

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 18, 2011 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, Klasina VanderWerf, and Harriet LaMair were present on silent roll call. Also present were 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

CONSENT AGENDA

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

- a. Approval of Minutes – January 4, 2011
- b. Contract with Winter & Company for Planning Consulting Services to Assist with Bulk Plane and Floor Area Ratio Ordinance Development

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Public Hearing – Request by Ms. Sally C. Murray of 5055 S. Albion Street for Approval of a Floodplain Development Permit to Allow Dredging of an Existing Pond and Adding Fill Material to an Abandoned Ditch in the Special Flood Hazard Area

Community Development Director Rob Zuccaro presented a request by Ms. Sally C. Murray of 5055 S. Albion Street for a floodplain development permit to dredge an existing pond of the sediment that has built up and to put the material into an adjacent ditch. He explained that this application was very similar to one submitted and approved in 2005, but that this one had the added aspect of putting the dredged material into the ditch as opposed to taking it off-site. He indicated that a portion of the ditch extends into the neighboring property to the south, owned by CDOT (Colorado Department of Transportation). The applicant has indicated that dredged material will stay on the property. He explained that the Planning & Zoning Commission had reviewed the

request in October, and both the Planning & Zoning Commission and staff were recommending approval of the application with three conditions. First, the applicant's engineer shall provide a written statement after the work is completed certifying that the construction was conducted in accordance with the hydraulic study and that the dredging and grading results in no rise in the base flood elevations. Second, no dredge materials shall be allowed to be deposited in the portion of the ditch that extends beyond the applicant's property to the south. Third, the applicant shall be responsible for obtaining any necessary property and/or water rights approval for the project, including the right to fill the ditch as proposed.

Councilor Griffin asked why CDOT owned the property to the south.

Chuck Bess, the applicant's attorney, responded that a CDOT condemnation left the lot to the south too small to build a house on, so the owner sold the property to CDOT. He explained that the applicant had chosen to re-submit the application with the addition of keeping the dredging material on-site because taking it off-site would have involved bringing in large equipment. They were now planning to use a small mobile dredging device that would float on the pond and pull out the sediment. He indicated that the applicant would be careful to restrict depositing dredge material to the part of the ditch on their property, and would stake the property if necessary. He indicated that the conditions set forth by the Planning & Zoning Commission and staff were acceptable to the applicant.

Bill Ruzzo, the applicant's engineer, explained that the ditch was created by the Army Corps of Engineers as a shunt ditch in an effort to prevent sediment from building up in the pond, which it had failed to do, and was not being used for any other purpose.

Mayor Wozniak asked when the ditch was constructed.

Mr. Bess replied that it was created more than 25 years ago.

Mayor Wozniak asked about the circumstances resulting in the ditch extending onto the CDOT property.

Mr. Bess explained that at the time the property owner was a close friend of the Murrays and had agreed to extend the ditch.

Mayor Wozniak asked what the applicant would do with the dredged material if the ditch is too small to contain it all.

Mr. Bess replied that ditch should provide plenty of space but in the case it does not the excess material would be hauled off-site.

Mayor Wozniak asked how large the dredging equipment was.

Mr. Ruzzo showed the Mayor a photo of the equipment and noted that it was about eight feet by six feet.

Mayor Wozniak opened the public hearing and asked if anyone would like to comment. Hearing none the public hearing was closed.

Councilor LaMair moved, seconded by Councilor Griffin, to approve the request by Ms. Sally C. Murray for a floodplain development permit to allow dredging of the pond and depositing the dredge materials into an abandoned ditch within the special flood hazard area on property located at 5055 S. Albion Street with the following conditions: The applicant's engineer shall provide a written statement after the work is completed

certifying that the construction was conducted in accordance with the hydraulic study and that the dredging and grading results in no rise in the base flood elevations. No dredge materials shall be allowed to be deposited in the portion of the ditch that extends off the applicant's property to the south. The applicant shall be responsible for obtaining any necessary property and/or water rights approval for the project, including the right to fill the ditch as proposed. The City of Cherry Hills Village is not responsible for approving water rights and this permit does not relieve applicants of the obligation to obtain necessary water rights approval, if any, or to prevent injury to water rights.

Mayor Wozniak asked if the City was conditioning beyond its control by requiring the applicant to be responsible for water rights.

City Attorney Ken Fellman replied that condition was based on the City's water attorney's recommendation. He explained that it put the onus on the applicant and shielded the city from any liability.

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 Floodplain Development Permit Application: 6 ayes. 0 nays. The motion carried.

Road Paving Request Cherry Hills Annex

Public Works Director Jay Goldie presented the request by Torval Keller and Gary Nichols to pave portions of Parkway Drive and Cherry Lane Drive. He indicated that staff believed the City's policy for road paving requests did not adequately cover the issues of this situation. He explained that the neighborhood, "The Annex", was currently all gravel roads, and that paving a portion would diminish the rural feel of the neighborhood. He indicated that the City's policy addressed a situation with a singular road, in which case it would be easier to define the effected residents. However, in this situation the definition of effected residents should be broader due to the possible consequences to the entire neighborhood of paving the requested streets.

Mayor Wozniak commented that the City's policy does identify the "effected neighborhood" rather than the "effected street". He directed Council that they would need to give staff direction as to how to define the "effected neighborhood" in this case.

Councilor LaMair commented that she lived in the Annex, and while she appreciated the difficulty of the developer trying to sell the home at 1 Cherry Lane Drive, the neighborhood had been debating the issue of paving for a long time and it was a very contentious issue. She agreed that it would be inappropriate in this case to restrict the definition of "effected neighborhood" to just the streets requested to be paved. She recommended that, at minimum, the entire HOA neighborhood should be notified. She commented that people were not yet aware that Council was discussing this issue. She suggested that anyone whose home value might change as a result of the proposed paving and anyone who walked or drove along the streets might be considered "effected" residents.

Mayor Wozniak clarified that the Council was not making any decision related to the paving of these streets at this meeting; rather they were discussing the policy for street paving. He indicated that Council did have a precedent with Fairfax Street as to what to count as the "effected neighborhood" and that Council should be consistent.

Councilor VanderWerf commented that in the case of paving Fairfax Street, those living on Chenango had been counted as part of the "effected neighborhood".

Mayor Wozniak explained that in the case of Fairfax Street, Council had determined that anyone living on Chenango would use Fairfax Street, and therefore they should be included in the definition of the "effected neighborhood" He noted this was also similar to the speed bump issue on Oxford. He indicated that staff should make the initial determination of who is included in the definition so that the issue did not have to come before Council to clarify the City's policy for each paving request.

Councilor VanderWerf commented that it was better to take a broad view of the definition rather than a narrow view in order to avoid a patchwork feel to the City.

Councilor LaMair commented that it was important not to create a patchwork of paved vs. non-paved roads for the sake of the public works crews as well.

Councilor Griffin asked how the paving would be funded.

Mayor Wozniak indicated that was a subsidiary question that would only need to be addressed if 80% of the effected residents approved the proposal.

Councilor Griffin asked if the HOA were to decide to pave all the roads in the neighborhood, for example, would the cost be divided among the homeowners as a special assessment.

Mayor Wozniak responded that, if a project was approved, Council could chose to put it in the City budget or could chose to require the homeowners to pay the cost. He explained that even if the paving were approved, the City would have no obligation to pay for the paving.

Councilor Griffin indicated his belief that the City should require unanimous approval by the neighborhood for the paving project if they would be required to pay for it.

Mayor Wozniak directed staff to determine the effected neighborhood for the proposed paving.

Councilor Brown commented that the only information presented in the petition to the effected neighborhood would be the streets involved in the proposed paving. He indicated that he thought information about the plan for payment should be included in the petition so that the signers were aware of the whole situation.

Mr. Goldie reminded Council that the homeowner of 1 Cherry Land Drive had indicated he would pay for the paving project, and suggested that the applicant should represent his intent to pay on the petition.

Mayor Wozniak indicated that he would prefer Council not pass a motion on this matter as he did not want every paving request to come before Council. Rather he directed staff to exercise their discretion to determine the definition of the "effected neighborhood".

Councilor LaMair commented that Council had gone through the same issue with the speed bump on Oxford, and that it had worked out well to let staff make the determination.

Fence Donation at Volunteer Park

Mr. Goldie explained that last year Mr. Nichols, the owner of 1 Cherry Lane Drive, had offered to donate a fence to the City to put along Hampden in Volunteer Park. This fence would match the one at 8 Cherry Lane Drive and run the entire length of the park parallel to Hampden. It would help block the noise from the street and increase safety in the park. If the fence donation is accepted by the City, the City would be obligated to pay for the installation of the trees required by the City Code, as well as irrigation to improve their chances of survival. The fence would be placed approximately 25 feet from Hampden, on a berm, which would require that the height be six feet instead of the originally planned eight feet to account for natural grade per City Code. Mr. Nichols was amenable to changing the fence material from cedar to a stone/concrete wall, which would be easier for staff to maintain. Mr. Nichols had contacted all the immediate neighbors of Volunteer Park for their approval. Staff had not received any negative comments, and no residents were present at either the Parks, Trails and Recreation Commission (PTRC) meetings or the City Council meetings when this issue was discussed.

Councilor VanderWerf asked how the donated fence would match up with the other fences along Hampden.

Mr. Goldie replied that it would be continuous with the fence to the east but would not be completely in line with the cedar fence on Mr. Nichols' property due to contours in the land and drainage.

Councilor Brown asked if the fence would be on City property.

Mr. Goldie confirmed that the fence would be entirely on City property and out of CDOT's right-of-way along Hampden.

Mayor Wozniak expressed his appreciation to Mr. Nichols for his donation. He indicated that the fence would make it more conducive for residents to use the park.

Mayor Pro Tem Stewart asked if the cost for installation and irrigation of the trees was in the 2011 Budget.

Mr. Goldie explained that it had been budgeted, but not used, in 2010, and that it had been carried over into the 2011 budget.

Councilor Griffin asked if the donation funds would be required before the City would start construction.

Mr. Goldie confirmed that was correct.

Councilor VanderWerf also acknowledged Mr. Nichols' work with PTRC.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve Resolution 3, Series 2011 accepting the donation of \$39,100.00 for the construction of a masonry fence at Volunteer Park, and expend an additional \$14,842.00 for landscape and irrigation improvements associated with this project.

The motion carried unanimously.

REPORTS

Members of City Council

Councilor Griffin reported that the Board of Adjustment and Appeals (BOAA) met on January 6, elected a new slate of officers, and approved an expansion of a pool house and snack shack for Glenmoor Country Club. He commented on a City trail map from 1986.

Councilor LaMair reported that she would attend the next High Line Canal Working Group meeting with Councilor VanderWerf and Mr. Goldie. She commented that unfortunately the group would not be submitting any grant proposals to GOCO this round. She also reported that the Cherry Hills Land Preserve would like to sit down with Council to review their work. She reported that the Land Preserve was in the final stages of finishing a professional video documenting Cat Anderson's decision to donate her property to the City for open space.

Mayor Pro Tem Stewart reported that he had received an email from a resident regarding the City's Recreation Reimbursement Program and asked Mr. Goldie to address that during staff reports.

Councilor Roswell reported that he had received one as well and had arranged for Mr. Goldie to address the issue during staff reports. He reported that he had received a resignation from one of the citizens serving on the BOAA, and would work with staff to appoint a new board member. He also reported that he had been working with Deputy Police Chief Jody Sansing, Director of Public Works Jay Goldie, Community Development Director Rob Zuccaro, and South Metro Fire Rescue to review the proposals received for the Joint Public Safety Facility. He suggested that it might be helpful to have a Study Session with Council to discuss the scope of the project. He expressed his appreciation that Mr. Sansing was in full uniform for the Council meeting.

Councilor VanderWerf reported that she had met with Village Crier editor Martha Welborn and Court Clerk Jessica Sager regarding the next issue of the Village Crier. She indicated that they had discussed the possibility of converting the Crier to a primarily online publication rather than a primarily print publication, and have some printed issues available at the Village Center for any residents who preferred them in paper form. She indicated that currently residents can sign up to receive the Crier via email rather than through the mail, but that not many people had signed up. She also expressed concern to accommodate elderly residents who might prefer a printed copy.

Mayor Wozniak indicated that the City budgeted \$1,500 for printing and postage for the Village Crier, and that making it a primarily online publication was a possibility.

Councilor VanderWerf also reported that the PTRC meeting last week had featured the Calkins property at 5100 E. Quincy Ave., whose owners were interested in subdividing. She indicated that the PTRC members did a good job representing the public interest in what land would be dedicated to open space as part of the subdivision. PTRC would also be organizing another series of public meetings to discuss the installation of two small realistic boulders for children to climb on at Dahlia Hollow Park. She indicated the boulders would be tucked into an area of the park in an effort to not detract from the other aspects of the park that residents value.

Councilor Brown reported that the City's RTD District representative was interested in attending the February 1st meeting.

Mayor's Report

Mayor Wozniak reported that he had attended the Arapahoe Metro Mayors and Managers annual retreat. The University of Colorado Chancellor gave an impassioned speech for local support of public education, and there were many discussions related to public finances. There was also a presentation by a representative of CDOT, emphasizing their budget difficulties and impressing their hope that local municipalities will take on more of the burden of street maintenance. Reeves Brown, who works for Governor Hickenlooper, gave a presentation about the referendum process in Colorado. Colorado has the third-highest number of referendums in the past 20 years. Most do not pass, most are introduced by out-of-state interest groups, and Colorado is the easiest state to get referendums onto the ballot. Mayor Wozniak spoke with a representative of the Department of Local Affairs and if Council would like he will come to a Council meeting to discuss budget issues. Mayor Wozniak also met with Governor Hickenlooper's budget director. Governor Hickenlooper had invited all of the metro mayors to the inauguration and receptions. The next meeting would be in early February to determine their position on FastTracks. FastTracks was approved by the voters in 2004 and scheduled to be complete by 2017. The southern areas were served quickly, and the northern areas were now asking for support to extend the stadium tax, which will expire this year, and dedicate the tax to FastTracks.

Mayor Wozniak noted that before he was elected Cherry Hills Village was not well-known for being involved in regional issues, but now that the City was involved in organizations such as the Arapahoe Metro Mayors & Managers and DRCOG, they were viewed as a city that cares about regional issues.

Mayor Wozniak also reported that he would be having breakfast with Greenwood Village Mayor Rakowsky to discuss ways they might share services. They would also discuss a joint meeting between the two Councils sometime this spring.

He reported that he had agreed to participate in a public access television event with a group of South Metro Mayors on February 9th.

He commented that the City was working well with surrounding municipalities, though everyone was facing budget difficulties.

He reported that he had received a letter in the mail from Arapahoe County that asked the City to prepare an extensive inventory of the open space money spent. He referred the letter to staff.

He reported that the City usually funded the Arapahoe County Foundation Youth Award Program and suggested a modest sum of \$250.00.

He reported that he had received several calls from residents since the last meeting. One was regarding a home being built on Cherry Vale that City Manager Patterson had gone to look at with the residents and Mr. Zuccaro. Mayor Wozniak had gone to see the house as well, and while it was large it was not in violation of City Code.

Mayor Pro Tem Stewart asked what size lot the home was being constructed on.

Mr. Zuccaro commented that it was a major addition to the current home, on a 2.5 acre lot adjacent to Zone R-4.

Mayor Wozniak advised Council that the next few meetings might include Study Sessions.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

Mr. Patterson reported that departmental monthly reports and unaudited financial statements were included in Council packets and department directors were present to answer any questions. He reported that revenues would exceed expenditures by approximately \$630,000 for 2010, and congratulated Finance Director Karen Proctor and the department directors for their hard work. He noted that the Community Development Department in particular exceeded expectations of revenue in 2010.

Joint Public Safety Facility – Proposal Update

Mr. Sansing reported that 43 firms had attended the pre-submittal meeting, and that staff had received 14 proposals. He thanked Councilors LaMair, Roswell, and Brown for their help and involvement in the process. He explained that staff would review the proposals and gather background information, as well as have an outside party review the proposals. He indicated that staff hoped to conduct interviews with the four top firms towards the end of January. He suggested a study session at the next Council meeting to review draft versions of an intergovernmental agreement (IGA) and memorandum of understanding (MOU) with South Metro Fire Rescue (SMFR). He indicated that staff would like feedback from Council.

Mayor Wozniak indicated that he would prefer staff bring a recommendation to Council on the agenda, rather than holding a study session. He explained that a recommendation would hopefully keep the options narrowed and the discussion focused and better help Council and staff come to a decision.

Councilor Roswell explained that there were still many concepts to work out and that staff might need some direction from Council before they would be ready to bring forth any recommendation, such as the form the City should enter into an IGA with SMFR.

Councilor Brown indicated that he would be agreeable to bringing the IGA to Council as an agenda item rather than as the topic of a Study Session, so long as the conversation was started.

Councilor Roswell agreed.

Councilor LaMair indicated that she was concerned with staff going forward with interviews before the financing for the project was worked out. She also noted that she was not participating in the group spearheading the project.

Councilor Roswell agreed that financing was a central issue, and that determining what is/are the entity/entities that pay for the facility was complex.

Recreation Reimbursement Program

Mr. Goldie explained that the Recreation Reimbursement Program had been enforced much more strictly over the past year, making it much easier for staff to manage the program. He reminded Council that the City's policy is to reimburse recreation activities for only municipal or Title 35 (special district) facilities for adults, as well as 501(C)(3)

facilities for youth, if the primary focus of the facility is youth sports. Staff had recently received questions from residents as to why the City does not reimburse for membership to the University of Denver gym. This facility is neither a municipal nor a special district facility, and although it is a 501(C)(3), its primary focus is not youth sports.

Mayor Pro Tem Stewart indicated that when the City excluded from South Suburban, it was with the understanding that the City would provide recreation reimbursements to its residents so that they could enjoy the same types of activities and facilities that South Suburban provided. He indicated that there had not been anything in the plan of exclusion regarding special districts or municipal-run facilities presented to the court and to citizens on the ballot measure.

Mayor Wozniak agreed that the City had to do exactly as was mandated in court.

Mayor Pro Tem Stewart indicated that the City had modeled its recreation reimbursement program on Greenwood Village's program.

Mr. Goldie stated that staff could implement any policy that Council decided on, as long as it was enforceable.

Mayor Pro Tem Stewart indicated his belief that the City should reimburse for anything that South Suburban would provide, regardless of the type of facility providing it.

Councilor Brown agreed that the City should have a broader policy rather than a more restrictive one.

Mayor Wozniak argued that South Suburban has a golf course, and asked if then the City should reimburse green fees. He also asked staff how much of the reimbursements were donated to the Cat Anderson Fund.

Mr. Goldie replied that it was very little, just a few thousand dollars over an entire year.

Councilor LaMair asked roughly how much the City gave out in reimbursements a year.

Mr. Goldie estimated \$250,000.

Mayor Pro Tem indicated that the City represented to its citizens that they receive a benefit by voting to exclude from South Suburban. He indicated that exclusion was an enormous benefit to the City, and it was important to pass on that benefit to residents.

Councilor LaMair agreed that the spirit of the exclusion was more broad rather than narrow.

Councilor Brown indicated that while he could see the logic of public tax dollars being spent for public facilities and activities, he believed that spending public tax dollars on private facilities and activities brought up some issues.

Mayor Pro Tem Stewart indicated his feeling that a set group of residents participate in the program, and so broadening the restrictions would not result in a drastic increase in the amount of reimbursements the City processes.

Councilor Roswell noted that a large percentage of the City's reimbursements are for Greenwood Athletic Club, which is often viewed as a private club even though it is a special district facility. He indicated that this might be creating a perception problem with residents.

Mayor Wozniak directed staff to research the City's obligations and report back at the next Council meeting for further discussion.

City Attorney

Mr. Fellman reported that the City had received an open records request from the Denver Post for the City's ethics policy and gift disclosure forms. He indicated that the majority of cities around the metro area received the same request. He explained that the state statute requiring gift disclosure forms does not apply to home-rule cities, and that the City Code does not require City staff or Council members to complete gift donation forms, and he advised City Clerk Laura Smith of this. However, after reading three days of emails discussing the topic on his Metro Attorneys Listserve, he was questioning this advisement.

Mayor Wozniak indicated that it wouldn't apply to the City in any case, since the City's ethics code prohibits Council members and City staff from accepting any gift at all, allowing the City to opt out of Amendment 41 that would require gift disclosure forms.

Mayor Pro Tem Stewart indicated that he remembered the discussion surrounding the City's ethics code and that the Council elected to be extremely conservative in its treatment of gifts in an effort to eliminate any issues that may arise.

Mr. Fellman explained that Amendment 41 was different than the state statute requiring gift disclosure forms, and that the state statute was in effect prior to Amendment 41. He also noted that the state statute's definition of a gift was broader than "for City business". He stated that he needed to look into the matter more and would report back to Council.

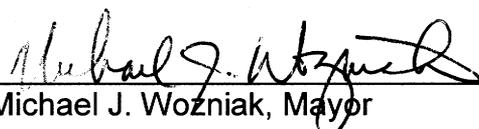
Mayor Wozniak asked that Mr. Fellman consult with Mayor Pro Tem Stewart as he researches the issue.

Mr. Fellman also reported that he would like to set up a study session for the Council with Nancy Rodgers to discuss the relationships between the Council member's use of electronic communications, such as email, websites, and social media, and open meetings and public records.

Mayor Wozniak emphasized the importance and complexity of these issues and indicated that a Study Session would be set to discuss them.

ADJOURNMENT

The meeting adjourned at 8:17 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk