

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, March 17, 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, Lieutenant Jody Sansing, Public Works Director Jay Goldie, Planning Manager Rob Zuccaro, Parks, Trails & Recreation Administrator Ryan Berninzoni, and Deputy City Clerk Jessica Sager.

Absent: None

PRESENTATIONS

Mayor Mike Wozniak thanked Senior Sergeant Weathers for his many years of hard work and for being a leader and role model to other officers and citizens. He also mentioned that he sat on the interview panel that interviewed all the candidates for the Sergeant position.

Lieutenant Jody Sansing introduced Jake Campbell, who had just been promoted to the Sergeant position. He also introduced Patrick Weathers, who had just been promoted to the Senior Sergeant position.

AUDIENCE PARTICIPATION PERIOD

Jeff Welborn
4901 South Fairfax Street
Littleton, CO

Mr. Jeff Welborn presented a memo to the Council that expressed his support of the proposed Cat Anderson Fund. He mentioned these issues are important to the community and the idea Councilmember LaMair had is an opportunity to get the process started. He stated the City should put into place a process so it can be proactive instead of reactive and also stated the Planning and Zoning Commission should be involved in whatever process the City enacts. He mentioned he would be happy to help in whatever capacity is necessary.

Stephanie Blucher
82 Glenmoor Place
Cherry Hills Village, CO

Ms. Stephanie Blucher mentioned that she was in attendance on behalf of the Cherry Hills Land Preserve and commended Councilmembers LaMair and VanderWerf for bringing forward the Cat Anderson Natural Areas Incentive Program. She stated the Master Plan process showed a strong support in favor of preserving land. She mentioned the Cat Anderson Incentive Program proposed transferring a percentage of funds into an account to promote efforts to expand natural areas.

Ken Mirr
3106 Cherryridge Road
Cherry Hills Village, CO

Mr. Ken Mirr stated he agrees with Ms. Blucher and Mr. Welborn and said the City can't rely on donations and the Cherry Hills Land Preserve alone. He mentioned he is highly in favor of this project and believes other funds will come in once people see the City and the Land Preserve working together.

Geoff Landry
5130 Nassau Circle West
Cherry Hills Village, CO

Mr. Geoff Landry mentioned he is a new member of the Land Preserve and believes this community is unique because of all the open space. He stated in order for the Master Plan to thrive, it has to be fulfilled and now is the time to take action.

David Jackson
7518 South Willow Circle
Centennial, CO

Mr. David Jackson introduced himself to the Council as a newly elected board member for the South Metro Fire District. He gave the Council a brief update on the changes the fire district has made and asked everyone to be extra cautious during this dry season.

Mayor Wozniak mentioned he appreciates the efforts of the fire district.

Debbie Welles
4950 Sanford Circle West
Cherry Hills Village, CO

Ms. Debbie Welles stated the City needs to implement a process for preserving open space because it is at a critical juncture in time. She stated people can increase the height of lots and build homes that can obliterate views and as natural areas become scarcer; the Village will be sought out more. She believes the Cat Anderson Fund is an appropriate approach.

Suzie Halle
17 Random Road
Cherry Hills Village, CO

Ms. Suzie Halle stated the Cat Anderson Fund is a great idea. She also said if there is a fund available, others will have a place to donate money and will be able to see where the money goes.

CONSENT AGENDA

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

- a. Approval of Minutes – March 3, 2009
- b. Contract for Services-City Engineer, Icon Engineering (*item tabled at the March 3, 2009 meeting*)
- c. Agreement Regarding Development Application; 12 Cherry Vale Drive
- d. Expenditure of Funds-Purchase of a Stump Grinder

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.

UNFINISHED BUSINESS

There was no unfinished business.

DISCUSSION – Subdivision Land Dedication Requirements

Deputy City Attorney David Foster stated he worked with the Parks, Trails and Recreation Commission (PTRC) as they explored the requirements for land dedication. He said the intent of PTRC is to increase the land dedication amount from 7.5% to 10% on all dedications. He stated it is clear the community values open space and trails. He said the majority of recent transactions for a subdivisions application resulted in an easement with a cash-in-lieu and not a fee simple or land dedication. He said he and City Attorney Ken Fellman have had conversations as to whether the easement should create the value of a fee-in-lieu. He also said the current process is to take an appraised value for a fee simple transaction and show what the value is. The value is determined on a case by case basis. He said the question becomes if the required percentage is increased and there is a fee-in-lieu in addition to the easement that could be gained, could the fee-in-lieu be paid as an easement value.

Mayor Wozniak asked Deputy City Attorney Foster to give a summary of the Nollan/Dolan series and how it would affect actions in this instance.

Mr. Foster answered it needs to be determined whether there is a nexus and whether it would be determined that there is some community need. He said the Council would have to rely on the impacts to the community and the things the residents' value.

Councilmember LaMair asked if the case law refers to the relationship of time and the need to mitigate that development.

Mr. Foster answered each time the law is analyzed; it gives an opportunity to determine what exists in the community. He stated if any moment in time the Council determines it is an issue, they can review it.

City Attorney Ken Fellman said he is not aware of a specific case that refers to a time frame. He stated there is a strong argument based on the law and community values have been clearly expressed.

Mayor Wozniak opened public comment.

Buzz Calkins
1080 Clayton Street
Denver, CO

Mr. Buzz Calkins stated he represented his grandfather who owns 20 acres near Holly & Dahlia. He said he is opposed to increasing the percentage for the land dedication requirements. He stated that an impact analysis has not been performed. He also stated the majority of the people that completed the survey for the Master Plan are not going to be affected. Only a handful of people will be affected and it is unfair for those people to bear the burden for the whole community. He recognizes the value in open space and mentioned his grandfather does not have any current plans to subdivide the property.

Nicole Gorham
Rothgerber Johnson & Lyons LLP
One Tabor Center, Suite 3000
1200 Seventeenth Street
Denver, CO

Ms. Nicole Gorham presented the Council with a memo on behalf of George Calkins asking them to deny the proposed ordinance to increase the percentage for land dedication requirements. She stated the Fifth Amendment requires a two-part test. The first part is generally there has to be an essential nexus between the dedication and a legitimate government interest. The second part is there has to be rough proportionality between the dedication and the impact of the use of the property. She said the issue becomes who is going to bear the burden to protect the open space.

Councilmember Stewart asked Ms. Gorham what her thoughts are on the ten percent easement issue Mr. Foster spoke to.

Ms. Gorham stated it would not change their position; unless the Council changed the percentage amount or had discretion to assess a percentage.

Mayor Wozniak commented there has been discussion that discretion was not favorable and it would appear every subdivision would be treated differently. He mentioned that staff surveyed other municipalities and the required percentage appeared to be all over the board. He asked Ms. Gorham if she was aware of any other challenges other cities have been presented with.

Ms. Gorham answered it is hard to compare Cherry Hills Village to other cities and she had not done research on any other challenges.

Theresa Gilpatrick
29 Charlou Circle
Cherry Hills Village, CO

Ms. Theresa Gilpatrick stated she appeared in her capacity as the PTRC chairman. She stated citizens value open space as a unique resource and the Village needs to make an investment to preserve open space. She said every time a subdivision application comes before PTRC, they look at all aspects and each case has had a different outcome based off what would be best for all parties involved. She encouraged the Council to help preserve open space and the unique character of the Village.

Mayor Wozniak asked if PTRC discussed a combination of cash-in-lieu and a percentage.

Ms. Gilpatrick answered they did not.

Mayor Wozniak suggested the City purchase property during the subdivision process if the land is valued as a piece of open space. He mentioned the City has been willing to purchase properties in the past. He stated there is not a clear mandate from the citizens to raise taxes for open space and take land from all subdivisions. He would prefer to put it to a vote and ask the citizens if they want to do it.

Mr. Wellborn said the Master Plan is great, but may be seen as something that provides answers when it doesn't. He stated there is a desire to have the Village the way it has always been, but there is concern about paying for it; as well as concerns over adverse impact on property rights. He said the next step needs to be defined and everyone needs to work together towards a common goal. He also reiterated his willingness to help.

Mayor Wozniak asked Ms. Gilpatrick her thoughts if the Council allowed PTRC the discretion to assign a percentage to subdivision applications.

Ms. Gilpatrick answered she believes they would take the same approach they do now. PTRC listens to the goals of the owner and reviews every parcel differently. She mentioned they have tried to come up with a mutually beneficial plan for every application. She would prefer a more even handed approach with a fixed number.

Mr. Foster stated an impact analysis is subjective. He said having to determine the impact on a case by case basis is difficult.

Kevin Iverson
1170 East Tufts Avenue
Cherry Hills Village, CO

Mr. Kevin Iverson stated the current code has been in effect since 2004 and wonders what has changed in the last 5 years.

Mayor Wozniak closed public comment.

Councilmember Stewart commented he appreciates the comments. He stated he is concerned with the statute and doesn't believe it represents the values of the Council and what they are trying to achieve. He suggested an easement dedication instead, which would provide some flexibility. He said it may benefit the landowners and the Village if the ordinance was modified to provide more flexibility.

Councilmember LaMair questioned how much the fund would lose if the values were based off an easement and mentioned she doesn't want to take a step back.

Councilmember Stewart stated the City took in more easements than money with the recent subdivision applications.

Councilmember LaMair stated when she was the liaison for PTRC; they took in a significant cash-in-lieu amount on a subdivision application.

Councilmember VanderWerf pointed out that trails and trail easements enhance the value of property and could make other lots more valuable.

Councilmember Alex Brown stated the most challenging issue is the pursuit in developing open space. He doesn't like the rigidity of a fixed number and would prefer a range with individual analysis.

Mr. Fellman stated the City currently has flexibility on whether to request a land dedication or cash-in-lieu or both. He said if the Council would like more flexibility, it would add levels of complexity to the negotiations. He asked Council for direction on the parameters regarding how much flexibility they would like.

Councilmember Stewart mentioned he would like to add a safe harbor of sorts to protect the City, but also likes the idea of adding flexibility to the negotiations.

Councilmember Scott Roswell said he appreciates the comments. He would like some time to reflect on them and is not in a position to give direction.

Councilmember LaMair is concerned the Council may indirectly give land owners incentive to negotiate the fee-in-lieu of and it would create some conflict. She mentioned she would like some time to reflect also.

Councilmember Griffin stated he would like some time to reflect on the comments also. He mentioned the City is unique and can't be compared to another city and feels a need to preserve what is here, but it will be difficult going forward with the small amount of land that is left. He hopes a land owner would want to preserve the land culture and would work with the City to work out a win-win situation.

Mayor Wozniak asked Councilmember Stewart to outline the idea he brought forward for the Council to review and discuss. He asked for another report at the next meeting to give everyone time to reflect on the issues. He likes the idea of more flexibility, but is concerned with the comments Mr. Fellman made about the levels of complexity. He mentioned all the parcels are unique and there should be some flexibility.

Councilmember LaMair suggested looking at the land dedication requirement in another context to try and see what else is going on with the property. She suggested looking at other ways to satisfy the land dedication requirement.

Mayor Wozniak stated the Council is not prepared to make a decision, but would like the item to remain on the agenda.

NEW BUSINESS

Council Bill 3, Series 2009; a bill for an ordinance for the supplemental appropriation of funds for the repair and replacement of sanitary sewer lines, water lines and the construction of a picnic shelter for fiscal year 2009.

Public Works Director Jay Goldie presented Council Bill 3, Series 2009 on first reading. He stated staff inadvertently left three projects out of the 2009 budgeting process that had not been completed in 2008. He said if approved, the total money would come from the reserves of the water and sewer fund and the Arapahoe County open space funds.

Councilmember VanderWerf moved, seconded by Councilmember LaMair, to approve on first reading, Council Bill 03-2009 a Bill for the Supplemental Appropriation of Funds in the amount of \$203,867.00 for the repair and replacement of sanitary sewer lines, water lines, and the construction of a picnic shelter for fiscal year 2009.

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 Council Bill 03-2009: 6 ayes. 0 nays. The motion carried.

Mayor Wozniak moved the Open Space Program item up on the agenda.

REPORTS

Open Space Program

City Manager Eric Ensey advised the Council that staff met with Councilors LaMair and VanderWerf to discuss a proposal for an open space program. He stated the intent of the program would be established to provide some financial assistance to residents or groups that might be interested in preserving open space. He said the concept of the program would be similar to a grant; where a person would apply to the City and request funds for an trail easement, acquisition of a piece of land or placing a conservation easement over their property. The Council would have the discretion of approving or denying any requests. Additionally, the Council could also use the funds directly to purchase trail easements and/or open space. He stated there are two possible options to consider if the Council decides to implement this program. The first would be the creation a brand new fund, in addition to the three existing funds. The second would be an inclusion of a new line item in the existing Land Donation Fund (Fund 8). He explained staff has concerns with creating a new fund from an administration and accounting stand point. He said should the Council desire to create a method to set aside funds specifically designated for the acquisition of open space, staff believes the best option would be to create a line item in the existing Fund 8. He mentioned there are a number of ways to fund the program. He also stated staff has concerns with transferring money from the General Fund at this time, due to the uncertainties with property taxes in the coming years. Staff would recommend dedicating a portion of the Specific Ownership Tax collected in Fund 30 and would also recommend increasing the City's out-reach to its residents in explaining what residents can do now to make donations to the City.

Councilmember Brown asked if the monies listed on page three were encumbered in any way.

Mr. Ensey answered the Council could use each of the three funds for the acquisition of open space, but mentioned Fund 7 and Fund 14 have mandated limitations.

Councilmember Roswell mentioned any of the funds could be renamed. He asked Mr. Ensey if all the money paid to South Suburban has come from Fund 30.

Mr. Ensey confirmed all the monies paid to South Suburban came from Fund 30, which was created after the exclusion from South Suburban.

Mr. Fellman stated the monies come out of Fund 30 because a previous Council determined that is where the money should come from, but nothing legally obligates the City to use that money for anything specific.

Mayor Wozniak asked Mr. Fellman to check and make sure that is the case. He commended Councilmembers LaMair and VanderWerf for bringing the program forward asked the Council their thoughts.

Councilmember LaMair stated the Council needs to let the community know they are committed to acquiring open space.

Mayor Wozniak stated the Council would encourage additional donations for the fund. He added Councilmember Stewart's suggestion of changing the name of a fund to the list of options in the staff memo.

Councilmember Stewart suggested a matching fund program.

Councilmember LaMair suggested the Council discuss the program itself, have it written up and then talk about the funding. She also suggested bringing an ordinance, modifying the name of the fund, at the next meeting and also removing maintenance and other recreation amenities verbiage from the fund description.

Mayor Wozniak believes the Council could approve the program with a resolution. He suggested, at a minimum, the Council get an established resolution to rename a fund and then work on adopting a funding mechanism.

Councilmember LaMair asked if an ordinance would be required if the Council wanted to change the regulations and rules for the program.

Councilmember VanderWerf explained the concept behind a matching fund would be if the applicants came before the Council with a proposal stating they would be willing to donate a specific amount of money to purchase a piece of property, it would be matched by the City.

Mayor Wozniak asked if it would preclude the City from purchasing its own property.

Councilmember VanderWerf stated it would not.

Councilmember LaMair suggested keeping the verbiage flexible by adding: included but not limited to. She also stated the idea behind the program is not necessarily to purchase a bunch of open space the City can't maintain, but to keep it as open as possible.

Mayor Wozniak stated he would not be opposed to asking the voters if they would like to raise taxes and earmark it for open space.

Councilmember VanderWerf stated she would like to see the Council make a substantive commitment to this type of fund, get publicity and also bring it to the voters.

Mayor Wozniak asked the Council to think about what their position would be on bringing the idea to the voters.

Councilmember Griffin inquired about a transfer fee on real estate transactions.

Mayor Wozniak stated the City can't implement a transfer fee because it is part of TABOR.

Mr. Fellman stated that fees on real estate transactions are strictly prohibited.

Councilmember LaMair said it could be difficult to go the voters to spend money on open space.

Councilmember Stewart suggested both items be put on a ballot. He said he would advocate both once South Suburban was reconciled.

Councilmember LaMair suggested moving both issues forward slowly.

Councilmember VanderWerf mentioned Chapter 4 of the Blue Ribbon Panel recommendation provided an analysis and lists creative ways to fund a program of this nature. She suggested the Council review this chapter before they discuss funding for this program.

Councilmember Griffin asked if the Specific Ownership Tax would be increased.

Mr. Ensey stated it would not be increased; a portion of the tax would be transferred to this specific account.

Councilmember Stewart suggested the City could match any funds donated to this program.

Mayor Wozniak stated he likes the idea of the City matching donations.

Councilmember VanderWerf said it may be hard to bring this forward to the voters because the Council does not have a specific property in mind.

Councilmember LaMair stated she has found in her work with the Land Preserve that it is easier to get donations if there is a specific project attached. She stated if the Council were to put a significant amount in the fund, it will show they are committed and other projects will come forward.

Mayor Wozniak asked the Council what their thoughts were regarding the Specific Ownership Tax option.

Councilmember Roswell stated its good first a step.

Mayor Wozniak stated he loves the idea. He asked that the program be drafted and the Council consider a funding mechanism.

Village Center RFP Distribution List

Mr. Ensey advised the Council that staff has made a list of the potential people to send the RFP list to and asked if they had any additions.

Councilmember LaMair suggested two other names to add to the list and asked how the RFP's will be evaluated and when they expect them to come in.

Mr. Ensey stated he is going to work with Councilor Brown on drafting the RFP. He stated he would e-mail the Council the last page that includes all the deadlines.

Councilmember Brown stated he is looking for people who demonstrate an interest and would encourage them to review the history of the project.

Departmental Monthly Reports

Mr. Ensey mentioned copies of the departmental monthly reports were provided to the Council in their packets.

Transfer of Funds to Wells Fargo

Finance Director Karen Proctor advised the Council that in 2008 they approved an investment policy that gave the Finance Director the responsibility for conducting investment transactions. She stated that staff will be transferring \$5 million dollars from Colotrust to a Wells Fargo Money Market account. She said it would add more diversity to the City's investment portfolio and meets all the requirements stated in the revised investment policy. She also mentioned staff will be working with Councilmember Griffin on more investments options in the next month or two.

Mayor Wozniak asked if there is a local contact from Wells Fargo.

Ms. Proctor stated she works with a representative that is based out of Highlands Ranch.

Mayor Wozniak stated it is a positive rate and asked where the rest of the general funds would be.

Ms. Proctor answered they would remain in CSafe and Colotrust.

Councilmember Brown asked Ms. Proctor if she was comfortable with the City's money remaining with CSafe given their recent performance.

Ms. Proctor answered she was because the City's money is guaranteed.

Councilmember Griffin stated he and Ms. Proctor would look deeper into Colotrust and Csafe to see what their practices are.

Mayor Wozniak stated he is comfortable with Ms. Proctor's recommendation.

Councilmember Stewart stated he is also comfortable and asked Ms. Proctor to provide more investment ideas to the Council.

Financial Update (January/February 2009)

Ms. Proctor advised the Council that the 2008 financial audit is not yet complete; therefore staff has not been able to close out the year. She gave the Council an overview through the end of February. She stated the City is at about 13% of budgeted revenue and about 14% of budgeted expenditures. She said expenses are inflated because the City pays a full year of insurance for workers compensation and property casualty insurance at the beginning of the year. She also mentioned property tax receipts are less than collections of property taxes at this point last year. She spoke with Arapahoe County and they have found the residents are waiting longer to pay their property taxes. She stated staff believes the City is in track to meet budget.

City Attorney

Mr. Fellman mentioned he previously advised the Council on Senate Bill 09-180, concerning mandatory collective bargaining for public safety. He has been told it will go before a full Senate vote and if the votes hold up, it will go down. This bill would have had a negative financial impact on the City. Mr. Fellman congratulated the Mayor on being recognized as a Super Lawyer.

Members of City Council

Councilmember Brown had nothing to report.

Councilmember VanderWerf mentioned the trail parallel to Big Dry Creek is complete. She stated the Land Preserve reception was great and there was a big attendance. She said the last PTRC meeting was cancelled due to lack of quorum and the Residential Development Standards Committee is scheduling their first public comment meeting on May 4th.

Councilmember Roswell had nothing to report.

Councilmember Stewart had nothing to report.

Councilmember LaMair stated she will attend a DRCOG meeting tomorrow. She also invited Councilmember Brown to cover a meeting if his schedule permits.

Councilmember Griffin mentioned there were four houses listed in foreclosure in the Villager and the Council may want to keep an eye on the legal listings from a property tax collection stand point. He also mentioned he will be attending the next Board of Adjustment and Appeals in April if there is a quorum.

Mayor's Report

Mayor Wozniak stated at the last Metro Mayors meeting they discussed RTD and mentioned there will be a tax increase on the next ballot so the RTD light rail project can be completed. He stated he will be meeting with the other party in the Crescent Development litigation and will give a report on the meeting at the next Council meeting. He also stated he and Councilmember Stewart will have a meeting set up with the South Suburban principals.

Members of City Boards and Commissions

There were no reports.

EXECUTIVE SESSION

Councilor Stewart moved, seconded by Councilor LaMair, to move into executive session for the purpose of receiving legal advice from the City Attorney concerning a pending legal matter under the provisions of C.R.S. § 24-6-402(4)(b), concerning a prior City land use approval and further for the purpose of receiving legal advice from the City Attorney concerning a pending legal matter pursuant C.R.S § 24-6-402(4)(b) and upon completion of the executive session immediately adjourning.

The following votes were recorded:

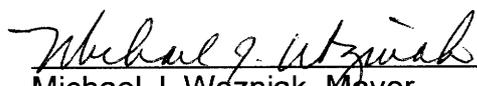
Scott Roswell	yes
Harriet LaMair	yes
Alex Brown	yes
Mark Griffin	yes
Russell Stewart	yes
Klasina VanderWerf	yes

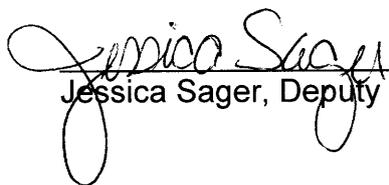
The motion passed unanimously.

Council adjourned to an Executive Session at 9:39 p.m.

The Executive Session adjourned at 9:54 p.m.

The meeting adjourned at 9:54 p.m.


Michael J. Wozniak, Mayor


Jessica Sager, Deputy City Clerk