

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, June 21, 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, 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, Community Development Director Rob Zuccaro, Public Works Director Jay Goldie, Deputy Chief Jody Sansing, Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Laura Smith.

Absent: Scott Roswell

AUDIENCE PARTICIPATION PERIOD

Ms. Katy Brown, of 4040 S. Dexter Street, addressed Council regarding a portable restroom along the High Line Canal. She stated that while she was a commissioner on the Parks, Trails and Recreation Commission (PTRC), she was here tonight as a resident. She stated that Council had considered a lot of public opinion on the issue of a portable restroom and that she would like to submit some factual information for Council to consider as well. First, she explained that the Federal Occupational Safety and Health Administration (OSHA) requires employers to provide employees with access to sanitary toilet facilities. While the City is not required to uphold similar standards in its public parks and trails, OSHA's policy is based upon medical research which shows that access to sanitary toilet facilities is an important component of health and welfare. Second, Title 2 of the Americans with Disabilities Act requires (ADA) public entities to provide "reasonable accommodation" to enable people with disabilities to participate in programs and services. She indicated that for pregnant women like herself the parks and trails are virtually unusable because she cannot go an hour without a restroom facility. While her condition is temporary, those of other people are not. As a resident, Ms. Brown stated that she believes the City can and should provide restroom facilities to people who need them.

Mayor Wozniak indicated that if the City followed Ms. Brown's logic they should pave all trails in the City to allow for wheelchair access.

Ms. Brown responded that Title 2 of the ADA requires entities to reasonably accommodate persons with disabilities and that if the City considered their parks and trails to be a public service then that might be true.

Mayor Wozniak thanked Ms. Brown for her comments and indicated he would have the City Attorney give Council some thoughts related to Ms. Brown's comments.

CONSENT AGENDA

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

- a. Approval of Minutes – June 7, 2011
- b. Kelly McMillan Bench Donation
- c. 2011 Arapahoe County Grant Intergovernmental Agreement

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Council Bill 5, Series 2011; Amending Chapter 16 of the Municipal Code, Concerning the Preservation of Established Trees (first reading)

Mayor Wozniak thanked Community Development Director Zuccaro for his hard work to thoroughly address all of Council's concerns and for bringing the proposed bill back for Council's consideration so quickly.

Community Development Director Rob Zuccaro thanked David Foster's office for their work and for their quick turn around on the changes to the proposed bill. He indicated that he would go one by one through the changes to the proposed bill. First, he addressed Council's direction to provide clarification on the use of the term "yard" compared to "setback" in the proposed bill. He explained that both "yard" and "setback" were used in different places in the Zoning Code and he and the City's attorneys had decided to use both terms in the proposed bill.

Mayor Pro Tem Stewart asked if it was necessary to distinguish between "yard" and "minimum yard".

City Attorney Ken Fellman indicated that the proposed bill had to say "minimum yard" because some sections of the Zoning Code define setback within the definition of "yard", while others use the term "setback". A separate and time-intensive project would be to go through the Zoning Code and clarify the definitions. In the scope of the current proposed bill staff had worked to be as clear as possible within the current Code.

Director Zuccaro indicated that the Code uses the term "yard" for all zone districts except for R3A, which uses "setback".

Mayor Pro Tem Stewart indicated that whether using "yard" or "setback", the intent was still that the proposed bill would not apply to the building envelope, which is what Council had intended.

Director Zuccaro explained that the second change to the proposed bill was a provision which exempts any tree listed on the State of Colorado Noxious Weed List or listed as a prohibited tree under Section 7-4-10 of the City Code. With this change these trees may be cut down under any circumstance in the City.

Mayor Pro Tem Stewart indicated that the provision was great and suggested that it be added to the definition of an established tree.

Mayor Wozniak directed City Attorney Fellman to work with staff on this suggestion.

Director Zuccaro explained that the third change to the proposed bill was an amendment of the replacement rate. The current proposed bill classified established trees into three size categories based on caliper size and assigned replacement rates for each category. Trees measuring 6 to 10 inches in caliper would have a replacement rate of 1 tree; trees measuring 11-20 inches in caliper would have a replacement rate of 3 trees; and trees measuring 21 or more inches in caliper would have a replacement

rate of 5 trees. This replacement rate would also reduce the financial burden to residents as compared to the originally proposed 1.5:1 rate. Director Zuccaro indicated that he believed the modified replacement rate limited the financial burden, included a cap on the number of replacement trees, and still met the intent of providing an immediate buffer proportional to the impact of the removal of an existing mature tree.

Councilor LaMair asked why staff had chosen 2 inches for the caliper of the replacement trees when calculating likely financial burdens to residents.

Director Zuccaro replied that a 2 inch caliper was typical for a nursery tree.

Councilor LaMair asked if there was any concern with a tree that size having difficulty getting established.

Director Zuccaro replied that the tree size had not been chosen based on any criteria related to the time it would take the new tree to get established, but rather because it was a standard tree size at a tree nursery.

Councilor LaMair noted that 2 inches was small compared to the caliper of an established tree.

Director Zuccaro suggested that a 3 inch caliper tree could be used.

Mayor Wozniak commented that planting three small caliper trees near by where a large 18 inch caliper tree is removed probably won't result in the same buffer as an established tree.

Councilor Brown noted that part of the intent of the proposed bill was to preserve privacy. He indicated that he liked the proposed size categories and replacement rates. He commented that the proposed bill's strongest feature was that residents do not have to worry about any of these regulations if they preserve or simply relocate established trees.

Director Zuccaro explained that the fourth change to the proposed bill was a streamlined variance or waiver where the removal of an established tree in the setback is beyond the property owner's control. Examples would be if a utility company required removal, or if the tree is unhealthy. This waiver would be administrative.

Mayor Wozniak asked if a waiver was denied administratively could the applicant appeal staff's decision.

Director Zuccaro confirmed that an appeal would go before the Board of Adjustment and Appeals (BOAA).

Mayor Pro Tem Stewart indicated that he would like to see more flexibility for waivers. He suggested that "for good cause" be added to the waiver provision instead of giving staff exact criteria for a waiver.

Councilor Brown reminded Council that the proposed bill would only regulate removal of established trees during a defined timeline surrounding a major construction project. He noted that he felt the waiver provision was fair and appropriate.

Mayor Wozniak commented that the question was whether Council wanted to have standards for staff to follow for waivers or increase discretion.

Councilor Brown asked how the regulation preventing established trees from being removed in the setback for 12 months prior to a major construction project would be enforced. He questioned what would happen if neighbor disagreed about the survey or if the property was sold during the timeframe.

Mayor Wozniak added that a property owner might remove an established tree to open a view corridor and then decide six months later that they want to do a major renovation.

Mayor Pro Tem Stewart indicated that the proposed bill was not intended to address the case of a private landowner so much as it was meant to address the case of a developer scraping a property.

Mayor Wozniak noted that there were strict criteria for regular variances that went before the BOAA, but that it was difficult to anticipate all instances when a variance to the proposed bill might be needed.

Mayor Pro Tem Stewart indicated that a waiver should be available if, for example, all neighbors agree that a certain unattractive established tree should be removed.

Mayor Wozniak noted that stricter criteria resulted in decisions that were easier to defend as fair and consistent.

Councilor Brown indicated he was in favor of the proposed waiver provision and that giving staff too much discretion meant giving them too little guidance.

Mayor Pro Tem Stewart suggested that "or for good cause" be added to the current proposed wording of the waiver provision.

Councilor Griffin asked what would happen under the proposed bill if there are half-dead cottonwoods in the setback on a property and the house is sold and demolished for reconstruction.

Director Zuccaro replied that the new property owner could get an arborist to certify that the cottonwood trees were unhealthy and then get a waiver to remove the trees through the proposed provision.

Director Zuccaro explained that the fifth change to the proposed bill is to waive the post-construction tree survey. Staff estimates that the pre-construction tree survey will add between \$600 and \$2000 to the cost of the site plan already required for large construction projects and believes that it is necessary to ensure compliance. The amended bill waives the post-construction survey requirement in order to reduce the cost of compliance. Staff will do a visual compliance check during the final zoning inspection.

Mayor Wozniak noted that with the required survey, replacement and watering costs, the proposed bill was pricey. He indicated that he appreciated the change staff had made to reduce the cost of compliance.

Councilor LaMair commented that it could be seen as adding cost to the construction project or as placing an undue cost on the neighbors who have to landscape on their property to recreate privacy or a buffer when established trees are removed. She indicated that she was comfortable with the reduction in the cost of compliance and that she believed the proposed bill was a sensitive approach to the issue. She added that most large construction projects have landscaping costs anyway, so the additional cost of the proposed bill may not be that much.

Mayor Wozniak indicated that as a general rule Council should be cautious about passing legislation to address an issue only affecting a few residents. He noted that most residents are very invested in their property and would be unlikely to remove established trees during construction without replacing them with some sort of landscaping. He noted that the RDSC had identified this issue and that was why Council was addressing it now. He added that most residents are responsive to guidelines and suggestions from the City.

Councilor LaMair indicated that the proposed bill was intended to address the case of a developer scraping a property.

Mayor Wozniak noted that a new homeowner would eventually landscape a scraped property. He clarified that he was not arguing against the proposed bill but that he felt it was important for the Council to ask itself if it is legislating for a small number of people.

Director Zuccaro explained that the next change clarified that the tree survey submitted would show the location of any trees removed from the site within the 12 months preceding application for a building permit so that trees may not simply be removed prior to the tree survey being conducted to avoid the tree preservation requirements. Staff will conduct a compliance check 24 to 36 months after completion of the project to make sure any relocated or replaced trees had survived. The proposed bill would not require maintenance of the trees beyond that timeline.

Mayor Wozniak noted that it was difficult for the City to require watering of trees to ensure their survival.

Councilor Griffin indicated that he was impressed with the proposed bill and that Director Zuccaro had addressed all of Council's concerns. He noted that he was comfortable with the tiered replacement rate. He stated that the proposed bill addressed the main issue of developers scraping properties. He indicated that Council had to walk a fine line between private and public interests and he endorsed the proposed bill.

Mayor Wozniak asked Mayor Pro Tem Stewart if his Home Owners' Association (HOA) has a tree preservation requirement.

Mayor Pro Tem Stewart indicated that his HOA has a requirement for planting trees but not for removing them.

Mayor Wozniak commented that at some point legislation like the proposed bill starts to sound like HOA requirements.

Mayor Pro Tem Stewart indicated that 90% of City residents like trees. He noted that they increase appraisal value to the property. He indicated that the issue is with the builders, not home owners.

Councilor VanderWerf expressed concern with the section of the proposed bill that stated replacement trees had to be placed generally in the same location as the removed tree.

Councilor LaMair noted that the change to a tiered replacement rate had removed the ability of the home owner to replace a tree with a larger tree instead of several small trees.

Mayor Wozniak and Councilor VanderWerf agreed.

Mayor Wozniak indicated that it would be nice to allow that flexibility by adding that residents could propose a different plan than the tiered system. He suggested that property owners could appeal to staff under the waiver provision if they wished to replace an established tree with a large tree rather than several smaller trees.

Councilor LaMair moved, seconded by Councilor Brown to approve Council Bill 5, Series 2011; A bill for an ordinance amending Chapter 16 of the Cherry Hills Village municipal Code concerning zoning, by the addition of Section 16-16-170 concerning the preservation of established trees, on first reading.

Mayor Wozniak suggested that the amendments discussed be included in the motion.

Councilor LaMair amended her motion to add subject to the discussions and suggestions regarding flexibility in the ordinance.

Mayor Wozniak asked if Councilor Brown maintained his second of the motion.

Councilor Brown confirmed that he did.

The following votes were recorded:

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

Vote on the Council Bill 5-2011: 5 ayes. 0 nays. The motion carried.

Council Bill 7, Series 2011; Amending Chapter 6 of the Municipal Code, To Adopt Standards, Procedures and Fees for Applications for Liquor Tastings (second reading)

City Clerk Laura Smith presented Council Bill 7, Series 2011 on second and final reading. She noted that there had been no changes to the proposed bill since first reading.

Mayor Pro Tem Stewart moved, seconded by Councilor VanderWerf to approve Council Bill 7, Series 2011; A Bill for an Ordinance of the City of Cherry Hills Village amending Chapter 6 of the Cherry Hills Village Municipal Code, concerning Business Licenses and Regulations, to adopt standards, procedures, and fees for applications for liquor tastings on second and final reading as further described in the staff memorandum dated June 21, 2011.

The following votes were recorded:

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

Vote on the Council Bill 7-2011: 5 ayes. 0 nays. The motion carried.

NEW BUSINESS

Application for a Liquor Tasting Permit by Vino & Vino, LLC

City Clerk Smith presented the application for a liquor tasting permit by Vino & Vino LLC for Council's consideration. She explained that staff received a complete application and fees on June 14, 2011. Mr. Ross Birkholz, owner, and Mr. Scott Smith, employee, completed the State certified TIPS training program on June 2, 2011. Both passed the course and will present Certificates of Training to the City Clerk's office as soon as they are available. Mr. Birkholz has not yet scheduled the first tasting event but will submit dates and times of any tasting event to the City Clerk's office at least a week prior to the event. If Council chose to approve the application Vino & Vino could hold their first tasting event on July 14, 2011. City Clerk Smith noted that the applicant was present to answer any questions from Council.

Mayor Wozniak asked about the certification program.

Mr. Birkholz replied that the program's intent was to ensure that servers were aware of the State regulations, such as the ounce limit per tasting and number of bottles allowed to be open at a time during a tasting. The program also provided training on checking IDs and how to avoid over-serving customers.

Mayor Pro Tem Stewart asked if Mr. Birkholz was planning regular tastings.

Mr. Birkholz replied that he was planning to hold two tastings per week, on Saturdays and one other day to be decided. He indicated he hoped his first tasting would be July 16th.

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair to approve the application for a liquor tasting permit by Vino & Vino LLC, as further described in the staff memorandum dated June 21, 2011.

The motion carried unanimously.

Report on Portable Restroom

Parks, Trails and Recreation Administrator Ryan Berninzoni presented Council with a review of the portable restroom issue. He explained that the Parks, Trails and Recreation Commission (PTRC) had begun discussions about installing a portable restroom at the south portion of the Dahlia Street parking lot in 2009. The PTRC held a public input meeting in April 2010. Staff brought the PTRC's recommendation to Council as a public hearing at the June 15, 2010 meeting. After a lengthy discussion Council decided not to accept the proposal based on its location, accessibility, and residents' concerns. Staff researched other locations and in August 2010 the PTRC held a public input meeting and voted to recommend placement of the restroom at Three Pond Park. Staff presented this recommendation to Council as a public hearing at the September 8, 2010 meeting. After a lengthy discussion the proposal was approved. In the months following Council's approval staff received strong opposition from residents living adjacent to Three Pond Park. City Council asked PTRC to revisit the issue and hold another public input meeting. The PTRC moved to continue with the original proposal to place a portable restroom at Three Pond Park and not hold any further discussions. Staff has held off installation of the portable restroom indefinitely and recommends that the proposal be tabled until a more suitable location is available.

Mayor Wozniak asked if staff was referring to the Cat Anderson property.

Administrator Berninzoni confirmed that Quincy Farms, once owned and managed by the City, would be a neutral location for a portable or permanent restroom. Additionally,

the property already has a plumbing system which would make a permanent restroom considerably easier to install.

Mayor Wozniak asked about the access for the Kent Denver site.

Administrator Berninzoni explained that access would be through the main entrance to the school.

Councilor LaMair asked if staff had contacted Kent Denver recently about the possibility of installing a portable restroom on their property.

Administrator Berninzoni replied that he had left messages but had not yet heard back from Kent Denver.

Mayor Wozniak indicated that Kent Denver was more appealing as a site for a portable restroom than Three Pond Park because it was centrally located in the City.

Councilor LaMair cautioned that residents of Blackmer Road across the High Line Canal from the possible Kent Denver location may not support a portable restroom at that location.

Administrator Berninzoni added that Cat Anderson was opposed to locating a portable restroom at Kent Denver.

Mayor Wozniak indicated that the process of public input was important and that he believed that Council should hold public input meetings prior to making any decision. He stated that he agreed with staff's recommendation on this issue.

Councilor LaMair proposed postponing discussions until staff could contact Kent Denver and determine if their property is still a possible location. She also noted that there was a location on Kent Denver property below eye-level where a portable restroom would not be visible to Blackmer residents.

Mayor Wozniak suggested that the City could also post signs along the High Line Canal indicating that public restrooms are available at the Village Center.

Councilor VanderWerf indicated that she is in favor of a location for a temporary restroom. She commented that opponents to placing a portable restroom at Three Pond Park may not have believed that the restroom would be temporary and emphasized that the location could be re-evaluated after six months. She stated that there is a need for a portable restroom even if the Kent Denver location does not work out.

Mayor Wozniak noted that a recent Denver Post article had reported on the vandalism and crime associated with portable restrooms. He suggested that a portable restroom could be located in Three Pond Park but back farther from the street than the two proposed locations, in order to reduce vandalism. He noted that maintenance trucks would likely have to drive along the High Line Canal to reach that site.

Councilor Brown indicated that Denver Water had restricted the City's access to the High Line Canal with maintenance trucks.

Administrator Berninzoni confirmed that the City would not be able to access the site via the High Line Canal and explained that the site would be difficult to access for maintenance for three to four months out of the year due to ground saturation.

Mayor Wozniak directed staff to find out if Kent Denver was still a possible site.

Councilor VanderWerf asked if staff or Council had ever received the signatures of the neighbors of Three Pond Park opposed to the portable restroom.

Mayor Wozniak indicated that he had not received the list.

Councilor LaMair asked if other neighbors had complained about the Three Pond Park site.

Mayor Wozniak indicated that four neighbors of that area had contacted him.

Administrator Berninzoni added that one other had contacted staff.

REPORTS

Members of City Council

Councilor Brown commented that the City's Annual Report was beautiful.

Mayor Wozniak agreed and thanked staff for their work on the report.

Councilor VanderWerf reported that she had attended the Arapahoe County Open Space Grant Award Ceremony with Director Goldie and Administrator Berninzoni. She congratulated staff on the grant the City received and thanked them for their hard work. She also reported that Public Arts Commissioner Ann Polumbus was anxious to fill the empty seats on the Public Art Commission (PAC) and begin work on the City's first piece of public art.

Director Goldie noted that staff had received three applications for the PAC and was expecting another one shortly. He noted that there were three to five positions on the PAC, including the Council liaison. He indicated he would work with Councilor VanderWerf and Commissioner Polumbus to set up interviews.

Councilor VanderWerf commented that she and Commissioner Polumbus planned to walk around some of the potential sites for public art identified by Director Goldie. She also noted that Commissioner Polumbus was concerned with moving quickly to secure Mr. Stevenson's lease of sculpture to the City.

Mayor Pro Tem Stewart reported that color boards illustrating the Kent Place development at University and Hampden were up for public view and comment at the City of Englewood offices.

Director Zuccaro noted that the color boards were part of the construction permit.

Councilor LaMair reported that the Cherry Hills Land Preserve is planning a fundraiser and barn tour September 17th and 18th. She indicated that invitations had been sent to all the Council members for this event as well as a showing of the video that the Land Preserve had made of Cat Anderson discussing her reasons for donating her property to the City. She suggested that the video could be played during a Council meeting so that Council and staff could see it.

Councilor Griffin reported that the Board of Adjustment and Appeals meeting had been cancelled. He also reported that he and Councilor Brown had met with staff regarding the City's finances and that appeals to property assessments were lower in the center of the City than anticipated. Finance Director Karen Proctor was working on an analysis of appeals in the City. He added that home values seemed to be getting worse nationally.

Mayor's Report

Mayor Wozniak reported that the City had received its Shareback Funds from the Arapahoe County Open Space Use Tax Program. He also read a portion of the Colorado State Senate's Joint Resolution 11-051 concerning the 150th anniversary of Arapahoe County. He noted that the July 5th Council meeting had been cancelled due to lack of a quorum and that the second meeting in July had been moved to Monday July 18th as he had a prior engagement on the 19th.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manager John Patterson reported that Director Proctor was at the Colorado Municipal League's annual conference in Vail for the week. He reported that the asphalt projects around the City were nearing completion. He added that Mitt Romney was in the City for a fundraiser last night and that there had been 20-25 protestors present. He noted that Commander Weathers handled the situation well.

Deputy Chief Sansing reported that work on the new joint public safety facility was progressing. Staff had chosen a contractor and was working with the City Attorney on the contract. Staff hoped to bring the contract to City Council for approval at the July 18th meeting. Staff hoped to bring a preliminary conceptual design with cost estimates to Council at the August 16th meeting.

Councilor Brown noted that residents had been interested in green building for the new Village Center and asked how staff was approaching the issue of energy conservation and a green building.

Deputy Chief Sansing replied that staff was planning to build the new joint public safety facility to some LEED standards, but would likely not pursue the actual LEED certificate as it was very expensive.

Director Zuccaro reported that an organization named Crosswalk Fellowship had bought Colorado Community Church and that there were no plans to change the function of the church at this time. Crosswalk Fellowship will rent the space back to Colorado Community Church. In the long-term the new owners might want add a second story for office space on the older part of the church, which would require an expanded use permit. The building's zoning also allows use as a K-8 school.

Mayor Pro Tem Stewart asked if Crosswalk Fellowship currently operated another church.

Director Zuccaro replied that it did not and that Crosswalk Fellowship was not a congregation itself, but was involved in starting other churches.

City Attorney

City Attorney Ken Fellman reported that Director Zuccaro had been doing a lot of work to bring the bulk plane ordinance to the Planning & Zoning Commission (P&Z).

Director Zuccaro added that he anticipated bringing the bulk plane ordinance to City Council in August with a recommendation from P&Z.

ADJOURNMENT

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to proceed into executive session for the purpose of discussing the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest related to the planned police/fire building as authorized by C.R.S. §24-6-402(4)(a), and further upon completion of the executive session to be immediately adjourned.

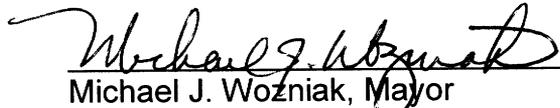
The following votes were recorded:

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

Vote on Executive Session: 5 ayes. 0 nays. The motion carried.

The regular meeting ended at 7:57 p.m.

The executive session adjourned at 8:07 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk