

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 6, 2009 at 6:30 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:31 p.m.

ROLL CALL

Councilors Alex Brown, 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, Police Chief John Patterson, Public Works Director Jay Goldie, Planning Manager Rob Zuccaro, Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Melissa Formby.

Absent: None

PRESENTATION

Presentation by Chief Dan Brennan, City of Wheat Ridge, on behalf of the Colorado Association of Chiefs of Police Formally Announcing the City of Cherry Hills Village's Police Department's Successful Accreditation

Mr. Brennan explained to the Council that earning this accreditation is a long and tedious process. He commended the Cherry Hills Village Police Department for their successful completion and presented a plaque to Chief John Patterson and the Cherry Hills Village Police Department for earning this award.

Chief of Police John Patterson thanked his staff and the Council for their assistance and support.

Mayor Wozniak commended Chief Patterson's leadership and thanked the Cherry Hills Village Police Department and Chief Patterson for their hard work.

AUDIENCE PARTICIPATION PERIOD

Kathryn Schmidt – 5860 S. Happy Canyon Dr.

Ms. Schmidt spoke in favor of amending the current code to allow development on the undersized lots without the current limitation on square footage.

Chuck Schloss – 801 E. Radcliffe

Mr. Schloss encouraged the Council to vote in favor of the Consolidation of Municipal Wastewater Collection System to the Cherry Hills Village Sanitation District.

Jeff Loehr – 4020 S. Ivanhoe Lane

Mr. Loehr spoke in favor of amending the current code to allow development on the undersized lots without the current limitation on square footage.

Tom Niederggerke - 4070 S.Ivy Lane

Mr. Niederggerke spoke in opposition of amending the current code to allow development on the undersized lots without the current limitation on square footage.

Jenny Evans – 5700 S. Happy Canyon Dr.

Ms. Evans spoke in opposition of amending the current code to allow development on the undersized lots without the current limitation on square footage.

Michael Frazier-7505 E. Peakview, CentennialBrant Dyken-7591 E. Quince Way, Centennial

Mr. Frazier and Mr. Dyken spoke on behalf of the Youth Adult Summit. They discussed the developmental assets that youth need to succeed both academically and socially. They mentioned that the Youth Adult Summit would be held on March 14, 2009 at Grandview High School and is geared towards 8th to 12th graders, as well as adults. Mr. Dyken added that last year approximately 800 people attended the summit and their goal this year is to have at least 900 people attend. Mr. Dyken asked the City to make a \$1,500 donation to the Community Asset Project to help with the estimated \$26,000 cost of the summit.

Mayor Wozniak stated that the City has supported the Youth Adult Summit for many years and that he has attended past summits. Mayor Wozniak noted that the Summit does provide opportunity for children, parents, teachers, and administrators to share and learn from each other.

Chris Evans – 5700 S. Happy Canyon Dr.

Mr. Evans spoke in opposition of amending the current code to allow development on the undersized lots without the current limitation on square footage.

Brian Meegan - 5850 E. Princeton Ave.

Mr. Meegan spoke on behalf of and as President of the Southmoor Vista HOA. He asked the Council to keep the Homeowners Association (HOA) Board members apprised of their decisions so the HOA may then relay the appropriate information to their residents.

Ruth Ann Tucker – 5992 E. Princeton Ave.

Ms. Tucker spoke in opposition of amending the current code to allow development on the undersized lots without the current limitation on square footage.

Shaun Soon – 6001 S. Happy Canyon

Mr. Soon stated he sits on the Board of the Southmoor Vista HOA and spoke in opposition of amending the current code to allow development on the undersized lots without the current limitation on square footage. He urged the Council to keep the Southmoor Vista Subdivision residents apprised as to Council's action on the matter.

CONSENT AGENDA

Councilor VanderWerf moved, seconded by Councilor Brown, to approve the following items on the Consent Agenda:

- b) Donation of Park Bench from Mr. Mike O'Neal
- c) Expenditure of Funds– Purchase of Mobile Data Systems for Police Vehicles
- d) Resolution 1, Series 2009; Designating the Public Place for Posting Notices of Regular and Special Meetings
- e) Highway User Tax Funds (HUTF) Certification
- f) Appointment of Members to the East Cherry Hills Water District Board
- g) Legal Services Agreement for Municipal Court Prosecution

The following votes were recorded:

Scott Roswell	yes
Harriet LaMair	yes
Mark Griffin	yes
Alex Brown	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:

Item 5a - Approval of December 9, 2008 Minutes

Mayor Wozniak pulled item 5a to make a change to page 12 regarding the code being issued to all citizens. He asked for his statement to read as follows:

“Mayor Wozniak stated homeowners are aware of the City’s laws and regulations. Additionally, citizens are deemed to know what is in the city code.”

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair, to approve the December 9, 2008 minutes as amended.

The motion passed unanimously.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

City Manager & Staff

Continued Discussion on Southmoor Vista Subdivision Nonconforming Lots

Planning Manager, Robert Zuccaro stated staff presented a discussion item on non-conforming lots in the Southmoor Vista Subdivision at the December 9, 2008 City Council meeting. At that meeting, Council directed staff to conduct more research on the issue to determine the extent of non-conforming lots throughout the Village and to review the history of the zoning for Southmoor Vista and the history of the Village’s nonconforming development regulations.

Mr. Zuccaro explained to Council that staff identified the following during their research:

- 46 lots Village-wide are non-conforming
- 20 are in the R-4 Zone District
- 18 of 20 are in R-4 located in the Southmoor Vista Subdivision
- 6 are in the R-3 Zone District
- 20 are in the R-1 Zone District

Mr. Zuccaro provided, and summarized, the historic ordinances and meeting minutes related to the annexation and zoning of Southmoor Vista and the Village's Nonconforming Lot regulations.

Mr. Zuccaro said Southmoor Vista appears to be uniquely impacted by the nonconforming lot area regulations. There are no other subdivisions in the Village with the same impact as is seen in Southmoor Vista. Among the other R-4 subdivisions, only Cherry Hills East appears to contain nonconforming lots, in which case there are 2 out of 1002.

Mr. Zuccaro stated that based on staff's research, it appears the lots in question were non-conforming from the time of annexation. However, the minutes do not reflect that there was any discussion related to the creation of such a large number of nonconforming lots.

In closing, Mr. Zuccaro said that if Council does direct staff to draft a code amendment, one suggestion would be to look into changing the 80% lot area threshold to a lower threshold, and perhaps have this lower threshold be specific to the R-4 district.

Mayor Wozniak asked for comments from the Council and asked for a focus on the R-4 District.

Councilor LaMair said it seems that if a limit is maintained there should be a regularly scheduled review of such limit, or that such limit should be tied to an increase in square foot average size increase in other neighborhood homes.

Mayor Pro Tem Stewart asked how many of the lots being discussed were nonconforming prior to 2000.

Mr. Zuccaro said he did not have any research regarding the number of lots that were nonconforming prior to 2000.

Mayor Wozniak said if you look at the removal of the "no variance" language from 100% to 80%; it was in recognition of a massive area that was nonconforming.

Mayor Pro Tem Stewart stated that virtually all Southmoor Vista lots were conforming when built, but became non-conforming when annexed to the City and the Code was changed. He indicated that the current situation violates one of the fundamental cannons of zoning regulations; that similar lots should be treated similarly.

Councilor Brown asked if Mr. Zuccaro could speak to the average height of the homes being discussed.

Mr. Zuccaro said the majority of homes are single story.

Mayor Wozniak asked if, whether conforming or nonconforming, these homes can currently build to the 30 foot height and the 3,000 square foot limit.

Mr. Zuccaro said that Mayor Wozniak was correct and added there are no height limitations for non-conforming lots.

Mayor Wozniak asked, on average, what square footage people could build to the setbacks.

Mr. Zuccaro said it is over 10,000 square feet if you were going to build a literal box to the setbacks.

Mayor Wozniak asked if, in staff's research, a discussion took place with regard to how a previous Council came up with the numbers and requirements they chose.

Mr. Zuccaro said he could not find any evidence supporting why a decision was made by previous Councils.

Mayor Wozniak asked if a hardship variance has ever been granted for this type of situation.

Mr. Zuccaro said that information was not researched, but added he did not see any evidence of that.

City Attorney Ken Fellman asked for clarification if Mayor Wozniak's question was whether the standards before the Board of Adjustment and Appeals (BOAA) would be different for an owner of a nonconforming lot.

Mayor Wozniak said that was correct.

Mr. Fellman said the answer would be no since section 16-14-90 states in part "nothing in this article will prohibit an applicant that is denied a building permit from seeking a variance..."

Mayor Wozniak confirmed there would still be a hardship requirement. He asked if the BOAA has granted any in the last 10-15 years.

City Manager Eric Ensey said there was a variance granted a couple of years ago on Humboldt Street in Old Cherry Hills; he added it was a one-acre lot in a 2 ½ acre zone district.

Councilor Griffin asked for clarification as to the order of events that took place resulting in the current lot requirements.

Mr. Zuccaro said there was not a case file available and staff was only able to review the meeting minutes which were not descriptive enough to allow for further clarification.

Mayor Wozniak stated that up until the year 2000, all of these lots were conforming. He mentioned that a lot of issues arose at that time due to variances being granted too liberally.

Councilor Roswell stated he is troubled by the fact that Council is reviewing this issue.

Mayor Wozniak said the issue arose when staff identified the issue and added he asked staff to review and research the issue.

Councilor Roswell said he struggled with whether the Council should be taking on this issue.

Mayor Wozniak asked if Councilor Roswell would prefer to leave the situation as is.

Councilor Roswell said he is inclined to leave it the way it is.

Councilor VanderWerf stated she is sympathetic to the issue at hand, but wondered if the issue needed to be dealt with by the Council.

Mayor Wozniak mentioned there are two options before the Council; they can decide whether there is a rational distinction in the current code or whether to hold a public hearing on the issue.

Councilor VanderWerf said the rationale is that people should have been aware of the code when they built their homes. She added that one of the ideas discussed by the Residential Development Standards Committee (RDSC) was that as the square footage of the home gets larger, the setback also gets larger.

Councilor Brown said he too is struggling with this issue. He said it seems to be a conflict between preservation of community character as it exists today versus use of enjoyment of property to a contemporary standard. He said he is sympathetic to both sides. He stated he does not believe the variance process is the answer to this issue. He stated the variance procedure was not designed for this type of matter.

Mayor Wozniak said there are certain circumstances where a variance might be justified.

Mayor Pro Tem Stewart said the Code's current variance procedures are not designed to deal with the situation at Southmoor Vista. A new and different case-by-case variance procedure designed for this particular area would have similar issues and difficulties. There are too many non-conforming lots with similar circumstances to be fairly addressed on a case-by-case basis. He indicated that if he had voted in 2000, he would have advocated the (then) HOA's proposed 70% threshold, and believes that such a change from 80% would be fair and preferable to the current or any proposed variance options. But until and unless the current or future HOA takes a position on behalf of the community, he is now inclined to leave the Code as it is. If the HOA approached the City with a proposal to lower the threshold in the Code, he would be supportive.

Mayor Wozniak said HOA's can be far more restrictive than the City. If an HOA came before the Council he would recommend telling them to make their covenants tighter.

Councilor LaMair said if the current standard remains the same, then the Council should look into it further. She stated the issue needs further research and thought by the neighborhood and recommended the residents go before the RDSC. She added she does not feel comfortable making a decision on the matter.

Councilor Griffin said the neighbors may be more qualified to make these decisions since they live in the area, he also recommended the residents go before the RDSC. He said he would not feel comfortable making a decision.

Mayor Wozniak stated he feels the issue should be reviewed by the Council because similarly situated people should be treated equally under a zoning code. He concluded by saying the consensus of the Council is to take no further action.

FEMA's Adoption of Revised Floodplain Maps Update

Mr. Zuccaro stated the Federal Emergency Management Agency (FEMA), in cooperation with the Urban Drainage and Flood Control District, has undertaken the process of updating the Flood Insurance Rate Maps (FIRMs) for all of Arapahoe County. The new floodplain designations will alter the floodplain boundaries for many properties within Cherry Hills Village. The updated FIRMs will also be provided in an
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electronic format, which will be compatible with the City's GIS software and may allow opportunities for additional credits under FEMA's Community Rating System.

Mr. Zuccaro said a final community meeting was held on December 18, 2008. The next step in the approval process is a 90-day appeal period, during which any technical appeals will be considered. After the 90-day appeal period, there will be a six-month period before the new FIRMs come into effect. It is anticipated the new FIRMs will become effective in October or November of 2009.

REPORTS

Mayor's Report

Mayor Wozniak read a letter to the Council from by Mr. James Muhm. Mr. Muhm thanked the City and the Council for their support during their recovery after a car accident. Mayor Wozniak said Mr. Muhm is a wonderful man and has been a very active member of the community for many years.

Mayor Wozniak said he would be attending the Metro Mayors Caucus Annual Retreat over the weekend. He stated many important items would be discussed and mentioned he would not be asking for funds on behalf of the City for the 2009 calendar year due to the lack of available funds by the State.

Mayor Wozniak informed the Council there would be a coyote symposium, at the Jefferson County Fairgrounds, on January 11th to discuss what cities can and cannot do with regard to common coyote issues.

Mayor Wozniak said he received a letter from a resident praising the dedication of Officer Paul McCarthy and the police department.

Members of City Council

Councilor Griffin stated he and Mayor Wozniak met with the Denver Police Foundation to discuss obtaining assistance with upgrades to computer systems, cameras in patrol vehicles, etc. He said the meeting went well and was very productive. He added the Council should discuss what course of action should be taken.

Mayor Wozniak said he also thinks the matter should be discussed by the Council. He asked Councilor Griffin to provide the Council with the paperwork and information from the Denver Police Foundation.

Councilor LaMair informed the Council there has been some crime reported in her neighborhood and she received a number of phone calls from her neighbors; she recommended to her neighbors that they organize a neighborhood watch and asked Chief Patterson to give her any information regarding that matter. She mentioned the Parks, Trails, and Recreation Commission (PTRC) is meeting on January 8th and there would be discussion on the possibility of a trail along the north side of Mansfield; she stated she would report back to the Council with the results of that meeting.

Mayor Pro Tem Stewart said South Suburban filed their response brief and the City's brief would be due in two weeks.

Councilor Roswell said he was contacted by a resident who was concerned with floodplain development and how it would affect urban drainages; he said he would forward the information to Councilor Griffin as it was a resident from his district.

Councilor VanderWerf said the new sign in front of the building is very nice.

Councilor Brown said he met with the General Manager and President of the Glenmoor Country Club for the purpose of discussing the issue of a traffic light at the club. He said they have not heard people discuss the need for a traffic signal and they don't feel the members feel a new signal is warranted.

Mayor Wozniak expressed his appreciation to Councilor Brown for meeting with the Glenmoor General Manager and President.

Members of City Boards and Commissions

There were no reports.

City Attorney

Transfer of Municipal Wastewater Collection System to the Cherry Hills Village Sanitation District

Mr. Fellman informed the Council that staff has not discussed this issue with the Cherry Hills Village Sanitation District (CHVSD) yet. He said they wanted to discuss the issue with the Council before discussing the item with CHVSD. He said the determination is that it is not in the City's best interest to continue handling this kind of service. He said there are two options available to the City; the first option is to transfer wastewater service responsibility to CHVSD by intergovernmental agreement, the second option is to transfer the Municipal Collection system to CHVSD concurrent with CHVSD including within its boundaries the Subdivisions of Cherryridge, Cherrymoor South, and Cherry Hills Rancho.

Mayor Pro Tem Stewart asked if, for an inclusion vote, an election would be required and if it would be done during the regular municipal election.

Mr. Fellman said it could be held during a regular election, but added it could be scheduled for a special election, if needed.

Mayor Pro Tem Stewart asked if it would be cheaper to do it during a special election.

Mr. Fellman said it would probably be more expensive to conduct as a special election as opposed to adding it to the ballot during a regular election.

Mayor Wozniak said his first reaction was that an Intergovernmental Agreement (IGA) would be cheaper and easier.

Councilor Brown said he sat on the Hillcrest Water Board for many years and said they had many IGA's with municipalities and added it is much easier to have one district taking care of it all. He asked if this would be a service area change or inclusion of territory, and if so, asked if an election would still be required.

Mr. Fellman said that an election is required when a district is created, and a court order then sets the boundaries of that district. If the boundaries of that district are going to change, then it requires an election from the property owners who would be the new members.

Mayor Wozniak recommended staff initiate discussion with CHVSD as to what options are available, research election costs, etc. and then report back to the Council.

Mr. Fellman mentioned that even if CHVSD agrees, there still needs to be an outreach on the part of the City to those in the areas to be transferred.

Mayor Pro Tem Stewart said he is concerned with an IGA being permanent to ensure a future Council is aware of why it was done.

Councilor Brown said he would like a little more research as to what options are available and if there are more options available than what has been discussed thus far.

Mr. Fellman said it may be best if staff approaches CHVSD first and the neighborhood second to find out who is in favor or opposed. He said Mr. Tim Flynn would have more information for the Council, but was unavailable to be at this meeting to discuss it further.

Councilor LaMair asked if the subdivisions are aware these discussions are being held.

Mr. Fellman said the residents are not aware of the discussions at this time.

Councilor Griffin asked what happened when the Cherryridge, Cherrymoor South, and Cherry Hills Rancho subdivisions were dissolved.

Mr. Fellman said everything was turned over to the City when those districts dissolved.

Councilor Griffin asked why the City could not make the determination since those subdivisions were turned over to the City.

Mr. Fellman said the City owns the infrastructure, but because CHVSD is a separate entity, in order for that district to expand its boundaries an election is required of the new property owners because they will become taxpayers. He mentioned the City could enter into an IGA, but in the future the parties may decide they don't want to do it anymore and then the problem has just been deferred to a future Council.

Direction was given to staff to work with Mr. Tim Flynn as well as contact the Cherry Hills Village Sanitation District to pursue the next steps.

Continued Discussion on Land Dedication

Mr. Fellman said he and Deputy City Attorney David Foster were asked to review a proposal that would increase the dedication requirement from 7.5% to 10% for lots in excess of 10 acres. Mr. Fellman explained there are three criteria the City must follow in order to impose a higher open space percentage:

1. Does the open space percentage increase promote a legitimate state interest?
2. Is there an essential nexus between the open space percentage increase and the legitimate state interest? (Or, is the nature of the open space percentage increase reasonably related to the impact it is intended to address?)
3. Is there an appropriate degree of connection between the open space percentage increase and the impact sought to be alleviated? (Or, is the extent of the open space percentage increase roughly proportional to the impact it is intended to address?)

Mr. Foster's determination, after further research on the matter, is that the Village can make findings that support the critical criteria and requirements on larger properties being subdivided in the Village.

Mr. Fellman said the issue at hand, if Council wanted staff to bring a Council Bill forward, was whether or not to require a 10% increase across the board or look at it on a case by case basis. He informed the Council that some communities impose a set percentage for land dedication while others leave the specific amount open to negotiation. He mentioned that while a few other Colorado municipalities do negotiate open space requirements on a case by case basis, doing so in the Village would create a greater burden on both planning and legal staff, and could increase the chances that Village subdivision decisions may be legally challenged.

Mr. Fellman advised the Council to have a standard percentage that is uniformly applicable to larger subdivisions.

Mr. Ensey said the initial PTRC recommendation was to impose the increase to properties of 10 acres or more.

Mr. Goldie clarified the PTRC wanted to impose the increase on all properties, regardless of acreage.

Councilor LaMair said she spoke with PTRC Chairperson, Theresa Gilpatrick, and Ms. Gilpatrick stated she and the Commission are comfortable with increasing the requirement on all properties.

Mayor Wozniak asked staff to bring an ordinance forward increasing the land dedication requirement from 7.5% to 10% for all properties.

EXECUTIVE SESSION

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin, to hold an executive session for the purpose of receiving legal advice from the City Attorney concerning a pending legal matter pursuant to the provisions of CRS 24-6-402(4)(b) *and* upon conclusion of the executive session, adjourn the regular meeting of January 6, 2009.

The following votes were recorded:

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

The motion passed unanimously.

Council adjourned to an Executive Session at 8:41p.m.

The Executive Session adjourned at 9:02 p.m.

ADJOURNMENT

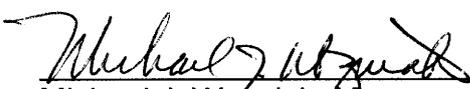
The regular meeting adjourned at 9:02 p.m.

STUDY SESSION

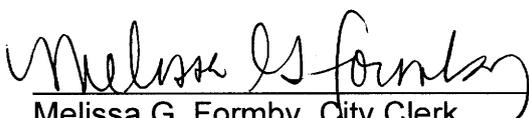
A Study Session was held to discuss follow-up strategies with regard to the Village Center.

The Study Session was called to order at 9:04 p.m.

The Study Session ended at 9:33 p.m.



Michael J. Wozniak, Mayor



Melissa G. Formby, City Clerk