on Resolution 7-07: 6 yes. 0 no. The motion carried.

CB 12-07, A bill for an ordinance amending Chapter 10 of the Municipal Code, concerning general offenses, by amending Sections 10-4-10, concerning Criminal Mischief; 10-4-50, concerning Theft; 10-4-60, concerning Theft of Rental Property; 10-4-70, concerning Theft by Receiving; 10-4-80, concerning Concealment of Goods; and 10-5-110, concerning Fraud by Check, to increase the jurisdictional amounts in each (first reading)

Mr. Renaud presented CB 12-07, A Bill for an Ordinance on First Reading.

The Council Bill presented is for the purpose of increasing the jurisdictional dollar amounts for theft and theft-related crimes that are contained within the City's Municipal Code. During the 2007 legislative session, the general assembly adopted Senate Bill 07-260 for the purpose of increasing the jurisdictional dollar amount for theft and theft related crimes that are set forth in state statutes. The legislative declaration contained in that Bill stated that the increase to value-based crimes contained in the Bill was based upon inflationary changes since those provisions were adopted.

The Council Bill increases the jurisdictional dollar amount for the crime of theft that is contained in the City's Code from \$500 to \$1,000. In addition, and based upon the City's home rule authority, staff believes that it is reasonable and appropriate to similarly increase the jurisdictional dollar amount for theft-related crimes that are contained in the City's Code. Those crimes include criminal mischief, theft of rental property, theft by receiving, concealment of goods, and fraud by check.

The primary impact of the Code changes presented in the Council Bill will be to allow a greater number of theft and theft-related crimes to be tried in the City's Municipal Court, as opposed to County Court.

Councilmember Roswell asked what kind of impact this would have on our court system.

Mr. Renaud stated there would be very little impact on the court system.

Councilmember Tisdale clarified the justification would be that the City would have more opportunity to hear more cases in municipal court rather than going to Arapahoe County. He commented if this was part of an overall reconsideration of the court system, it would be worth it.

Councilmember Roswell stated it is a question of oversight. He inquired as to what latitude we give the judiciaries as far as imposing fines. He stated he feels this is an extension to our jurisdictional opportunities.

Mayor Wozniak added CB-12 is a positive idea and it should be seriously considered.

Councilmember Stewart feels this is a good opportunity.

Councilmember LaMair asked, if legislature is changing these fines, why wouldn't the City have language in the Code saying we increase when the Legislature increases.

Mr. Renaud stated the State Statutes don't always use the same terminology as local municipalities.

Councilmember Stewart moved, seconded by Councilmember Tisdale, to approve CB 12-07, A bill for an ordinance amending Chapter 10 of the Municipal Code, concerning general offenses, by amending Sections 10-4-10, concerning Criminal Mischief; 10-4-50, concerning Theft; 10-4-60, concerning Theft of Rental Property; 10-4-70, concerning Theft by Receiving; 10-4-80, concerning Concealment of Goods; and 10-5-110, concerning Fraud by Check, to increase the jurisdictional amounts in each on first reading

Roll Call on CB 12-07: 6 yes. 0 no. The motion carried.

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

REPORTS

Mayor's Report

Mayor Wozniak received a letter from Judge Turre regarding court fines and penalties. Judge Turre requested a meeting with him and another Councilmember to discuss court fines and penalties. He stated he and Councilmember Stewart would meet with Judge Turre. A report would be given to the Council at the first meeting in November.

He was pleased with the number of attendees present for the Master Plan Public Meeting. He stated many citizens responded with compliments and concerns.

He stressed the importance of considering alternative Village Center location sites for the purpose of cellular phone use. The reception in this area is not good and this should be considered as a policy to be able to protect the health, safety and welfare of citizens.

He received a personal invitation for himself and the Council from Greenwood Village to participate in a coyote discussion. The meeting will be held on September 26th at 2:30 p.m. He asked who would like to participate in this discussion. Councilmembers VanderWerf and Blum agreed to attend the coyote discussion.

He recognized Director of Public Works, Jay Goldie, and his staff for the Dahlia Street improvements. He also stated the trails are in great shape.

Members of City Council

Councilmember Roswell had no report.

Councilmember LaMair complimented the neatness and professionalism of the Public Works staff. At the Master Plan public meeting, she felt there was an overwhelming commentary on keeping things the same in the Village. She is concerned with the general consensus of the community. Keeping things the same is not always good.

Councilmember Tisdale stated he has received a series of calls from citizen John Love inquiring about the planting of trees. Councilmember Tisdale asked that the record reflect the subject was raised.

He asked about the status of wireless connectivity in the City.

Mr. Ensey stated the City is now wired to go wireless, but there are issues ensuring it's security.

Councilmember Tisdale stated, in regards to the cell phone towers, the City go back to the resolution adopted on October 2, 2001. The resolution was generated by the attacks of September 11, 2001, as wireless communications, and, in a sense, are lifelines.

He advised Council that DRCOG will be meeting on September 19th to discuss urban growth. He stated it is good to have communities get involved in these sorts of discussions.

Councilmember Blum stated John Love inquired as to whether the money set aside for planting trees was still available.

Mr. Goldie stated the trees in question are in the right-of-ways. Studies haven't been done yet, but there seems to be view issues, power line issues and staffing issues. The money for planting trees is budgeted with good intent, but they don't want to spend the money and have the trees die.

Councilwoman Blum said that if the money is in the budget it would be a good idea to look at a better place to plant trees.

Mr. Goldie confirmed that the trees are getting planted, just not in the right-of-ways.

Councilmember Blum stated there was a meeting the morning after the Master Plan Public Meeting and it was very productive. She observed that the people who attended the Public Meeting tended to be residents who have lived in the Village for a very long time, there weren't any young residents. One of the ideas that came forward was to get more people involved. Dave Knopik had some good thoughts and did a good job at the meeting. Mr. Knopik's staff is involved and she enjoyed the morning after meeting.

Councilmember Stewart commended the Parks staff and their hard work. He asked how the CDOT study is coming.

Mr. Goldie stated he has a preliminary copy of the CDOT report and would give a copy to the Council.

Councilmember VanderWerf commented on how wonderful the Big Dry Creek trail is. She asked if a date has been set for the next Master Plan public meeting.

Mr. Ensey stated the next Master Plan Public Meeting will be held in November following fall break.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Mr. Ensey stated the CCCC submitted their report. They will be presenting the report on October 2nd.

Chief of Police, John Patterson notified the Council that the Code Officer resigned her position. They have filled the Code Enforcement position with a gentleman named Chuck Friend, who will start on September 25th.

Departmental Monthly Reports

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

Holly Street Paving in Cherry Hills North/Southmoor Vista

Mr. Goldie stated that while preparing to overlay Holly Street, from Oxford Avenue to Ivanhoe Lane, it was discovered that there were a number of issues that were not anticipated prior to bidding the project. Staff had anticipated an extra cost to remove asphalt; which is approximately 6 inches above the curb causing issues with residents trying to enter and exit their driveways. Normally the removal of the excess asphalt would be a routine process with minimal extra cost, but because of the age of the original construction on this road and the techniques used in the 1960's to build residential roads, there is no way to simply overlay this section of Holly Street. Once the minimum amount of asphalt is removed, there is no base course of asphalt remaining to overlay on top of. For this to work there needs to be a minimum of 2" of old asphalt to build the road properly. It was anticipated in the original project design that there would be adequate asphalt to perform a routine overlay of this section of road, but this is not the case. After having a number of core samples of the road cross section taken, it was discovered there is an inadequate base coarse to simply overlay the road.

To properly replace the road, it must be completely removed, a new base built and compacted and then a new road will need to be built with a minimum of 4" of new asphalt. This process can be done in phases to minimize the inconveniences to the residents. The entire project will take about one to two weeks to complete. The estimated increase for the project is unknown at this time. Staff will continue to work with the contractor on the cost to fix this problem and will bring an expenditure of funds request to an upcoming Council meeting. Staff has also involved the personnel at the Colorado Asphalt Paving Association (CAPA). As a member of this organization the City is able to use the knowledge and experience of a number of engineers and industry experts to get an unbiased opinion on this issue.

Financial Reports

The Financial Reports were included in Council packets. There were no questions from members of the City Council.

City Attorney

There was no report.

EXECUTIVE SESSION

Councilmember Tisdale moved, seconded by Councilmember Blum, to hold an Executive Session to determine positions relative to matters that are subject to negotiations, develop strategies for negotiations, and instruct negotiators with regard to the City Manager's contract and the acquisition of certain real property pursuant to the provisions of CRS 24-6-402(4)(e) and following the conclusion of the Executive Session, adjourn this meeting and will convene in Study Session following the regular meeting pursuant to the provisions of CRS 24-6-402(4)(e).

Vote to hold an Executive Session: 6 yes. 0 no. The motion carried.

Council adjourned to Executive Session at 8:02 p.m.

The Executive Session adjourned at 8:23 p.m.

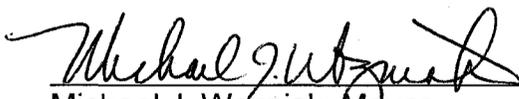
STUDY SESSION

Council adjourned to Study Session for the purpose of discussing the proposed 2008 Budget at 8:24 p.m.

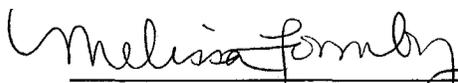
The Study Session adjourned at 9:09 p.m.

ADJOURNMENT

The Executive Session, Study Session and regular City Council meeting adjourned at 9:09 p.m.



Michael J. Wozniak, Mayor



Melissa G. Formby, City Clerk