

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, June 16, 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, Klasina VanderWerf, Harriet LaMair, Mark Griffin, Mike Wozniak, and Russell Stewart were present on silent roll call. Also present were City Manager Eric Ensey, Deputy City Attorney David Foster, Finance Director Karen Proctor, Police Chief John Patterson, Public Works Director Jay Goldie, Planning Manager Rob Zuccaro, Parks and Trails Administrator Ryan Berninzoni, Lieutenant Jody Sansing, and Deputy City Clerk Jessica Sager.

Scott Roswell arrived at 6:35 p.m.

Absent: None

Mayor Wozniak moved item 8(d)(vii) Request for City funding for replacement of the fence along the jurisdictional boundary between the City and County of Denver and Cherry Hills Village adjacent to the Denver Tech Center up on the agenda.

City Manager, Eric Ensey, stated that approximately 25 years ago a fence was constructed along the jurisdictional boundary between the City and County of Denver and the City of Cherry Hills Village. The fence was constructed by the developer as a means of mitigation to the potential impacts associated with the development of the Denver Tech Center. Some residents that were around during the time recall there was an agreement regarding the maintenance of the fence. However, staff has been unable to locate this record in the City's files, at Arapahoe County or at the City and County of Denver. The Goldsmith Metropolitan District's Board of Directors decided that they no longer wish to spend the funds to maintain the fence. In addition, the District's architectural guidelines specify fencing material allowed within the District, and the existing fence, which is constructed of cedar, does not comply. As a result, sections of the fence have been removed as they have come into disrepair. The fence proposed by the District would be constructed of Trex material, which is a durable material made of wood and plastic fibers. Goldsmith priced the fence at a total cost of \$300,000 for the entire one-mile stretch of fence adjacent to Charlou/Chaumont and Charlou Park. The District agreed to pay one half of the total cost, or \$150,000, and requested the homeowners adjacent to the fence pay the other half of the fence. As a result, staff received a request from the homeowners in both Charlou Park and Charlou/Chaumont for the City to fund the \$150,000 not being paid by the District. Mr. Ensey stated staff recognizes the safety concerns expressed by the residents. He said staff has concerns about the precedent of funding all or a portion of this fence could have on other properties throughout the Village with similar situations.

Councilor Klasina VanderWerf asked if it were possible that Goldsmith did agree to maintain the fence.

Mr. Ensey stated he has spoken to former Mayor Joan Duncan and she remembers they did agree to maintain the fence, but he cannot find any documents to that effect.

Mayor Wozniak stated it is hard to believe the City Attorney at the time would not have documented anything and asked if there was anything staff can point to.

Mr. Alex Brown suggested staff research the minutes from the District to see if the agreement is reflected in their minutes.

Deputy City Attorney, David Foster, indicated it is his understanding that the developer built the fence so the documentation between the developer and the District may be different, but it is possible the improvement is reflected on the bill of sale.

Mayor Wozniak stated in some cases the bill of sale is not recorded and finds it curious there is not a record of the agreement.

Councilor Harriet LaMair suggested contacting every homeowner to see if they have any documentation of the agreement.

Mayor Wozniak stated after all the meetings that have been held, the documents would have appeared.

Allorah Jo Byrnes
6445 Greenbriar Drive
Cherry Hills Village, CO

Ms. Allorah Jo Byrnes stated she attended the meeting with Goldsmith back in the 80's or 90's when the fence was negotiated and was under the impression that the cedar fence would be everlasting. She finds it hard to believe the records were not maintained by the City after the many meetings and lengthy surveys that were done.

Frank Visciano
6400 Plateau Drive
Cherry Hills Village, CO

Mr. Frank Visciano stated there was an agreement in place that allowed for the construction of the fence without objection from the residents. He understands staffs concerns about setting a precedent, but feels this is a very unique case. He said it was clearly articulated, when the fence was built, that the commercial builder would maintain the fence and it can be proven there was an agreement by the fact that they have maintained the fence for all these years.

Judy Trimble
6499 Plateau Drive
Cherry Hills Village, CO

Ms. Judy Trimble stated there was a major meeting between numerous homeowners so there has to be some minutes from those meetings. She suggested contacting the City Attorney at the time to see if he has any copies of the records.

Mayor Wozniak stated that City Attorney is now deceased. He said he would love to see the fence replaced and staff is doing the best they can to get it taken care of. He added even if an agreement is located, staff may not be able to get the fence everyone wants. He said staff is looking at all the options.

Chris Norin
6400 Manor Drive
Cherry Hills Village, CO

Ms. Chris Norin questioned where the new fence would go.

Mr. Ensey answered Goldsmith has indicated the replacement fence will be built within the existing pillars.

Susan Levy (former resident of 6445 Greenbriar Drive)

Ms. Susan Levy asked why Goldsmith was changing the fence.

Mayor Wozniak answered that the fence is in disrepair and because of the new covenants, they can't just repair the fence, it has to be replaced. He added the City will continue to work with Goldsmith to get the best option and will communicate with the land owners.

AUDIENCE PARTICIPATION PERIOD

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

CONSENT AGENDA

Councilor Harriet LaMair moved, seconded by Mayor Pro Tem Russell Stewart, to approve the following items on the Consent Agenda:

- a. Approval of Minutes – June 2, 2009
- d. Resolution 10, Series 2009; a resolution adopting bylaws for the Planning and Zoning Commission
- e. Resolution 11, Series 2009; a resolution adopting bylaws for the Board of Adjustment and Appeals

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:

Contract for Services – Village Center Conceptual Plan

Councilor Alex Brown stated he has put together an outline that was distributed on the dais. He said the City received 11 proposals. He advised Council that the companies were graded on a point system and the top four were interviewed. The recommendation is to hire Norris Design. He said the firm stressed public outreach and input during the interview and had a good grasp on the constraints of the site. He noted the contract for services is for this project only and the City is under no obligation to continue the project with Norris Design. He provided the Council with a revised schedule for the conceptual plan process.

Councilor Scott Roswell stated he too approves the selection.

Mayor Wozniak said he would like to have a local representative for the firm and stressed the importance of continuity. He said he is concerned about the timing with South Metro and the revised schedule.

Councilor Roswell noted South Metro actively participated with the interview and selection process.

Mr. John Norris
Norris Design
1101 Bannock Street
Denver, CO

Mr. John Norris stated he is anxious to begin working with the Council, staff and residents. He added Diana Rael will be the local contact for the project. He said his desire is to come up with a final design that feels like it was there from the beginning.

Councilor VanderWerf said she is very interested in alternative sources and LEED standards.

Mr. Norris said they will be looking at those options as well.

Councilor LaMair asked if Mr. Norris would be submitting a preliminary cost estimate.

Mr. Norris answered they will be putting those together.

Councilor Brown stated he expects the costs to be very general as it is a preliminary estimate.

Councilor LaMair expressed her concern regarding a theme for the Village Center. She said the residents would prefer to leave the Village Center as natural as possible.

Mr. Norris stated they have a "listen and respond" approach so they will be listening to the residents, staff and the Council.

Councilor VanderWerf asked if they would be taking any other Citizens City Center Committee (CCCC) recommendations into consideration.

Mr. Norris said they start from the beginning and will come up with three plans. They will look at each plan and will make a joint decision with the City as to what makes the most sense.

Councilor Brown mentioned open space will be reflected and Norris Design will not ignore the fact that the site is more than buildings.

Mayor Wozniak cautioned the Council not to have too many expectations for this phase of the project. He thanked everyone for all their contributions.

Councilor Alex Brown moved, seconded by Councilor Scott Roswell, to approve the contract agreement between the City of Cherry Hills Village and Norris Design, Inc. in the amount not to exceed \$68,816.00 for completion of the Village Center Conceptual Plan.

The motion passed unanimously.

Contract for Services – 2009 Street Improvement and Maintenance Program; Concrete Replacement

Public Works Director, Jay Goldie, presented a contract for the second phase of a concrete program. He advised the Council the City has used Concrete Express, Inc in the past with good results. He said they are waiting on an exact time table, but the work will be done sometime in the fall.

Councilor LaMair asked if metal plates will be installed to avoid dips.

Mr. Goldie answered sometimes the dips are hard to avoid. He added if it is possible, they will make the pan less deep, but it can't be avoided in all places.

Councilor LaMair asked if the City provides the metal plates.

Mr. Goldie answered the City does not provide the plates, but staff helps facilitate the process.

Councilor Griffin asked if Mr. Goldie had any issues with the company that did the first phase of the concrete work.

Mr. Goldie answered there were some problems, but they have been resolved.

Councilor Harriet LaMair moved, seconded by Councilor Klasina VanderWerf, to approve the Contract for Services with Concrete Express Inc. for the fall 2009 Concrete Replacement Project in the amount of \$232,465.00, plus a 10% contingency for a maximum expenditure of \$255,711.50, and authorize the Mayor to sign the contract.

The motion passed unanimously.

UNFINISHED BUSINESS

Council Bill 8, Series 2009; a bill for an ordinance authorizing a supplemental appropriation transferring money from the General Fund to the Catherine H. Anderson Land Donation Fund (first reading, item tabled from June 2, 2009)

Finance Director, Karen Proctor, presented Council Bill 8, Series 2009. She advised the Council the only change was the decrease in the amount from \$500,000.00 to \$150,000.00. She stated staff is not in favor of the transfer because of the uncertainty of the future property taxes and the South Suburban litigation. She recommended only authorizing a supplemental appropriation in the event of an emergency. She recommended Council consider methods of funding the account during the normal budget process.

Councilor Scott Roswell asked when the normal budget process would begin.

Ms. Proctor answered the process begins in September.

Councilor VanderWerf stated she appreciates staffs concerns, but believes \$150,000.00 is a nominal amount. She said she would feel comfortable approving the Council Bill because they have heard from residents supporting open space.

Mayor Wozniak asked Councilor VanderWerf if she has considered what she will propose during the budget process in September.

Councilor VanderWerf suggested looking at a revenue stream instead of naming a specific figure in the future. She stated they could transfer a portion of the revenue collected by the photo red light or look at transferring a percentage of the interest earned on one of the City's investments.

Councilor LaMair asked how the property at 90 Meade Lane was purchased and suggested a portion of the sale of that land could go into the fund.

Councilor Roswell stated he hasn't changed his view and is troubled by considering transferring funds into the account outside the budget cycle. He added he is not in favor of the Council Bill at this time.

Councilor Brown stated he was comfortable with the first Council Bill and is just as comfortable with the revised Council Bill. He said the proposed sum will not drastically alter the General Fund and reiterated his point that transferring the funds is not a spending of the funds.

Mayor Pro Tem Stewart indicated that he favors the idea. He believes that the proposed amount is needed to assist and facilitate donations like the Catherine Anderson property, and is consistent with the priority that Village residents and members of Council place on maintaining open space. He indicated that any request for additional funds would be taken up during the budget process, but he remains inclined not to allocate revenue for land acquisition unless and until voters approve such use of tax revenue.

Councilor Griffin stated he has the same view as the last Council meeting. He endorses open space and is in favor of dedicating a revenue source. He would like to see the issue taken up during the budget process.

Councilor LaMair said she supports the current supplemental appropriation. She stated open space was front and center during the Master Plan process and this is a way for the City to provide seed money and encourage residents to help.

Mayor Wozniak thinks there is support towards open space, but is not sure if the residents are willing to pay for it. He supports Mayor Pro Tem Stewart's suggestion of taking the idea to the voters. He would rather look at funding the account during the budget process.

Councilor Klasina VanderWerf moved, seconded by Councilor Harriet LaMair, to approve on first reading Council Bill 8, Series 2009; a bill for an ordinance authorizing a supplemental appropriation transferring \$150,000.00 from the General Fund to Fund 8, Catherine H. Anderson Land Donation Fund.

The following votes were recorded:

Scott Roswell	no
Harriet LaMair	yes
Mark Griffin	no
Alex Brown	yes
Russell Stewart	yes
Klasina VanderWerf	yes

Vote on the Council Bill 08-2009: 4 ayes. 2 nays. The motion carried.

Council Bill 9, Series 2009; a bill for an ordinance amending Chapter 7 of the Municipal Code by amending Section 7-5-50, concerning prohibited and restricted animals

Lieutenant Jody Sansing presented Council Bill 9, Series 2009. He stated staff has revised section 7-5-50 and added a section to the code that covers the feeding of coyotes.

Mayor Pro Tem Russell Stewart moved, seconded by Councilor Harriet LaMair, to approve on first reading Council Bill 9, Series 2009; a bill for an ordinance amending Chapter 7 of the Municipal Code by amending Section 7-5-50, concerning prohibited and restricted animals.

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 09-2009: 6 ayes. 0 nays. The motion carried.

Council Bill 10, Series 2009; a bill for an ordinance amending Chapter 10 of the Municipal Code by amending Section 10-5-100, concerning throwing stones or missiles (first reading; item tabled from June 2, 2009)

Lieutenant Sansing presented Council Bill 10, Series 2009. He stated staff revised section 10-5-100 by removing the word missiles from the section.

Mayor Wozniak stated the title of the bill includes the word missiles and asked if it was from the first Council Bill.

Lieutenant Sansing answered it was the title of the first Council Bill.

Mayor Pro Tem Stewart clarified this Council Bill would allow residents to throw stones at coyotes as a means of hazing them.

Lieutenant Sansing answered it does as long as it doesn't cause a threat to public safety.

Mayor Pro Tem Russell Stewart moved, seconded by Councilor Mark Griffin, to approve on first reading Council Bill 10, Series 2009; a bill for an ordinance amending Chapter 10 of the Municipal Code by amending Section 10-5-100, concerning throwing stones or missiles.

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 10-2009: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS**REPORTS****Mayor's Report**

Mayor Wozniak reported he received a complaint on some horses owned by Ms. Hughes and also received several letters of support from other residents.

Mr. Ensey advised the Council that staff is currently researching the complaint of an odor from the horses owned by Ms. Hughes. He said some staff members have gone out to the property and have found one location where there is an odor. He said staff is working with Ms. Hughes on looking at different alternatives.

Mayor Wozniak asked if there was any interest from staff or Council in attending the Public Utilities Commission (PUC) for the State of Colorado. He said the PUC will be holding hearings on June 22nd for stimulus funds that are available for cities who are interested in pursuing a smart grid similar to that of the City of Boulder.

Mayor Pro Tem Stewart volunteered to attend.

Members of City Council

Councilor Brown had nothing to report.

Councilor VanderWerf reported the PTRC will be coming up with a four year plan. They are also planning another movie night to be held on August 22nd.

Councilor Roswell had nothing to report.

Mayor Pro Tem Stewart had nothing to report.

Councilor LaMair had nothing to report.

Councilor Griffin stated he was contacted by a resident who would like the City to construct a new fence at the corner of Franklin Street and Belleview Avenue.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff**Departmental Monthly Reports (May 2009)**

Mr. Ensey reported the monthly reports were included in the council packets.

Unaudited Financial Statements (May 2009)

Mr. Ensey reported the unaudited financial statements for May were included in the council packets.

Arapahoe County Open Space Program – City Grants Received and Shareback Funds

Mr. Ensey reported the City received a grant to assist in the Woodie Hollow Park Horse Arena restoration project. The City also received shareback funds in the amount of \$123,027.89 that will go the Arapahoe County Open Space Fund.

R-3A Buffer Discussion (Continued)

Mr. Zuccaro stated at the March 3rd Council meeting it was reported there would be modifications to the R-3A buffer. It was brought forward in response to a request from the Buell Mansion Homeowners Association to reduce or removed the 50-foot buffer. At the time, Council directed staff to do some additional research on the history of the buffer. Mr. Zuccaro reported there was not a lot of information on the buffers in the minutes. Staff presented three options for the Council's consideration:

1. Removing the Buffer: Amend the Municipal Code (Section 16-8-8) to allow the City Council to authorize removal of the buffer if all adjacent and affected lot owners agree to the application. This option could also allow for an automatic plat amendment without an additional review process.
2. Allowing Improvements within the Buffer: Amend the Municipal Code (Section 16-8-80(c)) to expand the allowed uses in the 50-foot buffer to include "accessory structures, pools, tennis courts, patios, decks, fences and driveways."
3. Reducing the Width of the Buffer: Amend the Municipal Code (Section 16-8-80(c)) to reduce the width of the buffer from 50 feet to 25 feet, making the buffer consistent with the front and rear setbacks for the ½-acre and 16,000-square foot lots in the R-3A Zone District. This option could also allow for an automatic plat amendment without an additional review process.

Staff recommended the first option if the Council would like to amend the buffer.

Mayor Wozniak said the City was sued by the original contractor and that is why the open space buffer was created at that time. He asked if all the homeowners in Buell Mansion Subdivision were agreeable to amending the buffer.

Mr. Zuccaro answered according to the letter that was submitted by the Buell Mansion Homeowners Association the homeowners are all in agreement.

Mayor Wozniak asked if the plats would have to be amended.

Mr. Zuccaro replied the code and the plats could be amended simultaneously.

Mayor Pro Tem Stewart clarified the next step would be to draft the language. He mentioned he has had a long history with the landscape buffer and that it is best to go with the first option as staff is recommending.

Councilor Griffin asked what assurances the City has that all the homeowners are agreeable to reducing the buffer and also asked if any of the properties are owned by a bank.

Mr. Zuccaro replied part of the process would require the homeowners to show their support by signing a letter or an affidavit and does not know if any of the properties are bank owned.

Mayor Pro Tem Stewart stated that all the residents adjacent to the buffer have already signed a letter to the City indicating their support. He indicated he would not have to recuse himself as the ethics code has been amended and the situation affects the entire City.

Councilor LaMair stated the landscape buffer was requested for a reason and asked what the legal ramifications would be if the Council were to vote to remove it.

Deputy City Attorney Foster answered if Council amended the code, the amendment would only be in affect for the specific area.

Mayor Wozniak stated the City would have to hold public hearings on the issue. He said staff is asking for direction on what option the Council would like to consider.

Mayor Pro Tem Stewart indicated the landscape buffer ordinance is being violated every day because it is a restriction on use and this is a way to protect against litigation. He stated one of the problems they are facing is a fence cannot be constructed in the buffer because it can only be used for plants.

Councilor Brown clarified if the area is rezoned, the buffer cannot be used as land for a land dedication. He also asked if one owner of all the lots request different parcels be rezoned.

Deputy City Attorney Foster answered the way the code would be written, all land owners would need to be party to the application.

Mayor Wozniak suggested placing the issue on the agenda so it can be addressed.

Cherry Creek School District Request for Construction of a Sidewalk on Quincy Avenue

Mr. Goldie advised the Council he received a request from the Cherry Creek School District to install a sidewalk along the northern portion of Quincy Avenue and to also make it a no parking zone. Staff reviewed the request and believes there would be no benefit to installing the sidewalk that has no access and leads no where. He stated he would prefer to work with the school district on making the area a no parking zone, but would like the school district to work with the City on making sure the parents do not use the City parking lot during school functions.

Mayor Wozniak asked if the intent was to prevent parking along Quincy Avenue.

Mr. Goldie answered that was the intent.

Councilor Roswell said the problem with parking in that area is that it requires a person to walk in the street.

Councilor LaMair said there is a legitimate problem with people walking in the street.

Mayor Wozniak stated he would like to work with the school district, but would also like them to work with the City.

Mayor Pro Tem Stewart suggested staff continue working with the district to see if there is a solution to the problem.

Mayor Wozniak suggested staff continue the dialog with the school district because the request before Council is not something the City can commit to.

Mr. Goldie stated staff would schedule a meeting with the school district.

Follow-up on Chip Seal Street Maintenance Issues

Mr. Goldie reported staff has reviewed maintenance options and the majority of the options have not been tested. He stated slurry seal is cheaper than chip seal, but is not as effective.

Mayor Wozniak asked if the striping was finished on Mansfield Avenue.

Mr. Goldie replied it has not been completed yet because of the weather.

Councilor LaMair asked if there was anything the City can do to reduce the friction on the roads.

Mr. Goldie answered the only option is to use slurry seal; which is not something he would recommend.

City Attorney

Deputy City Attorney Foster advised he and Mr. Ensey have spoken of some other alternatives staff can investigate with regards to the Goldsmith fence issue.

Mayor Wozniak suggested adding an executive session to the next City Council meeting to discuss that issue.

Mayor Pro Tem Stewart advised he would not be able to attend the next City Council meeting.

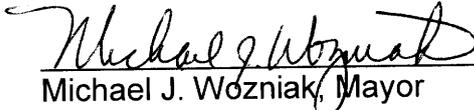
Mayor Wozniak mentioned he does not have an update on the South Suburban litigation so an executive session will not be held after the regular meeting.

ADJOURNMENT

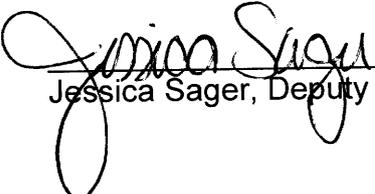
A motion was made by Mayor Pro Tem Russell Stewart, seconded by Councilor Scott Roswell, to adjourn the meeting at 8:45 p.m.

The motion passed unanimously.

The meeting adjourned at 8:45 p.m.



Michael J. Wozniak, Mayor



Jessica Sager, Deputy City Clerk