

RECORD OF PROCEEDINGS

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

Mayor Pro Tem Russell Stewart called the meeting to order at 6:32 p.m.

ROLL CALL

Councilors Alex Brown, Klasina VanderWerf, Harriet LaMair, Mark Griffin, 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 and Trails Administrator Ryan Berninzoni, and Deputy City Clerk Sarah Henderson.

Absent: Mayor Mike Wozniak

AUDIENCE PARTICIPATION PERIOD

Michael Leede
1601 East Quincy Avenue
Cherry Hills Village, CO

Mr. Michael Leede requested that agenda item 4c be approved by the City Council. Mr. Leede stated he subdivided a parcel of land on Quincy and Franklin in 2007 and a neighbor has complained that the re-grading of the land has caused a drainage problem. This neighbor has since sued him over this issue. Mr. Leede provided background regarding the history of his subdivision process. He stated that he was responsible for the drainage plan and the City became responsible for the trail easement and improvements. Mr. Leede stated that Crescent Development, his wife, and he are all being sued by the neighbor. He said that through the discovery process they have found out the claim is during a 100 year storm event, water that used to partially flow onto Mr. Leede's property is now, theoretically, all flowing onto his neighbor's horse pasture. The neighbors are now claiming that this has caused them to be subject to the floodplain regulations of the City. To dispute this he worked with the City to obtain a letter from Urban Drainage and Flood Control District stating that this allegation was false. Mr. Leede said his neighbor claims, that due to the theoretical water flow during a 100 year storm event, the value of their land has diminished.

In June, Mr. Leede asked his engineers to find a solution to this problem by re-grading the trail, but he stated he needed approval from the City before he could proceed. After consulting with the City's engineer, on June 19th he sent a proposal to the City, and copied the opposing counsel. The City had some minor modifications, but in essence his engineers and the City's agreed to the proposed re-grading solution. Mr. Leede said he was ready to start work tomorrow. Mr. Leede stated he was indemnifying the City for any repercussions that may come about regarding this issue.

Mayor Pro Tem Russell Stewart thanked Mr. Leede.

CONSENT AGENDA

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

- d. Resolution 9, Series 2009; a resolution concerning the amendment of Resolution 8, Series 2009 as it relates to the term of Parks, Trails and Recreation Commission Katy Brown
- e. Resolution 13, Series 2009; appointing Andy Love to the Centennial Airport/Community Roundtable

The following votes were recorded:

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

First Amendment to Development Agreement for Crescent Gardens Minor Subdivision

Planning Manager, Rob Zuccaro, stated that a 16-foot wide trail easement on Mr. Leede's property was graded and landscaped as part of the original subdivision improvements. The proposed First Amendment would allow re-grading of the trail by the current property owners in order to address potential drainage issues on a neighboring property. Mr. Zuccaro stated this would be a one time event. He said the City's engineer has reviewed the re-grading plans and accepted them. Mr. Zuccaro also stated the City Attorney has reviewed and approved the agreement.

Councilor LaMair inquired if the floodplains were set by FEMA and if they could so easily be changed by re-grading. She said she thought it was a very involved process.

Mr. Zuccaro said that ultimately FEMA sets the floodplain.

City Engineer Troy Carmann stated that several processes are required before a floodplain can be changed.

Mayor Pro Tem Stewart noted that this is a revised plan, so he inquired what was revised.

Mr. Carmann stated that the first set of plans did not show a cross slope on the trail, so a very minor cross slope adjustment was made to the plans.

Councilor VanderWerf clarified that two engineering firms have looked at his proposal and they both agreed it is a solution to the possible drainage problem.

Mr. Carmann confirmed that two engineering firms have determined that re-grading would effectively address the issue.

Mayor Pro Tem Stewart asked for a short explanation regarding what the re-grading would change.

Mr. Carmann said the re-grading would effectively lower the trail by a matter of inches, which would provide more capacity for the overland sheet flow.

Councilor Brown inquired if the agreement was approved, would it mandate that the re-grading trail work be done and also be completed in a certain time period.

Mr. Zuccaro said he believed the agreement would authorize the work, but not mandate it. He also stated that no time frame is noted in the agreement.

City Attorney Fellman stated that Mr. Leede had agreed to indemnify the City in the event of any potential claims that result from this decision. He requested that Mr. Leede agree to broaden the indemnification to include any potential claims against the City, its officials, its employees, and its contractors.

Mr. Leede stated that he would do so.

City Attorney Fellman stated that if Council made motion to approve, he would recommend Section 2.4 of the agreement be revised to include the additional indemnifications.

Councilor Brown stated this proposal is something that is permitted under the code, and is presented by the City Engineers as being beneficial work, so he didn't see any reason not to proceed with the proposition.

Councilor VanderWerf agreed, but stated there needs to be reassurance to other property owners that when an issue arises on a trail, the City will review it.

Mayor Pro Tem Stewart agreed with Councilor Brown, but he didn't believe there was any urgent need for immediate action, as the present condition has existed for some time without apparent harm to the public health. He indicated that he believed Mr. Leede acted properly in retaining engineers and bringing the issue to the attention of the Village staff and Council.

Mr. Leede said the time frame that he is dealing with is due to the upcoming trial. He stated he believes this is a shake-down. Mr. Leede said he is set-up to have surveyors at the property tomorrow and could have the project finished by Saturday, if Council would give approval.

City Attorney Fellman stated that there was another issue in order to provide full indemnification, which is to include coverage of defense costs.

Mr. Leede agreed to this additional indemnification.

City Attorney Fellman stated he understood why Mr. Leede wanted to give full background regarding this situation, and why Mr. Leede's perception is that this is a shake-down. He said the City always tries to facilitate a better understanding of the issues of a situation. He confirmed that the Councilmembers will be reviewing and evaluating the context of this agreement and the situation in a neutral manner, and not in the context that it is to alleviate any potential lawsuit.

Mayor Pro Tem Stewart agreed with City Attorney Fellman and indicated that the history of the parties' dispute and the allegations in the litigation are irrelevant to the merits of the application and have been disregarded by the Council.

Councilor LaMair brought up the point of allowing adequate time for the neighbor to be heard by the Council.

Councilor Brown stated the code does not require a public hearing on this type of issue, which might be an omission in the process.

Mayor Pro Tem Stewart stated that when citizens express a desire to be heard on issues, the Council will generally try to accommodate conflicts and grant reasonable extensions depending on the circumstances.

Councilor LaMair mentioned that the neighbor's attorney will not be in town until August 4th, which is the next Council meeting.

Councilor Roswell stated he is in favor of tabling it for one meeting to allow the neighbors to be heard. He also stated that whether or not this issue is in litigation and whether or not either side has legal counsel should not be a consideration.

Councilor Roswell moved, seconded by Councilor Brown, to table the First Amendment to Development Agreement for Crescent Gardens Minor Subdivision to the next City Council meeting.

The motion passed unanimously.

Stipulation and Agreement – Southgate Water District and Glenmoor Country Club/Anderson Well

Councilor Scott Roswell asked for clarification as to whether the agreement is to reduce the amount of water flow rights the City has with the existing well. He expressed concern about giving up water rights.

A discussion ensued regarding water rights, water usage, and water production. City Manager, Eric Ensey, stated that the City would not be giving up water rights.

Councilor Mark Griffin asked if this situation was fundable.

City Attorney Fellman said that by agreeing to this stipulation the City would not incur legal fees fighting a losing battle.

Councilor Klasina VanderWerf commented that the City should make sure that there is enough water capacity to water the acreage.

Councilor LaMair inquired if Catherine Anderson was aware of this situation.

Mr. Ensey confirmed that she had been kept informed during the process.

Councilor Brown inquired if the reduction being proposed is still above the capacity of the well. Mr. Ensey stated that the proposed reduction was significantly above the capacity of the well.

Councilor LaMair inquired where the well was located.

Mr. Ensey stated it was located close to the pond.

Councilor Scott Roswell moved, seconded by Councilor Harriet LaMair to approve the "Stipulation and Agreement" as described in Exhibit A of the staff memorandum dated

July 21, 2009 concerning the application for water rights of the Southgate Water District and Glenmoor Country Club and authorize the Mayor to sign the document on behalf of the City Council.

The motion passed unanimously.

Approval of July 7, 2009 Minutes

City Attorney Ken Fellman pulled item 4a to make a change to page 8 of the July 7, 2009 draft minutes. He asked for his statement to read as follows:

"...if they would like him to authorize outside Council to file the petition for certiorari."

Councilor Scott Roswell moved, seconded by Councilor Harriet LaMair, to approve the July 7, 2009 minutes as amended.

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 (final reading)

Finance Director, Karen Proctor, advised the proposed Council Bill authorizes transferring \$150,000.00 from the General Fund to the Catherine H. Anderson Land Donation Fund. She stated there have been no changes since the first reading.

Councilor Harriet LaMair moved, seconded by Councilor Klasina VanderWerf, to approve Council Bill 8, Series 2009 on final reading. The proposed bill authorizes 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	yes
Russell Stewart	yes
Alex Brown	yes
Klasina VanderWerf	yes

Vote on the Council Bill 08-2009: 5 ayes. 1 nay. The motion carried.

Council Bill 11, Series 2009; a bill for an ordinance amending Chapter 19 of the Municipal Code by amending Section 19-1-120(a), concerning permanent stormwater BMP's (final reading)

Public Works Director, Jay Goldie, advised the proposed Council Bill would amend Chapter 19 of the Municipal Code concerning permanent stormwater BMP's. He stated there have been no changes since the first reading.

Councilor Scott Roswell moved, seconded by Councilor Griffin, 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 19-1-120(a),

concerning permanent post construction stormwater BMP's on second and final reading.

The following votes were recorded:

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

Vote on Council Bill 11-2009: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

None

REPORTS

Mayor's Report

There was no report.

Members of City Council

Councilor Brown stated he was contacted by a resident regarding a warning that they had received from the police department regarding weeds in the public right of way. Councilor Brown understands that requirement has been dropped from the code. He said he believes it has been the City's practice to require some property owners maintain the right of way, while in other areas the City maintains this area.

A discussion ensued on areas that the City has historically maintained versus what the code requires property owners to maintain. It was decided that Staff should research this issue and provide information to the Council during a future study session.

Councilor Griffin stated that he has been contacted by a resident named Jason Matherly regarding issues with the Police Department and he has tried to call back the resident on three different occasions.

Councilor Griffin stated that at a recent homeowners meeting he was asked if a left turn lane signal could be put on Northbound University Blvd at the Quincy Avenue intersection. He stated he had asked Mr. Goldie to contact Colorado Department of Transportation regarding this issue.

Members of City Boards and Commissions

There was no report.

City Manager & Staff

City Manager

Mr. Ensey stated he had attended a South Metro Fire Rescue meeting and that information was included in the packet.

Unaudited Financial Statements (June 2009) and Six Month Budget Review (Through June 2009)

Ms. Proctor discussed the unaudited financial statements and the six month budget review information that were included in the packets. She stated that the City is at about 66% of budgeted revenues and about 45% of budgeted expenditures for the General Fund. Ms. Proctor stated that at the end of June, General Fund revenues exceed expenditures by over 1.3 million dollars. She stated that the City is on track to meet or exceed that budget. Ms. Proctor said if anything becomes a concern she would advise the Councilors at future meeting.

Councilor VanderWerf inquired about the interest income and if we didn't have very much money invested.

Ms. Proctor stated that the City doesn't currently have any investments such as CD's, but that she was planning on investigating various investment options in the future.

Councilor Griffin commended Ms. Proctor on her reports.

Request for Proposal – Financial Audit Services

Ms. Proctor stated that she would be distributing a request for proposal for financial audit servers the following day. She stated that it has been the City's standard practice to do this every five years.

Councilor Brown inquired if the incumbent auditor is allowed to rebid.

Ms. Proctor stated she believed that the current auditor is allowed to bid.

Councilor Brown stated that one concept for re-bidding is to rotate auditors.

EXECUTIVE SESSION

Councilor Roswell moved, seconded by Councilor VanderWerf to hold an executive session for the purpose of receiving legal advice from the City Attorney pursuant to the provisions of C.R.S. §24-6-402(4)(b) and to instruct negotiators concerning a pending legal matter pursuant to the provisions of CRS §24-6-402(4)(e), concerning the South Suburban litigation 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.

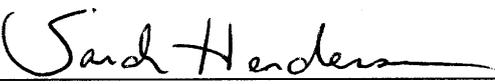
Council adjourned to an Executive Session at 7:30 p.m.

The Executive Session adjourned at 7:36 p.m.

The meeting adjourned at 7:36 p.m.



Russell Stewart, Mayor Pro Tem



Sarah Henderson, Deputy City Clerk