

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, April 7, 2009 at 6:30 p.m.
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:35 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 Deputy City Clerk Jessica Sager.

Absent: None

AUDIENCE PARTICIPATION PERIOD

Jeff Welborn
4901 South Fairfax Street
Littleton, CO

Mr. Jeff Welborn thanked the Council for all their efforts. He requested the City adopt a policy to assure that the City will not sell or trade City land to accommodate private use for development or vacate a trail or easement for private use for development. He stated the Master Plan is grounded with clear public support for low density development and preservation of open areas and vistas. He said the next step of the Master Plan is to define what the rest of the process will be and part of that process should include an inventory of what the City has and what will be done with it. He stated the policy shouldn't be defined by a reaction to specific circumstances.

Mayor Wozniak stated the City has altered trails and in certain circumstances, and an altered trail can be a benefit to the City. He said including the verbiage "the City shall not" in a policy causes some concern because there could be certain circumstances where the Parks, Trails and Recreation Commission (PTRC) may consider altering a trail a benefit to the City.

Mr. Welborn said the verbiage could be changed to give the City some flexibility. He stated the City needs a context in which to review such requests and that context needs to be defined by a policy. He mentioned when he was on the Board of Adjustment and Appeals (BOAA), they denied most requests and it put the burden on the applicant to demonstrate their hardship case.

CONSENT AGENDA

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

- a. Approval of Minutes – March 17, 2009
- b. Expenditure of Funds and Contract for Services-Quality Contracting Inc. (Concrete Replacement)
- c. Expenditure of Funds and Contract for Services-Premier Paving Inc. (Asphalt Overlay)

- d. Expenditure of Funds and Contract for Services-A-1 Chipseal Company (Chip Seal)
- e. Expenditure of Funds and Contract for Services-Precise Striping LLC (Crack Seal)

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:

Resolution 4, Series 2009; establishing the Catherine H. Anderson Open Space Program

Councilor Harriet LaMair stated she would like to remove the item because she and City Manager Eric Ensey have additional work to do on the resolution. She mentioned Mr. Ensey is going to check with Greenwood Village to see how they have structured their allocation.

Councilor LaMair moved, seconded by Councilor Brown, to table Resolution 4, Series 2009; establishing the Catherine H. Anderson Open Space Program until the May 5th Council meeting.

The motion passed unanimously.

DISCUSSION – Subdivision Land Dedication Requirements

Mr. Ensey advised the Council that Councilor Stewart has drafted a revised Council Bill for further discussion. He stated the revised bill proposes increasing the donation requirement to 10% based off the donation of an easement.

Councilor Russell Stewart stated that after listening to some of the comments made by PTRC at the last meeting, generally it has been the practice to accept an easement donation instead of the required fee simple donation, and the easement is generally a lesser value amount than fee simple. He stated in revising the bill, he intended a compromise that would reduce the burden on landowners while providing additional open space by implementing a 10% easement requirement in lieu of fee simple mandate. The additional language in the proposal gives the City and the landowner flexibility and authority to agree on something other than a 10% easement, consistent Master Plan.

Councilor Klasina VanderWerf asked if “*public* easement” should be included in the sentence “shall convey to the City an easement, trail, park, etc”.

Councilor Stewart stated he used language from the existing code, and the suggestion was a good one.

Councilor VanderWerf asked if the phrase "not less than 10%" allows for the flexibility of the combination of land donation and cash-in-lieu.

Councilor Stewart answered the language sets in place a minimum 10% open space easement, but does not exclude a combination of land donation and cash-in-lieu. He stated the bill doesn't tie people to a pre-made formula.

Councilor VanderWerf asked to add "Whereas the park and trail system is what is unique about Cherry Hills Village and is regarded as part of what comprises the character of the Cherry Hills Village".

Councilor Alex Brown complimented Councilor Stewart on drafting the bill. He asked the date the \$5,500 per lot fee was established in the existing code.

Mr. Ensey stated the City could do some research on past ordinances to find the date.

Councilor LaMair asked how the City has taken easements and fee simple conveyances of land in the past and what the history has been on reducing the land able to be developed.

Mr. Ensey stated staff can provide that information to the Council at the next meeting.

Councilor LaMair questioned if an easement could reduce the amount of land able to be developed.

Councilor Stewart answered the easement dedication requirement does not affect the amount of land able to be developed. He stated the land able to be developed is based off gross acreage.

Mayor Wozniak questioned if an easement crosses a lot, if it would reduce the amount of land able to be developed.

City Attorney Ken Fellman stated he would provide that information to the Council at the next meeting.

Mayor Wozniak opened public comment.

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

Ms. Nicole Gorham commented she was appearing on behalf of Mr. George Calkins with follow-up comments regarding the proposed bill. She stated at the last meeting the discussion was held on how the proposed ordinance would be impacted if the City required dedication of an easement instead of a fee simple interest. She said requiring a property owner to dedicate 10% of their land in the form of an easement or cash-in-lieu does not satisfy the Nollan/Dolan issue. She stated the City is still responsible for proving the essential nexus and the rough proportionality test. She stated that she believed there would not be an essential nexus between the 10% easement and the City's interest in the acquisition of open space, parks and trails. She stated that even though the dedication of an easement would allow the property owner to maintain ownership of the property, it still deprives them of the full use of the property. She reiterated it is unfair to place the burden of preserving open space on a small number of

property owners. She requested the Council deny the PTRC's request to increase the land dedication requirement from 7.5% to 10%.

Councilor Stewart asked Ms. Gorham if she believes the existing land dedication requirement is unconstitutional.

Ms. Gorham answered the current code could pose an issue even though it hasn't been challenged. She stated if the required percentage is in excess and the impact of development does not require the same percentage, then the excess percentage isn't justified.

Mayor Wozniak inquired how the rough proportionality test works under the Nollan/Dolan cases and if the required percentage would have to be related to the impact of the subdivision.

Ms. Gorham answered there is not a specific mathematical equation.

Mayor Wozniak asked if the burden of rough proportionality is on the municipality.

Ms. Gorham answered it is on the impact created to the public.

Mr. Fellman asked if Ms. Gorham believes there is a nexus on the current required 7.5% on subdivisions.

Ms. Gorham answered there is no essential nexus between uniform standard and the legitimate interest that is being stated unless there is a connection. She stated unless the property is developed, she cannot make a definitive statement one way or the other and it would also depend on how the City used the money obtained from the subdivision.

Mr. Fellman asked if in the event the City does not amend the current ordinance, would Mr. Caulkins challenge the current required percentage.

Ms. Gorham answered the time limitation for the current percentage has already expired, but if the ordinance was changed, it would give Mr. Caulkins another opportunity to challenge it.

Mr. Fellman asked Ms. Gorham if, in some cases, a standard percentage across the board would meet constitutional muster.

Ms. Gorham answered that it may meet constitutional muster, but it hasn't been challenged. She stated it is hard to compare Cherry Hills Village to another jurisdiction because of their open space requirements and, in this instance, this ordinance will only affect a small number of people.

Dan Conway
THK Associates
3982 South Holly Street
Cherry Hills Village, CO

Mr. Dan Conway advised the Council the standard requirement for open space is to preserve 10 acres per 1000 people. He stated that requiring 10% would be 10 times the national standard. He also stated the standard requirement for the surrounding counties follows the 10 acres per 1000 people standard.

Mr. Welborn suggested the Council approve a minimum range where the City could select a fallback. He disagreed with Mr. Conway and stated Cherry Hills Village has a much lower density than the national standard and a different value on open space.

Mayor Wozniak stated the Council has been cautioned by the City Attorney against providing a range because it could appear the Council is being arbitrary and capricious.

Mary Scott
4501 South Monroe Lane
Cherry Hills Village, CO

Ms. Mary Scott advised the Council that she was opposed to increasing the dedication requirement to 10%. She feels it is unfair for the few properties left to bear the entire burden.

Mayor Wozniak closed public comment.

Councilor Brown stated he likes the direction Councilor Stewart's new ordinance is going, but would like to take some time to study the history of the fee. He stated he has seen similar fees imposed on a per acre basis and would like time to consider that as well.

Councilor VanderWerf asked Mr. Fellman if the City should avoid approving a percentage range.

Mr. Fellman answered it becomes difficult because Council members and staff change and future Councils run the risk of subsequent property owners saying the percentage is unfair. He stated open discretion would expose the City to more claims and it would cost the City more to proceed in that direction.

Councilor VanderWerf stated she is dismayed with how the relationship between the City and the applicant has been portrayed. She said open space is a benefit to the subdivided property. She views the 10% requirement as a guideline and believes the City has the discretion to request land and cash-in-lieu.

Councilor Scott Roswell stated he wants to better understand the issue and wants to be sure the increase has been thoroughly discussed.

Councilor Stewart stated the value to the community of open space and trails is real and substantial, but difficult to quantify.

Councilor LaMair believes there are numerous ways the City could justify a nexus. She stated the Council should really consider the flexibility that Councilor Stewart has added to his amended draft. She also stated given the number of parcels of property left to develop, the Council needs that flexibility and the amended draft seems like a good approach.

Councilor Mark Griffin stated Councilor Stewart's draft is reasonable alternative. He said Cherry Hills Village is unique and may not conform to the standard nexus. He stated the per acre land value is higher because the residents have preserved open space. He also stated with the few parcels left, regardless of the decision the Council makes, there will be extensive negotiations on how the land will be used so it will probably be used as a guideline.

Mayor Wozniak stated Councilor Stewart's ordinance will give the flexibility that he and Councilor LaMair requested at the last meeting. He stated he wished the relationship

between the City and the applicants was not adversarial, but that is not always the case as people have competing goals. He is not going to put this item on the agenda for a few weeks to give the Council time to consider the options. He wants to balance the rights of the citizens and also wants to maintain flexibility. He tabled the item and will bring it back when the Council is ready to make a decision.

UNFINISHED 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 (final reading)

Public Works Director Jay Goldie advised the Council there have not been any corrections to Council Bill 03-2009 since it was approved on first reading at the March 17, 2009 Council meeting.

Councilor LaMair moved, seconded by Councilor Griffin, to approve on second and final 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.

NEW BUSINESS

Council Bill 4, Series 2009; a bill for an ordinance amending Chapter 2 of the Municipal Code, concerning Administration & Personnel, by amending Section 2-9-20, concerning the definition of "Personal Interest" relating to the City's Code of Ethics (first reading)

Mr. Ensey advised the Council the proposed bill will amend the definition of personal interest. He stated the way the code is currently written; it is possible for someone to argue that no member on the Council could act on amendments to zoning regulations or any other regulation that could impact the value of the property, even though such regulation may be applicable to the entire community.

Councilor Stewart stated the current ethics code was modeled after another jurisdiction that has since amended some of the definitions. He said it was never the intent of the Council to preclude members from debating and adopting ordinances affecting zoning and height issues. He mentioned if a Council member had a direct financial interest regarding a zoning issue, they would have to withdraw, but the proposed language allows Council to debate matters of general application that have only an indirect effect of property values.

Mayor Wozniak stated the Council needs to do their job by looking at the City as a whole and that type of issue would have an impact on all of them.

Councilor Stewart moved, seconded by Councilor VanderWerf, to approve the Council Bill 4, Series 2009; a bill for an ordinance amending Chapter 2 of the Municipal Code, concerning Administration & Personnel, by amending Section 2-9-20; concerning the definition of "Personal Interest" relating to the City's Code of Ethics as outlined in the staff memorandum dated April 7, 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 04-2009: 6 ayes. 0 nays. The motion carried.

REPORTS

Mayor's Report

Mayor Wozniak advised the Council he has attended two Metro Mayor's meetings since the last Council meeting. He stated they will be getting a packet on the census soon and it is very important to get a good census count. He said he has gotten some calls from architecture firms with questions regarding the RFP. He stated he has also gotten some calls and letters from residents regarding the Mooney property. He mentioned he will be absent from the May 19th City Council meeting and that City Attorney Ken Fellman and Deputy City Attorney Nancy Cornish Rogers would also be absent, so that meeting may be cancelled. He said he received a letter from the Craig Hospital regarding their student driving vans. He stated the Police Department has received some phone calls regarding a slow moving van in their neighborhood and a Cherry Hills Village officer recently stopped one of the vans. He advised the Council the vans are used to help victims of a stroke learn to drive again. He noted the vans are clearly marked with student driver Craig Hospital on three sides.

Councilor VanderWerf suggested staff write an article about the vans and include it in the next edition of the Village Crier.

Members of City Council

Councilor Griffin advised the Council he attended his first Board of Adjustment and Appeals (BOAA) meeting and was surprised with how the applicants seem to ignore the 9 criteria the board must follow. He stated the City should explore better ways to ensure that applicants come prepared to address the criteria.

Mayor Wozniak stated he was Chair of the BOAA for 5 years and some people were better prepared than others. He said the ordinance is intentionally a high standard, but some variances have been granted even though it is difficult to make a case. He believes staff does a good job advising the applicants what the requirements are.

Councilor Griffin agreed that staff did an excellent job analyzing the criteria; whether they were affirmative or negative.

Councilor LaMair advised the Council she attended another DRCOG meeting and learned they are going to cut the higher education budget. She mentioned she will be attending the next PTRC meeting on behalf of Councilor Vanderwerf. She also stated

Cherry Hills Village resident Helen Freemyer submitted a letter to request the Council approve an off leash dog park.

Mayor Wozniak advised the Council he has had two complaints regarding the enforcement of the off leash rule on Kent Denver. He mentioned he would be concerned about the liability for the City at an off leash park.

Councilor VanderWerf stated that Woodie Hollow was once used as an off leash park and it would be interesting to found out more about that.

Mayor Wozniak stated he would like to refer the subject to the PTRC for further review.

Councilor Stewart stated he has real reservations with an off leash park.

Councilor LaMair advised the Council that City Clerk Melissa Formby gave birth to a baby girl, Ruthann Formby, on March 19th.

Councilor Stewart advised the Council the South Suburban oral arguments will be on April 21st. He also mentioned there is an open position on the PTRC with the resignation of Nancy McGrath.

Mayor Wozniak stated he would like to delegate a group to interview applicants.

Councilor LaMair and Councilor Roswell both volunteered to interview the applicants.

Councilor Roswell stated he has received several comments on coyotes. He mentioned he will be attending the next Residential Standards Development Committee (RDSC) meeting.

Councilor VanderWerf stated the first public forum for the RDSC meeting will be on May 4th at 6:00 p.m.

Councilor Brown advised the Council there have been several inquiries from architectural firms in response to the RFP for the new Village Center. He stated the same committee that drafted the RFP will begin drafting a grading and review system. He mentioned the RFP's are due by April 15th and they are trying to have a system in place before then.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Coyote Plan

Mr. Ensey advised the Council that staff has drafted a coyote management plan based on other similar projects from other communities and the Colorado Division of Wildlife. He stated the intent was to give the Council time to review the plan and possibly hold a study session at the next meeting to discuss it further.

Mayor Wozniak suggested adding it to the next agenda as a resolution instead of holding another study session.

Councilor Roswell stated a study is not necessary and is not sure the Council would accomplish any more during a study session than they would having a discussion on the resolution.

Councilor LaMair suggested adopting an ordinance outlawing the feeding of coyotes.

Mayor Wozniak suggested the Council work on adopting the policy first and then review other codes that might need some modifications.

Blue Ribbon Panel

Mr. Ensey stated at the request of Councilor LaMair, he included Chapter 4 of the Blue Ribbon Panel report for the Council's review.

Role of City Council

Mr. Fellman stated Councilor Stewart raised some concerns about the Council's role in the Master Plan process and asked if the City could amend the ordinance which would give them more control in the approval process. He stated one option would be the Planning and Zoning Commission make a recommendation to Council, but the Council would ultimately have the authority to adopt or make changes to the Master Plan. He has spoken to other municipalities and has discovered they have similarly amended their ordinances.

Councilor Stewart stated the way the current code is written, the Council only approve or disapprove, and not change, the Master Plan prepared by the Planning and Zoning Commission. He stated drafting an ordinance would permit future Councils to "make" as well as "approve" revised Master Plans.

HOA Notification

Mr. Rob Zuccaro stated at the request of Councilor Brown, staff has begun investigating a procedure to notify homeowner's associations when building permit applications are before the City for review. He stated staff is recommending the application provide an affidavit to the City to ensure the HOA has been notified.

Mayor Wozniak asked if the application would be deemed incomplete if the affidavit was not provided.

Mr. Zuccaro answered it would be incomplete.

Mayor Wozniak asked what type of permits the applicant would have to provide the affidavit for.

Mr. Ensey stated the type of permit would require more discussion with the City Attorney.

Mr. Zuccaro stated staff has also recommended a process where the HOA would register with the City and if a permit has been applied for that falls within their boundary, they would be notified by the City.

Mr. Ensey stated the City currently stamps the applicant's set of plans that advises them to contact the HOA before they begin construction.

Mayor Wozniak stated he likes the idea of the applicant providing an affidavit and it wouldn't put undue burden on an applicant.

Councilor Brown stated the process he had in mind would put the burden on the HOA to register with the City and make sure it is updated on a regular basis. He stated cities are in the business of providing notice and the scope of applicability needs to be studied and narrowed as necessary. He said the notice would notify members of the public that are interested and if they don't register with the City, they wouldn't be able to access the information. He stated there is no incentive for the applicant to provide an affidavit to the City and he is not sure that is a viable approach.

Mr. Zuccaro suggested the HOA's could register with the City and staff could e-mail a bi-weekly permit list to the contact person listed for the HOA. Council concurred that this would be a good approach.

City Attorney

There was no report.

EXECUTIVE SESSION

Councilor Stewart moved, seconded by Councilor Roswell, 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 C.R.S. § 24-6-402(4)(b), concerning a prior land use approval and further for receiving legal advice concerning the South Suburban litigation as authorized by C.R.S. § 24-6-402(4)(b)&(e) and further for the purpose of instructing negotiators pursuant to the provisions C.R.S § 24-6-402(4)(b)&(e), regarding a real estate issue and immediately upon completion of the executive session to adjourn.

The following votes were recorded:

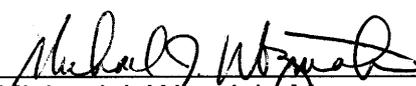
Scott Roswell	yes
Harriet LaMair	yes
Alex Brown	yes
Mark Griffin	yes
Russell Stewart	yes
Klasina VanderWerf	yes

The motion passed unanimously.

Council adjourned to an Executive Session at 8:52 p.m.

The Executive Session adjourned at 9:31 p.m.

The meeting adjourned at 9:31 p.m.



Michael J. Wozniak, Mayor



Jessica Sager, Deputy City Clerk