

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Thursday, November 19, 2009 at 6:00 p.m.
At the Village Center

The Study Session on the Residential Standards Development Committee's Report to the City Council began at 6:05 p.m.

The Study Session on the Village Center Conceptual Design with Norris Design began at 7:05 p.m.

Mayor Mike Wozniak called the regular meeting to order at 7:30 p.m.

ROLL CALL

Mayor Mike Wozniak, Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell, Klasina VanderWerf, and Harriet LaMair were present on silent roll call. Also present were Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Lieutenant Jody Sansing, Public Works Director Jay Goldie, and City Clerk Laura Smith.

City Attorney Ken Fellman arrived at 6:45 p.m.

Absent: City Manager Eric Ensey

AUDIENCE PARTICIPATION PERIOD

Martha Welborn
4901 S. Fairfax St.
Cherry Hills Village, CO 80121

Ms. Welborn asked that Council consider plowing the High Line Canal. She stated that the canal is plowed in other cities. She also asked if the trail might be maintained to prevent muddiness.

Mayor Wozniak asked Public Works Director, Jay Goldie, to address the issue in front of Council on December 8th, 2009.

Mr. Goldie said that he would be able to address the issue of plowing on December 8th, 2009, but that Public Works will be out maintaining the trail as soon as the weather warmed up.

Bill Piper
8 Churchill Dr.
Cherry Hills Village, CO 80113

Mr. Piper explained that he lives at 8 Churchill Drive, and is the second house at the end of a private road that bisects his property into a north side and a south side. He explained that he is building a house on the property and put up pillars on either side of the road where it enters his property. He stated that his neighbor to the west had originally agreed to the pillars, but did not want an automatic gate in between them, so he did not add a gate. He stated that everyone on the street has pillars or something of the sort in front of their property, but that every other property is either on the north or south side of the road and not bisected by the road as his property is. He stated that he has small children and that he just wants some kind of structure to make cars slow down as they drive by his property. He stated that through his attorney he has found out

that if 51% of the surrounding land owners agree to allow him to construct the pillars, he can do so, but he hasn't got the support necessary yet. He stated he has taken down one of the pillars and kept the other in the tract of land. He stated that the road is supposed to be 20 feet wide, and that there is a 15 foot bridal path on the north side, with a 10 foot utility easement on the south side. He stated there are large trees, pillars, and mailboxes along the road. He stated he would like to put his address, a light, and a mailbox on his pillar. He said that his understanding from talking to Planning Manager, Rob Zuccaro, is that he needs a permit in order to keep his pillar standing, and that everyone in the subdivision needs to support the permit before it may be issued. He stated that the letter he received from City Attorney Ken Fellman indicates that his recourse is to argue that everyone else in the subdivision has constructed pillars etc. without permits, but that he doesn't want to do that.

Mr. Piper also stated that because the end of the block has a very small area for turning around, trash trucks and fire trucks use a parking lot on the north part of his property to turn around and exit the block. He asked Council to address this issue as well.

Mayor Wozniak indicated that he has been by the property and that Council needs advice from Mr. Fellman on the Council's jurisdiction in dealing with an issue on a private road and on procedures for dealing with this type of issue.

Mr. Piper asked if he could have an extension on the date that the pillar must be removed until this issue is settled.

Mayor Wozniak deferred to staff to give Mr. Piper an extension of a reasonable period of time after Council figures out what they can do about the situation.

CONSENT AGENDA

Councilor LaMair removed Item b, Approval of the November 3, 2009 Meeting Minutes, from the Consent Agenda.

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

- a. Approval of Minutes – October 20, 2009
- c. Highway User Tax Funds (HUTF) Annual Mileage Certification
- d. License Agreement with the City of Englewood for a City-owned sewer line that crosses the "City Ditch"

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

The following items were removed from the Consent Agenda:

Item 4b. Approval of Minutes – November 3, 2009

Councilor LaMair indicated that she would like to amend the section of the minutes addressing her report to read "Councilor LaMair indicated that she had written a letter in support of a candidate for the Arts Commission for Arapahoe County but she was not elected. She also indicated that she has a background in public art and would be willing to assist with the Art Commission."

Mayor Pro Tem Stewart moved, seconded by Councilor VanderWerf, to approve the November 3, 2009 Meeting Minutes subject to the aforementioned amendment.

The motion carried unanimously.

UNFINISHED BUSINESS

None

NEW BUSINESS

Council Bill 18, Series 2009; Amending Chapter 16 of the Municipal Code, concerning zoning, by amending Section 16-8-80, concerning R-3A Variable Lot Residential District buffer requirements (first reading)

Mr. Zuccaro indicated that there were two versions of Council Bill 18, Series 2009 for consideration by the Council. He indicated that both versions add a new subsection (f) to section 16-8-80 of the Zoning Ordinance. Section 16-8-80 outlines three different types of buffers for the R-3A zoned subdivision. The new subsection (f) allows for the removal of the 50-foot "internal" buffer in subsection (c). He indicated that Council has gotten a lot of background on this issue in previous meetings. The newly proposed subsection (f) specifies that the buffer can only be removed if it was not used as a credit against the land dedication requirements of the subdivision and requires that all property owners adjacent to the buffer agree to the removal. Subsection (f) also infers procedures in Article III, Division 4 of the Subdivision Ordinance. Procedures that one would have to go through to remove a buffer include going before the Planning and Zoning Commission (P&Z) and the City Council at a public hearing. The City Council would have the final word on approval. These procedures are presented in Council Bill 19, Series 2009.

The second version of Council Bill 18, Series 2009, includes the deletion of the second sentence in subsection (a). This sentence allows for the buffer to be counted as credit towards the land based dedication requirements in the R-3A subdivision. The deletion of this sentence was at the recommendation of the P&Z. Their reasoning was that allowing private land to count towards the dedication requirements was inconsistent with the intent of the requirements to provide public parks, open space, and trails, and inconsistent with the Master Plan. Council has had several recent discussions regarding the removal of the R-3A buffer, most recently during the September 15, 2009 City Council meeting. At that meeting Council provided staff additional direction on the proposal, including writing a draft with a public hearing requirement. Staff recommended approval of version one of Council Bill 18, Series 2009.

Councilor LaMair asked if the internal buffer was included in the land dedication requirements.

Mayor Pro Tem Stewart replied that the land dedication requirement has been met without the buffer.

Mr. Zuccaro indicated that this was outlined in a stipulation in the subdivision improvement agreement.

Mayor Pro Tem Stewart asked staff to clarify why they were recommending a different version of the bill than P&Z had recommended.

Mr. Zuccaro indicated that staff chose to recommend version one because they felt it was a policy issue that had been decided in the original zoning for the subdivision and

had been approved. Mr. Zuccaro stated it wasn't necessarily part of what was being looked at for this proposal.

Mayor Wozniak asked staff if he was correct in his understanding that in version two the homeowner could not vacate the buffer if it was used as part of the land dedication.

Mr. Zuccaro stated that there were two separate issues. There was the issue of the existing subdivision which counted the internal buffer towards the land dedication requirements, and that of the subdivision that did not count the buffer. Subsection (f) of the proposed bill states that if the buffer was counted towards the land dedication requirements, then it cannot be vacated. The P&Z wanted to remove subsection (a) in anticipation of a future R-3A subdivision. He indicated that another R-3A subdivision is a fairly unlikely scenario.

Councilor Brown asked if buffers dedicated as open space carry their own requirements.

Mayor Wozniak indicated that he thought P&Z's recommendation to remove subsection (a) gave Council the ability to deny future landowners from vacating their internal buffers if it was used as open space and part of the land dedication requirements.

Mayor Pro Tem Stewart indicated that he thought P&Z's recommendation was a good idea because it gives the City the flexibility to decide where they want the internal buffer. He also indicated that when the City takes a land dedication it also takes the title to the land, but that in this case the City does not have the land title.

Councilor LaMair asked staff to describe the location of the buffer along Hampden Ave. in the Covington subdivision.

Mr. Zuccaro indicated that there is one vacant lot in Covington that is owned by the Nazarene Church and has a buffer that borders Hampden.

Mayor Wozniak indicated that when the subdivision was platted the City required some setbacks and buffers. He stated that while the chance of a new R-3A subdivision being created in the future is minimal, he supported P&Z's recommendation to remove subdivision (a).

Mayor Pro Tem Stewart indicated that the main change to the proposal that he was concerned with was the addition of a public hearing in the procedures, which removed the decision from a purely administrative decision to one with public input.

Councilor Brown indicated that he thought the current code placed overly restrictive limits on use of land. He also indicated that he thought spatial separation between structures in zone districts was a valid idea. He indicated he was willing to add a further amendment to the proposed bill that would simply say that the elimination of a buffer won't change the building envelope as it was originally configured on the lot. This would eliminate any restriction on use, besides erect structures, in the vacated portion of the buffer.

Mayor Pro Tem Stewart indicated that doing so would double the size of the setbacks on those lots as opposed to a similar lot anywhere else in the Village.

Council LaMair expressed her concern that the residents who purchased lots with internal buffers bought them with an understanding of what that entailed. The internal buffers were pieces of land held in the public interest, and she asked what the public will be getting in exchange for eliminating the buffer.

Mayor Pro Tem Stewart indicated that he believed the issue was use restriction. He indicated that he thought that treating the eliminated buffer as a setback and allowing the same uses as is allowed in a setback might be a good way to address the issue.

Mayor Wozniak indicated that he thought that Councilor Brown's solution was somewhat elegant, as the rules for a setback are already outlined in the zoning code.

Councilor Brown indicated that he has always been concerned with zone district boundary areas and the preservation of open space in accordance with the Master Plan, and for that reason he likes the idea of the buffer. However he is also sympathetic to horizontal uses in that area. He indicated that he is comfortable accommodating but does not want to see the building envelope change.

Councilor LaMair asked how this proposed bill would affect the other buffer.

Mayor Wozniak stated that it does not affect the external buffer.

Mr. Zuccaro confirmed that this proposal does not affect the 100-foot buffer or the second 50-foot buffer.

Mayor Pro Tem Stewart indicated that they did not change the definition of buffer so that they would not affect all the buffers.

Councilor LaMair asked if the distinction between internal and external buffers was explicit in the Code.

Mr. Zuccaro stated that the buffer in question is internal to the Buell subdivision.

Mayor Pro Tem Stewart suggested that another possibility would be to get rid of the buffer as a special category and turn it into a larger setback, which is already clearly defined in the Code.

Mayor Wozniak asked Councilor Brown to suggest language to add to the proposed bill.

Councilor Brown suggested adding a new subsection (g) to section 16-8-80, stating something to the effect of 'the removal of buffers established pursuant to subsection (c) of this section shall not be deemed to change the building envelope on any lot as originally established by said buffer.'

Mayor Wozniak asked for other comments.

Councilor Roswell indicated that he had been most concerned with discussing the proposed bill in a more public setting so that those residents in subdivisions other than Buell might voice any concerns they had. He stated that he was encouraged that the proposed bill would be presented in a public hearing.

Mayor Pro Tem Stewart indicated that the only way this will work is if everyone on both sides agrees.

Councilor LaMair indicated that just because everyone who is immediately affected by something doesn't want it, doesn't mean that it is not in the public interest.

Mayor Pro Tem Stewart indicated that the internal buffer under consideration has no public interest because it is completely internal to the subdivision, there are no trails on it, and it cannot be seen from the street, nearby trails, or other neighborhoods.

Councilor LaMair indicated that it is a piece of land unencumbered by fencing, wildlife may use it, and that there is an argument to be made that there is potentially a public interest.

Councilor Brown indicated that he is approaching the issue from a less site-specific analysis, rather he is coming from a community zoning and compromise. He stated that the public interest potential has value as a concept but that in this case it might be best to give a little on the uses allowed on this land.

Councilor Brown moved, seconded by Mayor Pro Tem Stewart to approve on first reading Version 2 of Council Bill 18, Series 2009 as outlined in Exhibit B of the November 19th, 2009 staff memorandum amending Chapter 16 of the Municipal Code, concerning zoning, by amending Section 16-8-80 of the Municipal Code, concerning R-3A Variable Lot Residential District buffer requirements with the proposed amendment adding a new subsection (g) to the effect that removal of the buffer established pursuant to subsection (c) of this Section, shall not be deemed to change the building envelope for any lot as originally established with said buffer.

The following votes were recorded:

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

Vote on Council Bill 18, Series 2009: 6 ayes. 0 nays. The motion carried.

Mayor Wozniak indicated that the second reading of this bill would be on December 8th, 2009.

Council Bill 19, Series 2009; Amending Chapter 17 of the Municipal Code, concerning subdivisions, by amending Article III, Division 4, providing procedures for amended plats for the purpose of removal of R-3A Zone District buffers (first reading)

Mr. Zuccaro stated that Council Bill 19, Series 2009, modifies the existing minor subdivision procedures that already exist in the subdivision ordinances in order to include new classifications for amended plats. The amended plat procedures will provide a mechanism for Council to consider requests to remove buffers from subdivision plats. The procedures will require a public hearing before P&Z and City Council. They also will require written approval from all adjacent property owners prior to removal of the buffers and will also provide review criteria for Council to consider when reviewing these requests.

Mayor Pro Tem Stewart asked if this bill dove-tails with Council Bill 18, Series 2009.

Mr. Zuccaro confirmed that it did.

Mayor Pro Tem Stewart moved, seconded by Councilor Roswell to approve on first reading Council Bill 19, Series 2009; a bill for amending Chapter 17 of the Municipal Code, concerning subdivisions, by amending Article III, Division 4, providing procedures for amended plats for the purpose of removal of R-3A Zone District buffers as further outlined in the staff memorandum dated November 19, 2009.

Councilor LaMair asked if items discussed in previous Council meetings such as the ultimate intent of the buffer, the nature of improvements, and the impact of the buffer on the original intent of the buffer are included the review criteria outlined in Council Bill 19, Series 2009, for removal of a buffer.

Mr. Fellman responded that the proposed bill would be a minor amendment to Section 17-3-360 already outlines the criteria used to review a request. Subsection (8) of this Section addresses conformity to the Master Plan.

The following votes were recorded:

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

Vote on Council Bill 19, Series 2009: 6 ayes. 0 nays. The motion carried.

Mayor Wozniak indicated that the second reading of this bill would be on December 8th, 2009.

REPORTS

Members of City Council

Councilor Brown had no report.

Councilor VanderWerf recommended that people driving by Holly and Belleview notice the improvements in the island and the corner. She stated that she attended the Parks, Trails & Recreation Committee (PRTC) meeting and wanted to outline their priorities for the coming year. First, they are looking again at finishing the trail that partially goes between Franklin and High Street along what would be an extension of Radcliffe and that would involve a low-water crossing. The PRTC studied this area many years ago. The homeowners whose property is adjacent or surrounding the right-of-way are in favor of the development of a trail. Secondly, PRTC is looking at a trail that is currently used on the St. Claire property. Thirdly, they are looking into constructing a play structure at Dahlia Hollow. Fourthly, the Belleview underpass at Little Dry Creek and Woody Hollow is moving along. Greenwood Village is concerned about the possible increase in pedestrian traffic that this underpass may create.

Councilor VanderWerf stated she attended the second session of the Arapahoe County Open Space Master Plan process. She stated that she thought it was exciting and that Arapahoe County is doing some good things. She stated that the High Line Canal effort is still moving forward although it has taken a back seat to the Master Plan.

Councilor VanderWerf also mentioned that Jim Muhm, the City's trail guru, as well as his wife Jean Arthur, are both in the hospital and not doing well. Mr. Muhm asked that Councilor VanderWerf express his interest in having a trail easement on his property along the driveway to Holly that would go into effect when they sell the property.

Mr. Goldie indicated that he is working with Mr. Muhm on this.

Councilor Roswell had no report.

Mayor Pro Tem Stewart had no report.

Councilor LaMair indicated that the Denver Regional Council of Governments (DRCOG) meetings have been full with complex issues dealing with federal funding. They are having two short courses, one on December 9th, 2009 from 4-6pm on water, and another on January 13th, 2010 from 4-6pm on aging. She also mentioned the bad press that DRCOG received when they had to make employee cuts.

Councilor Griffin presented an article from the Wall Street Journal regarding the end of the Federal Tax Credit for homebuyers in April 2010 and the Federal winding-down of support for the mortgaged-backed security market in March. He stated that the housing market is still very fragile and expressed his concern over the next two to three years. He stated that Mr. Fellman has reviewed the City's options in changing its assessment and urged Council to address the issue sooner rather than later.

Mayor's Report

Mayor Wozniak asked if the City had received legal council on a water rights contract.

Mr. Fellman confirmed that they had, and explained that the reason the Mayor was signing the contract now was because one of the law firms had changed their address during the process so the City needs to submitted a new version with the updated address.

Mayor Wozniak stated that the final strategic planning meeting to provide input on the Great Outdoors Colorado (GOCO) Lottery Funding for future projects would be December 1st, 2009 at 6:30 p.m. They will be discussing projects in Arapahoe County and he suggested that someone from Council or staff attend. He asked Mr. Goldie to keep apprised of anyone attending this meeting.

Mayor Wozniak stated that he had received a call from Judge Turre requesting a meeting before the end of the year to discuss the City's fine schedule. He asked Mayor Pro Tem Stewart to come to the meeting with him. He asked that someone from City staff also attend.

Ms. Proctor indicated that Court Clerk Jessica Sager had sent an email to Mayor Wozniak regarding the meeting.

Mayor Wozniak indicated that the 2009 budget was looking better due to staff vigilance, and that Ms. Proctor has done a wonderful job. He stated that they would have a report for Council on December 8th, 2009 regarding the budget.

Mayor Wozniak stated that he has had two separate calls from residents inquiring as to the City's poor cell service. One of these residents is a CEO of a fairly large carrier and offered to help, and another develops cell phone technology. He updated them on the City's cell tower project and the need for carriers.

Councilor Griffin asked if AT&T and Sprint had shown interest.

Mr. Zuccaro clarified that the City had two carriers signed up and one with whom they are working on a contract with.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Mayor Wozniak directed Council to hold any discussion of the 2010 budget until the December 8th, 2009 meeting.

Departmental Monthly Reports (October 2009)

Finance Director Karen Proctor advised Council that the October 2009 Departmental Monthly Reports were included in the Council packets.

2010 Capital Improvement Projects

Mr. Goldie stated that at the October 20th, 2009 meeting, Councilor Brown had initiated a discussion about possibly raising the 2010 Capital Improvements budget to around a million dollars, as it had been over the last several years. He indicated that when staff presented a balanced 2010 budget to Council it included a reduced budget for Capital Improvements of \$450,000. He stated that he had talked to people in the industry and that no one was willing to say what oil prices will do over the next couple years, but that they are most likely to remain flat. Asphalt and concrete prices are also predicted to stay stable at their current rate, which is about 25% lower than in 2007 and 2008. Because of this, it may make sense to look at taking money from the reserve to bring the Capital Improvement budget up to around a million dollars since spending that money now might result in an overall cost saving for the City. In addition, the reserve funds are not gaining much interest in the present economy. Although there is no way to predict what those actual savings would be, they could be substantial. He stated that staff is looking for guidance from Council on whether to take \$580,000 from the reserve fund to bring the 2010 Capital Improvements budget up to \$1,030,000.

Mayor Wozniak asked what the 2009 Capital Improvements budget had been.

Mr. Goldie responded that it was just under one million.

Mayor Wozniak stated that Councilor Griffin's comments about the housing market were concerning, and there was the issue with South Suburban that Council would be discussing during Executive Session, but that he would like to see this increase in the Capital Improvements budget as an option in the 2010 budget for the Council to discuss at the next meeting.

Councilor Brown indicated that the Council should keep discussing this option. He stated that this is part of a work plan that has already been approved, the money has already been collected from the tax payers, and by saying the City can't go above current year revenues they were in a sense letting outside forces dictate the standard of community infrastructure.

Mayor Wozniak asked Ms. Proctor to provide information on the reserve numbers in each account for discussion at the next meeting.

2010 Municipal Election

City Clerk Laura Smith presented Council with information regarding the April 6th, 2010 Regular Municipal Election. She stated that staff was seeking direction on whether Council would like to hold the election as a mail ballot election or as a polling place election. In the past ten years Council has chosen to hold four mail ballot elections and

one polling place election. The primary benefit of a mail ballot election is higher voter turnout while the primary benefit of a polling place election is lower cost.

Mayor Wozniak indicated that anything that can be done to increase participation is worth the cost.

Other Council members expressed their agreement.

Mayor Wozniak directed staff to conduct the April 6th, 2010 election as a mail ballot election.

Business/Sales Tax Licenses

Ms. Proctor indicated that staff had recently been receiving an increased volume of phone calls regarding business licenses and sales tax, causing staff to revisit issues and in doing so discovered inconsistencies between City procedures and the Municipal Code, as well as points needing clarification within the Municipal Code. One of these issues is that the City currently only issues Business Licenses to those businesses in the C-2 zoning district. However, the Code states that everyone must obtain a license from the City before conducting business within the City. Staff asked for direction from Council on whether they should issue every business within the City with a license, or amend the Code to reflect the current practice.

The next issue is that currently the City does not issue sales tax licenses, while still requiring remittance of sales tax. However, the application for a business license does require some tax information. The Code states that everyone engaged in business within the City must obtain a sales tax license.

Mayor Wozniak asked staff to comment on the practices of other municipalities, particularly related to home occupation.

Ms. Proctor directed Council to a memo from Mr. Fellman's office that compared the practices of other municipalities.

Mr. Fellman indicated that home occupation is not specifically addressed in criteria determining which businesses require a license in other municipalities. He stated that he interprets this to mean that the location from which goods or services are sold is not a factor.

Mayor Pro Tem Stewart indicated that his understanding was that the selling goods or services is not permitted in residential districts.

Mayor Wozniak stated that he would think there are a number of residents in the City with some sort of home office business despite the Code.

Councilor LaMair agreed that there are a lot of cottage industries in the City, as well as residents who sell goods via the internet.

Councilor Griffin stated it was an issue of enforceability.

Mayor Wozniak stated that the goal is to have consistency between the Code and the City's procedures, and that the issue is which to change to be consistent with the other.

Councilor LaMair asked if businesses are required to have a state license.

Mr. Fellman confirmed that they are.

Mayor Wozniak stated that this is a complex issue and Council will need time to explore and discuss it.

Councilor LaMair stated that whatever was decided the result should not be onerous for staff.

Mayor Wozniak stated he would be interested to know the revenue that other municipalities receive from business licenses and sales tax.

Mr. Fellman stated it would be interesting to know how much revenue came from home occupations, but that other municipalities may not have that information. He also advised the Council that businesses are obligated to remit sales tax with or without a license, and that a license just makes it easier for government to monitor remitted tax.

Mayor Wozniak stated that it might be best to not require a business or sales tax license for any business other than those in the C-2 zoning district.

Mayor Pro Tem Stewart indicated that Continental Cleaners is exempt from paying sales tax.

Ms. Proctor noted that the dry cleaning business is a service and does not sell tangible goods. She stated that the City Code defines business as including services in some cases but not in others.

Mayor Wozniak stated that revenues from business licenses and sales tax would likely be very minor. He indicated that Council would need more time to think about and discuss this issue before they were ready to make any decisions.

Ms. Proctor stated that another issue deals with deliveries into the City. City practice had been not to tax any deliveries into the City, and this had been published in the Village Crier numerous times. However, the Code stated that any business making more than one delivery into the City within a year must remit sales tax.

Councilor LaMair stated that this issue is huge with deliveries of furniture, and that furniture stores know that if they deliver into the City they don't have to pay sales tax.

Mayor Wozniak thanked Alison Moy, from Mr. Fellman's office, for the memo. He stated that Council would re-visit this issue during the December 8th meeting.

City Attorney

Mr. Fellman indicated that he had received paperwork regarding the City's on-going suit over the bicycle accident. He stated that the contractor is also being sued.

Mr. Fellman indicated that a recent FCC decision imposes time limits on City action on land use applications for wireless facilities. An application to collocate on an existing site must be acted upon within 90 days and an application for other kinds of sites must be acted upon within 150 days. This relates to final action, so the time frames relate to the full Planning and Zoning and then Council process. If the time frames are not met, the applicant could either voluntarily agree with the City to a longer period of time, or alternatively, could challenge an unreasonable failure to act in a court action. The City would be able to present evidence in court to demonstrate why it was reasonable to take more than the 90 or 150 days to reach a decision. If the initial land use application is incomplete, and if the City notifies the applicant of this within 30 days, then the 90 or 150 day shot clock does not begin to run until a complete application is received. The

FCC order also found that local governments could not deny an application of one applicant, solely because another company provides service in that area. In all other respects, the FCC decision preserves local land use authority.

Mr. Fellman stated that during the last municipal election in 2008, there had been an issue involving the swearing-in of new municipal officials, which must be done by the Municipal Judge according to the Code. A problem arose when the Municipal Judge was not available at the first meeting with the new Council. He asked Council if they would like staff to prepare a code amendment that allows someone like the City Clerk to swear in new municipal officials informally until a formal ceremony with the Judge can be arranged.

Mayor Wozniak indicated that Council would like such an amendment.

Mr. Fellman stated that his contract with the City ends on December 31st 2009. He indicated that his firm has not raised their rates in the last two years and will not for 2010 either.

Mayor Wozniak indicated that was fine. He stated he would like staff to write a memo with the breakdown of what has been budgeted for Mr. Fellman's firm vs. what has been paid to them, as well as for the Foster firm and the Water Council.

ADJOURNMENT

A motion was made by Mayor Pro Tem Stewart seconded by Councilor LaMair to proceed into Executive Session for the purpose of instructing negotiators and receiving legal advice concerning the South Suburban litigation as well as for the purpose of receiving legal advice from the City Attorney and instructing negotiators as authorized by CRS §24-6-402(4)(b)&(e), regarding a real property issue, and also for the purpose of discussing personnel matters as authorized by C.R.S. 24-6-402(4)(f), and further upon completion of the Executive Session to immediately adjourn.

The following votes were recorded:

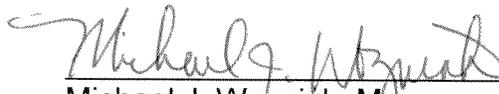
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Mark Griffin	yes
Harriet LaMair	yes

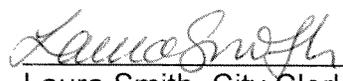
Vote on Executive Session and adjournment: 6 ayes. 0 nays. The motion carried.

Mayor Wozniak requested that staff stay for the first two Executive Sessions.

The meeting adjourned into Executive Session at 9:00 p.m.

The meeting adjourned at 10:05 p.m.


 Michael J. Wozniak, Mayor


 Laura Smith, City Clerk