

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 4, 2010 at 6:30 p.m.
At the Village Center

EXECUTIVE SESSION

Mayor Mike Wozniak called the Executive Meeting to order at 6:02 p.m.

Councilor Roswell moved, seconded by Councilor Griffin, to enter into Executive Session for the purpose of discussing the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest as authorized by C.R.S. 24-6-402(4)(a); and for determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators as authorized by C.R.S. 24-6-402(4)(e), regarding the new Village Center, and upon completion to adjourn.

The Executive Session adjourned at 6:28 p.m.

REGULAR MEETING

Mayor Mike Wozniak called the meeting to order at 6:30 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 Interim City Manager and Police Chief John Patterson, City Attorney Ken Fellman, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Public Works Director Jay Goldie, Deputy Chief Jody Sansing, Parks, Trails & Recreation Administrator Ryan Berninzoni, and City Clerk Laura Smith.

Absent: none

AUDIENCE PARTICIPATION PERIOD

None

REPORTS

Mayor Wozniak asked staff to present the report on Fire Sprinkler Requirements.

Fire Sprinkler Requirements Discussion

Community Development Director Rob Zuccaro reported that Council had requested updated information regarding the City's fire hydrants and water flow in response to a resident's concerns regarding the City's requirements for fire sprinklers. He stated that South Metro Fire Rescue (SMFR) District had worked with Denver Water to produce an updated map for Council displaying the location of fire hydrants throughout the City. He indicated that the City's Building Official Steve Thomas and Fire Marshal Anthony Valdez were present to give background information on the City's fire sprinkler requirements and to answer Council's questions.

Mayor Wozniak complemented the map.

Councilor Roswell asked why some areas of Englewood Water District were not included in the map.

Fire Marshal Valdez indicated that Englewood Water District did not have the same level of information as Denver Water and was not easily incorporated into the map. He stated that he would try to get more detailed information.

Councilor Griffin asked what the black dots on the map represented.

Fire Marshal Valdez indicated they represented hydrants that were not incorporated into the model mainly because they were not in the Denver Water district.

Councilor Griffin asked what a CBV was.

Mayor Wozniak indicated that it had to do with preventing water from backing up into Denver.

Mayor Wozniak invited Mr. Thomas to address Council.

Mr. Thomas indicated that when he had started working for Cherry Hills Village there had not been a sprinkler requirement for homes. SMFR had addressed the issue. The City does not have a lot of good water access or flow. He stated that the building inspectors had met to discuss adoption of the 2006 International Residential Code (IRC) and held public meetings for contractors. He stated that he thought only three contractors attended the meeting, but that there were no major issues raised. The City policy since 2007, when the 2006 IRC was adopted, has been to require any construction of new homes or additions of over 50% of the existing square footage to install sprinklers unless the number of fire hydrants and water flow to the home is sufficient. The 2009 IRC is being discussed nationally and this version would require all single family dwellings to have fire sprinklers effective January 2011. There has been controversy about this requirement and some jurisdictions have chosen to remove this requirement. In Colorado the Home Builders Association, the Fire Marshals Association, and the Building Code Group have recommended that municipalities postpone implementation of the 2009 IRC until 2013. This would allow time to determine infrastructure and water needs; and to educate the public about how sprinklers work, for example how they are not activated until they reach 185 degrees, and each sprinkler is individually activated. Furthermore, they would like the time to train inspection code officials on the new regulations. Mr. Thomas then showed a video demonstrating the effect of sprinklers on the temperature of a fire.

Councilor Brown asked why there was any exception to the sprinkler regulations if they were so effective.

Mr. Thomas replied that they had put in the exceptions in order to ease the transition and implementation of the new code. He stated that the 2009 IRC does not have any exceptions to the fire sprinkler rule.

Fire Marshal Valdez explained that he reviewed building plans and performed an analysis individual to each home including square footage and type of construction in order to determine the required fire flow for a home in gallons per minute. He then determined the number of hydrants that would be needed and did an analysis of the residence using the Denver Water hydrant model or field flow tests if necessary, to determine if the residence meets the requirements as existing or if fire sprinklers were required. He stated that SMFR's concern was for life safety, and not for property conservation. He stated that when sprinklers were required they were placed in the main living areas such as living rooms and bedrooms, and typically not in attics and sometimes not in bathrooms. He stated that their purpose was to extend the time residents would have to evacuate the home in the case of a fire.

Councilor VanderWerf clarified that Fire Marshal Valdez calculated the sprinkler requirement on a home by home basis.

Fire Marshal Valdez confirmed that was correct.

Mayor Pro Tem Stewart asked if any generalities could be given regarding square footage and a requirement for sprinklers.

Fire Marshal Valdez replied that SMFR had used a square foot threshold in the past, but that over the years the evolution of the program had resulted in the current method in an effort to improve consistency.

Mayor Wozniak asked for clarification on the dangers to homes by not having fire hydrants close enough.

Fire Marshal Valdez replied that the water supply through hydrants was SMFR's first line of defense against a fire. He stated that most fires are controlled by one or two sprinklers in the home. However, if the fire is in the attic, then SMFR will still need a water supply from a hydrant to extinguish the fire.

Mayor Wozniak stated that most arguments against installing fire sprinklers were economic and financial.

Councilor Brown wondered if insurance premiums would go up because of the possibility of mechanical failure and unintended discharge.

Councilor Griffin asked if the hydrants with water flow ranges of 1500 to 2500 gallons per minute would allow a 3000-5000 square foot house to be exempt from the sprinkler requirement.

Fire Marshal Valdez replied that it would be specific to the residence but that in general that situation would probably exempt the residence from the requirement. He stated that after water flow, the spacing of the nearest hydrants would be a large factor.

Councilor Griffin asked if the hydrants with water flow ranges of 1000-1500 gallons/minute would be inadequate.

Fire Marshal Valdez agreed that an exception would be less likely in that case. He stated that a hydrant had to have a minimum water flow of 1000 gallons/minute to allow the SMFR water pumps to operate effectively.

Mayor Pro Tem Stewart asked staff to research the effectiveness of fire alarms versus fire sprinklers in improving life safety.

Mr. Thomas stated that there was propaganda on both sides of the cost issue, but that in new homes the cost was approximately \$1.50 per square foot. He stated that the cost was more in retrofitted homes. He stated that insurance companies were generally starting to give credits for sprinkler systems, whereas before they would assume the sprinklers would result in water damage and would charge more as a result. He stated that the threat of accidental activation was no greater than with any other plumbing system in the house. He stated that the water damage from sprinklers would be about the same as from a defective faucet or clothes washer. He stated that there were concerns about people not waking up and sleeping through the smoke alarms.

Mayor Wozniak directed staff to schedule this discussion for the next meeting. He stated that although the requirement for sprinklers seems logical to promote health, safety and welfare, he recognizes the concerns of the residents, including the costs. He stated that if Council did decide to require sprinklers that the City Code should be very clear about the distance of hydrants, flow rates, and square footage used to determine the requirement. He stated that Council should have some idea of the cost of retrofitting houses with sprinkler systems if they ever wanted to consider that.

Councilor Griffin advised that the Council should consider the economic impact of any new regulations taking into account the latest federal regulations as well.

CONSENT AGENDA

Mayor Wozniak indicated that the agenda had been amended to move Item 4b from the Consent Agenda to New Business.

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

- a. Approval of Minutes – April 20, 2010
- c. Agreement for Dispatch Services with Arapahoe County for 2010

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Council Bill 9, Series 2010; A Bill for an Ordinance Vacating the City's Interest if Any, in a Portion of the right of Way for Union Avenue

Public Works Director Jay Goldie presented Council Bill 9, Series 2010 on final reading. He stated that it was also a public hearing. He stated that there were no changes to the proposed bill since it was approved on first reading April 6th. He stated that he had held off on getting an updated appraisal of the property in question in order to get direction from Council on whether the City or the petitioner should get the appraisal. He stated that staff recommended that the petitioner get the appraisal using an appraiser approved by the City. He also asked for direction from Council on whether they would like to pass the bill on second reading and authorize the City Manager to close the deal once the updated appraisal was received, or if Council would like the issue to come back before Council in which case a third public hearing would be required.

Councilor LaMair asked if it might be to the City's benefit to use the old appraisal.

Mayor Wozniak and Councilor Brown replied that it was good policy to request a contemporary appraisal.

Mayor Wozniak opened the public hearing and hearing no comments, closed the public hearing.

Mayor Wozniak stated that he had received three phone calls and messages from Mr. James Lyons, who indicated that he had no objection as an adjoining neighbor to the Mooney's request, but that his concern was with the other proposals that were not

included in the proposed bill. He also received a call from Mr. Woodward, whom he had told did not need to attend tonight's meeting.

Councilor LaMair indicated that she had a conversation with Mr. Connors regarding his comments at the April 6th Council meeting. She asked staff to review the remaining portions of Union Avenue that had not been vacated by the City.

Mr. Goldie advised that the only portion left is the other section that the Mooney's had in their original petition but was not included in the current proposed bill.

Councilor LaMair asked staff to provide a map showing these portions of land.

Mayor Pro Tem Stewart indicated that the motion for the proposed bill should include the provision that the City will select the appraiser and that the appraiser be MAI certified.

Mayor Wozniak advised that Council did not need a third public hearing on this matter and that they authorized the City Manager to approve the new appraisal.

Councilor LaMair indicated that she wanted to be sure that the funds from the vacation go to the Cat Anderson Fund.

Mayor Wozniak indicated that Council would take up that issue separately.

Councilor Roswell moved to approve on second and final reading Council Bill 9, Series 2010; an ordinance for the vacation of certain portions of East Union Avenue that abut the property known as 4750 South Dahlia Street and find that the vacation is in the best interest of the public as required by City Code Article V, Section 11-5-50(f) (1). The description of this parcel of East Union Avenue right-of-way is outlined and depicted in Exhibit A of Council Bill 9, Series 2010. In return, the City will be compensated based on the fair market value of the property. The Petitioner shall have the property appraised by a professional appraiser that has been approved by the City. The City Manager shall have the authority to approve the appraisal value.

Mayor Pro Tem Stewart amended the motion to say that the appraiser will be an MAI appraiser and that the cost of property appraisal shall be paid by the property owner.

The motion was seconded by Councilor LaMair.

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 the Council Bill 9-2010: 6 ayes. 0 nays. The motion carried.

Council Bill 10, Series 2010; A Bill for an Ordinance Amending Chapter 16 of the Municipal Code, Concerning Zoning, by Amending Section 16-16-50 Concerning Exterior Lighting

Community Development Director Rob Zuccaro presented Council Bill 10, Series 2010 on second and final reading. He indicated that Section D of the proposed bill had been

amended since first reading per Council's request to incorporate existing performance standards for grandfathered properties. He indicated that a summary of HOA lighting requirements was included in the staff memo, and that there was a wide range of requirements, but that the proposed bill was not in conflict with these requirements. He also indicated that staff had amended the effective date of the proposed bill to 90 days after final reading to allow time for public education and staff training.

Mayor Wozniak indicated that he was concerned that residents with HOA requirements will have double requirements with the proposed bill.

Mr. Zuccaro responded that most residents would be grandfathered into the proposed bill, and that their lighting would be reviewed by staff for compliance with the new regulations in the building plan stage if their home development required them to follow the new standards.

Mayor Wozniak commented on a brochure he had received promoting LED technology for street lights.

Councilor Brown commented that LED lights were the next wave of energy conservation technology.

City Attorney Ken Fellman commented on a recent case with Xcel Energy that restricted the use of LED lights for municipalities.

Mayor Wozniak opened the public hearing. Hearing no comments, the public hearing was closed.

Councilor VanderWerf indicated that the proposed bill may help HOAs define lighting requirements as their language was rather subjective.

Councilor Roswell indicated that the proposed bill may be over-legislation, and that he thought the issue should remain with HOAs to regulate.

Councilor LaMair moved, seconded by Councilor Griffin to approve Council Bill 10, Series 2010; A Bill for an Ordinance Amending Chapter 16 of the Municipal Code, Concerning Zoning, by Amending Section 16-16-50 Concerning Exterior Lighting on second and final reading.

The following votes were recorded:

Russell Stewart	yes
Scott Roswell	no
Klasina VanderWerf	yes
Alex Brown	yes
Mark Griffin	yes
Harriet LaMair	yes

Vote on the Council Bill 10-2010: 5 ayes. 1 nay. The motion carried.

Council Bill 11, Series 2010; A Bill for an Ordinance Authorizing a Supplemental Appropriation of Funds for the Installation of a Fuel Management System and New Roof on the Public Works Building

Mr. Goldie presented Council Bill 11, Series 2010 on second and final reading. He stated that there had been no changes to the proposed bill since first reading on April 20th.

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair to approve Council Bill 11, Series 2010; for the Supplemental Appropriation in the amount of \$27,500.00 for the new roof on the Public Works building and the Fuel Management System.

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 11-2010: 6 ayes. 0 nays. The motion carried.

Council Bill 12, Series 2010; A Bill for an Ordinance Authorizing a Supplemental Appropriation of Funds for the Installation of Asphalt on Franklin Street as a Result of a Waterline Project

Mr. Goldie presented Council Bill 12, Series 2010 on second and final reading. He stated that there had been no changes to the proposed bill since first reading on April 20th.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve Council Bill 12, Series 2010 on second and final reading for the supplemental appropriation of \$50,371.00 to pave the southbound lane of South Franklin Street and, as agreed, these funds will be reimbursed to the City by the Denver Water Board once the project is complete.

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 12-2010: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

Council Bill 13-2010; A Bill for an Ordinance Amending Chapter 16 of the Cherry Hills Village Municipal Code, Concerning Zoning, by Amending Sections 16-3-90, 16-14-100, 16-17-90, 16-18-50, and 16-19-60, and Amending Chapter 17 of the Cherry Hills Village Municipal Code, Concerning Subdivisions, by Amending Sections 17-3-20 and 17-2-30, all for the Purpose of Updating Escrow Deposit Amounts to Cover the Cost of City Consulting Services Associated with Development Applications

Mr. Zuccaro presented Council Bill 13, Series 2010 on first reading. He indicated that the proposed bill would update the escrow deposit amounts required under several of the City's land development application procedures. These escrow deposits were required for all land development applications covered by the City's zoning and subdivision codes and were used to pay for the City's consultant fees, including any legal or engineering service costs that the City incurred as a result of reviewing the

application. Any balance remaining in the escrow account at the conclusion of the application would be returned to the applicant. If all the funds were exhausted before the conclusion of the application, the applicant must make a supplemental deposit into the account. The escrow deposit amounts were last updated in 1998 and were now out of date and in many instances did not cover the actual costs to the City. The proposed bill would update the escrow amounts to more accurately reflect the actual costs to the City, and would prevent staff from having to collect additional funds during or after the application process. Staff provided a summary table in the staff memo that shows current and proposed escrow deposit amounts with examples of actual fees from recent applications.

Mayor Wozniak expressed concern about small projects being required to pay a large escrow fee.

City Attorney Fellman stated that it was easier to reimburse money than to request additional fees, especially when the applicant is turned down.

Mayor Pro Tem Stewart indicated that the applicants would get any un-used portion of the escrow fee returned.

Councilor LaMair moved, seconded by Councilor VanderWerf to approve Council Bill 13, Series 2010; A Bill for an Ordinance Amending Chapter 16 of the Municipal Code, Concerning Zoning, by Amending Sections 16-3-90, 16-14-100, 16-17-90, 16-18-50, and 16-19-60, and Amending Chapter 17 of the Municipal Code, Concerning Subdivisions, by Amending Sections 17-3-20 and 17-6-30, all for the Purpose of Updating Escrow Deposit Amounts to Cover the Cost of City Consulting Services Associated with Development Applications.

The following votes were recorded:

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

Vote on the Council Bill 13-2010: 6 ayes. 0 nays. The motion carried.

Council Bill 14-2010; A Bill for an Ordinance Amending Chapter 18 of the Cherry Hills Village Municipal Code, concerning Building Regulations, by Amending Article X, Section 70(f) Concerning Enforcement and Fines

City Attorney Fellman presented Council Bill 14, Series 2010 on first reading. He stated that the City's Municipal Code has a sliding scale of increasing fines for each subsequent construction violation. City staff and the City's Municipal Judge have recommended amending the Code to provide that the increased fines will only occur if the repeat violations happen within three years of a previous violation. He indicated that the proposed bill had been reviewed and approved by the City's Prosecuting Attorney and Code Enforcement Officers.

Councilor VanderWerf moved, seconded by Councilor Brown to approve Council Bill 14, Series 2010; A Bill for an Ordinance Amending Chapter 18 of the Municipal Code, concerning Building Regulations, by Amending Article X, Section 70(f) Concerning Enforcement and Fines on first reading.

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 the Council Bill 14-2010: 6 ayes. 0 nays. The motion carried.

Agreement for Annex Park Fence Donation

Mr. Goldie indicated that staff has been working with Mr. Gary Nichol, owner of #1 Cherry Lane Drive, who would like to donate the funds to install a fence on City property along Hampden Avenue. Mr. Nichol would prefer to donate the funds for the fence rather than donate the fence as he is not comfortable indemnifying the City. Once the fence is built it will be City-owned and covered by the City's insurance. He complemented Parks, Trails and Recreation Administrator Ryan Berninzoni on his work with Mr. Nichol to agree on fence material that would mitigate traffic noise as well as be reasonable for the City to upkeep. Mr. Goldie indicated that the fence would also be a positive amenity to the park in that area. He indicated that the City Code did not require Council to approve donations, but that he had brought this issue to Council to get Council's approval on the donation of funds to build the fence. If Council agreed to this arrangement Mr. Goldie would bring an agreement with Mr. Nichol at the next Council meeting.

Councilor LaMair commended the fence material.

Mayor Wozniak commended Mr. Nichols.

Councilor Griffin expressed concern about damage to the fence from traffic on Hampden.

Councilor LaMair suggested that the burm would help protect the fence.

Mr. Goldie replied that he would be working with Mr. Zuccaro to construct the fence as far away from the road as the City Code allowed.

Councilor LaMair asked if the fence would be serpentine.

Mr. Goldie confirmed that it would and that the required trees and/or bushes would have to be paid for by the City.

Councilor VanderWerf indicated that the only negative to the fence might be the loss of the view of the Denver city lights at night.

Mr. Goldie replied that Denver would still be visible over the fence due the gradient in the land.

Mayor Wozniak applauded Mr. Nichol for his generosity and indicated that the fence would be a great asset to the park. He directed staff to move forward with the agreement.

REPORTS

Members of City Council

Councilor Brown reported that he had attended the Cherry Hills East HOA meeting. He indicated that there was some street work being done in that part of the City, and that a long time resident had mentioned that the wiring to the lighted street monument is often cut when the City is doing work in the area. He indicated that the HOA is willing to explore splitting the cost with the City of a location survey to avoid this issue in the future. He indicated that he had notified Mr. Goldie of this.

Mr. Goldie indicated that he had received cost estimates between \$1,300 and \$1,500 for the location survey and the production of a map.

Mayor Wozniak indicated that if the City did this survey for this HOA, other HOAs might also want a similar survey, and wondered if this was something that staff should look into.

Mr. Goldie replied that it would be useful information. He indicated that part of the problem was that the wiring was installed before the City required wiring to be buried deep enough that common street improvement projects would not interfere.

Mayor Wozniak indicated that it was a positive idea and directed staff to work with the HOA and bring the issue back to Council.

Councilor LaMair indicated that the City should be aware of any liability that such an agreement may result in.

Councilor VanderWerf reported that she had attended the final meeting of the Arapahoe County Open Space Steering Committee. She indicated that progress was exciting. She indicated that the Committee had shared a speaker with the South Platte Working Group, Mr. Chuck Flink, the chair of Greenways, who had presented on the economic benefits of open space.

Councilor VanderWerf also reported that she was in contact with Ann Polumbus about the Arts Committee, and that Ms. Polumbus had been out of town and unable to attend a Parks, Trails, and Recreation Commission (PTRC) meeting. She also reported that Cat Anderson was interested in donating a large sculpture on her property to the City. She indicated that she and Ms. Polumbus would work through PTRC to put together a formal legal document for donation of art to the City and to formalize the process of accepting and rejecting donated art.

Councilor Roswell reported that he had interviewed candidates for the RDSC (Resident Standard Development Committee) Bulk Plane Study with Councilor VanderWerf and Mr. Zuccaro, and indicated that Mr. Zuccaro would be presenting a contract for the study at the next meeting.

Mayor Pro Tem Stewart commented that he would be interested to see some data on the effectiveness of fire sprinklers.

Councilor LaMair had no report.

Councilor Griffin reported that he had received a complaint from 1776 E. Tufts about a construction site, and had contacted Code Enforcement and the situation had been resolved. He also reported that the Board of Adjustment and Appeals meeting had been postponed indefinitely.

Members of City Boards and Commissions

There were no reports.

Mayor's Report

Mayor Wozniak reported that he would be attending the Metro Mayor's group which would be discussing Amendments 60 and 61 and Proposition 101. He also reported that he had met with the City's senior police staff and commented on their high moral and that the City was very lucky to have the Chief, Deputy Chief, and Sergeants that it does. Finally he reported that he had received a notice from Urban Drainage about their updated online interactive map and directed staff to address their letter.

City Manager & Staff

Interim City Manger John Patterson reported that there would be a Study Session and Executive Session at the May 18th meeting. He also reported that the Cherry Creek School District would be changing its hours in August. Current hours were 8 am to 2:30 pm, and the new hours would be 9 am to 3:30 pm.

City Attorney

City Attorney Fellman reported that he had been in contact with T-Mobile and was waiting for more information on their plans to improve cell phone service for the City in response to Councilor LaMair's concern about service. He also reported that the preliminary discovery was complete on the City's lawsuit case with Mr. Bierenkoven, and that CIRSA was claiming that the City was not liable based on the government immunity act. He indicated that if the case is dismissed under the governmental immunity act the City will still have to pay attorney fees. He indicated that if the case continued to the District Court and the City lost, they could file an interlock appeal to the Court of Appeals before the trial. He indicated that the law firm representing the City would work hard to get the case dismissed.

ADJOURNMENT

The meeting adjourned at 7:58 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk