

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 6, 2008 at 6:30 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:33 p.m.

ROLL CALL

Councilors Harriet LaMair, Klasina VanderWerf, Marcia Frew, 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, Finance Director Karen Proctor, Police Chief John Patterson, Public Works Director Jay Goldie, Planning Manager Rob Zuccaro, Interim Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Melissa Formby.

Absent: None

AUDIENCE PARTICIPATION PERIOD

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

CONSENT AGENDA

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

- c. Armstrong Sanitary Sewer Connection Agreement

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Mark Griffin	yes
Marcia Frew	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on the Consent Agenda: 6 ayes. 0 nays. The motion carried.

ITEMS REMOVED FROM CONSENT AGENDA

The following items were removed from the Consent Agenda:

Approval of April 15, 2008 Minutes

Councilor LaMair requested a change in wording with regard to the Planning and Zoning Commission terms on page four of the minutes. She said she would like the minutes to say "it would be a good idea to appoint but wait to seat the new members to the Commission."

Councilor Stewart requested a change in verbiage to paragraph four, in the last sentence on page 7. He said it should say "about staging issues regarding landscaping" as opposed to staging and landscaping.

Councilor Stewart moved, seconded by Councilor Roswell, to approve the April 15, 2008 minutes as amended.

2007 Audited Financial Statements

Councilor VanderWerf inquired as to the amount budgeted for emergencies and if municipalities are required to have this budgeted.

Finance Director Karen Proctor said that the TABOR Amendment requires Cities to set aside three percent of total expenditures budgeted for emergencies.

Mayor Wozniak inquired as to the long term debt amount of 9.73 million dollars. He asked if, in light of the court action, this amount should be characterized as a long term debt or as a contingent liability.

Ms. Proctor stated it is characterized as long term debt until a decision is made with regard to the appeal.

Mayor Wozniak stated that prior to the Court of Appeals decision the determination of it being long term debt made sense. He added that once the court remanded the decision in 2007, it seems as if the characterization of a fixed amount of debt is uncertain and that maybe because we are not a company trying to make a profit the determination of whether it is long term debt or contingent liability doesn't matter.

Wendy Swanhorst of Swanhorst & Company LLC

Ms. Swanhorst stated the City signed an agreement two years ago to make the payments. It was at that time determined to consider these payments as long term debt.

Mayor Wozniak recommended talking about whether we should leave that amount as long term debt if a court decision is not made by the time of next year's audit, as it has a significant effect on the City's financial statements. He also inquired as to whether the City is still paying the annual amount and if it is being paid into an escrow account.

Ms. Proctor stated it was not paid in 2007 and it is still in the 2008 budget.

Councilor Stewart inquired as to a land value item in the amount of 13 million dollars listed. He asked how that amount was determined and if there was any value placed on the parks.

Ms. Swanhorst stated that land is put on the books at cost.

Councilor Stewart asked how it was carried before the litigation in 2007.

Mayor Wozniak stated it was not carried prior to 2007. He added that the exact same amount was listed in 2006 and 2007. He asked what CIP stands for.

Ms. Swanhorst stated CIP stands for Construction in Progress and Ms. Proctor stated that amount is related to the work that has been done on a new village center to date.

Mayor Wozniak asked if the value of the land ever appreciates.

Ms. Swanhorst confirmed the value of the land does not appreciate.

Councilor VanderWerf moved, seconded by Councilor LaMair, to approve the 2007 Audited Financial Statements.

The motion passed unanimously.

Council Bill 5, Series 2008; a bill for an ordinance amending Section 2-6-30 of the Municipal Code, concerning terms of office for the Planning and Zoning Commission on final reading

City Manager Eric Ensey presented CB 05-08, a bill for an ordinance amending Section 2-6-30 of the Municipal Code, concerning terms of office for the Planning and Zoning Commission on final reading. Mr. Ensey explained to Council the proposed bill amends the term of office for Planning and Zoning Commissioners by stating that each member shall be appointed to a three-year term expiring the 3rd Tuesday in September of each year.

He added the proposed bill was approved by Council on first reading at the April 15, 2008 Council meeting, he mentioned there have been no changes made to the bill since the Council's approval on first reading.

There was no discussion on the part of Council.

Councilor Roswell moved, seconded by Councilor Griffin, to approve CB 05-08, a bill for an ordinance amending Section 2-6-30 of the Municipal Code, concerning terms of office for the Planning and Zoning Commission on final reading.

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Mark Griffin	yes
Marcia Frew	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on CB 05-08: 6 ayes. 0 nays. The motion carried.

Council Bill 6, Series 2008; a bill for an ordinance amending section 10-4-30 of the Municipal Code, concerning trespassing

Mr. Ensey presented CB 06-08, a bill for an ordinance amending section 10-4-30 of the Municipal Code, concerning trespassing. Mr. Ensey further explained that the proposed bill adds a clause that clarifies that presence on private property is not a general offense if it is done within the parameters of the City's code provisions for door-to-door solicitation.

He mentioned the proposed bill was approved by Council on first reading at the April 15, 2008 Council meeting and no changes have been made since first reading. Mr. Ensey added that Council did request staff review the City's door-to-door solicitation ordinance, which will be presented as part of the City Attorney's report.

There was no discussion on the part of Council.

Councilor Roswell moved, seconded by Councilor VanderWerf, to approve CB 06-08, A bill for an ordinance amending section 10-4-30 of the Municipal Code, concerning trespassing.

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Mark Griffin	yes
Marcia Frew	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on CB 06-08: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

Expenditure of Funds and Construction of a new Village Center sign

Director of Public Works Jay Goldie informed Council that at the April 15, 2008 City Council meeting the Parks, Trails and Recreation Commission presented a request to Council for the replacement of the existing Village Center sign with a new sign that would include space to display upcoming events and City information.

He stated staff reviewed the City Code requirements for signage as it relates to governmental signs and upon reviewing the City Code, staff discovered an exemption for governmental signs. Mr. Goldie cited Section 16-15-50 (1) of the Municipal Code stating: "Any sign erected by the City acting in its governmental capacity, including but not limited to traffic control signs and signs identifying public places such as parks, trails and public buildings" ...is exempt from permitting requirements imposed by section 16-15-40 and shall be authorized in all zone districts. He explained to Council that any governmental sign for the Village Center site is not subject to area or height limitations.

Mr. Goldie further stated staff has included a picture and cost estimate of a sign that is similar to the type of sign that the Parks, Trails and Recreation Commission is recommending. He told Council the proposed sign would be approximately 7 feet in height and 4 feet in width with a portion of the sign that would be used to display a banner to identify upcoming City events and important information. He added that the size of the banner would be 4 feet in height and 3 feet in width.

Mr. Goldie informed Council the approximate cost of a two-sided banner is about \$270 to \$300, and multiple banners would need to be made throughout the year for different events or information. He mentioned that certain general banners could be made that would be displayed most of the time, including dates for Council meetings.

In closing Mr. Goldie stated that staff and the Parks, Trails and Recreation Commission (PTRC) are seeking direction from City Council as to whether the Council would like to proceed with the proposed sign.

Mayor Wozniak asked if there are alternatives to a banner, since the lettering will change with different events and, in turn, add extra costs.

Mr. Goldie stated there are banners and boards available in which the letters could be changed. He added this banner is the easiest and quickest way to please the PTRC.

Council LaMair asked if the current sign will stay where it is or if it would be moved. She added she likes the proposal.

Mr. Goldie said the current sign could be moved to the front of the Village Center.

Mayor Wozniak asked staff to look into alternatives to a banner. He also requested staff and City Attorney Ken Fellman research the code to see who can put information on the sign and if it is limited to city information only.

Councilor Frew stated the schools have banners made as well, and don't put dates on them so they can be reused each year.

Mr. Goldie suggested a Councilmember work with staff and the PTRC to assist in speeding up the process.

Councilor Frew offered her services to assist staff with regard to the new sign.

REPORTS

Mayor's Report

There was no report.

Members of City Council

Councilor Griffin stated he met with Karen Proctor and Eric Ensey to review the City's financial statements. They discussed the City's financial arrangements with institutions, issues that need to be dealt with as well as some of his concerns.

Councilor LaMair shared with Council that the Colorado Municipal League is having their annual conference in June. She recommended those Councilors available to attend do so as there are many wonderful sessions.

Councilor LaMair expressed her appreciation for Mayor Wozniak's flexibility in Councilor VanderWerf's interest in serving on the Board of Adjustment and Appeals.

Councilor LaMair mentioned the Water District in her neighborhood was fairly close to coming to an agreement but there were a number of people in her neighborhood that did not agree with the agreement from Denver Water.

Councilor LaMair said she attended the last Master Plan meeting of the Planning and Zoning Commission. She informed Council she was disappointed in the way the meeting was conducted and mentioned the lack of clear leadership. She stated she is hoping the P&Z and Advisory Committee take into account the people who speak at these meetings and recommended the Commission work on the structure of their meetings.

Councilor Stewart had no report.

Councilor Roswell attended the combined board meeting of the South Metro and Parker Fire Districts. He said they accepted a joint resolution to combine the fire districts and mentioned that the district will have a board of seven as opposed to five. He also mentioned they tabled the issue of closing fire station #37, so that will not be a part of the merger of the two districts.

Councilor Roswell said he would like to pick-up discussion on the construction issues they discussed at the retreat.

Mayor Wozniak stated he is trying to determine what course of action is best at this time. He suggested utilizing a small task force to discuss construction issues. He

asked Council to think about the issues discussed at the retreat and report back in two weeks.

Councilor Roswell suggested he and Councilor LaMair sit down and discuss these issues with one another and their neighbors and come back to Council with a proposal and/or suggestions.

Mayor Wozniak asked the small group meeting to discuss these issues and come up with some short term solutions such as; Saturday construction times, staging plans, increasing setbacks, reduction of work hours, etc.

Councilor Stewart stated builders should be invited to any construction change meetings.

Mayor Wozniak stated it will need to be looked at carefully.

Councilor VanderWerf stated the South Platte Working Group had a meeting last week. She mentioned Cherry Hills Village is one of only a few cities that have not had a presentation from the SPWG. She said they have a short presentation based on open space and trail connections. She added the level of cooperation with the group is terrific.

She also informed Council that she sat in the audience of the most recent Board of Adjustment and Appeals meeting. She said she conversed with one of the members and stated the Board is seeing a lot of cases where construction is being proposed where the existing structure already encroaches into the setback, where one option should the Board deny a variance would be for the homeowner to scrape and rebuild a much larger house. She added the Board approved an application along these lines.

Councilor Frew mentioned she too went to the Master Plan meeting and agreed with Councilor LaMair that there needs to be more structure and leadership within those meetings.

She added she attended the Cherry Hills East Homeowners Association (HOA) meeting and said their main concerns are that their HOA does not get to see their permit applications before the City.

Mr. Ensey informed Council staff does not hold up a building permit rather a stamp is noted on the permit that states they may be subject to their local HOA covenants and regulations. He informed Council that staff will now be placing plan reviews on the City's website in order to obtain more information.

Councilor Frew stated plan reviews being on the website are a good idea.

Councilor Roswell stated it is good information to make available to neighbors.

Councilor LaMair stated the availability of plans are important because there will be more awareness because of it.

Mayor Wozniak stated he is happy to post public information on the website but is concerned it might appear the City is involved with a private constricted covenant.

Councilor Stewart stated their HOA worked with the City when it came to their covenants, which led to the stamping of all plans reminding people to check with their HOAs for possible review.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Lighting Discussion

Planning Manager Robert Zuccaro informed Council that staff recently received a letter from a concerned citizen regarding lights located on multiple residential properties throughout the City. He said the concern was that the lights were causing excessive glare onto City roadways and trails.

Mr. Zuccaro added that Section 16-16-50 of the Municipal Code addresses exterior lighting on residential properties that shine onto the right-of-way. He informed Council two specific tests are required to determine if the lights are in violation: 1) is the bulb visible in a direct line of site, and 2) is the light sufficiently strong to cast a plainly visible shadow.

Mr. Zuccaro mentioned staff found that several of the properties noted in the letter from the citizen are likely in violation of the code and noticed that many other properties in the City are likely in violation as well. He added the light type most commonly associated with the violations are entry monument lights at the driveway and these lights often have completely transparent fixtures and are bright and close enough to cast a plainly visible shadow on the road or trail.

Mr. Zuccaro stated in order to get some idea of how widespread the issue is, staff sampled 60 residential properties throughout the City and found that 29 were likely in violation of the code.

He added that because this is a widespread issue throughout the City, staff is requesting direction from the City Council on how to proceed and has provided three options for consideration in the staff memo:

1. Strictly apply the code to bring the lights into compliance.
2. "Grandfather" existing lights and enforce on new lights as they are proposed.
3. Amend the code to still address the issue but have a different standard. Could revise the existing language or come up with new standard.

Mayor Wozniak stated this is a serious policy issue because there are a lot of safety and security issues with these lights. He asked Council their thoughts on the issue.

Councilor VanderWerf asked what alternatives might be available to light the end of a homeowner's driveway.

Mr. Zuccaro stated the Code says that a fixture type where the bulb isn't visible or a semi-transparent glass that hid the bulb is permissible.

Councilor LaMair said the idea of the ordinance was that the light shines down rather than out where the bulb can be seen.

Councilor Stewart stated this concern is based on the issue of lights that are so bright that they shine into peoples homes. He added it is a question of aiming the light down rather than out.

Mayor Wozniak stated he supports suggestion three with a few revisions.

Mr. Zuccaro stated there is a section in the nuisance code that addresses lighting on to private properties; from one residential property to another you cannot have light that creates a light level exceeding .2 foot-candle on the neighboring property.

Councilor Stewart said he likes how the ordinance reads now. He added there are a lot of issues at hand.

Mayor Wozniak stated there are two issues at hand; privacy and safety. He stated he would not be ready to act on this issue but asked staff to provide Council with more information.

Councilor LaMair stated she would be opposed to getting rid of the section with regard to being able to see the bulb. She added she too likes the language the way it is.

Mayor Wozniak stated he would not want everyone to take bulbs and recess them because homeowners would have to purchase new light fixtures. He added it is too hard to grandfather that many light fixtures.

Mayor Wozniak recommended staff bring recommendations and/or proposals back to Council at the next regular meeting.

Parks, Trails and Recreation Appointments

Mr. Ensey stated there are two members up for reappointment on the Parks, Trails and Recreation Commission; Phyllis Hayutin and Theresa Gilpatrick. He added the City has received six applications for the Commission and those applications have been included in the packets.

Mayor Wozniak asked for two councilors to interview those who applied and those who are up for reappointment.

Councilor VanderWerf and Councilor Frew offered their time to interview candidates.

Councilor LaMair stated there are more applicants than open seats for the Planning and Zoning Commission. She recommended interviewing those who have applied and giving those who are selected the opportunity to observe those meetings in the mean time and get up to speed on pertinent issues.

Board of Adjustment and Appeals Appointments

Mr. Ensey stated there is one member eligible for a second term; Suzy Love. One other person has applied for the position.

Mayor Wozniak asked Councilors Stewart and Roswell to interview Ms. Love and the other applicant.

City Attorney

Update on Door-to-door Solicitation Research

Mr. Fellman stated he sent a memo to Council with regard to the door-to-door solicitation research Council directed at a previous meeting. He added there are a couple of suggestions he could offer for ways of possibly further restricting the City's door-to-door solicitation ordinance, should the Council desire. He inquired as to whether Council thought there was enough of an issue to change the ordinance.

Mayor Wozniak said the ordinance seems fine the way it is.

Councilor Roswell stated would like to spend more time reading the information.

Mayor Wozniak stated it is a large issue because of freedom of speech. He stated his conclusion was that the remedy may be worse than the current status.

Councilor Roswell asked that Council be given the opportunity to review the information further and bring it back to a future Council meeting.

Mayor Wozniak requested it be brought back to Council at the next regular meeting.

Mr. Fellman informed Council of legislation changes with regard to construction contracts as well as practices and provisions for local governments dealing with the enforcement of the states immigration statues. He also mentioned a recently passed bill that would limit the amount local governments could charge for permits for solar devices. Mr. Fellman told Council he will keep them up to date with current legislation changes as they occur.

Mr. Fellman mentioned he received a letter from the City's outside counsel with regard to the Church of the Nazarene. The administrative hold on the case is about to expire and said the parties have mutually agreed to keep the matter on hold for another year. If nothing happens in the meantime, the case will be dismissed by the Federal Court in one year.

EXECUTIVE SESSION

Councilor LaMair moved, seconded by Councilor VanderWerf, to hold an executive session for the purpose of discussing negotiating strategy and instructing negotiators and receiving legal advice concerning the Davis Partnership mediation as authorized by CRS §24-6-402(4)(b)&(e) and following the conclusion of that executive session, this Council meeting of May 6, 2008 be formally adjourned.

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Mark Griffin	yes
Marcia Frew	yes
Russell Stewart	yes
Klasina VanderWerf	yes

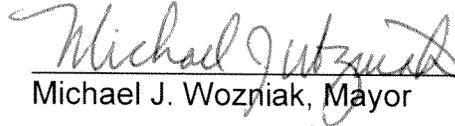
The motion passed unanimously.

Council adjourned to an Executive Session at 7:51 p.m.

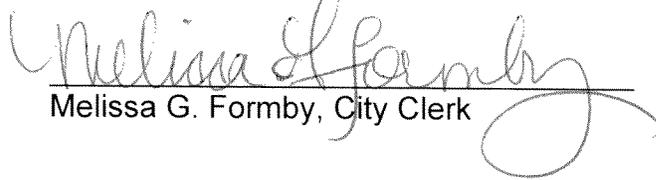
The Executive Session adjourned at 8:45 p.m.

ADJOURNMENT

The meeting adjourned at 8:45 p.m.



Michael J. Wozniak, Mayor



Melissa G. Formby, City Clerk