

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, April 21, 2009 at 6:30 p.m.  
At the Village Center

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

**ROLL CALL**

Councilors Alex Brown, Harriet LaMair, 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, Lieutenant Jody Sansing, Public Works Director Jay Goldie, Planning Manager Rob Zuccaro, and Deputy City Clerk Jessica Sager.

Absent: Councilor Klasina VanderWerf

**AUDIENCE PARTICIPATION PERIOD**

Patrice Casky  
45 Glenmoor Court  
Cherry Hills Village, CO

Ms. Patrice Casky stated she is concerned with the coyotes in Cherry Hills Village. She is worried the coyotes are out during the day, they are growing accustomed to humans and are acting more like pets.

Jim Rubin  
5 Random Road  
Cherry Hills Village, CO

Mr. Jim Rubin stated he was in favor of Council Bill 5 with one exception. The Council Bill would allow a homeowner to stabilize a bank in the floodplain on their property without a public hearing, but requires the property owner to give certified notice of the stabilization, to all adjacent home owners, within 15 days. The way the bill is written, an adjacent property owner can request the Planning and Zoning Commission review the application, which would require a public hearing and the hardship criteria would apply. This would empower any neighbor to make the process more difficult and expensive. He requested the Council remove that one paragraph and give the power to the floodplain administrator and staff.

**CONSENT AGENDA**

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

- a. Approval of Minutes – April 7, 2009
- d. Expenditure of Funds – Police Department SMART (Radar) Trailer

The following votes were recorded:

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

Vote on the Consent Agenda: 5 ayes. 0 nays. The motion carried.

### **ITEMS REMOVED FROM CONSENT AGENDA**

The following items were removed from the Consent Agenda:

#### **Expenditure of Funds and Contract for Services-Farnsworth Group Inc. (Sanitary sewer line survey, easement and GIS work)**

Mr. Jay Goldie advised the Council staff erred by not including a sole source clause in the contract.

He stated there are a number of gaps in easements that need to be researched and fixed before the project can move forward. He said the City is currently operating on addresses and not physical boundaries, but this project will create a GIS map of all boundaries.

City Attorney Ken Fellman stated Amendment 54 is still pending and it was an oversight not including that language, but the Council has received a new handout that incorporates the sole source verbiage.

Councilor Russell Stewart moved, seconded by Councilor Alex Brown, to approve the Contract for Services for the Farnsworth Group, Inc not to exceed \$24,500.00 on the condition the additional language acceptable by staff and the City Attorney is included and authorize the Mayor to sign the contract.

The motion passed unanimously.

#### **Expenditure of Funds – Vehicle for Code Enforcement**

Chief John Patterson advised the Council out of maintenance concerns on the existing Code Enforcement vehicle. He stated staff researched two different vehicles and is recommending Council approve the Ford Escape hybrid. He mentioned it is more expensive, but it will pay for itself in time. He stated he wanted to try a hybrid with the Code Officers to see what kind of maintenance it would need.

Mayor Mike Wozniak asked if the vehicle was included in the budget.

Chief Patterson answered that it was not, but there are available funds in the Public Works capital budget for the purchase.

Mayor Wozniak asked what project Mr. Goldie would have funded with the monies.

Mr. Goldie answered the funds would have completed a concrete project in the fall.

Councilor Scott Roswell asked if staff reviewed a lease option for the hybrid and mentioned the rates are low so it may be something they could explore.

Councilor Mark Griffin said a lease option may not apply in this case because the City would not be able to meet the mileage requirement.

Chief Patterson estimated the vehicle will accrue around 10,000 miles per year.

Councilor Griffin mentioned the paperwork Chief Patterson submitted to the Council mentions an additional warranty on hybrids.

Chief Patterson said the primary concern he has is the battery because they are very expensive to replace.

Councilor Griffin stated it appeared to be covered in the additional warranty.

Councilor LaMair moved, seconded by Councilor Scott Roswell, to authorize the Expenditure of Funds to purchase the Ford Escape Hybrid vehicle subject to exploring relevant options of leasing.

The motion passed unanimously.

### **UNFINISHED 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 (final reading)

Mr. Eric Ensey presented Council Bill 4 on second and final reading. He stated the proposed bill would amend the definition of personal interest and would allow the Council to make decisions on zoning and setback issues that may have a direct impact on their property values. He mentioned there have not been any changes since the first reading.

Councilor Russell Stewart moved, seconded by Councilor Scott Roswell, to approve on second and final reading 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.

The following votes were recorded:

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

Vote on the Council Bill 04-2009: 5 ayes. 0 nays. The motion carried.

### **NEW BUSINESS**

Resolution 5, Series 2009; a resolution adopting a management plan for responding to conflicts with coyotes.

Lieutenant Jody Sansing advised the Council that during the past year there has been increasing concern over conflicts with coyotes. He stated he and Animal Control Officer, Michelle Edwardson, have spent several months putting the coyote management plan together. He said the plan was constructed using other plans from several different municipalities in the area. He believes there is a good balance between public safety and the native ecology in the area and said public safety is their primary concern. He stated the management plan is based on educating the public on how to live with coyotes.

Mayor Wozniak commented there is a provision for lethal means included in the management plan and mentioned that he is not comfortable with citizens using these means. He asked under what circumstances lethal control would be used.

Ms. Michelle Edwardson answered it would only be used when a coyote has attacked or shown aggression towards a human. She stated residents will need to call 911 immediately and an officer will respond to investigate. She also stated the Division of Wildlife (DOW) would be notified within 24 hours and they will also perform an investigation of the incident before any kind of lethal control would be performed.

Lieutenant Sansing stated a big concern with lethal control is determining which coyote showed aggression. He said it is very hard to identify the coyotes.

Ms. Edwardson mentioned the coyote management plan being proposed does not include lethal control when a coyote shows aggression towards pets.

Officer Melanie Kaknes, from the Department of Wildlife, mentioned residents can contact the DOW 24 hours a day to report an incident.

Councilor LaMair asked if the Police Department has received numerous calls regarding aggressive behavior toward people.

Ms. Edwardson responded that in many instances it is the perception of the resident. She mentioned there have not been any close encounters, but some people may perceive there is an actual threat.

Mayor Wozniak stated the management plan is a good first step and he appreciates the hard work. He also stated the City should take a measured response now and, if needed, the plan can always be improved.

Councilor Alex Brown stated he attended a DOW conference and found it very useful. He commented the City is never going to eliminate the coyotes and they will always be part of the community. He stated he likes that the management plan educates residents. He asked how developed their understanding is on coyotes den locations.

Ms. Edwardson replied she and Officer Kaknes have looked for active dens. She said they have found more than five and one was pretty close to the High Line Canal so they will keep a close eye on it. She stated they will put signs in the area so residents will be more aware there is an active den. She also stated Sergeant Jake Campbell is going to help her create a computer generated map to better track all coyote sightings.

Councilor Griffin asked if there is a specific person the residents can call to report a coyote incident.

Ms. Edwardson replied the calls she has received in the past have never asked her to respond. She stated the residents seem to wait a few days before reporting an incident and at that point it is impossible to track down the coyote. She said she will respond if she's on duty and if not, an officer will respond.

Councilor Griffin stated the coyote management plan calls for aggressive hazing and asked if the Police Department carries paint ball guns.

Lieutenant Sansing answered they have recently purchased one for this reason and it has proven to be very effective.

Ms. Edwardson stated the DOW is also in the process of training volunteers on aggressive hazing.

Councilor Stewart believes this is a good policy. He indicated that coyotes will always be around as long as there is food, and the more food, the more coyotes will expand their litters and dens. Residents should eliminate all food sources and not feed or befriend them.

Officer Kaknes stated the coyotes have adapted to the urban area and isn't convinced there has been an increase in population. Although she said there haven't been any studies done to determine this. She also said the residents have to re-establish a natural fear of humans.

Ms. Edwardson stated she doesn't believe the population has increased since she has been employed as the Animal Control Officer. She stated everyone needs to help make the coyotes uncomfortable.

Councilor LaMair asked if Ms. Edwardson envisions teaching the elementary children how to deal with coyotes.

Ms. Edwardson answered the City of Aurora is currently putting together a classroom presentation for elementary schools and has indicated they will give her a copy when they are done.

Councilor Alex Brown moved, seconded by Councilor Mark Griffin, to approve Resolution 5, Series 2009; a resolution adopting a management plan for responses to conflicts with coyotes.

The following votes were recorded:

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

Vote on the Resolution 5, Series 2009: 5 ayes. 0 nays. The motion carried.

Council Bill 5, Series 2009; a bill for an ordinance amending Chapter 16 of the Municipal Code, concerning Zoning, by amending Section 16-17-60, concerning Procedure for Development relating to bank stabilization within the floodplain (first reading)

Mr. Rob Zuccaro stated the proposed bill would add review procedures allowing for administrative review exclusively for bank stabilization. He advised the Council the current code requires a full public hearing for this type of application. Staff recommends an expedited review procedure be considered. He said the applicants would have to meet design criteria and would have to provide an engineer analysis showing bank stabilization would not alter the floodplain boundary or increase base flood elevations on properties down stream. The proposed procedure would require the applicant to provide written notice to all adjacent property owners. He noted these procedures were modeled after the wireless code procedures. He mentioned the Planning and Zoning Commission (P&Z) reviewed the procedures and recommended approval to City Council.

Councilor LaMair questioned if the P&Z's recommendation was unanimous.

Mr. Zuccaro stated they reviewed the procedures during a study session and indicated there wasn't a formal vote taken.

Councilor LaMair questioned if there was a definition of bank stabilization or a requirement to show a demonstrated need. She is concerned approving the procedures would allow for the introduction of plants that aren't native to the area and questioned if the environment would be reduced for wildlife.

Mr. Zuccaro answered Chapter 12 of the Arapahoe County Stormwater plan lists some design criteria and provides a lot of options. He stated staff's recommendation does not list a specific definition of bank stabilization because it is spelled out in Chapter 12.

Councilor LaMair asked if staff would be responsible for the follow-up to ensure the applicant followed the definition in Chapter 12.

Mr. Zuccaro answered it would require certification from the developer's engineer that it was constructed in compliance with the hydraulic analysis and the City Engineer would verify.

Troy Carmann  
ICON Engineering (City Engineer)

Mr. Troy Carmann stated the technical criteria isn't something an engineer would typically review.

Mr. Zuccaro stated in considering all possibilities of bank stabilization staff added subsection 5 to the procedures. It allows the floodplain administrator to recommend review of the application to the P&Z and City Council.

Mayor Wozniak stated he is comfortable leaving discretion to staff provided subsection 5 is included in the procedures. He questioned what an adjacent homeowner would be. He believes an adjacent homeowner would have to have a legitimate protest before the applicant would go through the full public hearing. He stated he is not sure about subsection 4, but reiterated he likes subsection 5.

Councilor Brown stated he is in favor of putting discretion at the administration level. He asked if the City could allow someone to appeal the floodplain administrator's decision rather than have the applicant go through the entire public hearing process.

Councilor Roswell stated he agrees with Councilor Brown, but suggested the appeal go before the Board of Adjustment and Appeals (BOAA) instead of the City Council.

Councilor LaMair asked if Mr. Zuccaro researched how other communities handle that issue.

Mr. Zuccaro stated the majority of the cities reviewed by staff allow for administrative approval and mentioned the City Manager would be the floodplain administrator.

Mayor Wozniak stated if an applicant can meet the City's criteria, he is in favor of giving the discretion to staff. He believes bank stabilization is something the City should encourage and it should be easy for an applicant to pursue.

Councilor Stewart said he strongly favors bank stabilization efforts and believes the City's regulations and policies should encourage residents to make these improvements.

Mayor Wozniak asked if a person wanted to appeal the City Manager's decision, if the appeal would go before BOAA or City Council and questioned what the standard of appeals would be.

Mr. Ensey answered there are two criteria the BOAA needs to consider concerning an appeal, as outlined in Section 16-3-30 of the code: 1. The City Manager acted without clear and convincing evidence 2. The City Manger acted beyond the City Manager's authority.

Mayor Wozniak stated he would like to make sure the standards set forth in the Arapahoe County Stormwater plan are incorporated. He stated if the procedure is going to allow an adjacent homeowner to request a review, there needs to be a different process where they have to prove they have a legitimate protest to the decision maker.

Councilor LaMair suggested requiring two adjacent homeowners request a review before it would require a public hearing.

Councilor Brown stated water moves from one property to another so you may not have two people directly impacted. He believes there needs to be some mechanism in place where someone can come in and say the standards of criteria have not been properly applied; rather than just having someone come in and say they are just not in favor of the stabilization.

Mr. Fellman said when the original wireless code was amended it required any wireless structure to be reviewed by P&Z. He reminded the Council the wireless code has a provision that would allow any adjacent property owner to request a hearing with P&Z and doesn't know if the same policy basis would exist for a bank stabilization process.

Councilor Stewart suggested requiring the applicant submit written notice to the adjacent homeowners, but would eliminate the rest of subsection 4 and all of subsection 5.

Councilor LaMair agreed with Councilor Stewart's change to subsection 4, but doesn't see the need in eliminating subsection 5.

Mr. Zuccaro stated staff may for various reasons want to have Council approval of the application.

Mr. Ensey suggested instead of having the applicant go through the public hearing process, staff could reword it so the review would be subject to specific criteria.

Mayor Wozniak suggested tabling Council Bill 5 so the Council could give it more consideration. He stated it is a great first step and thanked Mr. Rubin for his comments.

Councilor Russell Stewart moved, seconded by Councilor Scott Roswell, to table Council Bill 5, Series 2009.

The following votes were recorded:

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

Vote to table Council Bill 05-2009: 5 ayes. 0 nays. The motion carried.

Council Bill 6, Series 2009; a bill for an ordinance amending Chapter 2 of the Municipal Code, concerning Administration and Personnel, by amending Section 2-6-10, concerning the Purpose of the Planning and Zoning Commission (first reading)

Mr. Ensey stated the proposed bill structures the purpose as it relates to the master plan approval process and subsequent amendments, in a manner similar to other land use activities. The bill would give the Council the ultimate authority to adopt, reject or modify the Master Plan as it becomes necessary after a plan has been presented by P&Z.

Councilor Stewart indicated he approves of the changes made by the bill and believes that future City Councils will appreciate the amendments.

Councilor LaMair said she thinks it is much more appropriate for a community the size of Cherry Hills Village.

Councilor Roswell requested the word "modified" in subsection 6(a) be corrected to read "modify."

Councilor Russell Stewart moved, seconded by Councilor Scott Roswell, to approve on first reading Council Bill 6, Series 2009; a bill for an ordinance amending Chapter 2 of the Municipal Code, concerning Administration and Personnel, by amending Section 2-6-10, concerning the Purpose of the Planning and Zoning Commission with the caveat by Councilor Roswell's note that 6(a) should be limit the City Council's authority to approve, modify or reject the Master plan.

The following votes were recorded:

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

Vote on the Council Bill 06-2009: 5 ayes. 0 nays. The motion carried.

## **REPORTS**

### **Mayor's Report**

There was no report.

### **Members of City Council**

Councilor Brown advised the Council there were 11 proposals for the RFP project. He stated he was pleased with the number and believes it was a good response.

Councilor Roswell mentioned he attended the Residential Development Standards Committee (RDSC) meeting and they are moving forward with the public meeting they have scheduled. He said they have scheduled another committee meeting for April 27<sup>th</sup>. He stated he is very impressed with the members of that committee. He also mentioned he is in the process of reviewing the RFP's as well.

Mayor Wozniak asked what the RDSC's process will be at the public meeting.

Councilor Roswell stated the committee is going to put some topical areas together and seek the resident's input as well as a possible direction. He stated he and Councilor LaMair have interviewed six candidates for the open position on the Parks, Trails and Recreation Commission (PTRC). He continues to be impressed with the candidates and stated they have not come up with a recommendation, but will have one for the next meeting.

Councilor Stewart announced the South Suburban appeal oral arguments were held earlier in the day and they expect a decision in a few months. He mentioned he has received some e-mails concerning strangers following children home from West Middle School and asked Chief Patterson if he has received similar complaints.

Chief Patterson answered he has not received any calls or e-mails.

Councilor LaMair advised the Council she was going to attend the monthly PTRC meeting in place of Councilor VanderWerf, but did not attend because the Mooney discussion was on the agenda and she believes it will come before Council. She mentioned the Mansfield Trail was also on the agenda. She said the PTRC recommended a trail on the south side of Mansfield with a stripe for parking only on the north side with the option of revisiting the concept of having a crusher fine trail off the curb on the north side.

Mayor Wozniak advised the Council he recently walked along Mansfield and stated you hear the cars coming, but you can't see them so it's a very uncomfortable experience.

Councilor LaMair suggested installing removable bollards for the first year to help establish the trail. She also mentioned she attended a DRCOG meeting. She advised the Council they are moving through their list for funding transportation projects very quickly and suggested the Council consider putting the underpass in the queue to try to get future funding for it. She mentioned DRCOG is looking for sponsors for some students that will be in Colorado from Bagdad in July. She stated \$18 million was approved for the Denver Union Station.

Councilor Griffin advised the Council he and Karen Proctor, Director of Finance, are continuing to review the investment fees for the City. He stated they will also be reviewing the 2008 audited financial statements and will have them available at the next Council meeting. He mentioned there was not a monthly BOAA meeting because of a lack of quorum.

### **Members of City Boards and Commissions**

There were no reports.

### **City Manager & Staff**

#### Departmental Monthly Reports (March 2009)

Mr. Ensey advised the Council the departmental monthly reports were provided in the Council packets.

#### Unaudited Financial Report (March 2009)

Mr. Ensey mentioned the unaudited financial report was provided in the council packets.

2008 Financial Audit Update

Mr. Ensey advised the Council they will have the audit at the next Council meeting.

Sanitary Sewer Repair and Rehabilitation Update

Mr. Ensey provided an update in the packets and advised the Council to contact Mr. Goldie with any questions.

Councilor Stewart stated it was a great result and he appreciates all of Mr. Goldie's efforts.

Special Events: Earth Day

Mr. Ensey stated the Earth Day event was going to be held on Saturday, April 25th.

**City Attorney**

Mr. Fellman advised the Council the bond issue refinance paperwork for the Denver Christian School has been done, but there is no formal action required from the Council.

Mr. Fellman advised the Council of a possible code amendment. A wireless service would like to do some work in Cherry Hills Village in the rights-of-way on existing poles. He said they normally take down the existing light pole and install a new light pole and all the wiring is installed inside the pole. He stated the poles they would like to locate are along Quincy Avenue and are wooden poles which would make it structurally difficult to hollow them out to run the wiring on the inside. He mentioned the current code requires the pole be existing, the same material or otherwise be permitted under the utility regulations. It also requires any wiring agents be contained within the pole. DAS would like the Council to consider amending the code so they can install a small box along the side of the pole or completely encase the pole in a sheathing material. He stated it would be easy to amend the code and also stated the Council could include some criteria for the size of the sheathing. He said unless the Council has any objections, he and Mr. Zuccaro could work on the ordinance and bring it back for their review and the next meeting.

**EXECUTIVE SESSION**

Councilor Russell Stewart moved, seconded by Councilor Scott Roswell, to adjourn into an executive session for the purpose of discussing negotiating strategy and instructing negotiators and receiving legal advice concerning the South Suburban litigation as authorized by CRS § 24-6-402(4)(b)&(e) and also for the purposed of receiving legal advice from the City Attorney concerning a pending legal matter pursuant to the provisions of CRS § 24-6-402(4)(b), concerning a prior City land use approval and immediately upon completion of the executive session to adjourn the regular meeting.

The following votes were recorded:

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

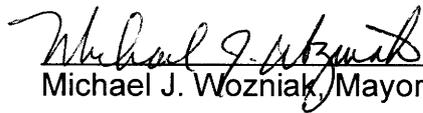
The motion passed unanimously.

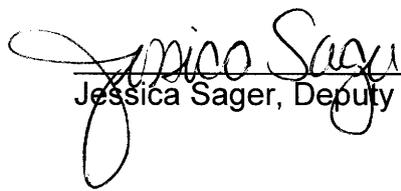
Council adjourned to an Executive Session at 8:13 p.m.

The Executive Session adjourned at 8:43 p.m.

**ADJOURNMENT**

The meeting adjourned at 8:43 p.m.

  
Michael J. Wozniak, Mayor

  
Jessica Sager, Deputy City Clerk