

Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, August 2, 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, Finance Director Karen Proctor, 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.

Councilor Scott Roswell arrived at 6:35 p.m.

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 – July 18, 2011
- b. Contract for Services with Black & Veatch and Expenditure of Funds for Sanitary Sewer Line Renewal and Replacement Analysis
- c. Intergovernmental Agreement with Urban Drainage and Flood Control District for Little Dry Creek Improvements at Martin Lane
- d. Agreement with Denver First Church of the Nazarene for the Paving of Monroe Street
- e. Contract for Services with Thoutt Brothers Concrete and Expenditure of Funds for the 2011 Concrete Replacement Program

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

**Council Bill 8, Series 2011; A Bill for an Ordinance Authorizing a Supplemental Appropriation for Preconstruction Services Related to the Planning and Design of the Proposed New Joint Public Safety Facility and Contract for Services with Adolfson and Peterson Construction**

Deputy Chief Jody Sansing presented Council Bill 8, Series 2011 on first reading. He explained that following an extensive interview process staff had selected Adolfson and Peterson Construction to provide pre-construction services during the planning and design phase of the new Joint Public Safety Facility. The contract for Adolfson and Peterson includes a fee of \$11,250 for pre-construction services, divided equally between the City and South Metro Fire Rescue. Staff is also requesting a 15% contingency for a maximum expenditure of \$6,468.75.

Councilor VanderWerf requested that a running total of expenditures and explanations for the project be included in future staff memos regarding the project.

Deputy Chief Sansing replied he would include that information in future memos and noted that the total amount allocated for the project was listed in the proposed bill.

Mayor Pro Stewart moved, seconded by Councilor Brown to approve on first reading Council Bill 08 Series 2011, a Bill for an Ordinance of the City of Cherry Hills Village, Authorizing a Supplemental Appropriation for pre-construction services related to the planning and design of the proposed New Joint Public Safety Facility. Additionally he moved to approve the contract for services with Adolfson and Peterson Construction in the amount of \$5,625.00 plus a 15% contingency for a total maximum expenditure of \$6,468.75 which represents ½ of the total cost of Phase One of the pre-construction services for the proposed Joint Public Safety Facility between the City of Cherry Hills Village and the South Metro Fire Authority.

The following votes were recorded:

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

Vote on the Council Bill 8-2011: 6 ayes. 0 nays. The motion carried.

**Council Bill 9, Series 2011; A Bill for an Ordinance Amending Chapter 16, Concerning Zoning, by the Addition of Provisions Concerning Bulk Plane and Maximum Floor Area Ratio Standards**

Community Development Director Rob Zuccaro presented Council Bill 9, Series 2011 on first reading. He explained that the process leading to the proposed bill had begun three years ago with the 2008 update to the City's Master Plan, during which staff had administered a city-wide survey. One of the survey questions asked if residents would support zoning changes that would address the trend toward larger homes. A total of 58% of respondents would support changes to the City's zoning regulations, with 32%

in support of changes with concerns of impacts and 26% in support of changes regardless of impacts. The City Council appointed the Residential Standards Development Committee (RDSC) to address concerns about the increasing size of new residential developments and their potentially negative impacts on the semi-rural character of the City. The RDSC completed its work and presented a final report with several recommendations to City Council in 2009. Three of these recommendations addressed the size and scope of new homes and make up the proposed bill: Floor Area Ratio (FAR), Bulk Plane, and an increase in maximum height from 30 feet to 35 feet. Following the RDSC's final report, the Planning & Zoning Commission (P&Z) worked on shaping the new zoning standards. Additionally, staff contracted Winter and Company to research traditional neighborhood forms throughout the City. The result was some modification from the RDSC's recommendations in order to align the new standards with traditional neighborhood characteristics in the various zone districts, as well as to reduce the number of lots which would be non-conforming to the new standards. The proposed bill outlines a two-tiered bulk plane to allow two stories at the front of the lot as is more traditional in many zone districts. In March of 2011 the P&Z held several study sessions and public meetings. They voted 4 to 2 in favor of the zoning standards outlined in the proposed bill. The two Commissioners who voted against the proposed standards did so because of their concerns about the impact the standards would have on property values and because they questioned the need for the standards on the larger lots of zone districts R1 and R2. Public input was an integral part of the process. Public surveys and comment letters were included in the Council packets.

Abe Barge of Winter and Company explained the proposed zoning standards in more depth. He reviewed trends in square footage by zone district and explained that the bulk plane would change the building envelope from a cube to a tent. The bulk plane zoning standards would address the issues of looming of one building onto neighboring properties; and preserve views, access to sunlight, and privacy. The FAR standards would address the issues of mass and scale of residences and help to preserve the City's semi-rural character and open space. Together the new standards would reduce mass scale impacts and encourage a variety of building forms. He explained how the new standards would apply to the various zone districts and how they would influence solar access. He presented a study in Boulder on property values before and after adoption of similar standards and explained that Boulder had seen either no influence or a slight beneficial influence on property values after implementation of similar standards. He presented estimates of non-conformity by zone district.

Mayor Pro Tem Stewart asked why the proposed FAR standard was calculated differently than the County's tax appraiser.

Mr. Barge replied that the proposed standard sought to regulate aspects of residences that increased apparent mass of scale. This meant that a great room with a ceiling height of 25 feet should not be counted the same as a room with a one story height because it has a higher impact on mass of scale. It was also determined that a higher number of smaller structures does not have as great an impact as a larger structure, therefore the impact of the square footage of detached accessory structures is not as great as the square footage of the main structure. Mr. Barge noted that the City already has strict regulations related to accessory structures and therefore staff was not concerned with the new standards resulting in a drastic increase in detached accessory structures.

Mayor Pro Tem Stewart asked if the proposed FAR would include utility areas.

Mr. Barge replied that it would and explained that any enclosed area would be counted.

Councilor Griffin asked why the proposed FARs were lower than those recommended by the RDSC based on similar neighborhoods around the country.

Mr. Barge confirmed that the proposed FAR standards were not extremely conservative. He explained that the P&Z wanted to balance regulations with the trend toward larger square footages and to avoid a large number of non-conforming lots.

Mayor Pro Tem Stewart asked if there were many new homes in zone district R3 that were over the proposed FAR for that district.

Mr. Barge replied that the highest current FAR in the City was 0.36 and that it was found in zone district R3. The FAR for R3 in the proposed bill is 0.25. Many new developments in R3 are also far outside the proposed bulk plane standard as well.

Councilor LaMair suggested increasing the proposed FAR for zone districts R3, R4, and R5.

Mr. Barge explained that there had been much discussion in the P&Z concerning a balance between regulations and not creating a high number of non-conforming lots. The P&Z had decided by consensus to loosen up the proposed FAR standards for zone districts R3 and R4 from the original recommendation of 0.23. Changing the proposed FAR for R3 from 0.23 to 0.25 reduced the number of non-conforming lots by half.

Mayor Wozniak indicated that the proposed standards were very complicated and expressed his concern about the increased staff time that would be required to implement and enforce the new standards should they be adopted. He asked how the new standards would apply to major remodels and how they would apply if a residence which became non-conforming under the new standards wanted to remodel.

Director Zuccaro replied that it depended on whether the lot was non-conforming to the bulk plane or the FAR. If the lot was non-conforming to the bulk plane but not the FAR then the property owner could remodel additional square footage within the bulk plane and up to the FAR. If the lot was non-conforming to the FAR then no new square footage could be added. He noted that the proposed standards would apply to any additional square footage. They would apply in the same way that setbacks do. Architectural plans would have to include documentation showing compliance with the new standards. As for staff time, Director Zuccaro indicated that he expected a learning curve in reviewing plans but did not anticipate very much additional staff time since staff was already reviewing projects for compliance with setbacks, height limits, etc. He noted that much of the burden would fall on the home owner or developer to demonstrate compliance with the new standards in the plans prior to the permit being issued and through a post-project survey. He estimated that with 10-20 new homes per year and an additional 4 hours per project the additional staff time needed to implement and enforce the new standards would be manageable at current staff levels.

Mayor Wozniak indicated that the requirement for detailed architectural plans and a post-project survey might be overwhelming for a small project such as enclosing a porch.

Director Zuccaro replied that a lower level of documentation might be required on an individual application basis if the project was clearly not going to come close to the limitations.

Mayor Wozniak noted that non-conforming homes would be very restricted in terms of what new additions or remodels would be allowed under the new standards.

Mr. Barge commented that there should not be very many non-conforming homes.

Director Zuccaro indicated that 95% of current homes in the entire City were in conformance with the new standards. He noted that those homes that would be non-conforming to the bulk plane standards would still be able to expand and that it was only those who were non-conforming to the FAR standards that would not be able to expand. He also explained that the bulk plane allowed the front 42 feet of the property to be two stories in order to minimize the number of non-conforming homes and that this neighborhood characteristic had been a significant finding of the Bulk Plane Strategy Report.

Councilor LaMair asked why the grading issue identified by the RDSC was not included in the P&Z recommendations.

Director Zuccaro explained that it had been covered to some extent with the recent retaining wall ordinance, but that P&Z also worried that it would make the new standards too complex.

Councilor LaMair indicated that grading and retaining walls were a sensitive issue and one of the main issues that brought the Master Plan and RDSC to this point. She explained that retaining walls were interpreted as building structures while grading was interpreted as a zoning issue. She indicated that she was disappointed not to see this issue included in the proposed standards.

Mr. Barge explained that the issue had been approached much less directly than originally recommended by the RDSC. Because the new standards measured the natural grade at multiple points along the slope the new standards did indirectly discourage re-grading.

Mayor Wozniak asked for public comment on the proposed bill.

Greg Williams of 4702 S. Clarkson Street indicated that he was in support of the new zoning standards. He explained that a recent development neighboring his property in zone district R3 had demonstrated the need for new zoning standards to preserve privacy and the semi-rural character of the City. He expressed his concern that without reasonable restrictions limiting the volume and size of residences new homes would be built to the full extent of the building envelope. He strongly encouraged the City Council to pass the proposed bill.

Jeff Welborn of 4901 S. Fairfax Street indicated that he was in favor of the new zoning standards with a few concerns. First, he was concerned that increasing the maximum height limit from 30 to 35 feet would decrease view corridors. He also questioned whether height limits should be the same across zone districts. He noted that the proposed bill defined the height as 35 feet or two stories, whichever is greater, but did not provide a definition of "story".

Director Zuccaro indicated that the language had been changed to define the height limit as 35 feet and two stories not counting a walk-out basement.

Mr. Welborn asked if a walkout basement could be above natural grade.

Director Zuccaro replied that it could.

Mr. Welborn asked if a wall could be higher than 35 feet but it could not be more than 35 feet above natural grade.

Director Zuccaro confirmed that was correct.

Mr. Welborn cautioned that if the height limit was increased to 35 feet the City would see many remodels to increase home height. He asked if there was a way to word the proposed ordinance to prevent current homes from increasing to the new height limit.

Mayor Wozniak indicated that it was possible.

Mr. Welborn asked if the side of the lot designated as the front was negotiable.

Director Zuccaro indicated that the lot line adjacent to the road is the front of the lot. He explained that for a corner lot the lot line adjacent to the road of the lot's address is the front. He indicated that there were a few exceptions having to do with historical subdivisions. He noted that there were many homes in the City oriented away from the front lot line.

Mr. Welborn asked why zone district R3A was not included in the proposed bill.

Director Zuccaro explained that the R3A zone district had current building restrictions that rendered the proposed standards inapplicable.

Mr. Welborn indicated that he shared the Mayor's concerns, especially regarding those non-conforming lots that would be unable to remodel under the new standards.

Mayor Wozniak indicated that the City had been trying to tackle these issues for the past 15 years and that he was proud of the proposed ordinance. He emphasized his concern for those properties that would be unable to remodel if the proposed standards were adopted.

Director Zuccaro commented that there were certain exceptions to the bulk plane standard including gables, dormers and chimneys. These features could be built into or beyond the bulk plane envelope.

Mayor Wozniak suggested a relaxed variance standard.

Mr. Welborn agreed. He commented that some lots in zone district R1 are less than two acres and asked if these should be held to the proposed standards for a different zone district. He also questioned the need for the proposed standards in zone district R1.

Jeff Loehr of 4020 S. Ivanhoe Lane indicated that he owned a property in Southmoor Vista in zone district R4 and that although he was a member of the Southmoor Vista Homeowners Association Board he was before Council as a resident and not as a board member. He explained that his was one of seventeen non-conforming lots that were overly-impacted by the limits already in place for non-conforming lots. He advocated that non-conforming lots be removed from the proposed ordinance.

Mark Michalek of 5850 S. Happy Canyon Drive indicated that he also had a non-conforming lot in Southmoor Vista and joined Mr. Loehr in his request regarding non-conforming lots.

Maureen Williams of 4702 S. Clarkson Street presented pictures of their backyard from 2010 and 2011 showing the impact of the new development. She noted the importance of the proposed standards for preserving the rural feel of the City and indicated her support of the standards for all zone districts.

Rick Watkins of 15 Vista Road indicated that the proposed ordinance was well thought-out but suggested that the FAR standards for zone districts R3 and R4 were too restrictive and should be increased to 0.25 or 0.26.

Beth Ells of 11 Cherry Vale Drive commented that a large gymnasium had been constructed near her home and that it was higher than the current 30 foot height limit.

Director Zuccaro explained that the height limit was taken from the center point of the lot and therefore the maximum height may increase or decrease in other sections of the property depending on the grade.

Ms. Ells asked why the City was proposing changes.

Mayor Wozniak explained that the City had been studying the issue of increasing house sizes for 15 to 20 years. There had been many public meetings and Council felt these issues had to be addressed.

Peter Savoie of 1550 E. Tufts Avenue indicated that he was present before Council as a resident and not as a member of the RDSC or P&Z. He reviewed the research, input, and review that had gone into the proposed ordinance. He noted that homeowners in every zone district had horror stories of large developments. He stated that while the proposed ordinance was not perfect it was a great start. He urged the City Council to pass the ordinance with no changes.

Mayor Wozniak thanked Mr. Savoie for his efforts on both the RDSC and P&Z. He asked Mr. Savoie to address Mr. Welborn's question relating to the height increase.

Mr. Savoie explained that the increased height of 35 feet would never be from setback to setback because of the bulk plane envelope. The area that could be built to 35 feet was very limited in most zone districts except for R1. The purpose of the increase is to allow a more aesthetically pleasing pitch to the roof. It was not meant to increase the mass scale or the number of stories.

Mayor Wozniak asked for further public comment. Hearing none he asked Council for their thoughts.

Councilor Brown indicated that the proposed ordinance had been thoroughly vetted and that there had been much time, effort, and work put into it. He noted that Council could address any issues in the future and he appreciated the explanation of the height increase. He indicated that the proposed standards would not be too big of a change and would not be disruptive to City residents. He stated that the proposed ordinance addressed community issues that had been brought to Council repeatedly over the years.

Councilor VanderWerf noted that former Mayor Welborn often said that the City's open space was owed in large part to private property owners. She indicated that the City needed measures like the proposed ordinance to preserve the City's open feel and semi-rural character. She stated that she was comfortable with the proposed ordinance and thanked staff for the detailed analysis, especially the Boulder study regarding impacts on property values. She indicated that with the global and national trends of increased energy costs, consumers may in time seek smaller homes and so would be drawn to the City due to these standards. She noted a secondary concern that staff and Council may want to address in the future, that of residents avoiding the limitations on accessory structures by connecting them to the main structure via a covered walkway.

Councilor Roswell indicated his strong support for the proposed ordinance. He noted that he was a resident of and represented many residents in zone district R3 and that his constituents were very vocal in their support of this legislation.

Mayor Pro Tem Stewart indicated his support of the proposed ordinance. He thanked staff for the detailed memo. He indicated his concern about zone district R3 where the highest level of non-conformity with the proposed FAR standards would be. He warned that the temptation for new homes would be to build to the greatest extent that the bulk plane and FAR standards would allow. He requested that staff research what the FAR standard would have to be for zone district R3 in order to have 98% conformity among existing structures. He suggested that if the FAR were not increased that the variance process should be changed to be less stringent. He also questioned how accurate staff's numbers could be related to percentages of conforming and non-conforming homes for the FAR standards given that the FAR was calculated differently than the County assessor.

Councilor LaMair indicated her support of the proposed ordinance and applauded staff's efforts. She stated that a percent of conformity should not be the deciding factor of the FAR standard. She indicated that there had been numerous concerns from residents in zone district R3 and that it was not just outliers who were the problem. She commented that increasing the height limit from 30 to 35 feet could have a significant and positive impact on home design in some areas, but she questioned the need for it in the R1 zone district. She noted that the increase might have a negative effect in R1 because it could inhibit views of the mountains.

Councilor Griffin stated that it was a difficult issue to balance the public interest and property rights. He indicated that the proposed ordinance was a good compromise and that he was in favor of the new standards.

Mayor Wozniak directed staff to ensure that the new standards would not be further limiting on the non-conforming properties of Southmoor Vista. He directed staff and Council to make sure the issue of walk-out basements was clear and understood because new homes in the R3 zone district might be building to the maximum size allowed and details would be important. He agreed with Councilor LaMair's concerns regarding the increase in height. He indicated that he would like to see an exception for small projects such as enclosing a porch and a modified variance process.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve Council Bill 09, Series 2011; A bill for an ordinance amending chapter 16 of the Cherry Hills Village Municipal Code concerning zoning, by the addition of provision concerning Bulk Plane and Maximum Floor Area Ratio Standards, on first reading.

The following votes were recorded:

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

Vote on the Council Bill 9-2011: 6 ayes. 0 nays. The motion carried.

**REPORTS**

**Members of City Council**

Councilor Griffin had no report.

Councilor LaMair reported that she believed the holiday party with the City Council and the Board and Commission members was important and encouraged Council and staff to consider bringing the event back this year.

Mayor Pro Tem Stewart reported that Parks, Trails and Recreation Administrator Ryan Berninzoni would be hosting a group of boy scouts to help the Parks crew in exchange for service hours. He also reported that the new Kent Place development was proceeding.

Councilor Roswell had no report.

Councilor VanderWerf reported that the Public Art Commission (PAC) had met on July 25<sup>th</sup> to look at possible sites for art around the City. Greg Stevenson had two sculptures that he was interested in displaying in the City. Many sites were small areas on public property. She noted that the public areas around the City looked wonderful and recognized Mr. Berninzoni and the Parks crew for their work.

Councilor Brown had no report.

**Mayor's Report**

Mayor Wozniak reported that the City's annual membership dues for the Colorado Municipal League had been decided and he recommended approval of the dues. He reported that he had received a request for the City to contribute to a regional air quality study and recommended not participating. He reported that he had several meetings in the coming weeks including the Metro Mayors' Caucus, a meeting with the Mayor of Greenwood Village to discuss shared services and the Belleview medians, a South Metro Realtors meeting and a meeting with State Senator Linda Newell.

**Members of City Boards and Commissions**

There were no reports.

**City Manager & Staff**

City Manager John Patterson reported that the City would be hosting a public input meeting for the Joint Public Safety Facility on August 3<sup>rd</sup> at 6:30pm at the Village Center. He reported that staff would bring the recreation reimbursement program back to Council for further discussion at the next meeting. He recognized Director Zuccaro for his work on the RDSC recommendations. He reported that staff was continuing to work on the 2012 budget. He reported that he would be on vacation August 13-19<sup>th</sup> and that Deputy City Manager Jay Goldie would cover his duties.

Mayor Wozniak asked for a report on the Animal Control Officer position and Police Officer position.

City Manager Patterson reported that the City had made a contingent offer of employment for the Animal Control Officer position to John Newhouse, who had been the Animal Control Officer for Arapahoe County until recently when they decided to contract out the position. He reported that tomorrow was the last day for Police Officer applications and that he hoped to begin oral boards in two weeks. He anticipated six to eight interviews and noted that the Police Department was focused on hiring a female

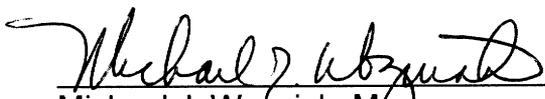
officer, but would hire the best candidate, and was looking for someone with maturity and strong communication skills.

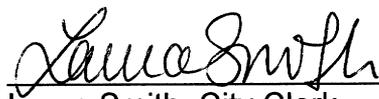
**City Attorney**

No report.

**ADJOURNMENT**

The meeting adjourned at 8:52 p.m.

  
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Michael J. Wozniak, Mayor

  
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Laura Smith, City Clerk