

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 3, 2010 at 6:30 p.m.
At the Village Center

Council held a Study Session starting at 6:00 p.m.

Councilor Brown moved, seconded by Councilor VanderWerf, given that Mayor Wozniak and Mayor Pro Tem Stewart were both absent, at the advisement of City Attorney Fellman of the need to appoint an Acting Mayor, to appoint Councilor Roswell as Acting Mayor for the meeting.

The regular Meeting began at 6:40 p.m.

ROLL CALL

Councilors Mark Griffin, Alex Brown, Scott Roswell, and Klasina VanderWerf were present on 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, Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Laura Smith.

Absent: Mayor Michael Wozniak, Councilor Russell Stewart, Councilor Harriet LaMair

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

Councilor VanderWerf moved, seconded by Councilor Griffin to approve the following items on the Consent Agenda with the changes made present on the dais:

- a. Approval of Minutes – July 20, 2010

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Permit Application for a Modification of Premises by JTM Investments, DBA Pulcinella Pizzeria

City Clerk Laura Smith presented an application for a modification of premises by JTM Investments, DBA Pulcinella Pizzeria, to expand the premises of their Hotel and Restaurant Liquor License at 1400 E. Hampden Ave Suite 140 to include an outdoor dining area on the sidewalk in front of the pizzeria. Ms. Smith indicated that staff had reviewed the application and found all the requirements have been met. Staff confirmed

that outdoor dining is allowed by the Development Agreement approved for the shopping center. Staff also confirmed that the property is not within 500 feet of any private or public school. Staff explained that the City Code does not regulate applications for modification of premises, and that the Colorado Liquor Code does not require a public hearing.

Tucker Manion, co-owner of JTM Investments DBA Pulcinella Pizzeria, explained that the application was in response to customer requests.

Councilor Griffin asked if Mr. Tucker was proposing a fence around the outdoor dining area.

Mr. Manion confirmed that they would install a short wrought-iron fence in holding with the style of the complex that would clearly show the boundary of the outdoor dining area.

City Attorney Fellman indicated that the applicant had stated August 1st as the start date for their modification of premises, and asked the applicant to confirm that no liquor would be served outside of the original premises until their application had been approved by both the City and the State.

Mr. Manion confirmed that the modification would not occur until approval from the City and State was received and the fence was installed.

Councilor Brown indicated that outdoor dining areas have become a common feature, the fact that there will be a railing that clearly delineates the area within which alcohol may be consumed is appropriate, and that the application was acceptable.

Councilor VanderWerf indicated that an outdoor dining area would be enjoyable and would enhance the dining experience at the pizzeria.

Councilor Roswell indicated he was in support of the application because outdoor dining areas are becoming more prevalent and having one in the City would help to attract consumers.

Councilor Griffin agreed, and asked the applicant if an awning was planned over the outdoor dining area.

Mr. Manion replied that there was no current plan for an awning. He stated that the front of the pizzeria received most of its light in the morning, while it received most of its customers in the evening. He also indicated that he was involved in the ownership of the property and that it would be important to have consistency in the look of the entire complex and so there would have to be some discussion about requiring all the businesses to have awnings if the pizzeria had an awning. He said it was unlikely to happen.

Councilor Griffin asked if the outdoor dining area would be accessible from the sidewalk or only from the pizzeria.

Mr. Manion replied that since the pizzeria had only one door the outdoor dining area was accessible from the sidewalk but that customers would have to enter the pizzeria in order to be seated outside.

Councilor Brown moved, seconded by Councilor VanderWerf, to approve the application for a modification of premises for the Hotel & Restaurant liquor license held by JTM

Investments, LLC doing business as Pulcinella Pizzeria at 1400 East Hampden Avenue Suite 140 in the City of Cherry Hills Village.

The motion carried unanimously.

Council Bill 21-2010; A Bill for an Ordinance Repealing and Re-Enacting Chapter 8 of the Municipal Code Concerning Vehicles and Traffic, to Adopt by Reference the 2010 Model Traffic Code for Colorado Municipalities, with Certain Amendments, and to Repeal all Ordinances in Conflict Therewith and Provide Penalties for Violation Thereof (first reading)

Chief of Police John Patterson presented Council Bill 21, Series 2010 on first reading. He indicated that the City currently operates on the ninth edition of the Model Traffic Code and the proposed bill would keep the City consistent with changes to the Model Traffic Code. The proposed bill incorporated recommendations from the City Attorney, Prosecuting Attorney, and City police officers.

City Attorney Fellman indicated that the proposed bill did not contain the Model Traffic Code but rather contained the exceptions to the Model Traffic Code, including exceptions carried over from the current version in addition to new recommendations from the Prosecuting Attorney and police officers that apply specifically to the City.

Councilor Brown moved, seconded by Councilor Griffin, to approve Council Bill 21, Series 2010; A Bill for an Ordinance of the City of Cherry Hills Village Repealing and Re-Enacting Chapter 8 of the Cherry Hills Village Municipal Code Concerning Vehicles and Traffic, to Adopt by Reference the 2010 Model Traffic Code for Colorado Municipalities, with Certain Amendments, and to Repeal all Ordinances in Conflict Therewith and Provide Penalties for Violation Thereof on first reading.

The following votes were recorded:

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

Vote on the Council Bill 21-2010: 4 ayes. 0 nays. The motion carried.

Resolution 14-2010; A Resolution Supporting DRCOG's Comprehensive Joint Application to the U.S. Department of Housing and Urban Development's Sustainable Communities Regional Planning Grant Program

Councilor Brown explained that the passage of this resolution was a request of DRCOG and was an endorsement of their application to the grant program with no financial or other commitment on the part of the City. It is a requirement for their application that DRCOG secure endorsements equal to 50% of the metro area population. He indicated his belief that the larger communities will endorse this application and that he was presenting it to Council as the DRCOG liaison, in the spirit of metro cooperation.

Councilor Roswell indicated that it was important for the City to support DRCOG as an active member.

Councilor Brown commented that the City occasionally requested grants from DRCOG as well.

Councilor Brown noted that the Resolution was numbered 14 on the text but 13 on the agenda.

Ms. Smith said it was Resolution 13.

Councilor Brown moved, seconded by Councilor VanderWerf, to approve Resolution 13, Series 2010; A Resolution of the City Council of Cherry Hills Village Supporting the Denver Regional Council of Governments Comprehensive Joint Application to the U.S. Department of Housing and Urban Development's Sustainable Communities Regional Planning Grant Program.

The motion carried unanimously.

City Attorney Fellman indicated that Ms. Smith had been mistaken and the Resolution was number 14 and that Council had to reconsider the motion

Councilor Brown moved, seconded by Councilor VanderWerf, to reconsider the motion for the purpose of changing the approval of Resolution 13 to Resolution 14, Series 2010; A Resolution of the City Council of Cherry Hills Village Supporting the Denver Regional Council of Governments Comprehensive Joint Application to the U.S. Department of Housing and Urban Development's Sustainable Communities Regional Planning Grant Program.

The motion carried unanimously.

REPORTS

Members of City Council

Councilor Brown had no report.

Councilor VanderWerf reported that the High Line Canal Working Group would be meeting on September 10th for a tour of 65 miles of the canal by bus, with 20 minute stops for each entity to show and explain a project. She had been in conversations with Councilor LaMair and Public Works Director Jay Goldie and determined that the stop for the City should be Three Pond Park, a property that is top priority for the Parks, Trails and Recreation Commission and the Cherry Hills Land Preserve. However, the City has the option of being the lunch stop, in which case the City would need to provide box lunches but would be allowed to show two projects. The City's second site visit might be the Dahlia Street Bridge and the Blackmere/Kent Denver/Salazar property area. If the City does the lunch stop staff's help would be required. Councilor LaMair would work on getting permission to use the restrooms at the Arapahoe Tennis Club and borrow their benches and bring them down to the canal for lunch. The Cherry Hills Land Preserve has agreed to give each participant a free history book with bookmarks indicating sections of the book related to the sites being visited.

Councilor VanderWerf also reported that Council may need an Executive Session in September to discuss property negotiations relating to open space.

Councilor Roswell reported that he was impressed with Clair Gallagher, who had spoken before Council in relation to the Dahlia Street portable restroom issue, and who had been highlighted in a recent edition of The Villager as the 2010 Fred Steinmark High School Athlete of the Year Award recipient.

Councilor Griffin reported that Greenwood Village was utilizing their 1% Underground Fund from Xcel Energy to bury a portion of lines along University Blvd. He asked if the City had the option of doing the same.

Mr. Goldie explained that the City did have the fund, but that they had done a project several years ago that had depleted it and it was only now building back up. He indicated that the amount in the fund now would only be enough to bury a few hundred feet of utility line.

Councilor Griffin asked how many feet of line the City still has overhead.

Mr. Goldie replied that he didn't have that number available.

City Attorney Fellman explained that the City's franchise agreement with Xcel allows underground projects to use up to three years of funds in advance.

Councilor Roswell indicated that burying utility lines came up in discussion during the creation of the City's Master Plan and that Council had had numerous discussions and resident inquiries over these projects over the years.

Mr. Goldie indicated that the City had a long waiting list of projects for the fund.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manager John Patterson reported that the Village Center would be open from 9am to 3pm on Saturday August 7 to accept mail ballots for the Primary Election. He also reported that the Nazarene Church will be holding an event on Friday August 13 and Saturday August 14, both from 8am to 8pm and 3500 attendees are expected. He also reported that schools would be opening this month, Cherry Hills Village Elementary on August 24, Kent Denver on August 25, and St. Mary's on August 30.

Councilor Griffin suggested it might be wise in anticipation of school starting to turn on the flashing 20 mph lights a week ahead of school opening.

Mr. Goldie indicated that the school zone speed was only enforceable when school was in session per City Code.

Chief Patterson indicated that he could have some police cars sit in the area to bring attention to the school zone before school started.

Liquor License Update

Ms. Smith reported that Oriental Art of Healing, in suite 130 at 1400 E. Hamden Ave, would most likely not be renewing its lease this fall. A possible new tenant, Vino & Vino, has applied for a retail liquor store license to open a wine shop in that unit. Vino & Vino would share a wall with Pulcinella Pizzeria and would like to have an open window between the two businesses. Vino & Vino believes that the window would be unique to the area and would promote both businesses. Staff was recently advised that if the window is not allowed, Vino & Vino may choose not to move into the space. Staff contacted the State Liquor Enforcement Division and was advised that there is nothing in the Colorado Liquor Code that would prevent such a window as long as no business was being conducted through the window. Staff was advised that it will be up to the City

Council as the Local Licensing Authority to approve or deny such a window, and asked Council for direction on this issue.

Councilor VanderWerf asked how large the window would be.

Ms. Smith and Mr. Manion replied that it was fairly large.

Councilor Roswell asked City Attorney Fellman to explain why Council would be involved in this decision.

City Attorney Fellman explained that the window is not a design issue but rather a license issue. Council must approve the layout of the liquor license premises. He asked for clarification about the size and shape of the window.

Ms. Smith indicated it would be a waist or chest high half circle and would be completely open, without glass.

City Attorney Fellman asked if people would be able to move between the wine shop and pizzeria through the window.

Mr. Manion explained that as the owner of the pizzeria he was comfortable with the concept and that both businesses would have alarm systems and that they would coordinate their hours to be opened and closed at the same times. He indicated that it would be unique to the area and to Colorado.

Councilor Griffin asked if a customer could buy a bottle of wine in the wine shop and then bring it and drink it in the pizzeria.

Mr. Manion replied that this would not be allowed. He explained that the businesses planned to coordinate wines so that if someone had a glass of wine at the pizzeria they could then go next door to the wine shop and buy a bottle of that wine. He indicated that to his knowledge this has been done in one other location in Colorado, in Estes Park where there is an open-air half circle window between a cheese shop and a wine shop.

Councilor VanderWerf asked if customers would be able to reach their hands through the window and potentially grab wine bottles.

Mr. Manion responded that they would work to assure that this wouldn't be possible. He indicated that one plan for the design of the wine shop had a counter in front of the window with wine racks out of reach.

Councilor Griffin asked what the Council's province was with this issue and what regulations the State had regarding an open window.

Ms. Smith explained that she had spoken to the State Liquor Enforcement Division and had been advised that there was nothing in the State Liquor Code that would prohibit such a window, but that it is up to the Local Liquor Licensing Authority to approve or deny the design. The main concern is to be sure that no business occurs through the window. The diagram of the wine shop showed a 24 foot window.

Councilor Griffin expressed his concern that such a large window would remove the sense of division between the two businesses.

Mr. Tucker indicated that such an effect was not planned and that the window was planned as a decorative addition to the wall. He explained that he had asked Ms. Smith

to bring this issue before Council just to get a general idea of whether any type of open window would be allowed.

Councilor VanderWerf indicated her concern would be that customers not be able to reach their arms through or exchange anything through the window.

Councilor Roswell asked if the wall was weight-bearing.

Mr. Manion replied that it was not.

City Attorney Fellman indicated that staff was not looking for a final decision from Council on the design of the open window, but rather if the design was such that Council's concerns about reaching through and walking between the businesses were addressed, would it be something that Council would consider; or if Council does not want to consider it at all.

Mr. Manion indicated that the window would most likely not be as large as the diagram showed.

Councilor VanderWerf indicated she would like to see the design for the window on the pizzeria side as well.

Councilor Roswell indicated that while Council had significant questions and concerns, they were open to the applicant bringing the issue forward with the application for the wine shop. He indicated that conceptually he was supportive of the idea, and of creative ideas that would increase customer traffic to the shopping center.

Liquor License Occupation Tax

Ms. Smith reported that the City Code outlines an Occupation Tax on certain classes of liquor licenses that was added to the Code in 1985. The current occupation tax covers Hotel & Restaurant, Tavern, and Club liquor licenses along with optional premise and extended hours. Compared to other cities the occupation tax in Cherry Hills Village is high. The minutes from the meeting when the occupation tax ordinance was passed discuss the tax relates to the extra work involved with the Police Department serving an area occupied by a liquor establishment. Staff suspects that the high tax may also be intentionally prohibitive to maintain the City character. Staff explained that the tax was prohibitive for the pizzeria. Staff asked Council for direction on the amount of tax as well as amending the tax to cover a wider range of license classes.

Councilor Griffin asked how many entities are currently paying the occupation tax.

Ms. Smith replied that there were three entities currently paying the tax – both country clubs and the pizzeria.

Councilor Roswell asked if the pizzeria was the first liquor license issued to a restaurant in the City.

Ms. Smith explained that Glenmoor Country Club also had a Hotel & Restaurant liquor license, but that Pulcinella Pizzeria was the first non-country club to receive a liquor license in the City.

Councilor Roswell indicated that was most likely why the issue had never come forward before. He indicated that while the amount of the tax seemed inconsistent with neighboring municipalities, the City was not always consistent because of its unique

character. He asked Chief Patterson if the Police Department did find servicing an area with liquor licenses to be an extra burden.

Chief Patterson replied that there is no extra burden due to the liquor licenses in the City. In those cities where it is an issue, it is mainly because of over-service. He indicated that the Police Department received very few calls from the country clubs and none from the pizzeria.

Councilor Griffin asked for clarification on the types of liquor licenses currently issued in the City.

Ms. Smith explained that Cherry Hills Country Club holds a Club license, while both Glenmoor Country Club and Pulcinella Pizzeria hold Hotel & Restaurant licenses. She indicated that a Hotel & Restaurant license carries with it the requirement that the majority of revenue comes from the sale of food, but also allows for an optional premises, which a Club license does not.

Councilor Brown clarified that staff recommended adding more categories of occupation tax as well as lowering the current occupation taxes. He commented that the City tax is easily three times that of other suburban municipalities, and that the City was also receiving revenue in the form of sales tax from these businesses. He indicated that, given the minimal additional enforcement requirements, an adjustment of the tax and broadening of tax classes would be acceptable.

Councilor VanderWerf indicated that since the City did not have many liquor licenses and did not receive a striking amount of revenue from this tax, that it would not affect City revenue very much.

Councilor Roswell indicated that Council should be as friendly as possible to the limited businesses in the City. He directed staff to bring alternatives for consideration by Council.

City Attorney

City Attorney Fellman reported that staff would likely bring a Resolution to Council at the next meeting to approve the contract transfer for NewPath Networks. He indicated that NewPath Networks has a closing date before the September Council meeting. He indicated that Financial Director Karen Proctor has reviewed the financial documents and agrees along with Mr. Fellman that the company has the financial wherewithal to comply with its financial obligations.

He also reported that the Bierenkoven case was finalized and closed.

He also reported that staff would bring a Council Bill to Council at the next meeting regarding Medical Marijuana. He indicated that he would give the memo to Council about a week before the meeting to give Council sufficient time to review the legal issues, including those that are still uncertain.

Councilor Brown asked if instead of presenting the bill on first reading at the next meeting, Council could review and discuss the bill as new business without a reading in order to allow more time to address the complex issues involved.

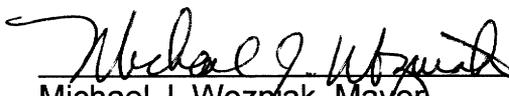
City Attorney Fellman agreed that Council could do that.

ADJOURNMENT

Councilor VanderWerf moved, seconded by Councilor Brown, to adjourn.

The motion passed unanimously.

The meeting adjourned at 7:33 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk