

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, November 18, 2008 at 7:00 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 7:03 p.m.

ROLL CALL

Councilors Harriet LaMair, 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, Finance Director Karen Proctor, Public Works Director Jay Goldie, Planning Manager Rob Zuccaro, Parks, Trails & Recreation Administrator Ryan Berninzoni, Lieutenant Jody Sansing and Deputy City Clerk Jessica Sager.

Absent: None

OATH OF OFFICE – ALEX BROWN, CITY COUNCIL DISTRICT 3

Municipal Judge James Turre administered the Oath of Office to Mr. Alex Brown.

Mayor Wozniak congratulated Councilor Brown and thanked him for his diligence and hard work on the numerous projects and commissions he has been involved in for the City.

AUDIENCE PARTICIPATION PERIOD

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

CONSENT AGENDA

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

- Expenditure of Funds and Contract for Services – Ideal Fence Corporation; for guardrail replacement on S. Colorado Boulevard

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Alex Brown	yes
Mark Griffin	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 October 21, 2008 Minutes

Councilor LaMair requested changes on pages 6 and 7 of the minutes and asked to have them tabled and placed on the agenda for the next City Council meeting.

Councilor LaMair moved, seconded by Councilor Stewart, to table the minutes and place them on the agenda for the December 9th City Council meeting. The motion passed unanimously.

Approval of November 4, 2008 Minutes

City Attorney Ken Fellman asked to have the roll call section of the minutes changed to reflect Deputy City Attorney Nancy Cornish-Rogers in attendance of the meeting.

Councilor Stewart moved, seconded by Councilor Griffin, to approve the November 4, 2008 minutes as amended.

The motion passed unanimously.

Proposed Paid Time Off; Short Term Disability and Extended Sick Leave Program

Mayor Wozniak commended Finance Director Karen Proctor, Human Resource Analyst Kerri Losier and Councilor Roswell for their combined efforts on putting the programs together.

Councilor Roswell gave a brief background behind the program. He also thanked Ms. Proctor and Ms. Losier for answering his questions and putting the programs together and stated he approves of the programs.

Ms. Proctor stated the liability for the City is increasing \$23,000 every year because there are six employees that have been with the City for over ten years and do not have a cap on the sick time they can accrue. She mentioned the employees will be paid out for their sick time so they won't lose it and that this will put a stop to the growing liability.

Mayor Wozniak stated he would like Ms. Proctor to review all the benefits that are offered by the City for the next calendar year. He mentioned these programs are a good first step. He also stated he would like a liaison from Council to work with Ms. Proctor and Ms. Losier with their review of the benefits.

Ms. Proctor advised Council she will be reviewing the City's benefit package at the beginning of the year.

Councilor Griffin asked how the "paid out" situation will be handled.

Ms. Proctor answered the sick leave will be paid out at 50%, after a portion of the sick time is moved into a leave bank. She mentioned the six employees will be paid at their 2008 pay rate when they leave the City.

Mr. Griffin questioned why Veteran's Day is not listed as a holiday.

Mr. Ensey answered the holiday schedule will be reviewed with the benefits.

Councilor Roswell moved, seconded by Councilor VanderWerf, to approve the Proposed Paid Time Off; Short Term Disability and Extended Sick Leave Program and requested Staff bring forward a resolution at the next City Council meeting.

The motion passed unanimously.

UNFINISHED BUSINESS

Council Bill 18, Series 2008; a bill for an ordinance amending Chapter 18 of the Municipal Code by amending Section 18-1-20(10) concerning amendments to Section 108.2.1 of the International Building Code, Table 1-E, Elevator Inspection Fees (final reading)

Planning Manager Rob Zuccaro stated Council Bill 18, Series 2008 was approved on first reading at the October 21, 2008 City Council meeting and there have been no changes since the first reading. He advised Council this is a proposal to increase the annual elevator inspection fee, which will help cover the increased cost for elevator inspections.

Councilor Roswell moved, seconded by Councilor Stewart, to approve CB 18-08, a bill for an ordinance of the City of Cherry Hills Village amending Chapter 18 of the Cherry Hills Village Municipal Code, concerning Building Regulations; by amending Section 18-1-20(10) concerning amendments to Section 108.2.1 of the 2006 International Building Code, Table 1-E, Elevator Inspection Fees, on second and final reading.

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Alex Brown	yes
Mark Griffin	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on CB 18-08: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

Floodplain Development Permit – Jim Rubin, 5 Random Road; to allow re-alignment of a portion of the Blackmer Gulch channel within the designated 100-year floodplain (Public Hearing)

Mr. Zuccaro presented a request by Jim Rubin of 5 Random Road for approval of a floodplain development permit in order to re-align an approximately 280 linear foot portion of Blackmer Gulch through his property. The purpose of the re-alignment is to improve the channel and make more of the property accessible. A new single family residence is currently under construction on the property. He stated the applicant has provided a hydraulic analysis and other supporting documentation indicating no rise in the base flood elevation as a result of the channel re-alignment. Mr. Zuccaro said that although the application meets the technical criteria for a floodplain development permit. However, staff finds that the application does not meet the exceptional hardship and showing of good and sufficient cause criteria outlined in Section 16-17-40(c). The applicant currently has an approved development, which is not impacted by the channel location, and therefore failure to grant the application will not cause an exceptional hardship. He mentioned the Planning and Zoning Commission reviewed the application at their October 14th meeting and

recommends that the application not be approved based on the exceptional hardship criteria not being met. He added the City's Engineer, Mike Dungan, was present and would be able to answer any technical questions.

Councilor VanderWerf inquired as to what the process would be if the applicant wanted to "shore up" the banks of the channel.

Mr. Zuccaro said the process would be a floodplain development application, similar to the one presented at this meeting.

Jim Rubin – 5 Random Road

Mr. Rubin presented his application and stated the key criteria for his floodplain development request:

- He recognized the concerns of his neighbor, Mr. Jason Matherly, and has offered to move the channel an additional 30 feet from the property line.
- The City's stormwater management regulations required him to put drainage ponds on his property when the building permit was pulled, which limited the amount of yard for his children to play in.
- The definition of hardship is not clearly defined and is subjective and subject to interpretation. He said hardship should not be part of the process because similar application would plans would never get approved.
- He expressed concern with the manner in which he felt he was treated by the Planning and Zoning Commission.

Mr. Rubin asked the Council for their consideration and approval of his floodplain development application.

Mayor Wozniak said he understands that half the lot is located in the floodplain but does not understand why he was forced to put drainage ponds in the specified locations.

Mr. Rubin said the drainage ponds could not be located in a floodplain and those were the only places left.

Councilor Griffin clarified that these ponds are just catch basins and are not filled with water all of the time.

Mayor Wozniak asked if he has plans to improve the drainage channel.

Mr. Rubin said he will be using current standards for putting the channel into a much better condition than it is now. It will be about the same size but will not have the overgrown grass and weeds.

Mayor Wozniak referred to Mr. Rubin's offer to move the channel thirty feet from the property line and asked if he has filed an application for that move.

Mr. Rubin stated he has not filed an application but made the offer to minimize the impact on Mr. Matherly's property.

Mayor Wozniak asked if his current house is in the same location as the former house.

Mr. Rubin said the location is almost identical.

Mayor Pro Tem Stewart asked if there is a water quality issue.

Mr. Rubin said there will be less erosion and will prevent sediment from going down stream.

Councilor Brown referred to Mr. Rubin's comments as to half of his property being in the floodplain and asked if the property would still be in the floodplain if the application were approved.

Mr. Rubin said there would be no change and half the property would still be in the floodplain.

Nathan Torrey – WRC Engineering

Mr. Torrey discussed the engineering aspects of the application. He said the project would not revise the floodplain boundaries and added it is in compliance with the City's technical floodplain criteria.

Councilor Brown asked why the velocity doesn't change.

Mr. Torrey stated that as it stands now, it is very slow. When the channel is moved and cleaned, the velocity will be similar.

Mr. Brown said that it seemed with a more solid structure underneath the water couldn't move the way it does now, and he was concerned it would travel faster.

Mr. Torrey said the channel will be re-vegetated to have a natural feel.

Councilor Roswell asked if there would be a change in the grade if the channel were moved.

Mr. Torrey said the grade will actually lessen because the channel will be a little longer.

Councilor Roswell asked how long it will take to get back to the natural vegetative state.

Mr. Torrey said if it were planted now it would probably take about 12-24 months.

Councilor LaMair asked if the change to the culvert would be less.

Mr. Torrey said it would be much milder than the existing culvert.

Adam Pollard – Designs by Sundown

Mr. Pollard gave a brief description of the overall design and its impact. He said the current space cannot be used due to the drainage ponds. He added that by allowing the relocation of the channel, they will gain usable space.

Councilor LaMair asked where they would place a flat area if the application were denied.

Mr. Pollard said the area is relatively flat as it stands. The floodplain would essentially become the flatter area.

Councilor LaMair clarified that the proposed location for the channel is already flat.

Mr. Pollard said the area is flat and the idea is to get a flat meadow closer to the house as opposed to the street.

Mike Dungan – Mueller Engineering

Mr. Dungan said he did not have anything to add from a technical point of view. He stated he does not have any technical concerns about the application at hand.

Mayor Pro Tem Stewart asked if he could speak to the water quality issue.

Mr. Dungan said the applicant had addressed the specific requirements that were imposed by the City and Mueller Engineering.

Mayor Pro Tem Stewart asked if he could speak to the velocity of the water to the new channel.

Mr. Dungan said they don't believe the velocity would change.

Mayor Wozniak opened the public hearing.

Jason Matherly – 10 Random Road

Mr. Matherly stated his property is directly south of the applicant's property. He said that his home is located in two flood plains and therefore he is required to obtain flood insurance. He discussed his concerns with the Council about the application:

- The floodplain risk is a concern as there is one case of flooding by Blackmer Gulch across Random Road.
- The aesthetics of the south side of the property. The Master Plan desires a natural aesthetic.
- The applicant feels the channel is unsightly but other people feel it is more natural.
- The applicant was aware, when purchasing the home, how difficult it is to change a floodplain.
- His property rights are protected by the City's floodplain code.

Mr. Matherly urged the Council to deny the floodplain development application. He presented and discussed, with the Council, photos and a survey packet.

The public hearing was closed.

Mr. Rubin informed the Council that he has not reviewed the packet Mr. Matherly presented but said that some of the information in the packet is false.

Mayor Wozniak commended the staff on outlining the criteria of the application. He asked City Attorney, Ken Fellman for guidance as to Council's role.

Mr. Fellman discussed the aspects of section 16-17-60 of the code:

- Subsection A lists the specific standards of the code.
- Subsection C details the language of the code.
- Subsection D gives the Council discretion to modify or waive any conditions of the article.

Mr. Fellman said the Council has as much of a policy decision to make as a legal one. The Council can accept staff's recommendation or they can make their own recommendation.

Mayor Pro Tem Stewart said that when the code is read literally it states "No land shall be altered in the floodplain except when there is found to be an exceptional hardship." He stated the Planning and Zoning Commission was correct in their determination but

Council has a standard that allows them to look at the conditions and policy requirements.

Councilor Brown stated he did not understand what problem is being addressed or solved by moving the channel. He said it makes him nervous to move the channel.

Councilor VanderWerf said the issue comes down to aesthetics. Although she would like things in the Village to look a certain way, she does not feel comfortable forcing a property owner to conform to what she considers ideal. She is inclined to approve the application.

Mr. Fellman explained subsections C and D and read subsection D aloud.

Mayor Wozniak said that exceptional hardship can never be shown and stated that he does not believe the applicant has shown exceptional hardship. He added that subsection D gives the Council authority to waive the requirements.

Councilor LaMair said the natural flow of the water through the floodplain should be respected. She asked Mr. Fellman if the Council has to determine whether the public health, safety, and welfare are a benefit or negative impact on the residents.

Mr. Fellman said the Council is directed to look more at the negative impact on the residents. He added that if there is evidence of exceptional hardship, and the majority of the Council believes there are conditions of exceptional hardship, they have the discretion to waive that condition.

Councilor LaMair said she regrets the negativity that Mr. Rubin felt he received from the Planning and Zoning Commission. She stated she does not believe it is in Council's best interest to ignore the language around the hardship.

Mayor Wozniak said the ordinance, as written, says a channel could not be improved or modified.

Councilor Griffin said he believes water seeks its own path. He stated that in the event of a catastrophic or 100 year flood, the channel would probably go right back to the current location. He said that Mr. Rubin has a right to alter his property as he sees fit but stressed the importance of maintaining the Village and its rural character.

Councilor Roswell said he does not have an issue with what the applicant wants to do with his private land.

Councilor LaMair moved, seconded by Councilor Brown, to deny the requested floodplain development permit for the realignment of an approximately 280 linear foot portion of Blackmer Gulch for the property located at 5 Random Road. The applicant has not demonstrated a showing of good and sufficient cause and failure to grant the authorization will not result in an exceptional hardship to the applicant for the reasons stated in the staff memorandum dated November 18, 2008.

The following votes were recorded:

Scott Roswell	no
Harriet LaMair	yes
Alex Brown	yes

Mark Griffin	yes
Russell Stewart	no
Klasina VanderWerf	no
Mike Wozniak	yes

Mayor Wozniak voted on the application due to a tie vote.

Vote: 4 ayes. 3 nays. The motion to deny the application carried.

REPORTS

Mayor's Report

(i.) City Council Liaison Assignments

Mayor Wozniak said that due to former Councilor Marcia Frew's resignation there are vacancies in the liaison assignments.

Councilor VanderWerf requested, and Mayor Wozniak approved, to sit as the liaison to the Parks, Trails and Recreation Commission (PTRC).

Mayor Wozniak requested Councilor Brown also sit on the DRCOG board along-side Councilor LaMair.

Mayor Wozniak said he was concerned with appointing Councilor Brown to the Board of Adjustment and Appeals (BOAA) since he was the Chair of that committee previously.

He requested Councilor Griffin consider sitting as liaison to the BOAA. Councilor Griffin said he would sit as liaison to the BOAA.

Mayor Wozniak said that any other vacancies, due to Ms. Frew's resignation, would be filled by Councilor Brown.

Mayor Wozniak said the Arapahoe County Metro Mayors and Managers would be hosted by the City of Cherry Hills Village at the Cherry Hills Country Club for the month of November.

Mayor Wozniak reminded the Council of the Holiday Tree Lighting event and City Holiday Party.

Mayor Wozniak informed the Council that City Manager Eric Ensey circulated resumes of all residents who have applied for a Board/Commission in 2008. He said he would prefer to appoint someone from the resumes and recommended the appointment of David Heller to the BOAA.

Mayor Pro Tem Stewart agreed with Mayor Wozniak's recommendation and felt Mr. Heller was a wise choice.

Mayor Wozniak asked that a resolution be brought forward to appoint Mr. Heller at the next meeting.

Members of City Council

Councilor Griffin said he was a little concerned with the lack of building permits being issued but was glad to hear the building department would make budget due to a large amount of revenue received in November.

Councilor LaMair provided Council with information about preservation of open space and said she would work with staff and bring more information to Council at a future meeting.

Mayor Pro Tem Stewart informed the Council the South Suburban brief would be filed on November 19th. He also said there would be an open house at the Village Center in December to discuss South Suburban history, litigation and other issues.

Councilor Roswell had no report.

Councilor VanderWerf said there was a PTRC meeting in November and mentioned that Debbie Welles is working with the PTRC issues that revolve around the High Line Canal. She added Council would be receiving a recommendation from the PTRC about increasing the percentage of dedicated land in the Village. She discussed the events of her recent Colorado Municipal League meeting. She stated the Residential Development Standards Committee had a meeting and they spent their time reviewing background information from what other communities have done in this regard.

Councilor Brown said he was going to meet with former Councilor Marcia Frew, but she was unable to due to a family emergency.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Departmental Monthly Reports

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

Report on North Central Regional for the State of Colorado Preparedness and Security Chair

Lieutenant Jody Sansing informed the Council that Arapahoe County is seeking funding assistance with regard to emergency preparedness. Mr. Sansing gave a brief history of and background of the funding request.

Mayor Wozniak asked how much Arapahoe County is requesting.

Lieutenant Sansing said the County is asking for approximately \$85,000 which would be divided among seven jurisdictions; although they do not have a final amount specified.

Mayor Wozniak asked if Lieutenant Sansing has any information regarding the billing for 911 services.

Lieutenant Sansing said that two years ago the County decided they would begin charging the City for these 911 services. The City has not had to pay anything yet, but there is \$90,000 budgeted for this purpose.

Mayor Wozniak asked if the funding request needs action taken or if it is informational.

Lieutenant Sansing said it is for informational purposes only.

Councilor Brown asked if there is a surcharge for 911 phone calls.

Mr. Fellman said there is a surcharge, but he is unsure of where that money goes.

Mayor Wozniak said the City had the choice to answer the 911 phone calls, but felt Arapahoe County was better equipped for this service.

Councilor VanderWerf asked how the charge for services is determined.

Lieutenant Sansing said it is determined by the number of 911 phone calls.

Traffic signal warrant evaluations for Steele Street (Glenmoor Drive) and Franklin Street at Belleview Avenue

Director of Public Works Jay Goldie informed the Council that staff contacted the City of Greenwood Village on behalf of Ms. Frew with regard to conducting a traffic study. He said that the City of Greenwood Village is ready to go forward with the traffic signals evaluations for Steele Street (Glenmoor Drive) and Franklin Street. Mr. Goldie gave a history of the traffic study request and explained that after the two studies were completed it was determined the Steele Street (Glenmoor Drive) study passed and warranted a traffic signal but the study for Franklin Street and Belleview Avenue shows a traffic signal is not warranted.

Mr. Goldie stated staff is continuing to work with the staff of the City of Greenwood Village and everyone would like to move forward. He added staff would like to get the Glenmoor Country Club and Glenmoor HOA to come together to fund the light on the City's side of the street.

Councilor Roswell stated he has spoken with Councilor Pressley of the City of Greenwood Village and has confirmed Greenwood Village is receptive to the signals and ready to move forward.

Mayor Wozniak said Cherry Hills Country Club will pay for their traffic signal. He added it is not the Council's obligation to pay for the traffic signal because it serves the Glenmoor community. He asked the Franklin Street traffic signal issue be placed on an upcoming agenda for further discussion.

Mr. Goldie stated the cost of the traffic signal for the Country Club would be \$225,000.

Mayor Wozniak said there are no funds budgeted for this purpose. He encouraged the Glenmoor community to come forward to fund this traffic signal.

Mr. Goldie said that staff will come up with different options for a traffic signal at Franklin Street.

Mayor Wozniak asked staff to compile some options and bring them back before the Council.

Update on the Denver West Fence project; Goldsmith Metropolitan District

Mr. Ensey informed the Council that he and Planning Manager Rob Zuccaro did some research at the City and County of Denver. He said they pulled all of the pertinent records but could not find any recorded documents with respect to the maintenance responsibilities of the fence. He recommended that he, Mr. Goldie and Councilor VanderWerf continue to work with the affected property owners.

Mayor Pro Tem Stewart asked if all the fences are on private property.

Mr. Ensey said there is no survey available and therefore they cannot be sure. He added it appears the fence is on the City of Denver side.

Mr. Ensey told the Council the next Residential Development Standards Committee meeting is scheduled for November 24th at 4:00 p.m.

City Attorney

Mr. Fellman updated the Council with regard to an application for the First Church of the Nazarene.

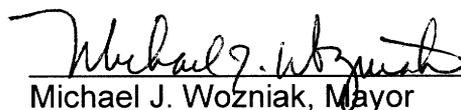
Mayor Wozniak recommended a discussion with regard to the Village Center be brought back at the beginning of the year.

ADJOURNMENT

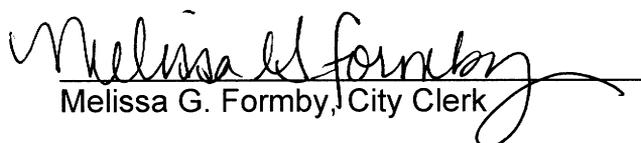
A motion was made by Councilor Roswell to adjourn the meeting.

The motion passed unanimously.

The meeting adjourned at 9:39 p.m.



Michael J. Wozniak, Mayor



Melissa G. Formby, City Clerk