

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, February 16, 2010 at 6:30 p.m.
At the Village Center

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

ROLL CALL

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

Absent: Councilors Russell Stewart and Harriet LaMair

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

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

- a. Approval of Minutes – February 2, 2010
- b. Intergovernmental Agreement with Arapahoe County for a mail ballot election for the April 6, 2010 regular municipal election
- c. Agreement for Purchase of Election Print Services with ProVoteSolutions for the April 6, 2010 regular municipal election
- d. Resolution 5, 2010; A Resolution to Not Appoint Election Judges for the April 6, 2010 Regular Municipal Election

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS**Council Bill 2, Series 2010; A Bill for an Ordinance Amending Chapter 11 of the Municipal Code (*final reading*)**

Public Works Director Jay Goldie presented Council Bill 2, Series 2010 for second and final reading. He explained that the proposed bill has three parts. The first recommendation was the addition of section 11-1-30 which would give responsibility of maintaining landscaping on all residential streets to residents. The second recommendation was the addition of section 11-1-40 and the amendment of section 11-2-40(e) which would allow staff to maintain control of landscaping within the public right-of-way by requiring that residents get a permit from the City before installing certain landscaping within the public right-of-way. The third recommendation was the addition of section 11-2-180 which makes the homeowner responsible for any damages that are

caused in the public right-of-way by contractors and homeowners doing work that is somewhere else on the property, whether there is a right-of-way permit issued or not. He indicated that there were two minor changes since first reading on February 2, 2010. At the request of Council the word "mailbox" had been added to the definition of landscaping, and the word "permission" was replaced with "permit(s)" in section 11-1-40.

Councilor Brown asked if rock fit into the definition of landscaping in the proposed bill or if there should be some reference to hardscape surface added.

Mr. Goldie stated that most rock, except for boulders, would not pose an issue to the maintenance of the right-of-way. He stated that City crews could work with rocks and if they needed to raise or lower the right-of-way that they could easily remove the rock to do the work and replace it afterwards. He stated that rock landscaping would not require a permit under the proposed bill.

Councilor Brown asked if anything in the proposed bill might be construed as requiring that homeowners install or improve landscaping.

City Attorney Ken Fellman stated that the proposed bill would not require or obligate a homeowner to install or improve landscaping.

Councilor Griffin asked for clarification on the timeline homeowners would be given to begin maintaining the landscaping in the rights-of-way.

Mr. Goldie replied that the City would continue to maintain the rights-of-way in 2010. He stated staff would physically locate each property that fronts rights-of-way currently maintained by the City and send one or two notices to those homeowners of the change in the Code. In 2011 homeowners would be responsible for maintaining the rights-of-way, and staff would work with Code Enforcement Officers to give residents some warnings before citing them for a code violation if the right-of-way is not maintained.

Mayor Wozniak asked staff to address section 11-1-30 of the proposed bill where it states "It shall be the responsibility of the owner, agent, or lessee." He stated that he preferred to deal with the owner of a property whenever possible because any enforcement would involve the owner and the owner has the most stake in a property. He asked if the proposed bill was worded this way to conform with the Code.

City Attorney Fellman indicated that he didn't recall that the proposed bill was worded the way it was in order to be consistent with the Code, but that the language allowed the City to deal with more people than just the owner regarding any issue associated with the proposed bill.

Mr. Goldie stated that he also didn't believe it was in order to be consistent with the Code. He stated that the policy staff followed was to first try to contact the owner, but that if the owner was unavailable the proposed bill gave staff the ability to deal with the owner's agent or lessee so that urgent matters could be handled in a timely manner.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve on second and final reading, Council Bill 2, Series 2010; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 11 of the Cherry Hills Village Municipal Code by adding Section 11-1-30, concerning the maintenance of any real property abutting a public right-of-way, adding Section 11-1-40 and amending Section 11-2-40(e), concerning the encroachment into any public right-of-way or easement, and by adding Section 11-2-180, concerning damage to public rights-of-way or other City property.

The following votes were recorded:

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

Vote on the Council Bill 2-2010: 4 ayes. 0 nays. The motion carried.

Council Bill 3, Series 2010; A Bill for an Ordinance Amending Chapter 18 of the Municipal Code, Concerning Building Regulations (*final reading*)

Community Development Director Rob Zuccaro presented Council Bill 3, Series 2010 on second reading. He stated that the proposed bill would amend the Building Code to clarify that an application for a building permit must be authorized by the owner or owners representing a majority interest in the property, or by their authorized agent. In addition, in cases where a deed, contract or other provisions require authorization by more than the majority interest to obtain the building permit, that such authorization be demonstrated by the applicant. He stated that there had been no changes to the proposed bill since first reading on February 2, 2010.

Councilor Roswell moved, seconded by Councilor Griffin to approve Council Bill 3, Series 2010; a bill for an ordinance amending Chapter 18 of the Municipal Code, concerning Building Regulations, by amending Sections 18-1-20, 18-2-20, 18-3-20, 18-4-20, and 18-5-20, concerning amendments to the 2006 International Building Code, International Residential Code, International Mechanical Code, International Plumbing Code, and International Fuel Gas Code permit application authorization requirements, on second and final reading.

The following votes were recorded:

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

Vote on the Council Bill 3-2010: 4 ayes. 0 nays. The motion carried.

Council Bill 4, Series 2010; A Bill for an Ordinance Amending Chapter 6 of the Municipal Code, Concerning Business Licenses (*final reading*)

Finance Director Karen Proctor presented Council Bill 4, Series 2010 on final reading. She stated that the main change in the proposed bill would amend the Code to require business licenses for only those businesses with a physical store front location. She stated that there had been no changes to the proposed bill since first reading on February 2, 2010.

Councilor Brown moved, seconded by Councilor VanderWerf to approve Council Bill 4, Series 2010; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 6 of the Cherry Hills Village Municipal Code, concerning business licenses, by amending Article I, concerning requirements for obtaining business licenses, on final reading.

The following votes were recorded:

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

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

Council Bill 5, Series 2010; A Bill for an Ordinance Amending Chapter 4 of the Municipal Code, Concerning Sales Tax (final reading)

Ms. Proctor presented Council Bill 5, Series 2010 on final reading. The proposed bill would amend the Code to include Home Occupation in the definition of businesses required to remit sales tax, and clarify that the City does not collect sales tax on services or deliveries into the City. She stated that there had been no changes to the proposed bill since first reading on February 2, 2010.

Councilor Brown moved, seconded by Councilor VanderWerf to approve Council Bill 5, Series 2010; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 4 of the Cherry Hills Village Municipal Code, concerning sales tax, by amending Article IV, concerning requirements for remitting sales tax to the City, on final reading.

The following votes were recorded:

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

Vote on the Council Bill 5-2010: 4 ayes. 0 nays. The motion carried.

NEW BUSINESS

None

REPORTS

Members of City Council

Councilor Brown reported that he and Mr. Goldie had met with representatives of the Denver Water Department regarding Three Pond Park. He stated that they had a good conversation and that Denver Water told them their policy and how they would like to see the City address the issue. He stated they would report to Council on future developments. He also reported that the improvements to Dahlia Hollow were progressing and that he thought residents will appreciate the openness that would result. He also reported that he had attended the Candidate Orientation Session organized by City Clerk Laura Smith and that one member of the public had shown up.

Councilor VanderWerf reported that at the Parks, Trails, & Recreation Commission (PTRC) meeting last week they had discussed revisiting the idea of adding play structures to Dahlia Hollow. She stated that staff would be collecting public comment on this possibility at an informal public meeting in the near future. She also reported that the PTRC was exploring the possibility of formalizing an informal trail on the St. Clair property. She stated that the area had been vacated in 1954 to the four adjacent property owners, and that staff would be approaching the owners to see if they could formalize a trail easement.

Mayor Wozniak asked if there was any activity on that property.

Councilor Roswell replied that there was no demolition going on.

Mr. Zuccaro replied that there had been no permits issued for that property, but that some heavy equipment had been stored on the property for a time.

Councilor Roswell indicated that many residents cut through the property, and that it would be good to get two of the four adjacent land owners to form a trail easement.

Councilor VanderWerf also reported that the City was organizing a summer equestrian event for June 12th from 9 to 11 am. She stated it would be a low key event, with three local equestrian groups travelling along different trails and meeting in John Meade Park. She stated they would have fun events including equestrian displays and events that mirror barn chores such as finding something in a haystack. People can ride, walk, run, or ride a bike to the event.

Councilor Roswell reported that he and City Attorney Fellman were in the process of forming a proposed Memorandum of Understanding to present to Chief Qualman of South Metro Fire Rescue. He also reported that he had spoken with the citizen who had attended the Candidate meeting and that he had said it was very thorough and informative.

Councilor Griffin reported that he had read a very well-written article by Dr. Phyllis Resnick in the February addition of the Colorado Municipal League magazine about the fiscal future of Colorado municipalities. He stated it was very interesting and recommended it to Council. He also expressed concern about the Police Department Monthly Report which indicated that there had been another teen suicide in the City. He stated he wished there was more that Council and staff could do to address this issue.

Mayor Wozniak indicated that the City had started a program to reach out to schools regarding teen suicide, perhaps using the DARE program, and discussed coordinating a program with Greenwood Village. However, he stated that none of them were experts in this issue and it was a complex issue. He stated that the City would do what it could to reach out. He stated that he and Police Chief John Patterson had sent letters to all the parents offering support. He stated that he knew that the City could not solve this problem but that they certainly can improve communication with those affected.

Councilor Griffin suggested the City might implement a crisis or suicide hotline and staff it with volunteers from the community.

Mayor Wozniak indicated that the County has a hotline.

Chief Patterson indicated that the metro area had a lot of resources. He stated that staff was working on getting information into the Village Crier, the Villager and to the school districts. Crisis hotline facilities are available with trained professionals. The challenge for parents and others is to identify the onsets of depression and get professionals involved before it is too late. These situations often seem to have no precursors, but in hindsight triggers can be identified. However, in two of the situations in Cherry Hills Village there was no indication of any problem. Teenagers may be influenced by what they find on the internet, such as a new choking game that's very concerning.

Councilor Roswell indicated that the Cherry Creek School Board has a task force on suicide.

Councilor Griffin asked if this number of suicides was highly unusual.

Chief Patterson replied that six suicides in 12 months was an abnormally high number for the City, and that in the six years he had worked at the City there had been eight or nine. He stated he had heard from a neighboring municipality that they had six teen suicides in a similar period. He also indicated that these suicides were not confined to a particular school, and that one was from West Middle School, one from Kent Denver, and two from Cherry Creek High School.

Councilor Roswell asked staff for an update on the grant application to the Denver Regional Council of Governments regarding the Residential Development Standards Committee.

Mr. Zuccaro reported that staff should hear back about the grant application in late February.

Mayor's Report

Mayor Wozniak reported that he had attended the all day Metro Mayors Caucus on legislative initiatives. He stated that he had circulated some of the legislative material to Council but not all of it, as many were pending bills that might not result in any legislation.

He stated he would like to publically acknowledge Mr. Goldie for his appointment to the City of Lakewood Planning and Zoning Commission. He also wished Ms. Smith a happy birthday.

He stated that he and Councilor VanderWerf and Mayor Pro Tem Stewart would not be able to make the March 2nd meeting, and directed staff to move the meeting to Monday, March 1st.

Councilor Brown asked if March 16th was caucus day.

Mayor Wozniak confirmed that it was and directed staff to move the March 16th meeting to a different day that week.

City Attorney Fellman indicated that he would be out of town on March 1st but that someone else from his office would attend the meeting.

Mayor Wozniak reported that his meeting regarding real estate had been postponed and he would report to Council with an update on the situation at the next meeting.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Mayor Wozniak noted the Building Department Monthly Report showed that revenue from building permits was down this January by 242% from January 2009, but that the total number of permits was only down 15%. This would indicate that residents are doing smaller projects and fewer of them. He thanked Mr. Zuccaro for showing the trends in these numbers between years.

Mayor Wozniak also commented on the Police Department Monthly Report which reported that the photo red light system at Belleview and University had cited over 3100 drivers in 2009. He estimated that about a hundred hand tickets had been written in

2008 for that intersection. He stated that the intersection there was clearly a safety issue and that the City should continue to look into adding photo red light systems to other busy intersections.

Chief Patterson indicated that Departmental Monthly Reports and Unaudited Financial Statements were in Council packets and that staff would be happy to answer any questions from Council.

NewPath Networks Project Update

Mr. Zuccaro reported that NewPath had nine working nodes within the City and was working on two more. For the past few months they were in the "tuning" phase and service might have been intermittent, but now AT&T was up and running on all nine. There were several other node locations in the planning stages. Verizon was in the "tuning" phase and anticipate being fully operational by mid-March. Another carrier was considering three other nodes as well. Landscaping would be put in to screen all the pedestals by early spring at the latest.

Mayor Wozniak indicated that the Council had been working on this issue for a long time, preceding his terms as Mayor, and that it was exciting to see some results.

South Fairfax Street Utility Box Update

Mr. Zuccaro reported that staff had spoken to Xcel after the last Council meeting and Xcel had agreed to postpone the start up of the utility box until February 10th in order to give residents more time to prepare for any power outages. The power outage for most of the properties involved lasted only a few minutes. He indicated that staff had been able to arrange a meeting between some of the residents in the area and representatives from Xcel earlier that day to discuss the issues surrounding the utility box on S. Fairfax Street. He also reported that staff had summarized existing regulations in the City, in other Colorado communities and in other parts of the country for these types of boxes. He said staff had not found an example of regulating screening of boxes on private property in Colorado, but had found some in other areas of the country that try to mitigate the visual and noise impacts of utility boxes. He asked if Council would like to direct staff to bring the issue to the Planning and Zoning Commission (P&Z) in order to get a recommendation to Council.

Mayor Wozniak indicated that he had had discussions with residents and a representative of Xcel, and was pleased that staff had been able to arrange a face-to-face meeting. He stated it might be good idea for Council to consider a modest ordinance that would require utility boxes to be screened while still allowing access. He suggested that staff bring the issue to P&Z and come back to Council with a recommendation.

Councilor Roswell asked if it might be added to the City's franchise agreement with Xcel.

City Attorney Fellman indicated that it would be better to pass an ordinance as opposed to including regulations in a franchise agreement because an ordinance will be applicable no matter what company is installing the utility box, and any changes to a franchise agreement must be approved by both parties. He also stated that issues regarding utility boxes would most likely continue to come up in the City.

Councilor Roswell asked how this would affect a homeowner putting a cell tower in their back yard or negotiating with Xcel to put a utility generator in their back yard.

City Attorney Fellman stated that nothing in the current zoning code would prevent that, but as Mr. Zuccaro pointed out in his staff memo the size of utility boxes has dramatically increased since the Code was written. He stated that the policy questions for Council was, do they want to allow utility boxes on private property but apply additional regulations to those over a certain size.

Mayor Wozniak directed staff to take the issue to P&Z.

Right-of-Way Issues for Village Center Redevelopment

Mr. Zuccaro reported that with the approval of the Cherry Hills Village Center Plat in 2005, the Meade Lane right-of-way had been relocated from the current Meade Lane alignment to the eastern boundary of the Village Center property, adjacent to 135 Meade Lane. He stated the right-of-way was currently 60-feet wide and was established in accordance with the development plans that were being considered at that time. The right-of-way location did not appear to be reflected in the final plan recommendation of the current Village Center Conceptual Plan. If the City were to consider vacating the Meade Lane right-of-way, State Statute requires that title to half of the right-of-way be vested to the City and half to the adjacent property owner. Upon vacation of the right-of-way, the new property boundary and building setback (20-foot side setback requirement) would be located 30 feet to the west from what was shown on the Conceptual Plan. The new property boundary and setback would impact the proposed Public Works Bays and the vehicular circulation shown on the Conceptual Plan.

Mr. Zuccaro stated that acquiring the additional 30-feet of right-of-way from the owner of the adjacent lots at 135 Meade Lane could be explored if there was a desire to maintain the development configuration shown on the Conceptual Plan. However, both lots at 135 Meade Lane depended on the adjacent Meade Lane right-of-way to comply with the minimum gross lot area requirements for R-1, 2 ½-Acre Zone District. Acquiring the right-of-way without making some other adjustment to maintain the minimum gross lot area would render the lots non-conforming and, under current zoning restrictions, would limit development to 11,000 square feet of residence and 10% lot coverage.

Mr. Zuccaro stated that was also a "View Easement" located at the far north property boundary, located approximately 115 feet south of the Quincy Avenue street edge. This appeared to impact several of the buildings on the Village Center Conceptual Plan.

Mayor Wozniak asked who owned the view easement.

Mr. Zuccaro responded that the property to the east of 135 Meade Lane was the owner. He also stated that the plans are "conceptual" and adjustments to the site layout could be considered that would meet the new setback.

Councilor Brown asked if when the new Meade Lane was established, the Village Center lot took half of the right-of-way from the property owner, and if the right-of-way was vacated if it would be a return of the property owner's property.

Mr. Zuccaro responded that when the Cherry Hills Village Center Plat was established in 2005, the two lots were consolidated, reconfigured, and incorporated into the Village Center plat. Because they were a part of the Village Center Plat, half of the right-of-way came from them and half from the City. He confirmed that vacating the right-of-way would result in a return of property.

Mayor Wozniak thanked Mr. Zuccaro for the report and indicated that starting a vacation process now would be premature.

Public Works Facility Needs Assessment

Mr. Goldie reported that he had been keeping the Public Works staff informed of the Village Center Conceptual Plan progress, and had asked them formally to discuss the pros and cons of the three options for a new public works facility – all on-site, all off-site, or split between on-site and off-site. He indicated that there was an overwhelming consent against splitting the public works facilities between two sites. Staff was concerned with juggling their daily duties between two sites and although they could plan their days and the equipment they would need, they were afraid that last minute duties would take too much time if the equipment they needed was at the other site. Staff determined that it would be much better to keep all of public works together, be it on-site or off-site, to maintain the functioning and efficiency of the department.

Mayor Wozniak thanked Mr. Goldie for the report and stated it was very interesting and very important to have that information.

Councilor VanderWerf asked if the EPA's tightening of stormwater regulations would have any effect on a new Village Center.

Mr. Goldie replied that the current Village Center site was grandfathered into the stormwater regulations, but that any major construction on the current Village Center site would require that the site meet the new drainage standards. Based on the amount of impervious surface on the site and the new standard, the City would have to collect and treat the stormwater on the site in a large pond roughly the size of the current public works yard.

City Attorney

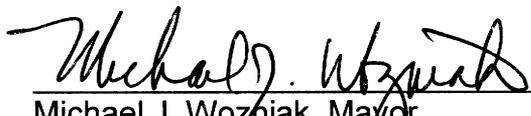
City Attorney Fellman reported that city attorneys on the Colorado Municipal League list serve had been discussing if cities issue sales tax licenses for deliveries of medical marijuana into their municipality, and that many cities do.

Mayor Wozniak indicated that the City might want to pass an ordinance regarding medical marijuana but that it might be logical to wait and see what the state legislature decides to do.

City Attorney Fellman indicated that this was probably the best approach.

ADJOURNMENT

The meeting adjourned at 7:30 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk