

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

Mayor Mike Wozniak called the meeting to order at 6:30 p.m.

ROLL CALL

Councilors Alex Brown, Klasina VanderWerf, Mark Griffin, Mike Wozniak and Scott Roswell 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 and Trails Administrator Ryan Berninzoni, Lieutenant Jody Sansing, and Deputy City Clerk Jessica Sager.

Absent: Mayor Pro Tem Russell Stewart and Councilor Harriet LaMair

AUDIENCE PARTICIPATION PERIOD

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

CONSENT AGENDA

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

- a. Approval of Minutes – June 2, 2009
- b. Approval of Minutes – June 16, 2009
- d. Expenditure of Funds and Contract for Services with Sure Foot LLC for restoration of the Woodie Hollow Park Horse Arena
- e. Expenditure of Funds and Contract for Services with Diamond Contracting Corporation for the installation and repair of sewer lines for the Cherryridge sewer line project
- f. Expenditure of Funds and Contract for Services with Quality Pipe Services for the man hole repair component of the Cherryridge sewer line project
- g. Expenditure of Funds and Contract for Services with Insituform Technologies, Inc. for the CIPP component of the Cherryridge sewer line repair project
- h. Resolution 12, Series 2009; a resolution adopting the 2010 Budget Calendar
- i. Intergovernmental Agreement with the Cherry Hills Village Sanitation District for Phase II Sewer Line Repair and Replacement Project Oversight
- j. Contract Amendment with Black and Veatch Corporation for Phase II of the Sanitary Sewer Repair and Replacement Project
- k. Right-of-Way Use Agreement with NewPath Networks, LLC for the installation of wireless equipment within City ROW

The following votes were recorded:

Scott Roswell	yes
Mark Griffin	yes
Alex Brown	yes
Klasina VanderWerf	yes

Vote on the Consent Agenda: 4 ayes. 0 nays. The motion carried.

Mayor Wozniak thanked NewPath Networks for working with the City to get the wireless equipment installed.

Mike Kavanagh, CEO for NewPath Networks, stated AT&T is the provider they are currently working with and are also negotiating with two other national carriers. He advised the Council that NewPath Networks has worked with the City of Denver and the City of Lakewood on similar systems. He mentioned the system is a very good way of getting away from tall towers and will blend in with the surroundings.

Mayor Wozniak stated this is a real solution for other cities similar to Cherry Hills Village.

ITEMS REMOVED FROM CONSENT AGENDA

The following items were removed from the Consent Agenda:

Intergovernmental Agreement concerning the grant of Arapahoe County Open Space Program Funds for restoration of the Woodie Hollow Park Horse Arena

Councilor Klasina VanderWerf asked if the City has to advise Arapahoe County that the cost for restoring the horse arena is less than what was included in the grant request and return the unused portion of the grant.

Mr. Eric Ensey answered the situation has happened before and there should not be a problem.

Councilor Klasina VanderWerf moved, seconded by Councilor Alex Brown, to approve the Intergovernmental Agreement concerning the grant of Arapahoe County Open Space Program Funds for restoration of the Woodie Hollow Park Horse Arena.

The motion passed unanimously.

UNFINISHED BUSINESS

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 (*final reading*)

Lieutenant Jody Sansing advised Council Bill 9; Series 2009 was approved on first reading at the June 16, 2009 City Council meeting and there have not been any changes since then.

Councilor Scott Roswell moved, seconded by Councilor Mark Griffin, to approve on final 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
Mark Griffin	yes
Alex Brown	yes

Klasina VanderWerf yes

Vote on the Council Bill 09-2009: 4 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 (final reading)

Lieutenant Sansing advised Council Bill 10, Series 2009 was approved on first reading at the June 16, 2009 City Council meeting and there have not been any changes since then.

Councilor Scott Roswell moved, seconded by Councilor Klasina VanderWerf, to approve on final 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
Mark Griffin	yes
Alex Brown	yes
Klasina VanderWerf	yes

Vote on the Council Bill 10-2009: 4 ayes. 0 nays. The motion carried.

NEW BUSINESS

Council Bill 11, Series 2009; a bill for an ordinance amending Chapter 19 of the Municipal Code by amending Section 19-1-20, concerning permanent stormwater BMP's (first reading)

Director of Public Works, Jay Goldie, presented Council Bill 11, Series 2009 which would amend Section 1-19-120(a) concerning stormwater Best Management Practices (BMP's). Mr. Goldie said when staff submitted the stormwater permit; the State of Colorado Water Quality Control Division stated the City Code did not meet their requirements. He indicated staff tried to write the code so permanent BMP's would not be required, but the State would not approve it. As a result, residents will now be required to install permanent BMP's unless they can prove one has already been installed for the subdivision.

Mayor Wozniak asked what the ramifications would be if the code was not amended.

Mr. Goldie answered the City would be in violation and could be fined.

Mayor Wozniak stated he does not like putting the burden on the homeowners, but doesn't want the City to get fined.

Mr. Goldie mentioned it is also a burden on the City; as staff will have to ensure the BMP's are installed and properly maintained.

Mayor Wozniak asked if a resident can claim an exemption or a waiver of the state's requirements.

Mr. Goldie answered the resident can claim an exemption if they can prove a permanent BMP is already in place. Mr. Goldie advised that residents who are disturbing an acre or more would have to pull a stormwater quality permit with the state and the City. He stated it will be the City's responsibility to ensure that all the requirements are met during the construction process. The resident would also have to install a BMP to ensure stormwater leaving their property is not contaminated. He stated staff would encourage the design to be as simple as possible.

Mayor Wozniak noted that BMP's change over time and are difficult to maintain. He is encouraged that the City can help the homeowner create a best management practice. He asked if the language for the amended code has been approved by the City Attorney and the Water Control Division.

Mr. Goldie answered it has been approved by both and this is the final step of the permitting process.

City Attorney Ken Fellman advised a period needs to be removed in Section A in the last full line of the draft Council Bill.

Councilor Scott Roswell moved, seconded by Councilor Klasina VanderWerf, to approve Council Bill 11, Series 2009; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 19 of the Cherry Hills Village Municipal Code amending Section 1-19-120(a), concerning permanent post construction stormwater BMP's on first reading with the correction mentioned by City Attorney Fellman.

The following votes were recorded:

Scott Roswell	yes
Mark Griffin	yes
Alex Brown	yes
Klasina VanderWerf	yes

Vote on the Council Bill 11-2009: 4 ayes. 0 nays. The motion carried.

REPORTS

Mayor's Report

Mayor Wozniak reported the City was invited by South Metro to attend a community feedback lunch and asked Councilor Roswell if he would be able to attend.

Councilor Roswell stated he will be out of town the week of the meeting.

Mr. Ensey advised he will be attending the lunch meeting.

Mayor Wozniak stated the City of Centennial will be setting up a community round table to discuss complaints about the Centennial Airport. He was asked to designate a councilmember to attend the committee and asked if Council would like to participate in forming the committee.

Councilor Roswell stated he thinks it is worthwhile to participate in the discussions.

Councilor VanderWerf stated she agrees it would be worthwhile, but if they find it's not they could always stop attending.

Councilor Brown stated he supports the direction the committee is going, but is concerned the area is too heavily regulated by the FAA.

Mayor Wozniak advised the FAA and an airport representative would be part of the committee also. He suggested putting an article in the Village Crier and sending out an e-mail blast to see if there is a resident who has an interest in attending the round table and would like to be designated in place of a councilmember.

He mentioned he attended a downtown member partnership meeting and heard that other cities around Metro Denver are cutting their budgets.

Members of City Council

Councilor Brown advised he and members of staff will have an initial meeting on Thursday with Norris Design and they will be presenting a list of questions for staff to consider. He mentioned they would also be touring the Village Center and South Metro Fire Station.

Councilor VanderWerf stated the Residential Development Standards Committee (RDSC) is currently working on a recommendation report, but City Council probably wouldn't review it until September.

Mayor Wozniak asked if they would circulate drafts of the recommendation before it was brought to City Council.

Mr. Ensey answered the RDSC is going to write the recommendation first and then circulate to the Council liaisons for review.

Councilor Roswell stated the report will be ready at the end of August or first part of September.

Councilor Griffin mentioned he has asked Councilor Brown and Finance Director Karen Proctor to form a Budget and Finance Committee for the budgetary process. He stated the Cherryridge subdivision will be going through some sewer line maintenance and repair and he has been working closely with Mr. Ensey and Mr. Goldie to keep the residents in that area informed of the project.

Councilor Roswell asked Mr. Goldie if there have been any complaints from residents about the Denver Water project.

Mr. Goldie answered Denver Water has had some trouble keeping the job site clean.

Councilor Griffin inquired about the status of a traffic light at the intersection of Franklin Street and Belleview Avenue.

Mr. Goldie answered the City of Greenwood Village has cut that project from their budget this year.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Bank stabilization at 6 Martin Lane to prevent exposure of a City-owned sanitary sewer line pipe

Mr. Goldie reported staff was contacted by Howard Torgrove regarding the erosion of the bank on Little Dry Creek as it runs through his property. He stated this would normally be a private issue, but because the City's sewer line is near the erosion, the City will be involved to help repair the bank. He said there is about 300 feet of sewer line that needs to be stabilized and the total cost of the project will be \$600,000.00. Urban Drainage has agreed to cover half the cost, so the remaining \$300,000.00 left will be covered by some homeowners and the City. He stated staff is in the process of obtaining a permit from the Corp of Engineers with assistance from Urban Drainage to install riprap as a temporary measure to stabilize the bank to prevent exposure of the sewer line. The work will be performed in house to minimize cost and prevent any delays with the project. Staff estimates the cost of the stabilization to be less than \$5,000.00 for materials, for the portion of the stabilization project near the sewer line.

Mayor Wozniak stated there is a real need to protect the sewer line, but is worried about setting a precedent.

Mr. Goldie responded he made it very clear the only reason the City is involved is because the sewer lines are so close to the bank erosion.

Mr. Brown questioned how much linear distance is involved for the estimate that Urban Drainage provided.

Mr. Goldie replied 300 feet total, but the City's cost of \$5,000.00 is for a 60 foot portion.

Retaining Wall Design Standards

Planning Manager, Rob Zuccaro, reported the City does not regulate design standards for retaining walls. He stated the City has received complaints on some retaining walls on Lynn Road that vary in height from three to twelve feet. The Planning and Zoning Commission (P & Z) discussed the development of retaining walls at several of their meetings and recommended expanding the City's current fence code to include retaining walls. This would include limiting the height of any retaining wall to six feet above the natural grade and requiring landscape screening for any retaining wall that runs parallel and is adjacent to a public roadway and located within the setbacks. P & Z would also recommend limiting the overall height of any fence or retaining wall to six feet above the finished grade. This recommendation would not preclude tiered retaining walls, as long as individual wall segments do not exceed 6 feet in height above the natural or finished grades. He stated staff is requesting that the Council review the P & Z's recommendations and provide staff with further direction on the development of retaining wall design standards. If the Council chooses to move forward with the development of design standards for retaining walls, staff will bring back a council bill for consideration at a future meeting.

Councilor VanderWerf asked for clarification of the building envelope.

Mr. Zuccaro stated the building envelope is defined by the setbacks.

Mayor Wozniak commented he likes the idea of a retaining wall being treated like a fence.

Councilor VanderWerf stated she sees where it would be useful to include retaining walls under the fence code.

Councilor Roswell commented the concept behind a fence is to make a perimeter boundary. He has not come to a conclusion on the recommendations and would like to give them more thought.

Mayor Wozniak asked if the RDSC has considered standards for a retaining wall.

Mr. Zuccaro answered they thought P & Z should review it. He mentioned court yard walls are addressed in the current fence code.

Councilor Brown asked if the P & Z's recommendation was a unanimous decision.

Mr. Zuccaro replied it was unanimous.

Councilor Brown stated it is obvious after three meetings the P & Z gave their recommendations a lot of consideration. He said he would also like more time to consider the recommendations.

Mayor Wozniak said he would like the Council to consider the recommendations and would like to see it placed back on the agenda in August. He stated he respects the work that was done by P & Z.

Councilor Griffin questioned why RDSC did not review the standards.

Councilor VanderWerf replied RDSC has made a list of their top priorities and retaining walls were not listed.

Councilor Griffin stated this is something the Council should carefully consider.

City Attorney

Direction on South Suburban Appeal

Mr. Fellman advised the Council the deadline to file a certiorari petition on the South Suburban appeal is Monday and asked the Council if they would like him to authorize outside counsel to file the petition for certiorari.

Mayor Wozniak stated the City is inclined to file the writ of certiorari and asked the Council their thoughts on moving forward.

Councilor Roswell stated he would like to see the petition filed and asked if Mr. Fellman has been able to get an amicus brief.

Mayor Wozniak stated the Colorado Municipal League (CML) responded to the City's request to file an amicus brief and they have declined the request at this time.

Mr. Fellman stated CML will rarely file an amicus brief at this stage of the petition. They normally wait to see if the Court will grant certiorari. He stated if certiorari is granted, the City can ask CML to consider filing an amicus brief again.

Mayor Wozniak directed staff to proceed on filing the petition.

EXECUTIVE SESSION

Councilor Scott Roswell moved, seconded by Councilor Klasina VanderWerf, to hold an executive session for the purpose of receiving legal advice from the City Attorney concerning a pending legal matter pursuant to the provisions of CRS §24-6-402(4)(b), concerning a prior City land use approval as well as an executive session continuing for the purpose of receiving legal advice from the City Attorney pursuant to the provision of CRS §24-6-402(4)(b), and to instruct negotiators pursuant to the provision of CRS §24-6-402(4)(e), concerning a pending contract dispute and at the conclusion of the sessions for the adjournment.

The following votes were recorded:

Scott Roswell	yes
Alex Brown	yes
Mark Griffin	yes
Klasina VanderWerf	yes

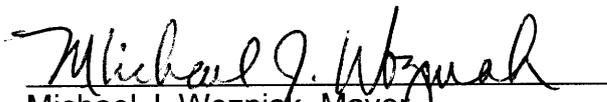
The motion passed unanimously.

Council adjourned to an Executive Session at 7:35 p.m.

The Executive Session adjourned at 7:54 p.m.

ADJOURNMENT

The meeting adjourned at 7:54 p.m.


Michael J. Wozniak, Mayor


Jessica Sager, Deputy City Clerk