

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, January 19, 2010 at 6:30 p.m.  
At the Village Center

Mayor Mike Wozniak called the meeting to order at 6:35 p.m.

**ROLL CALL**

Mayor Mike Wozniak, Councilors Mark Griffin, Russell Stewart, Alex Brown, and Scott Roswell were present on silent roll call. Also present were Interim City Manager and Police Chief John Patterson, Lieutenant Jody Sansing, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Public Works Director Jay Goldie, Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Laura Smith.

Absent: Councilors Harriet LaMair and Klasina VanderWerf

**AUDIENCE PARTICIPATION PERIOD**

None

**CONSENT AGENDA**

Mayor Wozniak removed Item 4b from the Consent Agenda for a Public Hearing.

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

- a. Approval of Minutes – January 5, 2010

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

**Item 4b. Arapahoe County – Belleview Underpass grant in conjunction with Greenwood Village**

Public Works Director Jay Goldie presented Council a request to approve the City's application for the 2010 Arapahoe County Open Space, Parks and Trails grant for the Belleview Underpass at Little Dry Creek in conjunction with Greenwood Village. The grant is for the construction of the north section of the project within the City of Cherry Hills Village. At the same time Greenwood Village will be asking for grant money to help fund their side of the project which will eventually connect the existing trail through Woodie Hollow Park in Cherry Hills Village to the High Line Canal in Greenwood Village. A map showing what Greenwood Village is proposing was provided to Council. The Belleview Underpass project was first brought to the City by the then Parks Committee, before it became the Parks, Trails, & Recreation Commission (PTRC), while the City was still part of the South Suburban Parks and Recreation District.

The Committee made this project a priority in 2003. It was discussed at all 12 of that year's Parks Committee meetings. On May 21, 2003 it was discussed at City Council, which gave staff and the Parks Committee approval to talk with the City of Greenwood Village about a possible joint project. On October 20, 2003, it was reported that Mr. Philip Seawalt of the Committee had met with Greenwood Village staff and that they would begin the process of getting the project budgeted on their end of the connection.

On November 19, 2003 it was reported that the Parks Committee of Greenwood Village would put money in their next budget cycle for planning purposes for the project. On April 21, 2004 it was reported that then Public Works Director Kevin Louis had met on-site with Maureen Sabo of the Parks Commission and had contacted CDOT to get more information about the underpass. Ms. Sabo made contacts with the Greenwood Village Trails Committee to continue the joint effort on the project. On May 19, 2004 Mr. Jim Muhm of the Parks Committee suggested a letter be mailed to all the residents neighboring the area in question. On June 16, 2004 a draft of the letter was given to Mr. Goldie by Mr. Muhm, and on July 1, 2004 the letter was sent to residents. The letter was reviewed by former City Manager Randy Funk prior to being mailed due to the South Suburban litigation that had begun. The same list of residents was used to send letters in January 2010. On July 21, 2004 Mr. Goldie reported to the Parks Committee that he had received phone calls from residents both for and against the project. The only call against the project had been from then HOA president Don Cunningham. On September 1, 2004 Mr. Goldie reported that Greenwood Village would be budgeting for the project for 2005 and 2006. However, Greenwood Village put the project on hold due to its City Center project and it has been kept on hold until recently. From 2005 until 2009 there was little discussion about the project because Greenwood Village was unable to include the project in their budget.

In late 2009 Greenwood Village and Cherry Hills Village began to discuss the project again. Greenwood Village held a public meeting in November, and has been waiting to hear from Cherry Hills Village. Greenwood Village staff received mixed comments from residents, but mostly positive comments. Because of cancelled meetings and the holiday season, staff and the PTRC decided to wait until January to hold the meeting for public input, knowing that this timeline would make the completion of the Arapahoe County Open Space grant application by the deadline much more difficult. On December 11, 2009 staff sent letters notifying neighbors of the public meeting using the same contact list that was used in 2004. On December 16, 2009 staff posted a notice of the upcoming public meeting on the trail. The only requirement for posting PTRC meetings is to post notice of the meeting at the Village Center 24 hours prior to the meeting. Staff went above and beyond this requirement to make residents aware of the public meeting. The agenda for the meeting was posted on the City's webpage on January 4, 2010. When the City launched its new webpage on January 13, 2010 the PTRC agenda did not properly transfer. There is no legal requirement to post the agenda on the website. Mention of the proposed project appears in the PTRC agenda 32 times since 2003. It was also budgeted for in 2006, 2008, 2009, and 2010.

The public meeting was held in front of the PTRC on January 14, 2010. There were mixed reactions from residents who attended. Two of the main issues that were discussed were dogs off leash and the ability of residents adjacent to the park to fence their back yards. With the FEMA map revision that is currently underway, it will be possible for these residents to have a fence that is 50% open. Later in the meeting the Commission asked staff to add the construction of fences into the grant, and staff added that to the price of the project. PTRC Chair, Jane Soderberg, recommended that the dogs off leash issue be taken up by the Commission at a future meeting. The Commission voted 4 to 2 in favor of recommending to Council moving forward with the grant application to Arapahoe County for the Belleview Underpass project.

Staff feels that this is a worthwhile project that will make significant improvements to trail connectivity and usability of all the trails on the west side of the City as well as the entire trail network throughout the City. Staff is seeking approval from City Council to move forward by submitting the grant application to Arapahoe County Open Space for 50% of the estimated \$115,465 cost of the project.

Mayor Wozniak asked for clarification on the estimated cost of the project.

Mr. Goldie stated that the City's portion of the project was actually quite small. The project would involve upgrading the underpass with lighting and possible concrete and building about 150-300 feet of trail. In contrast, Greenwood Village would be building more trail and budgeting between \$500,000 to \$750,000. If staff does the concrete in-house there would be potential to further reduce the City's cost of the project. The City and Greenwood Village decided to each apply for a separate grant from Arapahoe County to increase the possible grant funds to \$250,000 each.

Mayor Wozniak asked for comments from the public.

Kathy Polhemus of 1965 E. Chenango Ct. stated that she had received the letter sent on December 14, 2009 and immediately got in touch with Parks, Trails, and Recreation Administrator Ryan Berninzoni and has had several conversations with him. She stated the notice of the public meeting was posted on the trail on December 20, 2009. She attended the PTRC meeting on January 14, 2010. She stated that her issue now is the whole process, while the issues of dog control, flood plains, and fencing could be addressed later. She stated that she has been on many boards and thought the process on this issue was a travesty. She stated that the draft minutes do not show that the meeting was adjourned and erroneously say the vote was unanimous, in violation of policy, procedure, Robert's Rules of Order, and possibly the law. She stated she has logs of all her calls and copies of all the information she received. She stated she requested an agenda for the meeting, but never received one, that there was no printed agenda available at the meeting, and no overhead or power point of the meeting material. She asked that Council initiate an investigation, change the leadership of the PTRC, initiate training for all volunteer leaders and staff, and take a more active role in the process. She stated that access under Belleview is a game changer that the City is not adequately staffed to manage. She asked that Council table the issue indefinitely and begin the process anew.

Carl Polhemus of 1965 E. Chenango Ct. stated that he was also at the PTRC meeting on January 14, 2010 and was struck by the lack of process. He stated that there were no maps at the meeting and that it was indicated that the pathway to Race Street would be approximately 75 feet away from Belleview and that the underpass was a safety issue since currently pedestrians must cross Belleview. He stated that he walked the area that was referred to in the meeting. He stated that the total cycle of traffic lights at the intersection of Belleview and University was two minutes, which meant that the longest anyone would have to wait to cross would be two minutes. He stated that once the walk light goes on, there is a whole minute before it would be dangerous to cross. He stated that because of these facts he's not sure what the safety issue is for people crossing Belleview currently to get to the same place they would be getting to if there was an underpass. He stated that the pathway along Belleview would have to be within 50 feet, and on average only 25 feet, off Belleview due to a brick wall and expensive landscaping that he doubts would be ripped up. He stated that he's not sure what the benefit of the underpass would be since currently someone can cross Belleview and use the sidewalk to go up University to the High Line Canal and to the Recreation Center, two of the primary attractions in the area. He stated that while the underpass might be a great idea, there might be more direct ways to do it. He stated that he is not arguing that point tonight, but that residents should be made aware of what the proposal is, which he doesn't think there is one except for the map presented tonight which wasn't made available to anyone else. He stated that it seems like the citizens of the City ought to be able to review and comment on the proposal. He stated that his understanding is that the vote tonight is not a vote to approve work on a proposal, but rather a vote to approve the underpass.

PTRC Chair Jane Soderberg asked staff to address the draft PTRC minutes from the January 14, 2010 meeting.

Mr. Goldie explained that they were draft minutes only, that staff had worked very quickly to prepare them in time for the Council meeting and that they were only for that portion of the meeting regarding the Belleview underpass. He indicated that the statement that the motion passed unanimously was a misprint and would be corrected.

Ms. Soderberg indicated that the PTRC meeting adjourned at about 8:00 p.m. on January 14, 2010. The PTRC spent roughly an hour on the Belleview Underpass issue, which was the first issue on the agenda. She apologized to Ms. Polhemus if she did not receive a copy of the agenda, but stated that the issue was addressed immediately by all the participants at the meeting. The PTRC had a clear discussion and a vote on the issue, 4 to 2. She stated the vote was for a recommendation, not approval for any action. She stated that Ms. Polhemus' comments were unfounded and that PTRC had addressed her major concern, which was the issue of dogs off leash. Ms. Soderberg stated that PTRC was happy to address this issue at their next meeting.

Mayor Wozniak asked staff if the process for this grant was different than the other grants the City has applied for.

Mr. Goldie responded that this process had been no different. Staff always needs Council's approval to apply for a grant, then if their application is accepted they must return to Council to request approval of the portion of the funding not covered by the grant.

Mayor Wozniak asked if he was correct in understanding that the reason why staff had to move quickly with this grant was that it was being done in conjunction with Greenwood Village and had to be in by the February 5, 2010 deadline.

Mr. Goldie confirmed that was correct, and that if the City is approved to receive this grant, Council still has the option of not approving the expenditure of funds necessary for the project.

Mayor Wozniak asked if the City Engineer had reviewed the proposal.

Mr. Goldie replied that there was not yet a plan for the City Engineer to review, but that the City Engineer had provided the cost estimate for the project.

Councilor Roswell asked if the intent of the underpass was primarily pedestrian and bicycle use but would not allow for horses.

Mr. Goldie indicated that it may not allow for mounted riders, but that a minimum height was planned to allow for un-mounted riders and horses.

Councilor Griffin asked how often the portion of the trail going through the gate and up onto the sidewalk of Belleview is used.

Mr. Goldie replied that it is not highly travelled, but that those who do go up to Belleview tend to run across where the trail comes out to the sidewalk rather than walking down to the crosswalk at the intersection with University.

Councilor Brown indicated that he often bikes the trail near Belleview and rarely sees anyone else using the trail because it is a dead-end for them. He asked if this project would require any approval from CDOT.

Mr. Goldie replied that this project would require approval from CDOT as well as FEMA. He stated that CDOT only needed to be assured that the proper controls were in place to allow the underpass to be used for water when necessary. Urban Drainage and FEMA have been made aware of the project, but will not review the flood plane analysis until later in the process. The flood plane analysis would take six to eight months. The City should know by March or April if they were approved for the grant, so this would be a fall project. The grant allows for at least a year to spend the funds.

Councilor Griffin asked if the trail would be within the right of way along Belleview.

Mr. Goldie confirmed that the trail would meander through the right of way, which is approximately 75 feet wide, and go around the HOA vegetation.

Mayor Wozniak asked how this project fit into the City's Master Plan.

Mr. Goldie responded that it fit very well into the Master Plan, as it would significantly increase connection of trails throughout the west side of the City as well as the north side of the City.

Councilor Roswell noted that currently the only way to get to the High Line Canal from his house is via streets and sidewalks, but that there isn't any trails that connects.

Ms. Polhemus stated that the process was wrong, that the PTRC meeting minutes were only draft minutes, they gave a draft recommendation, and that the recommendation was for completion of the project rather than application for the grant.

Mayor Wozniak indicated that PTRC can only make recommendations to Council, and that it is at the Council's discretion to follow that recommendation or not to follow it. It is up to Council to act and to pass a resolution or bill. He stated that he appreciated Ms. and Mr. Polhemus' comments but that this issue had been discussed for the past seven years. If the City does not get their grant application in they will have wasted a good opportunity for matching funding and an opportunity to at least evaluate this funding. He noted that Councilors LaMair and VanderWerf continually emphasize the importance of applying for every possible grant. He indicated that the only thing Council was deciding tonight was whether to direct staff to apply for the grant, and that if their grant is accepted, staff will still have to bring the project to Council for approval.

City Attorney Ken Fellman indicated that Ms. Polhemus' statement that the PTRC had recommended approving the project was correct but that, as the Mayor had stated, Council can proceed as it sees fit regardless of the recommendation. He stated that regardless of the recommendation from the PTRC, the motion that staff was asking Council to vote on tonight was only a motion to move forward on the grant application.

Councilor Brown indicated that he is always in favor of having control of more money and that he is comfortable going forward with the grant application. He indicated that it was clear that for a variety of reasons the project was not ready to go just yet, it was put together quickly, PTRC was somewhat mixed in their recommendation and that there were more processes to be undertaken in regards to the specifics of the project.

Mayor Pro Tem Stewart indicated that the motion tonight wouldn't commit the City to anything, but that it was all a moot point if the application was not accepted. He indicated that the City should continue to have an open conversation with residents about the project.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to approve the 2010 Arapahoe County Open Space, Parks and Trails grant application for the Belleview

Underpass at Little Dry Creek and authorize the Mayor to sign the letter of support for the 2010 grant.

The motion carried unanimously.

### **UNFINISHED BUSINESS**

#### **Village Center Conceptual Plan – Norris Design (John Norris, Diana Rael) (Public Hearing)**

Mayor Wozniak indicated that Council would not be making any decisions tonight regarding the Conceptual Plan. He stated that everyone had been working on the plan for a long time and that Council was very excited and pleased with the report that Norris Design had prepared, which encompassed much of the discussion, meetings, and community outreach surrounding the plan.

Diana Rael of Norris Design indicated that Norris Design and SEH had enjoyed the Conceptual Plan process. They were a few weeks off schedule in presenting the final plan to Council but those weeks had been well spent. The final plan was available on the City's webpage. They had held more than 20 meetings over the past 7 months, including team meetings, public meetings, and community workshops, and had learned a lot about the site and the community. The final plan includes phasing options, pricing options, and working closely with South Metro Fire Rescue (SMFR).

Mayor Wozniak asked if there were any public comments.

Lucinda Green of 2855 Cherryridge Road asked for information on the decision making process that designated 90 Meade Lane as an "opportunity lot". She asked that the term be further defined, what that meant for the future and what the potential options might be.

Mayor Wozniak indicated that Norris Design had given a lot of good options as to how the lot might be used, which is why it is designated an opportunity lot. It might be left separate, incorporated into the park, exchanged, marketed, or sold. It was up to Council to evaluate these options in the future and determine what would be in the City's best interest. He stated Council was sensitive to the neighbors of 90 Meade Lane and sensitive to their view that it would be nice to leave it as park land. He indicated that it was hard to define because Council was not ready to make a decision on what to do with that property.

Ms. Green asked if there would be public comment and input and notice before any final decision was made regarding 90 Meade Lane by Council.

Mayor Wozniak stated that there absolutely would be a series of public hearings regarding the issue and that Council would work with the neighbors to decide what the best possible use for the land was for the City to make it an amenity for residents. He indicated that he didn't currently know what that might be and that everyone on Council was trying to keep an open mind.

Ms. Rael stated that as part of the final report they had four recommendations – a Building Taskforce for Phase 1, a Public Works Taskforce, a John Meade Park Taskforce, and a Building Taskforce for Phase 2. She suggested that they add exploring possible uses of 90 Meade Lane as a task of the John Meade Park Taskforce.

Mayor Wozniak asked that Norris Design go through all four recommendations in detail.

Ms. Rael stated that the idea was that all the taskforces would include members of Council, City staff, and members of the community. The first recommendation was for a Building Taskforce for Phase 1 that would negotiate an Intergovernmental Agreement (IGA) with SMFR; be involved in the design and construction effort of Phases 1A and 1B; serve as liaison to SMFR throughout the process, quickly address any issues that arise during the construction process; and prepare a cost benefit analysis regarding LEED certification.

The second recommendation was for a Public Works Taskforce that would evaluate the options of having Public Works completely off-site or partially on-site. The option of keeping Public Works completely on-site was eliminated due to community polling and the limited options that this leaves for the rest of the Village Center and Village Green. The Public Works Taskforce would evaluate off-site locations and costs of moving Public Works partially or completely off-site. The final plan has Public Works partially off-site, leaving several bays on-site for snow plows and other equipment to maintain response times to snow and other events.

The third recommendation was for a John Meade Park Taskforce that would evaluate what amenities to provide in the park through more public participation. 90 Meade Lane could be added to the tasks for this taskforce.

The fourth recommendation was for a second Building Taskforce for Phase 2 that would be involved in the construction of the Municipal Center; be a liaison during construction; and prepare a cost benefit analysis regarding LEED certification. This would be a long-range recommendation.

Mayor Wozniak stated that his concern would be that delegating to a taskforce would result in a never-ending committee process. He did like the idea of small groups with definite deadlines to report back to Council. He asked Councilor Brown for his input.

Councilor Brown indicated that while with some issues, such as John Meade Park, Council has the luxury of time, but other issues, such as Public Works, Council should resolve before committing to any plan or phase in order to calm any lingering questions in the community. He recommended that Council should resolve the issue of Public Works before they move forward; that they should have the Finance Director put together a cost analysis of the options available to Council based on the cost estimates provided in the final plan; and for his own edification, he would like to see information on the right of way issues associated with the site. He stated that he didn't anticipate this information changing the conceptual plan, but it would be beneficial to Council and help Council to present the final package to the community.

Mayor Wozniak agreed that determining Public Works' optimal location will reside should be preliminary to any design of the Village Center. He also indicated that a formal IGA with SMFR was needed before moving forward.

Marlo Persichitte, realtor for the residents of 135 Meade Lane, stated that her clients felt out of the loop on this process, which they had first heard about when she received a call from City Clerk Laura Smith in September.

Mayor Wozniak apologized for that, and stated that Council and staff had made a large effort to involve the public including public meetings, letters, and postings on the website.

Ms. Persichitte indicated that the final plan was confusing for potential buyers and had scared away a full-price offer.

Councilor Brown clarified that the plan was a final draft of a consultant report, and did not mean that the City was going to build or implement anything. He stated that the City had made every effort to notify adjacent property members of this process.

Councilor Griffin indicated that he met with the property owners last week. He stated that the City had been diligent getting information to them and that he had specifically asked staff to deliver a copy of the final plan to them. He stated that their main concern was the effect on the property value due to the visual impact, their safety, and impact of construction including their driveway access. He told them that the City would keep them notified of the process as best they can, and also that the City was just in the beginning stages of the project. They were very complementary of the Police Department and of SMFR. He pledged that the City would keep them informed as they moved forward and try to mitigate the impact to their property.

Mayor Wozniak thanked Ms. Persichitte for her comments and indicated that Council and staff will continue to reach out to the neighbors.

Mayor Wozniak indicated that Council was at least a year away from beginning the process as it was not budgeted for 2010 and had many preliminary decisions to make before committing to any plan. He directed staff to put together information on potential relocation of Public Works including options, costs, benefits, street issues, response times, amount of space needed, maximum distance from the City, etc., and to inform Council on the right of way issues at the second meeting in February. He directed staff to prepare a cost analysis and payment options including COPs and bonding issues for a study session sometime in March or April. He directed Councilor Roswell and City Attorney Ken Fellman to work on the IGA with SMFR.

Fred Abrams of 105 Meade Lane reminded Council that there had been lots of preliminary work already done.

Mayor Wozniak agreed that there had been a lot of work already done and that was integrated into Norris Design's report.

Councilor Roswell reminded Council that Norris Design had divided Phase 1 of construction into Phase 1A and 1B so that the issue of Public Works would not prohibit the construction of Public Works and SMFR.

Councilor Brown agreed, but stated that he thought Council should still be able to answer the questions of Public Works for the community.

Mayor Wozniak thanked Norris Design and SEH for all their work. He thanked the residents that had participated, especially the adjacent neighbors.

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 (final reading)

Finance Director Karen Proctor presented Council Bill 1, Series 2010, on final reading. She stated that it had been passed on first reading at the January 5, 2010 meeting and that there were no changes to the proposed bill.

Councilor Brown moved, seconded by Councilor Griffin 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 final reading.

The following votes were recorded:

Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Alex Brown	yes

Vote on the Council Bill 1-2010: 4 ayes. 0 nays. The motion carried.

### **NEW BUSINESS**

None

### **REPORTS**

#### **Members of City Council**

Councilor Brown reported that he is still in contact with the Denver Water Board regarding water flow between the High Line Canal and Three Pond Park and will keep Council updated on any new developments. He also reported that for the last few Denver Regional Council of Governments (DRCOG) meetings one of the major topics of discussion has been Cycle Two Amendments to the Metro Plan. Most of the elements have been straightforward. One issue that has been controversial is the completion of the beltway that circumvents the Metro area. The western portion, sometimes called the Jefferson Parkway, is incomplete and the proposal to complete it has been brought forward by a Public Highway Authority Forum by several governments. The standards that the board is considering include air quality, on which there has been an analysis with no negative results, and financing, which is still under discussion. Some board members don't feel that a lack of available finances should be an impediment as long as the project is logical, but others don't think a project should be voted on unless the finances are available. There will be a vote tomorrow night on this issue.

Mayor Wozniak commented that he has encountered this issue in the Metro Mayors association and that it has been an issue for years. He directed Council to voice any views they had on the issue to Councilor Brown so that he could cast a vote as the Council's representative. He indicated that as long as the issues of air quality and finances were resolved he viewed the project as a positive thing.

Councilor Brown indicated that this issue stemmed from an underfunding of transportation, probably nation-wide. The representative of Louisville at the January 6, 2010 DRCOG work session pointed out that the Metro Plan assumes to some extent that cities would be spending money aside from the toll road to maintain and improve other roads and the general infrastructure. However, because of the lack of financial resources for transportation infrastructure, it might be more beneficial for Louisville to have funds spent on improving Highway 36 instead of constructing new toll roads.

Mr. Fellman indicated that he could address this issue not as the City Attorney but as a private citizen and who has been very involved in the beltway connection issue for years. He stated that the issue is very complex because of all the different governments affected by the parkway and the associated financial and open space issues.

Councilor Roswell reported that he and Councilor Brown had met with SMFR Chief Qualman to discuss the Village Center Conceptual Plan project and to address any concerns he may have. He indicated that Council has a strong partnership with SMFR and will be working on the possible construction of a Public Safety facility with police and SMFR.

Mayor Pro Tem Stewart had no report.

Councilor Griffin had no report.

### **Mayor's Report**

Mayor Wozniak reported that staff had received all of the Requests for Proposals (RFP) for the Executive Search Firm for a new City Manager. He had reviewed them with Chief Patterson and narrowed it down to one or two firms. They will make a recommendation to Council on or before February 3, 2010 and then Council LaMair and Mayor Pro Tem Stewart would be assisting with the preliminary evaluation of applicants for City Manager. He stated he had been surprised by the wide spread of cost estimates and locations of the firms that had submitted RFPs. He also reported that he would be adding an Executive Session to the next Council meeting to discuss senior staff evaluations. Lastly, he thanked Chief Patterson for the excellent work he was doing balancing two jobs and was a great help to the Mayor. He indicated he had received several positive comments from police officers about the Chief.

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

There were no reports.

### **City Manager & Staff**

Interim City Manager Police Chief John Patterson reported that first, City Clerk Laura Smith would be holding a Candidate Information Session on Monday, February 8, 2010 from 6-8pm at the Village Center. Department heads will be available to answer questions from potential candidates. Second, in the past 6 months there had been three teenage suicides in Cherry Hills Village. This is not an issue particular to the City, but the Police Department is very concerned about this and will be working with the school district to distribute brochures to parents and try to be proactive about the issue. The information would also be posted on the website and included in the Village Crier. Third, Stephanie Blucher has moved out of the City and resigned from the Planning and Zoning Commission (P&Z). He will be working with Community Development Director Rob Zuccaro to fill the position.

Mayor Wozniak suggested that staff look at resumes received the last time there was a vacancy on the P&Z.

Financial Director Karen Proctor presented Council with Unaudited Financial Reports for December 2009. She stated that she was proud to report that through the efforts of staff the City is forecasted to had a positive balance in the General Fund for 2009 of approximately \$400,000. This was partially due to a month of high motor vehicle use tax. The 2009 audit is scheduled to begin February 22, 2010 and a final report would be given to Council probably in late March.

### **Business/Sales Tax Licenses**

Ms. Proctor reported that staff had presented Council with some discrepancies between the Municipal Code and City practice relating to Business Licenses and Sales Tax at the November 19, 2010 meeting. At the direction of Council, staff was presenting recommended changes to the Municipal Code to resolve those discrepancies. The changes would amend the Code to only require actual store fronts to receive a business license; not charge sales tax only on tangible personal property and not services; not charge sales tax on deliveries into the City; and add Home Occupation to the definition

of a business. She asked for direction from Council on whether Council wanted staff to prepare council bills to amend the Code with these changes.

Mayor Wozniak asked for clarification on the types of businesses that would qualify as Home Occupation.

Ms. Proctor gave the example of a Tupperware party, a case where the business would not employ anyone who did not reside in the home, and a case where the sale was an irregular occurrence.

Mayor Wozniak asked what businesses that are currently required to remit sales tax would not be required to if the Code were changed to not charge sales tax on services.

City Clerk Laura Smith clarified that as the Code is currently it is unclear if services are taxed, but that the proposed changes to the Code would clarify that they are not taxed.

Mayor Wozniak expressed his concern that changing the Code would create more work for staff.

Ms. Proctor replied that part of the reason for the proposed changes to the Code was due to the fact that to follow the Code as it was currently written would be more work for staff and that the proposed changes are in line with current practice. She also stated that all businesses operating within the City should be licensed with the State and that she had the ability to easily obtain a list of those businesses. Should staff ever need to do an audit of business remitting sales tax, that list would be sufficient.

Mayor Pro Tem Stewart asked staff to address the issue of businesses being prohibited in residential districts.

Ms. Proctor clarified that the zoning code allowed for Home Occupations, as long as they do not have a separate entrance, do not have any signs on the outside of the home, do not employ anyone not living in the home, are not conducted in an accessory structure, and the sale of goods is not continuous or repeated.

City Attorney Fellman stated that the current Code is inconsistent regarding the tax of tangible personally property versus services and should be clarified. He indicated that the Code does allow for certain types of sales from homes such as the sale of animals, and certain one-time sales as Ms. Proctor was describing such as the sale of a car.

Mayor Wozniak directed staff to proceed with their proposed changes to clarify the Code.

### **City Attorney**

Mayor Wozniak reported that City Attorney Fellman had asked if Council wanted to address the medical marijuana issue, which he had declined as the City has very limited commercial space.

Councilor Brown stated that if someone wanted to lease a store front in the City's limited commercial area for that purpose, they could do so.

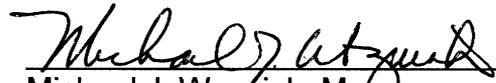
City Attorney Fellman suggested that Council wait to see what the State legislature passes regarding medical marijuana, and that if what Councilor Brown pointed out were to occur the City could pass a moratorium while Council decided the best course of action.

City Attorney Fellman requested that a link to the Municipal Code be added to the main page of the new website.

Mayor Wozniak requested that the most recent Crier be added to the main page as well.

**ADJOURNMENT**

The meeting adjourned at 8:30 p.m.

  
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Michael J. Wozniak, Mayor

  
\_\_\_\_\_  
Laura Smith, City Clerk