

## RECORD OF PROCEEDINGS

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, April 1, 2008 at 6:00 p.m.  
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:06 p.m.

### ROLL CALL

Councilors Bonnie Blum, Klasina VanderWerf, Doug Tisdale, Mike Wozniak, Russell Stewart, and Scott Roswell were present on silent roll call. Also present were City Manager Eric Ensey, City Attorney Ken Fellman, Police Chief John Patterson, Public Works Director Jay Goldie, Interim Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Melissa Formby.

Absent: Councilor Harriet LaMair

### AUDIENCE PARTICIPATION PERIOD

#### Dave Jackson – 7518 S. Willow Circle, Centennial, CO

Mr. Jackson introduced himself to Council and informed them he is a candidate for the South Metro Fire District Board of Directors. He shared with Council that he is aware of what goes on in the City and is paying attention to issues with regard to the Fire District.

#### Jeff Welborn – 4901 S. Fairfax St., Littleton, CO

Mr. Welborn thanked Councilors Blum and Tisdale for their years of service to the City of Cherry Hills Village.

Mr. Welborn also discussed the Master Plan. He assured Council that the Master Plan is going well and the process is working. He added that the process itself is very worthwhile and satisfying. He stated the Planning and Zoning Commission and the Master Plan Advisory Committee are doing a great job and working very hard. He asked Council for their continued patience.

Mr. Welborn stated they will continue to hold meetings with the Community and are also meeting with the Parks, Trails and Recreation Commission in the very near future. He stressed the importance of a future follow-up questionnaire and added that the purpose of this questionnaire will be to involve the community.

### CONSENT AGENDA

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

- Approval of March 18, 2008 Meeting Minutes

The following votes were recorded:

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

Vote on the Consent Agenda: 5 ayes. 0 nays. The motion carried.

REPORTS

Mayor Pro-tem Tisdale stated the DRCOG meetings are important and reassured Council that Councilor LaMair is very involved already and would urge whoever is appointed to the DRCOG Board to be involved as well.

Councilor Blum had no report.

**Mayor's Report**

Mayor Wozniak paid honor to Councilor Bonnie Blum. He said he has known Ms. Blum since her appointment to the Board of Adjustments and in that time he has always, and will always, remember how honest and knowledgeable Ms. Blum is. He added that Ms. Blum is very prudent, careful and energetic and has always had a very caring attitude toward the City. He told Ms. Blum it was his privilege and honor to have sat beside her on Council and wished her the best of luck in her future endeavors.

Mayor Wozniak paid honor to Mayor Pro-tem Doug Tisdale. He said that Mr. Tisdale is the most articulate person he has ever met. He mentioned that every decision Mayor Pro-tem Tisdale has ever made has always had the best interest of the Community at heart. He added that in addition to being ardent and caring, Mr. Tisdale is very passionate about everything he does. Mayor Wozniak stated he will miss having Mr. Tisdale by his side. He told Mr. Tisdale that it had been an honor and a privilege to work with him.

Mayor Pro-tem Tisdale thanked Councilor Bonnie Blum for her time and talent to the City Council and told her it was an honor and privilege to work with her. Mr. Tisdale discussed the many challenges Council faced over the years. He said that through all the challenges they were able to grow as a governing body.

Mr. Tisdale also discussed personal triumphs and those of the Council. He talked about the City's exclusion from the South Suburban Parks and Recreation District and the creation of a small pocket-sized business district in the City. He also mentioned the renewal of the City's cable franchise as well as the securing of the City's dedicated cable channel. He included his concept of using CIViC (The Crier, the Internet, the Villager and Cable Channel 22) to communicate better with the citizens of Cherry Hills Village.

Mr. Tisdale mentioned the City's success in creating a new expanded use ordinance; which allowed for the sensible and careful expansion of both St. Mary's Academy and Kent Denver. He also discussed the achievement of City Council through the creation of a major events ordinance, which resulted in a successful United States Golf Association Women's Open.

Mr. Tisdale stated he is now concluding eight years of term-limited service on the Council because of his beloved wife, Pat Tisdale. He thanked Pat for having the insight and the persistence to make him run for Council as well as serving as a model of municipal service to him.

In closing, Mr. Tisdale left the Council with the three guiding principles of municipal governance;

1. We've always done it that way.
2. We've never done it that way.
3. What do other cities do?

Councilor Blum stated it had been an honor, a privilege and a wonderful experience to work with such a diverse group of people over the years, including City staff, Council, and residents. She said she has learned that nothing is black and white and every side needs to be seen as well as heard. She mentioned that Mayor Pro-tem Tisdale taught her to be honest and to share her beliefs and she said it was an honor to have sat with him on Council. She expressed the importance of using honesty and openness and to be calm and patient when making future decisions.

Councilor Blum also thanked Mayor Wozniak for his kind words.

### **Members of City Council**

There were no reports.

## ***ORGANIZATIONAL MEETING OF THE NEW CITY COUNCIL***

### **OATH OF OFFICE**

Municipal Judge James Turre administered the Oath of Office to Mayor Mike Wozniak, and Councilors Klasina VanderWerf, and Mark Griffin.

### **ROLL CALL**

Councilors Klasina VanderWerf, Mark Griffin, Mike Wozniak, Scott Roswell, and Russell Stewart were present on silent roll call. Also present were City Manager Eric Ensey, City Attorney Ken Fellman, Police Chief John Patterson, Public Works Director Jay Goldie, Interim Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Melissa Formby.

Absent: Councilors Marcia Frew and Harriet LaMair

### **APPOINTMENT OF MAYOR PRO-TEM**

Councilor Roswell nominated Councilor Stewart for the appointment of Mayor Pro-tem.

Discussion was held concerning the appointment of Mayor Pro tem.

Councilor Roswell moved, seconded by Councilor VanderWerf, to nominate Councilor Stewart as Mayor Pro-tem.

The following votes were recorded:

Scott Roswell	yes
Mark Griffin	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on the Appointment of Mayor Pro-tem: 4 ayes. 0 nays. The motion carried.

### **CONSENT AGENDA**

Councilor Stewart moved, seconded by Councilor Roswell to approve the following items on the Consent Agenda:

- f. Appointment of City Clerk, City Treasurer and City Attorney

The following votes were recorded:

Scott Roswell	yes
Mark Griffin	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on the Consent Agenda: 4ayes. 0 nays. The motion carried.

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

The following items were removed from the Consent Agenda:

- a. Contract for Services – 2008 Street Improvement Program, Crack Seal (A-1 Chipseal)
- b. Contract for Services – 2008 Street Improvement Program, Chip Seal (A-1 Chipseal)
- c. Contract for Services – 2008 Street Improvement Program, Concrete Replacement (Thoutt Brothers Concrete Contractors)
- d. Contract for Services – 2008 Street Improvement Program, Asphalt Milling and Overlay (Asphalt Specialties, Co., Inc.)
- e. Contract for Services – Street Striping Program (Highway Technologies, Inc.)

Director of Public Works Jay Goldie stated the items before Council are the 2008 Street Improvement Program's Contracts for Services. Mr. Goldie discussed the Crack Seal and Chip Seal programs; he stated that crack sealing is the most basic operation the City does because they find the worst roads with cracks and fill them with tar to give the road a longer life. He added that normally the City will follow-up one to two years later with a chip seal or overlay. This year the crack seal happens to be under the chip sealing, which is the top layer. He explained that the chip seal was most recently done last year in Old Cherry Hills Village and that this section of town, as well as some others, would be finished this year.

Mayor Wozniak inquired as to whether Mr. Goldie and staff were comfortable with the areas that needed improvement.

Mr. Goldie informed Council that in 2007 staff put together a five year improvement program and these items were part of that program. He mentioned that some of these items and locations have changed due to priorities.

Councilor Roswell asked for clarification on why the chip seal process is being done in the Old Cherry Hills area so soon after the last seal was done. He also asked what type of surface was being laid in this area. He added there is a lot of construction still going on and more damage could be done to these roads.

Mr. Goldie explained that the chip seal is about a quarter inch of wear layer in which two layers of tar and chip/rock are laid and are then compacted into the existing asphalt. He added that the seal is being done because it provides more wear and keeps any moisture out of the asphalt; he added the seal gives the area just as much time as an overlay does and is a third of the cost.

Councilor Roswell asked what the expected life of the chip seal is.

Mr. Goldie said the life of the chip seal is usually seven to twelve years depending on the wear it gets.

Mayor Wozniak asked why an asphalt overlay would need to be done if the chip seal lasts so long.

Mr. Goldie stated that sometimes the surface itself will rot and warp which then requires them to do an asphalt overlay. He added that asphalt provides more strength than that of a chip seal.

Mayor Wozniak asked if the concrete replacement program was a part of the five year plan.

Mr. Goldie stated there is not a five year plan in place for concrete replacement, although Public Works is in the process of creating one. He mentioned they take the worst sections each year and repair and/or replace those.

Mayor Wozniak asked if staff is asking to utilize all allotted funds for these projects.

Mr. Goldie confirmed staff is looking to spend \$942,000, the budgeted amount for these projects.

Mayor Wozniak inquired as to whether there is enough money budgeted for emergencies.

Mr. Goldie stated there are funds set aside specifically for these projects. He added there are other funds within Public Works for in house repairs which can be used for emergencies.

Mr. Ensey reminded Council that the code requires contractors to pay for any damage to adjacent roads and the code requires photos of any adjacent roads so the City can verify if any damage is done.

Councilor Roswell moved, seconded by Councilor Stewart, to approve Consent Agenda Items 11a through 11e.

The motion passed unanimously.

Council Bill 4, Series 2008; a bill for an ordinance amending Chapter 18 of the Municipal Code, concerning building regulations, by amending Section 18-1-20(7), concerning drainage plan submittal requirements for permits under the 2006 International Building Code, and by amending Section 18-2-20(6), concerning drainage plan submittal requirements for permits under the 2006 International Residential Code on first reading.

Planning Manager Rob Zuccaro presented CB 04-08, a bill for an ordinance amending Chapter 18 of the Municipal Code, concerning building regulations, by amending Section 18-1-20(7), concerning drainage plan submittal requirements for permits under the 2006 International Building Code, and by amending Section 18-2-20(6), concerning drainage plan submittal requirements for permits under the 2006 International Residential Code.

He stated the current code was adopted on January 15, 2008 as Ordinance 01-08. The current code includes specific guidelines for when drainage reports and plans are required in cases of building expansions. He added that drainage reports must meet the Arapahoe County Stormwater Management Manual guidelines, which include provisions for stormwater detention and water quality facilities for new developments, redevelopments and expansions.

He said the adopted threshold for when a report is required in the case of an expansion is with an increase in residential square footage by 50% or more. He added the 50% square footage threshold is not consistent with the County Stormwater Management Manual, and does not provide a good indicator for the amount of additional impervious surface created by an expansion, thus it does not necessarily indicate the impact of the expansion on drainage.

He gave the following example: it is possible that a second story addition over the existing building footprint could increase the square footage of the structure by 50% while not increasing the impervious surface on the site. He added that significant impervious surfaces could be added to a site, through driveways, patios and tennis courts, etc., while not increasing the square footage of the building.

He stated the County Stormwater Management Manual includes an exemption for expansions when the expansions create less than 2,500 square feet of additional impervious surfaces, taking into account cumulative additions to impervious surface over time.

Lastly, Mr. Zuccaro stated that because of these reasons, CB 04-08 proposes to replace the current threshold of increasing the residential square footage by 50% or more with a threshold of 2,500 square feet of additional impervious surface, cumulative over the history of site expansions.

Councilor VanderWerf said that Council has previously discussed reviewing the building code based on citizens comments. She added that with regards to landscaping, it is conceivable a person would be able to increase impervious surfaces with a patio, plants and etc.

Mayor Wozniak stated that even through landscaping, 2500 additional square feet of impervious surface would still need to obtain a permit.

Mr. Ensey stated patios require a permit, though not a building permit. They would be subject to permit requirements through a zoning review because the City checks for compliance of setbacks.

Mr. Zuccaro stated staff could require information from a homeowner as to what impervious surfaces have been added.

Councilor VanderWerf inquired as to the threshold number being based on a cumulative basis. She asked if that requires a lot of record keeping.

Mr. Zuccaro stated it is a lot of record keeping. He said some record keeping, such as an address log, would need to be involved and it would need to be tracked over time. He stated the City is prepared to track this type of information and he would recommend doing so.

Mr. Ensey added the City has a computer software program to assist with this sort of tracking.

Councilor Stewart asked if the manual itself addresses additions.

Mr. Zuccaro stated the manual references expansions which cover any kind of site improvement including building additions, patios, swimming pools and the like.

Councilor Stewart asked why the word "addition" was chosen rather than "expansion". He added the word addition is associated with a house whereas expansion is associated with more.

Mr. Ensey stated staff would review the word "addition" in the subsections of the ordinance.

Mayor Wozniak asked how the accumulation of surfaces will be addressed. He inquired as to how the City would count impervious surfaces if someone who already had a patio and/or tennis court wanted to add another small impervious surface. He asked if the City could retroactively count the current surface.

Mr. Zuccaro stated the City would not be able to retroactively count any surfaces, though they could count beginning the day the ordinance was passed.

Mayor Wozniak asked about the impervious structures to the churches and if this ordinance would apply to them

Mr. Zuccaro said it would apply to the churches because they follow the 2007 International Building Code and this is an amendment to that code.

Mr. Ensey stated there are different standards in the drainage criteria manual for commercial properties. He added that non-residential is covered by the International Building Code as opposed to the International Residential Code. Both codes are being amended; one addresses residential while the other addresses commercial.

Mayor Wozniak inquired about the 2500 square feet requirement. He asked how staff came up with 2500 and asked if we should be more stringent with the requirement.

Mr. Zuccaro stated they followed the Stormwater Management manual as well as worked with Mike Dungan, who is the City's engineering consultant. Between the two things, staff ran through some different scenarios as to what kinds of permits would be required. He added that staff took the advice of Mike Dungan in regards to the common sense aspect of what type of structure might cause you to get to that threshold.

Mayor Wozniak asked if tennis courts would be affected.

Mr. Ensey stated tennis courts would be affected. He added this ordinance is going to start taking effect when you see the accumulation of multiple permits going on at one property.

Mayor Wozniak asked if a drainage study has to be done any time a building is built. He also asked what the true purpose of this ordinance is.

Mr. Ensey stated the City has not traditionally required a drainage study on residential properties, although the City adopted the Arapahoe County manual. He added the reason they are proposing this is to ensure that historic drainage patterns are maintained on adjacent properties and still allow people to do additions to their buildings. He said that when additions are being done to a building, the impervious surface and water run-off are increased. The purpose of the drainage requirements is to detain that increased water for a period of time so additional run-off is not incurred on adjacent properties.

Mr. Zuccaro stated some facilities are designed to capture the water and allow for some run off as there is an overflow device and they calculate it so that for a particular storm

event there won't be any more running off the property than prior to the development or adding of impervious surfaces.

Mayor Wozniak stated he would just like to make sure the decision is judicious.

Councilor VanderWerf asked if the definition of impervious would cover gravel and the like.

Mr. Ensey stated there are discounts to certain types of impervious services and those types of impervious surfaces that are not entirely 100% impervious might be eligible for a discount.

Mr. Zuccaro said there are also variance procedures in the manual that someone could follow if they have a hardship. He added those applications are reviewed on a case by case basis.

City Attorney Ken Fellman informed Council that the Federal Government imposed new regulations on local governments a few years ago so there are now obligations the City will have depending on how the run-off flows. The studies the City would perform give the City the ability to see what is going on.

Mayor Wozniak asked if the requirement should be more strict than as proposed. He asked if the requirement should be 2000 square feet rather than 2500 square feet so that a study is required earlier.

Mr. Zuccaro stated he would check with the County and other municipalities to see what their requirements are.

Mayor Wozniak stated this is a serious issue and should be compared to other communities.

Councilor VanderWerf asked if flooding needs to be considered as well.

Mr. Zuccaro stated there are two aspects; flood attenuation and water quality. It is designed to accommodate where the water flows would be.

Councilor Stewart moved, seconded by Councilor VanderWerf, to approve Council Bill 4, Series 2008, a bill for an ordinance amending Chapter 18 of the Municipal Code, concerning building regulations, by amending Section 18-1-20(7), as indicated in the staff memo dated April 1<sup>st</sup> with the instructions to staff to investigate and report back to Council on the issues of wording, the definition of impervious and consistency with Arapahoe County and the manual as well as reporting back to Council on the 2500 square foot standard.

The following votes were recorded:

Scott Roswell	yes
Mark Griffin	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on CB 04-08: 4yes. 0 nays. The motion carried.

**REPORTS****Mayor's Report**

Mayor Wozniak discussed Council Liaisons and stated he would assign positions at the next Council meeting.

Mayor Wozniak informed Council the City Council Retreat would be held on May 3, 2008 and that he would be working with Mr. Ensey and Mr. Peter Kenny of Civic Results to outline the schedule of events.

Mayor Wozniak said he has a Metro Mayors Caucus meeting on April 2<sup>nd</sup>. He said they are working on a Health and Wellness Plan and proposals for that plan.

Mayor Wozniak informed Council and staff that he received a letter from the Urban Drainage Control board with regard to complying with an emergency preparedness plan; they also asked the City to review their floodplain insurance. He asked Mr. Ensey to follow up with Council as to the status of the City's floodplain insurance.

Mayor Wozniak told Council that Mayor Sharp of the City of Greenwood Village invited the Cherry Hills Village City Council to take part in the Greenwood Village Fun Run.

**Members of City Council**

Councilor VanderWerf had no report.

Councilor Roswell stated the South Metro Fire District has some public meetings scheduled and that all items with regard to this meeting have been posted on the City website. He informed Council he will also be holding neighborhood meetings in April to discuss construction concerns.

Councilor Stewart informed Council the Dolphin Dash will be held on May 18<sup>th</sup>. He said "The Dad's Club" is putting on the Dolphin Dash and it will be bigger and better than ever. He also mentioned to Council that he may need to leave the Council retreat early.

Councilor Griffin stated he is pleased to be here and is open to comments and suggestions.

**Members of City Boards and Commissions**

There were no reports.

**City Manager & Staff****City Council Retreat**

Mr. Ensey informed Council the City Council retreat has been scheduled for Saturday, May 3<sup>rd</sup> from 8:30 a.m. to approximately 3:30 p.m. He said the first half of the retreat will include a training session led by Peter Kenny of Civic Results and the second half will focus more directly on City-related issues. He also mentioned that the location of the retreat has not yet been decided, but Council would be informed as soon as a decision was made.

Planning and Zoning Commission term limits

Mr. Ensey provided information to Council regarding term limits of the Planning and Zoning Commission. He informed Council there are three members of the Planning and Zoning Commission whose terms will expire in May of this year and because the Master Plan will not be complete at that time, he asked Council how they would like to proceed with the current term limits.

Mr. Ensey discussed a few different options for the term limits. He stated one of the options is to appoint three new members to the Commission and possibly have the term limited members act in non-voting advisory capacity to the current Commission. He said this option could be problematic because the new members would have to get up to speed rather quickly.

A second option; since there are no "official" terms is that the term limited members would be reappointed until the Master Plan is completed and resign upon the completion.

Mayor Wozniak asked if they could be appointed until September of 2008.

Mr. Fellman said the Charter states that terms shall be no more than three years, and though it is a technicality, it is important to follow the terms of the Charter.

Wozniak said he is reluctant to ask someone to resign from their seat.

Councilor Stewart clarified they have already been appointed for a three year term and asked if an ordinance could go into effect to extend their terms one more year.

Councilor VanderWerf stated she likes the option to allow the term limited members to sit on the commission in an advisory capacity. She added that new members would be a good sounding board at this point.

Councilor Stewart stated the number of members could be changed by ordinance.

Mayor Wozniak said that wouldn't work because the old members would still have to be appointed. He added that he likes Councilor Stewart's idea to create an ordinance to extend their terms of office.

Councilor VanderWerf stated there have been people who have already applied to the Planning and Zoning Commission and she is afraid they might not wait.

Mayor Wozniak asked for Council's thoughts.

Councilor Roswell stated he feels extending the term is the way to go.

Mr. Fellman stated the City is legally in a grey area because the Charter says the term "shall" be appointed by the Council to overlapping terms of three years. He mentioned another way to do this, along the lines of extending terms, would be to amend the ordinance to say each member should be appointed to a three year term with the terms expiring the third Tuesday of May in each year or until such time their successor be appointed and take the oath of office. He added that because you have still extended the three year term, it is less susceptible to interpretation. He mentioned the risk of a challenge will always be there and Council should be aware of that.

Mayor Wozniak asked if the term could expire on the third Tuesday in September rather than May.

Mr. Fellman stated that could be done and he added it would be a good short term solution.

Mayor Wozniak asked Mr. Fellman and Mr. Ensey to look into it further and bring it back before Council.

Councilor VanderWerf stated she would not oppose the idea of extending terms, but feels new people and new views are always good to have.

Mayor Wozniak requested everyone think about the situation and discuss it at the next meeting.

Councilor Stewart recommended extending the term of current members as well as appointing new members.

#### **City Attorney**

Mr. Fellman stated they have received notice of a potential claim of a bicyclist being injured in the City of Cherry Hills Village due to road construction. He said there is no lawsuit at this point, but the notice has been submitted and he would keep Council informed of the progress.

Mr. Fellman said the snow removal issue will be brought before Council when all members are present.

Mr. Fellman sent a memo to Council with regard to a citizen who has raised an issue under the City's trespass ordinance. He said he sent the citizen a letter stating he did not believe there was an ordinance violation and he is not recommending prosecution. He added there is a simple amendment to the ordinance that could be done in order to avoid this type of issue arising in the future. He mentioned staff is recommending a minor modification to the trespassing ordinance and said it can be presented at the next meeting.

Mayor Wozniak requested Mr. Fellman resend the memo to everyone on Council and they would discuss it further at a later date.

Mr. Fellman reminded Council that the Campaign Reform Act prohibits the use of municipal facilities and resources to promote candidates or positions on issues that are on a ballot. He mentioned there is a liability to the City when a citizen speaks to this affect and asked Council to continue their awareness of the subject matter during public comment.

Mayor Wozniak inquired as to dates for the Davis Partnership mediation.

Mr. Fellman stated the date is set for May 6<sup>th</sup>. He said he is preparing the written position for that mediation.

**ADJOURNMENT**

A motion was made by Councilor VanderWerf seconded by Councilor Stewart to adjourn the regular meeting of the City Council.

The motion passed unanimously.

The meeting adjourned at 8:03 p.m.



*Michael J. Wozniak*  
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Michael J. Wozniak, Mayor

*Melissa G. Formby*  
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Melissa G. Formby, City Clerk