

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, June 1, 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, Russell Stewart, Alex Brown, Scott Roswell, and Harriet LaMair were present on silent roll call. Also present were Interim City Manager and Police Chief John Patterson, City Attorney Nancy Rodgers, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Public Works Director Jay Goldie, Deputy Chief Jody Sansing, and City Clerk Laura Smith.

Absent: Klasina VanderWerf

**AUDIENCE PARTICIPATION PERIOD**

Randy Luskey of 4 Random Road stated that he lives next to Greenwood gulch, and that when the water gets low it is a negative for his family and neighbors because of the sediment and sewage build-up. He stated that it was unsightly and unhealthy. He asked Council for permission to temporarily divert the flow of water around the pond so that the water could be drained and the sludge removed. He also asked Council for the right to repeat the process every five years or so as needed. He stated that the process would not result in any change in depth of the pond, just a removal of the material that had built up. He stated that he would be sure that the material was contained and mitigated once removed from the pond.

Mayor Wozniak thanked Mr. Luskey for his comments and indicated that Council would certainly take them into consideration. He indicated that Council would be discussing dredging during the staff reports.

**CONSENT AGENDA**

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

- a. Approval of Minutes – March 18, 2010

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

Council Bill 13, Series 2010; A Bill for an Ordinance of the City of Cherry Hills Village Amending Chapter 16 of the Municipal Code Regarding Escrows on final reading (Public Hearing)

Community Development Director Rob Zuccaro presented Council Bill 13, Series 2010 on second and final reading. He indicated that there had been no changes made to the proposed bill since first reading. He indicated that this was a public hearing on the

proposed bill and that notice had been posted on the board in front of the Village Center and in the Villager Newspaper.

Mayor Wozniak recognized that Council had a thorough discussion on the proposed bill during first reading and asked if anyone had any further questions or comments.

Councilor Roswell expressed his concern at the increase in escrow for a variance or appeal applications from \$500 to \$2000. He indicated that he did not want to further impede residents to bring variance applications before the City.

Mr. Zuccaro explained that in 2009 one variance case had a total cost of \$940 and another over \$2000, so staff thought that \$2000 would be appropriate to cover the costs to the City. He indicated that the cost for variance cases increases significantly if the case requires multiple attorney reviews and multiple hearings. He also stated that any unused part of the escrow fee would be reimbursed to the applicant.

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

Councilor Roswell reiterated his concern over the increased fee. He indicated that the number of variance requests was low and that the one request that had a total cost of over \$2000 may have skewed the data.

Mayor Pro Tem Stewart indicated that increasing the escrow fee would allow the City to avoid having to ask for fees after an application was denied.

Councilor Brown suggested that Council could consider a sequential fee structure where the applicant pays an initial fee and then if necessary pays an additional fee for outside analysis.

Mayor Wozniak asked if staff could determine right away if a request would require outside analysis.

Mr. Zuccaro indicated that most often staff could determine early on in the process if the application would have to be reviewed by the city attorney. He indicated that most often the additional fees for variance requests were due to legal review, not to engineer review. He indicated that the cost is increased if the applicant is required to do multiple submittals, if the first submittal is lacking information. In this case the attorney has to review the request both times and there would have to be two public hearings which the attorney attends. This is a cost that staff cannot control. He indicated that the proposed bill raised the fees to cover the City's costs comfortably. He indicated that many variance requests are denied and that's why staff was recommending a larger buffer on the escrow fee for variance requests than other development applications.

Councilor Roswell moved, seconded by Councilor Brown to approve Council Bill 13, Series 2010; a bill for an ordinance amending Chapter 16 of the Municipal Code, concerning zoning, by amending Section 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, on second and final reading.

The following votes were recorded:

Mark Griffin	yes
Harriet LaMair	yes

Russell Stewart	yes
Scott Roswell	yes
Alex Brown	yes

Vote on the Council Bill 13-2010: 5 ayes. 0 nays. The motion carried.

Council Bill 15, Series 2010; A Bill for an Ordinance of the City of Cherry Hills Village Amending Chapter 2 of the Municipal Code Regarding Elections on final reading

City Clerk Laura Smith presented Council Bill 15, Series 2010 on second and final reading. She indicated that there had been no changes made to the proposed bill since first reading.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve Council Bill 15, Series 2010; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 2 of the Cherry Hills Village Municipal Code, concerning Administration and Personnel, by Amending Section 2-1-10, Concerning Conduct of Elections, Section 2-1-40, Concerning Write-in Candidate Affidavits, and Section 2-1-50, Concerning Cancellation of Elections on second and final reading.

The following votes were recorded:

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

Vote on the Council Bill 15-2010: 5 ayes. 0 nays. The motion carried.

Council Bill 16, Series 2010; A Bill for an Ordinance of the City of Cherry Hills Village Amending Chapter 2 of the Municipal Code Regarding Elections on final reading

Ms. Smith presented Council Bill 16, Series 2010 on second and final reading. She indicated that there had been no changes made to the proposed bill since first reading.

Councilor Roswell moved, seconded by Councilor LaMair to approve Council Bill 16, Series 2010; a bill for an ordinance of the City of Cherry Hills Village amending Chapter 1 of the Cherry Hills Village Municipal Code, concerning General Provisions, by amending Section 1-6-10, concerning the Location of City Offices and Records on second and final reading.

The following votes were recorded:

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

Vote on the Council Bill 16-2010: 5 ayes. 0 nays. The motion carried.

Council Bill 17, Series 2010; A Bill for an Ordinance of the City of Cherry Hills Village Authorizing a Supplemental Appropriation for the Expenditure of Funds for a Contract with Winter and Company to Conduct a Bulk Plain Study on final reading

Mr. Zuccaro presented Council Bill 17, Series 2010 on second and final reading. He indicated that there had been no changes made to the proposed bill since first reading.

Mayor Wozniak asked when the City would receive the grant funds from the Denver Regional Council of Governments (DRCOG).

Mr. Zuccaro replied that after the City paid the consultants staff would submit the payment to DRCOG for reimbursement.

Councilor LaMair asked when the bulk plane study would be complete.

Mr. Zuccaro replied that staff anticipated a preliminary report for Council in July and a final report in August.

Councilor LaMair suggested that the reports be sent to members of the Residential Development Standards Committee (RDSC) before being presented to Council to collect their comments and input.

Mr. Zuccaro replied that the RDSC had been involved in the process and that he would be sure to ask them for comments on the report.

Councilor LaMair moved, seconded by Councilor Griffin to approve Council Bill 17, Series 2010; a bill for an ordinance of the City of Cherry Hills Village authorizing a supplemental appropriation for the expenditure of funds on a contract with Winter and Company to conduct a bulk plane study, on second and final reading.

The following votes were recorded:

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

Vote on the Council Bill 17-2010: 5 ayes. 0 nays. The motion carried.

### **NEW BUSINESS**

None.

### **REPORTS**

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

Councilor Brown reported that he had followed up with the Cherry Hills East Home Owners Association (HOA) regarding locating of electrical lines in the right-of-way. He indicated that the president of the HOA was still agreeable to sharing the cost of the locate, and would be working with the HOA and Public Works Director Jay Goldie to get confirmation from the HOA and to move forward.

Mayor Wozniak asked Mr. Goldie for his thoughts.

Mr. Goldie replied that a locate would be helpful so that the public works crew could avoid hitting the lines.

Mayor Wozniak indicated that his only reservation was that this agreement would set a policy precedent with other HOAs.

Mr. Goldie replied that this was the only neighborhood that had lighted street signs that was old enough to not have been required to bury their lines deep enough so that the public works crew would not interact with them. He indicated that this was likely the only HOA that would want a locate of their lines.

Councilor Brown indicated that the first step would be to locate the lines, and then the next step would be to investigate remedies to the problem.

Mayor Wozniak asked if this agreement would require a supplemental appropriation.

Mr. Goldie replied that it would not as it would be covered under the Public Works budget.

Mayor Wozniak directed Councilor Brown and Mr. Goldie to move forward with the agreement and locate. He also thanked the HOA for offering to share the cost of the locate.

Councilor Roswell had no report.

Mayor Pro Tem Stewart had no report.

Councilor LaMair reported that she would attend a meeting of the High Line Canal Working Group, part of the Arapahoe County Open Space program, and that they were asking entities to highlight places in their area that the group could look at via satellite to determine the need for projects. The general areas that she would pass along for the City were: Kent Denver, adjacent to Blackmer Common, highlighting the sharing of private open space with the public community, the overuse of trails and potential conflicts; the Dahlia bridge, highlighting the need for bathrooms and the conflict surrounding that issue; the Cat Anderson property; Three Pond Park, highlighting the surrounding open space and acreage; the open space across from Mansfield at the High Line; and highlight the problem with trail connectivity on the City's northern border. She indicated that Councilor VanderWerf and Mr. Goldie would be attending the meeting with her.

Councilor LaMair also indicated that she was frustrated with the water situation in her community, Cherry Hills East, that occurred at the May 18<sup>th</sup> Council meeting. She indicated that the community had struggled for years with water issues and there had already been a significant cost to replace water lines. She indicated that she had felt there was an unspoken understanding that City Council would support the Cherry Hills East Water Board but that there had been a lack of communication and understanding.

Councilor Griffin reported that he and Financial Director Karen Proctor had met with two investment advisors. He also reported that he had been contacted by Ms. Rose on University Blvd who would be meeting with CDOT (Colorado Department of Transportation) regarding complaints about noise and salts. Lastly he reported that residents on Stanford Ave are in the process of improving Little Dry Creek and had put in a lot of money and effort to make it beautiful. He wondered if Council had a citizen recognition that would be appropriate.

Councilor LaMair asked if the residents had done bank stabilization.

Councilor Griffin replied that they had.

Mayor Wozniak replied that the Council rarely gave citizen recognition awards unless it was a life saving award.

Councilor LaMair suggested that Council could draft a nice letter to the residents.

Councilor Griffin indicated that the project would not be complete for another two months. He also commented that Councilor VanderWerf had undergone knee surgery and that Council should send flowers.

### **Mayor's Report**

No report.

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

There were no reports.

### **City Manager & Staff**

Interim City Manager John Patterson reported that Mr. Goldie would be attending the meeting with the resident at 4701 S. University Blvd. and CDOT on June 7<sup>th</sup>. He also reported that the City had a new intern, Mr. Doug Stall, a second year law student at the University of Denver and son-in-law of resident Laura Christman, who would be working with Mr. Zuccaro on RDSC projects.

### Administrative Floodplain Development Permit for Dredging Ponds in the Floodplain

Mr. Zuccaro reported that staff was seeking direction from Council on a possible code amendment that would create an administrative review procedure for dredging ponds in the regulated floodplain. Currently, any applicant proposing to dredge a pond in the floodplain is required to obtain a Floodplain Development Permit under Article XVII of the Zoning Ordinance. The process to obtain the permit includes public hearings before the Planning and Zoning Commission (P&Z) and City Council. Due to the benefits to the floodplain from dredging ponds, it may be appropriate to consider an administrative procedure in order to promote proper pond maintenance. Council adopted administrative procedures for bank stabilization projects in June of 2009 and could consider modeling the process for administrative review of dredging ponds on the bank stabilization procedures. Mr. Zuccaro indicated that City Engineer Troy Carmen was also present to answer questions from Council.

Mayor Wozniak asked if a resident wanted to dredge a pond that was interconnected if they would be required to get an Army Corps of Engineers permit and if this permit would be required before a request was approved by staff.

Mr. Carmen replied that they would and that the permit would require the applicant to outline the area that would be disturbed, the habitat impacted, the contents of the sludge to be dredged, and the manner in which it would be disposed.

Mr. Zuccaro indicated that proof of the accepted Army Corps permit would be required before staff approved the request administratively.

Mayor Wozniak asked how staff would deal with water rights issues.

Councilor Brown indicated that he had the same question and was going to ask if the administrative review could be limited to a certification that there would be no diversion of water.

Mayor Wozniak indicated that may be a good way to handle the water rights but cautioned that the City not issue abbreviated permits.

Mr. Zuccaro indicated that any application would be referred to the State Engineer's office where it would receive comments on the application in relation to water rights.

Councilor Brown indicated that requiring ponds to be dredged to "historic depth" may be difficult criteria to determine when applied to man-made, altered, or dried-up ponds.

Mayor Pro Tem Stewart indicated that many ponds in the City were not legal, and that residents were not aware that evaporation from these ponds related to water rights.

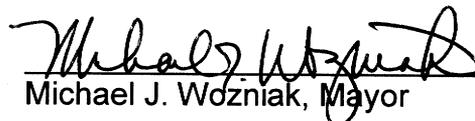
Mayor Wozniak indicated that it was a good concept, that creating administrative review procedures would simplify the process for residents. He cautioned staff that there were many complex issues involved. He directed staff to go forward and work with P&Z on an ordinance to present to Council.

#### **City Attorney**

City Attorney Nancy Rodgers reported that she would be meeting with T-Mobile on Thursday to discuss coverage issues in the City. She indicated that she would be presenting the City's desire to have T-Mobile assess their coverage and to outline a definitive action plan to improve coverage. She indicated that T-Mobile may be moving away from residential areas and focusing more on mixed-use areas. She also reported that the Bierenkoven case had been settled for a nuisance value. Finally she reported that Council should expect a Village Center memo from City Attorney Ken Fellman.

#### **ADJOURNMENT**

The meeting adjourned at 7:20 p.m.

  
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Michael J. Wozniak, Mayor

  
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Laura Smith, City Clerk