

**RECORD OF PROCEEDINGS**

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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, January 5, 2010 at 6:30 p.m.  
At the Village Center

Mayor Pro Tem Stewart called the meeting to order at 6:35 p.m.

**ROLL CALL**

Mayor Pro Tem Russell Stewart, Councilors Mark Griffin, Alex Brown, Scott Roswell, Klasina VanderWerf, and Harriet LaMair were present on roll call. Also present were Interim City Manager and Police Chief John Patterson, Finance Director Karen Proctor, Public Works Director Jay Goldie, Parks, Trails & Recreation Administrator Ryan Berninzoni, Lieutenant Jody Sansing and City Clerk Laura Smith.

Absent: Mayor Mike Wozniak

**AUDIENCE PARTICIPATION PERIOD**

None

**CONSENT AGENDA**

Mayor Pro Tem Stewart removed Item 4c from the Consent Agenda.

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

- a. Approval of Minutes – December 8, 2009
- b. Sanitation Sewer Easements, Cherry Hills Rancho and Cherrymoor South Water Districts
- d. Resolution 1, Series 2010; Designating a Public Place for Posting Notices of Regular and Special Meetings
- e. Resolution 2, Series 2010; Concerning the Appointment of an Interim City Manager
- f. Resolution 3, Series 2010; Approving the Settlement Agreement and Release with Eric J. Ensey

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

Mayor Pro Tem Stewart asked City Attorney Ken Fellman to speak about Item 4c.

Mr. Fellman suggested to Council that the City post links to the Colorado Autism Society and the Governor's Commission on Autism as links along with the Mayor's Proclamation on the City website. Providing this information would further the goal of educating the public about autism.

Councilor LaMair moved, seconded by Councilor Roswell to approve the following item on the Consent Agenda:

- c. Proclamation 1, Series 2010; Designating the Week of January 31<sup>st</sup> to February 6<sup>th</sup> 2010 as Autism Education Week

**UNFINISHED 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 (final reading)

Public Works Director Jay Goldie presented Council Bill 18, Series 2009 on second reading and stated that it had been approved on first reading by Council on November 19<sup>th</sup>, 2009. Mr. Goldie advised Council that the three proposed changes to the bill were outlined in the staff memo included in Council packets.

Mayor Pro Tem Stewart indicated that he supports the Council Bill in the current form which eliminates the buffer, but that Council could also simply redefine what is allowed in the buffer. This would avoid having to change the plat. However, it would not include a public hearing requirement.

Councilor Brown indicated that he had wanted to maintain the buffer for structures, but had not understood that the bill would preclude things like patios and decks. There are uses that people would probably not object to, and would still maintain the openness of the lot.

Councilor Roswell indicated that his understanding was that patios and decks are not allowed in any other zone area if it impedes upon the setback. Council Bill 18 removes the buffer but makes the area subject to the zoning setbacks. He indicated that a resident could apply for a variance to build a patio or deck in this setback.

Councilor Brown indicated that it is a difficult process to apply for a variance under the City's Code. He concurred that Councilor Roswell was correct and that one of the frustrations of the original homeowners was that the buffer was overly restrictive.

Councilor Roswell indicated that this bill permits the Buell Mansion subdivision to bring an application before the City Council.

Mayor Pro Tem Stewart indicated that if the City treats these buffers like other setbacks, then it is more easily enforced and puts the City on firmer legal grounds.

Mr. Goldie indicated that this bill would allow fences, sidewalks, driveways, and landscaping in the buffer areas.

Councilor Roswell asked if the City anticipates an application from Buell Mansion subdivision.

Mayor Pro Tem Stewart indicated that Buell Mansion subdivision had submitted a letter to the City with signatures of the affected landowners.

Councilor Brown moved, seconded by Councilor VanderWerf to approve Council Bill 18, Series 2009 on second and final reading, a bill for an ordinance 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.

The following votes were recorded:

|                    |     |
|--------------------|-----|
| Harriet LaMair     | yes |
| Russell Stewart    | yes |
| Scott Roswell      | yes |
| Klasina VanderWerf | yes |
| Alex Brown         | yes |



The following votes were recorded:

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

Vote on the Council Bill 20-2009: 6 ayes. 0 nays. The motion carried.

### **NEW BUSINESS**

#### **Application for a Hotel & Restaurant Liquor License as Requested by JTM Investments**

City Clerk Laura Smith presented an application for a new Hotel & Restaurant Liquor License as requested by JTM Investments D.B.A. Pulcinella Pizzeria at 1400 E. Hampden Ave. Suite 140. She indicated that staff has been in contact with the State Liquor License Enforcement Division as well as City Attorney Ken Fellman regarding the application process. She introduced the owner of JTM Investments, Tucker Manion, and the manager of Pulcinella Pizzeria, Andrew Birkholz.

Councilor Roswell asked if staff had received any public comments voicing objection to the liquor license.

Ms. Smith replied that staff had not received any public comments beyond the petition that Mr. Manion's staff submitted with signatures of residents supporting the application.

Councilor Roswell asked staff if there were any other liquor licenses in the 1400 E. Hampden Ave. retail area.

Ms. Smith confirmed that there were no other liquor licenses in that area, and that the only other liquor licenses in the City were at the country clubs.

Councilor VanderWerf asked why one country club had a Hotel & Restaurant liquor license while the other had a Club liquor license.

Ms. Smith replied that she did not know why the country clubs had chosen two different types of liquor licenses. She stated that Hotel & Restaurant license require the establishment to receive a majority of its revenue from the sale of food.

Councilor Brown asked if the Hotel & Restaurant license would allow Pulcinella Pizzeria to serve any type of liquor.

City Attorney Ken Fellman confirmed that this was a full liquor license.

Mr. Manion responded that they would begin with serving primarily wine and beer, but that they would like to have the option to expand into other liquors in the future depending on their clientele.

Mr. Manion introduced himself and Mr. Birkholz. He stated their business address at 1400 E. Hampden Ave. Suite 140.

Mayor Pro Tem Stewart asked what business had been in that suite before.

Mr. Birkholz responded that the Frame & Gallery had been the previous occupant.

Mayor Pro Tem Stewart asked what their schedule for opening was.

Mr. Manion responded that they expected to open by the end of January or the beginning of February.

Mayor Pro Tem Stewart asked if they had other businesses they are currently running.

Mr. Manion responded that he owns a business called Center Point Properties. He stated that he and his father were the owners of the building at 1400 E. Hampden Ave. Suite 140, and that was the initiative to putting a new business in that space.

Councilor LaMair asked if Pulcinella Pizzeria is a franchise.

Mr. Birkholz responded that Pulcinella Pizzeria has three locations in northern Colorado, two in Ft. Collins and one in Lafayette.

Councilor LaMair asked what the hours of operation will be.

Mr. Birkholz responded that the hours of operation will be from 11 a.m. until 10 p.m.

Mayor Pro Tem Stewart asked if there is a separate bar in the premises.

Mr. Manion confirmed that there is a separate bar with seating for ten people.

Councilor Brown asked if Mr. Birkholz had experience managing establishments with liquor licenses.

Mr. Birkholz responded that he does, through his work at Pulcinella Pizzeria and Rock Bottom Brewery. He stated that he's very familiar with the TIPS staff program.

Mayor Pro Tem Stewart asked how many employees they would have.

Mr. Birkholz responded that they will have between four and thirteen employees including him as the manager.

Mayor Pro Tem Stewart asked if the establishment would be open seven days a week.

Mr. Birkholz confirmed that they would, but would possibly open a bit later and close a bit earlier on Sundays.

Councilor LaMair asked if they would be serving food other than pizza.

Mr. Birkholz responded that they will be serving an Antipasti menu as well as pizza, consisting of small tapas items or appetizers.

Councilor Griffin indicated that the Ft. Collins branch of Pulcinella Pizzeria is very successful.

Mayor Pro Tem Stewart asked if they had done any customer surveys in Cherry Hills Village.

Mr. Manion responded that they had not done any surveys beyond the petition they had asked residents to sign in support of the establishment.

Mayor Pro Tem Stewart asked where they expected most of their customers to come from.

Mr. Manion responded that the business would be located close to a hospital and apartment complexes, as well as the Cherry Hills Village area. He stated that offering wine should bring in a dinner crowd.

Mayor Pro Tem Stewart asked if they will be delivering as well.

Mr. Manion confirmed they would.

Councilor LaMair asked how big the space is.

Mr. Manion replied that it is 1600 square feet.

Councilor LaMair asked if there was an outdoor seating area.

Mr. Manion replied that they would have liked to have outdoor seating but that the space was not conducive to it.

Councilor Griffin asked how they planned to deal with the tight parking in the area.

Mr. Manion replied that he has rented several spaces at the medical center across the street for employee parking to free up space in the business parking lot.

Mr. Fellman asked Mr. Birkholz to clarify what he had said earlier about being at this meeting on behalf of another owner.

Mr. Birkholz clarified that he had been talking about his current employer who is an owner of other Pulcinella Pizzerias, and who has no ownership or interest in the business under discussion.

Councilor Roswell moved, and Councilor VanderWerf seconded to approve Resolution 4, Series 2010 approving a new Hotel & Restaurant liquor license for JTM Investments, LLC D.B.A. Pulcinella Pizzeria at 1400 E. Hampden Ave. Suite 140.

The motion carried unanimously.

Council Bill 1, Series 2010 – Authorizing a Supplemental Appropriation for Payment to Eric Ensey with Respect to the Settlement Agreement and Release in Fiscal Year 2010 (first reading)

Ms. Proctor presented Council Bill 1, Series 2010 on first reading. She stated that the agreement Council had passed on the Consent Agenda, Item 4f, required payments to be made that were not in the 2010 budget. The proposed bill authorizes a supplemental appropriation for these payments.

Councilor Griffin moved, seconded by Councilor LaMair to approve Council Bill 1, Series 2010, a bill for an ordinance of the City of Cherry Hills Village authorizing a supplemental appropriation for payment to Eric Ensey with respect to the settlement agreement and release in fiscal year 2010 on first reading.

The following votes were recorded:

|                    |     |
|--------------------|-----|
| Klasina VanderWerf | yes |
| Alex Brown         | yes |

|                 |     |
|-----------------|-----|
| Mark Griffin    | yes |
| Harriet LaMair  | yes |
| Russell Stewart | yes |
| Scott Roswell   | yes |

Vote on the Council Bill 1-2010: 6 ayes. 0 nays. The motion carried.

## REPORTS

### **Members of City Council**

Councilor Brown reported that he approached the Parks, Trails & Recreation Committee (PTRC) and expressed his concern regarding the loss of the regular supply of water from the High Line Canal into Three Pond Park. PTRC took it under advisement. He indicated that he had spoken to the City Engineer about the possibility of diverting rainwater that currently goes into the High Line Canal so that water will flow more steadily. He stated that he has spoken with a member of the Denver Water Board about this issue and they will talk internally. He will advise Council of any further communication with the Water Board.

Councilor Brown also reported that he has been in contact with Community Development Director Rob Zuccaro concerning an inquiry by a resident of Councilor Brown's district regarding the construction of solar panels as a ground array. He stated that solar panel permits for roofs were frequent but that he had not encountered a permit for a ground array before, and asked if Council had encountered this issue in the past.

Councilor Roswell suggested that in the past ground arrays have been treated as accessory structures and applications for variances have gone through the Board of Adjustment and Appeals.

Councilor VanderWerf reported that she had attended Jim Muhm's service last Saturday and that it was a very nice service and well attended. She said that Jean Arthur is ready to proceed on dedicating a portion of their land to a trail. Councilor VanderWerf also reported that she had been in contact with Chuck Schloss about setting up lectures at the Village Center for the spring and summer again. Last year it was well attended and she would like to support it again, but she said Council should be careful about how much staff time it takes up. She said it might be a good idea for Mr. Schloss to come up with a number of topics and to send an email to residents to get feedback.

Mr. Goldie indicated that staff did not do a lot last year as the lectures were organized by the University of Colorado and held at Kent Denver School, but that if this year was more organized that would help staff to publicize the lectures.

Councilor LaMair suggested that a PTRC volunteer could help with the administration of the lectures.

Councilor Roswell suggested that the lectures might provide fundraising opportunities for Parks & Trails.

Councilor Roswell reported that he and Councilor Brown would be in contact with Chief Qualman of South Metro Fire Rescue regarding the Village Center Conceptual Plan.

Councilor LaMair reported that Arapahoe County has taken the lead on a Trust for Public Lands project to look at use expansion of the entire High Line Canal. They are hiring an 18 month position to lead the project and to put together recommendations for

the trail. The plan includes the open space property owners adjacent to the High Line Canal. Councilor LaMair suggested Council put together a planning session to make sure these residents are aware of the available funds for trail improvement and how the City Council is involved. She and Councilor VanderWerf will continue to monitor the project as it becomes more formally structured. She also reported that she will be absent for the January 19<sup>th</sup> meeting. Lastly, she reported that she had been in contact with the resident concerning the fence situation and that Mr. Zuccaro would be contacting the resident tomorrow.

Mayor Pro Tem Stewart indicated that Mr. Zuccaro would be referencing the City Code to determine what the resident's options will be. He also indicated that this has been an issue for several years.

Councilor LaMair stated she was sensitive to the resident's situation.

Chief Patterson indicated that the resident had received a stop work order on the fence because they did not have a permit.

Mr. Goldie explained that part of the issue was that it was unclear whether the fence was in the right place, and that going through the permit process would make that clear.

Councilor Griffin reported that a neighbor of the Village Center is very concerned with the Conceptual Plans. Chief Patterson has been in communication with her.

Councilor LaMair indicated that she believes the resident had not attended any of the public meetings associated with the Village Center Conceptual Plan, but that the resident will be at the public hearing on January 19<sup>th</sup>. She also believed that the resident has read through the plans and is representing the concern of several neighbors. She said their primary concern is with the uses of the lot on Meade Lane.

Councilor Griffin indicated that the residents were concerned about the lot being used for Public Works or for storage of equipment.

Councilor LaMair indicated that she had reiterated to the resident that storage was a possible use of that lot but that it would be temporary, and that Council and staff would work with the residents on this issue.

Mayor Pro Tem Stewart had no report.

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

There were no reports.

### **City Manager & Staff**

Chief Patterson reported that he is continuing to work out of his office, and that former City Manager Eric Ensey's email is being forwarded to him and his phone is being forwarded to the Court Clerk. He reported that he and Ms. Proctor had put together a memo for Council comparing Cherry Hills Village Real Estate Home Sales in 2008 and 2009. He also reported that staff had begun the search for a new City Manager. They had posted the job description as well as a Request for Proposals (RFP) for an Executive Search Firm to assist the City in finding a new City Manager. He stated staff had targeted five search firms which all have Colorado connections, but that they would consider all submitted RFPs. The deadline for the RFP is mid-January and the hope is to get a new Manager in by the end of May or the beginning of June. Staff will be seeking input from Council throughout the process with the search firm including during

the screening of applicants. Staff may seek involvement from other City Managers as well during the applicant screening process.

He reported that Mayor Wozniak met with members of the Police Department last week to discuss the changes in the Chief's status. He also reported that Ms. Smith would be organizing a Candidate Information Session on Monday, February 8<sup>th</sup> from 6-8 p.m. at the Village Center. The deadline for candidate applications is Friday, March 5<sup>th</sup>.

He reported that he would like to make a few structural changes to the City. He would like to promote Mr. Zuccaro to Community Development Director; and have Human Resources Analyst Kerri Losier report directly to the City Manager instead of to the Finance Director.

He reported that the City's new website would be ready to go live on January 11<sup>th</sup>, and that if Council had any edits they should give those to Ms. Smith.

He asked Council for any input on how he and staff could improve City services.

Councilor Roswell and Mayor Pro Tem Stewart thanked Chief Patterson for taking on the extra responsibility.

#### DRCOG – Small Technical Assistant Grants

Mr. Goldie indicated that staff had been working with Mayor Wozniak and Councilor LaMair on the DRCOG grants. He stated that staff has come up with three grant opportunities for the City. The first project will utilize GIS to map all the City's undeveloped and underdeveloped properties and their relationship to the City's trails and open space and the High Line Canal. The map will be interactive and changeable.

The second project will allow for the purchase of hand-held GIS units that will allow staff to inventory all the trees, street signs, etc in the City. It will also allow Code Enforcement officers and Public Works crew leaders to produce GIS reports while still in the field and send those reports back to the office right away.

The third project will continue where the Residential Development Standards Committee left off by performing an in-depth Residential Bulk Plane study. If this project is approved staff will come to Council to approve a supplemental appropriation for half the grant, or \$9,250.

Councilor LaMair thanked Mr. Goldie for all his work. She asked if staff time could be used as match for the grant.

Mr. Goldie stated that DRCOG would not accept any work done before the grant is issued as in-kind match.

Mayor Pro Tem Stewart asked what the timeline for the grant was.

Mr. Goldie replied that the grant was due January 7<sup>th</sup>, and that they expected a decision from DRCOG by the first week of February.

Mayor Pro Tem Stewart indicated that Council directs staff to submit the grant applications.

#### **Mayor's Report**

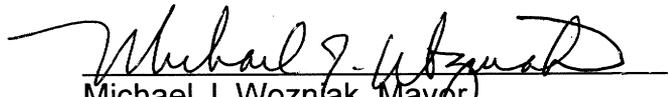
There was no report.

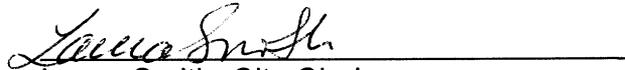
**City Attorney**

Mr. Fellman reminded Council that the State legislature would be back next week, and that he would be monitoring the legislature and would advise Council of any important issues.

**ADJOURNMENT**

The meeting adjourned at 7:30 p.m.

  
Michael J. Wozniak, Mayor

  
Laura Smith, City Clerk