

**RECORD OF PROCEEDINGS**

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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, September 6, 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**

Jeff Welborn of 4901 S. Fairfax Street addressed Council on the Labor Day fireworks display at Glenmoor Country Club. He indicated that the noise was significant for animals and that the City should require a notification process for the broader neighborhood as part of the permit process.

Mayor Wozniak agreed and thanked Mr. Welborn for bringing the issue to Council's attention.

**CONSENT AGENDA**

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

- a. Approval of Minutes – August 16, 2011
- b. IGA with Cherry Hills Village Sanitation District
- c. Contract for Services with The Engineering Company (TEC) and Expenditure of Funds for a Sanitary Sewer Reserve Study and Analysis
- d. Resolution 14, Series 2011; Adopting the 2012 Budget Calendar

The motion carried unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

None

**UNFINISHED BUSINESS**

Council Bill 9, Series 2011; A Bill for an Ordinance Concerning Bulk Plane and Floor Area Ratio (Public Hearing and final reading)

Mayor Wozniak thanked Community Development Director Rob Zuccaro for the thorough staff memo and exhibits. He noted that the information provided had historical value to the City as well.

Mr. Zuccaro presented Council Bill 9, Series 2011 on second and final reading. He noted that notice of the public hearing had been published in the Village Crier. He indicated that there had been one change to the council bill since first reading and that was an addition to the intent section of the bill. He explained that based on Council's feedback from the first reading of the proposed bill staff had included more information in the staff packet to address Council's concerns. He indicated that Abe Barge of Winter and Company would review the additional information related to the proposed height increase from 30 to 35 feet and the number of estimated non-conforming lots. He explained that staff believed the issues regarding the Southmoor Vista properties should be addressed by staff and Council separately from the Bulk Plane and FAR issues. He noted that staff had received four additional comment letters regarding the proposed bill, three of which were included in Council packets and one of which was distributed on the dais.

Mayor Wozniak complemented Mr. Zuccaro and Mr. Barge on the diagrams presented in the staff memo and noted that they had made it easier to understand the proposals.

Mr. Barge presented a comparison of the shading effect from a 30 foot building with no bulk plane versus a 30 foot building with bulk plane versus a 35 foot building with bulk plane in various zone districts. He also presented a view analysis of the possible effect of 30 versus 35 feet on a view of the mountains. He provided an analysis on the number of homes in zone district R3 which would be non-conforming given various FAR standards from 0.25 to 0.34. He explained that there were various other ways to adjust the bulk plane standards to increase conformity but that they were fairly complicated. He noted that the proposed bill had a list of exceptions to the bulk plane including gable roof ends, dormers, chimneys, wind turbines, and antennas. He indicated that submittal requirements could be simplified for those projects which were clearly under the FAR limit and clearly setback from the bulk plane limit. He noted that the proposed bill did not outline submittal requirements but that they would be administratively established and could be adjusted as needed.

Councilor LaMair asked Assistant City Attorney David Foster to comment on the legal perspective related to the number of non-conforming lots predicted with the proposed FAR standards.

Assistant City Attorney Foster replied that there were no legal cases that defined "how much is too much" but reminded Council that if a property were in non-conformance with the proposed bulk plane standards that they could continue to build as long as they did not increase that non-conformance or become non-conforming with the proposed FAR standards. He also noted that the City had its variance provisions and that staff had discussed returning to Council with a separate discussion related to a variance procedure specific to the proposed bulk plane and FAR standards.

Councilor LaMair asked if the high number of non-conforming lots predicted with the proposed standards, up to 61% in some cases, did not have the potential to be legally problematic for the City.

Assistant City Attorney Foster replied that it was a public policy issue and not a legal issue. He also noted that the FAR standards had been adjusted from the original recommendation from the Residential Standards Development Committee (RDSC) to reduce the number of non-conforming lots.

Mr. Barge also noted that, to his understanding, zoning standards do not become legal issues as long as they allow for "reasonable use" of the land which would mean that they allow the property owner to build a home.

Mr. Zuccaro noted that Table 6 on page 19 of the staff memo showed conformance rates for the proposed FAR standards over the entire City, based on the County Assessor's calculations, to be 95.5% or higher in all zone districts. He clarified that the 61% conformance rate had been a theoretical rate based on a lower FAR than was proposed in the ordinance. He also noted that the last row of the table showed percentages of new development from 2005 to 2011 that conformed with the proposed FAR standards and ranged from 78% in zone district R3 to 100% in zone districts R1, R2, and R5.

Mayor Wozniak asked if Table 6 included the exceptions presented by Mr. Barge such as dormers.

Mr. Zuccaro confirmed that it did. He noted that Table 7 on page 20 of the staff memo showed the same information for the proposed bulk plane standards. He reminded Council that if a home was non-conforming with the proposed bulk plane standards and conforming with the proposed FAR standards that the home could be expanded as long as the expansion remained in conformance with the proposed FAR standards and did not increase the non-conformance with the proposed bulk plane standards.

Mayor Wozniak expressed concern that according to Table 7 only 41% of new development from 2005 to 2011 was in conformance with the proposed bulk plane standards in zone district R3. He indicated that he was hesitant to pass an ordinance that might result in an increase in administrative and variance issues. He stated that he was sympathetic to the issue of non-conformity faced by the homeowners in Southmoor Vista and indicated that staff and Council would deal with that issue separately.

Mayor Wozniak opened the Public Hearing.

Mr. Welborn thanked Council for letting him address them on this issue late in the process. He expressed several concerns about the proposed bill outlined in the letter Mr. Zuccaro had distributed to Council. He stated that his primary concern was with the 35 foot structure height increase. He also suggested that the variance issue be addressed right away, perhaps by a non-Council committee. He explained that his second concern was to define and restrict the net lot area.

Steve Szymanski of 1111 E. Tufts Ave. addressed Council as a member of the RDSC. He explained that the RDSC's recommendation to increase the City's height limit from 30 to 35 feet was based on many months of research, discussion and feedback regarding design enhancement, functionality and the bulk plane. He noted that in the past it has been common for home interiors to be under eight feet per floor whereas now nine or ten feet is much more common. He indicated that the 30 foot height limit with the bulk plane standards would likely create problems with the design and functionality of residences. He noted that the 35 foot height was very restricted within the bulk plane and so there would only be a small area of a property where 35 feet would be permitted.

Councilor LaMair asked if the RDSC had discussed the issue of views as seriously as they had discussed the issues of looming and shadows.

Mr. Szymanski replied that in the course of blending the height limit, setbacks, bulk plane, and views, the RDSC had determined that the impact of the additional five feet was not significant enough to not make the recommendation. He indicated that the 35 foot height limit was an integral part of the bulk plane standards.

Councilor LaMair noted that the RDSC had originally recommended a smaller FAR standard.

Mr. Szymanski confirmed that was correct.

Mayor Wozniak asked if anyone else had any comments. Hearing none the Public Hearing was closed.

Mayor Wozniak indicated that staff and Council would address the variance and the Southmoor Vista issues separately.

Assistant City Attorney Foster clarified that the minimum lot area did not equal the minimum lot size. He indicated that the FAR on a ten acre site in zone district R1, for example, would be based on the ten acres and not the minimum lot size for the zone district which is 2.5 acres.

Mayor Wozniak indicated that he would be wary of the unintended consequences that might result from making the change suggested by Mr. Welborn. He commented that if Council was to restrict the size of the home based on 2.5 acres it might encourage more property owners to subdivide their large lots. He noted that it was a good discussion to have.

Councilor Brown indicated that it was a new issue that he would need to consider before serious discussion.

Councilor VanderWerf stated that the various recommendations of the RDSC were interrelated. She indicated that another one of their recommendations, the neighborhood review process, might address many of the issues brought up about view corridors.

Councilor Roswell indicated that he was very supportive of the proposed ordinance and all the work that the RDSC had put into it. He thanked Mr. Szymanski for his reminder of the background for the height increase. He noted that the proposed ordinance would address the big picture concern of controlling mass and scale of homes built in the City.

Mayor Pro Tem Stewart indicated that he supported the proposed ordinance. He explained that his primary concern was the number of non-conforming lots produced by the FAR, but was satisfied with the overall compromise. He reiterated his belief that the percentage of non-conforming lots suggests builders would likely build to the maximum extent allowed by ordinance. However, he thought that the overall combined bulk plane and FAR ordinance was well done. He stated that he had spoken to several architects regarding the height increase and understood that the intent of the height increase was to encourage correctly proportioned and historically accurate designs by allowing a greater roof pitch. He also indicated that he supported the non-binding neighborhood review process recommended by RDSC.

Councilor LaMair indicated that she liked the concept of architectural design but that she wanted to be respectful of the existing homes in the City, many of which were ranch style. She stated that she was respectful of the work done by the RDSC and cautioned that the changes made to the RDSC's original recommendations by the Planning & Zoning Commission and Council might cause the standards to become unbalanced and ineffective. She suggested that Council return to the 0.23 FAR for zone district R3 because the intent of the proposed regulations was to limit mass, not to make all current homes conforming.

Councilor Griffin stated that while the proposed ordinance may not be perfect it had been very well vetted and that he was supportive.

Mayor Wozniak indicated that he would like to see Council reconsider the height increase. He noted that there were several other issues that Council might want to discuss further including the FAR standard for zone district R3 and the subsequent percentages of non-conforming homes, the variance issue and the net lot area issue.

Councilor Brown noted that he did not want to pass the ordinance and amend it shortly thereafter if there were so many issues that Council needed to discuss.

Mayor Wozniak indicated that he believed Council was in support of 99% of the concepts presented in the proposed ordinance. The percentage of non-conforming homes and the height increase were perhaps the main issues that did not have full support.

Councilor LaMair indicated that she did not want to unravel the work already done on these proposed standards and did not want to backtrack or stall the proposed ordinance, but noted that views are a big issue in Old Cherry Hills especially. She suggested that different height limits be considered for different zone districts.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to approve Council Bill 9, Series 2011; A bill for an ordinance amending Chapter 16 of the Cherry Hills Village Municipal Code concerning zoning, by the addition of provisions for Bulk Plane and Maximum Floor Ratio Standards for the R-1, R-2, R-3, R-4 and R-5 zone districts, on second and final reading, and that the variance issue will be addressed at another time.

Mayor Wozniak confirmed that the motion would keep all the recommendations presented by staff.

Councilor Roswell confirmed that the motion was for the 35 foot height increase and the 0.25 FAR for zone district R-3.

The following votes were recorded:

Mark Griffin	yes
Harriet LaMair	no
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes

Vote on the Council Bill 9-2011: 5 ayes. 1 nay. The motion carried.

Mayor Pro Tem Stewart indicated that approval of the ordinance did not preclude future revisions and that he believed the ordinance embodied a lot of work and was a great compromise.

IGA between the City and the South Metro Fire Rescue Authority for the Construction, Ownership, Administration and Operation of a Public Safety Facility

Deputy Chief Jody Sansing presented the revised version of the IGA to Council. He indicated that the revisions, explained in detail in the staff memo, were based on Council's direction from the August 16<sup>th</sup> meeting as well as some revisions from the South Metro Fire Rescue (SMFR) legal council. He explained that the SMFR Board had approved the IGA at their August 22<sup>nd</sup> meeting pending City Council's approval of the revisions.

Mayor Wozniak complimented Deputy Chief Sansing and City Attorney Ken Fellman for their efficiency in addressing Council's concerns. He indicated that he appreciated the explanations in the staff memo.

Councilor Brown moved, seconded by Councilor Griffin to approve an Intergovernmental Agreement between the City of Cherry Hills Village and the South Metro Fire Rescue Authority for the construction, ownership, administration and operation of a Public Safety Facility.

The motion carried unanimously.

## **NEW BUSINESS**

### **Council Bill 10-2011; A Bill for an Ordinance Approving a Supplemental Appropriation of Funds for the Paving of Monroe Street (first reading)**

Public Works Director Jay Goldie presented Council Bill 10, Series 2011 on first reading. He explained that City Council had approved the development agreement with Denver First Church of the Nazarene on August 2, 2011, and that the proposed bill was simply a housekeeping measure because the project was not part of the original 2011 budget.

Mayor Wozniak asked for clarification between what the City would pay for the project and what the Church would pay.

Director Goldie replied that the cost for the entire project was \$45,000. The cost for the paving work would be paid for by the Church for the established escrow account and the City will pay \$2,950 to widen a small section of the road at the intersection of Monroe Street and Jefferson Avenue to accommodate parking for the High Line Canal. These funds would be expended from the 2011 Capital Project funds already budgeted.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve Council Bill 10, Series 2011 for the supplemental appropriation of funds for the paving of Monroe Street from Hampden to Jefferson 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 10-2011: 6 ayes. 0 nays. The motion carried.

## **REPORTS**

### **Members of City Council**

Councilor Brown had no report.

Councilor VanderWerf reported that staff would be presenting Council with a recommendation from the Public Art Commission at the next Council meeting.

Councilor Roswell had no report.

Mayor Pro Tem Stewart reported that he agreed that a neighborhood notification policy for fireworks displays would be a good thing to implement.

Councilor LaMair reported that she had spoken to Councilor VanderWerf, Director Goldie, and Administrator Berninzoni regarding the possible formation of a special committee to discuss maintenance and recreational activities for Quincy Farms, the Cat Anderson property. She also reported that she had recently attended a High Line Canal Working Group meeting and that the group was in favor of Director Goldie working with Denver on trail connectivity through the Hampden and Colorado intersection.

Councilor Griffin reported that assessed property values were down 16% for 2012 and indicated that it was time to be very conservative with the City's budget.

### **Mayor's Report**

Mayor Wozniak directed Council to meet with their staff liaisons and present ideas to adjust the budget. He indicated that Council and staff had always presented a balanced budget and would continue to do so for 2012.

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

There were no reports.

### **City Manager & Staff**

City Manager John Patterson reported that four large cottonwoods had died at Holly and El Camino and would be removed by staff. He reported that the wall extension project along Hampden Avenue had fallen through. He also reported that Parks staff would begin the work at Dahlia Hollow park shortly.

Mayor Wozniak asked how the Dahlia Hollow work was being funded.

Director Goldie and Administrator Berninzoni replied that it was funded through Fund 30.

City Manager Patterson reported that the new Audio/Visual equipment in the Council Chambers was installed and would be functional by the September 20<sup>th</sup> meeting. He reported that computerized dispatch had been installed in some of the police cars. He also reported that Director Zuccaro and Director Goldie had completed their Certified Public Manager program and that Court Clerk Jessica Sager had completed her Certified Municipal Court certification program.

Council congratulated Directors Zuccaro and Goldie and Court Clerk Sager on their accomplishments.

### **Undergrounding of Power Lines on Quincy in Front of the Village Center**

Director Goldie reported that staff was seeking direction from Council regarding the possible undergrounding of power lines on Quincy in front of the Village Center and the proposed new joint public safety facility using the City's 1% Xcel Fund. He noted that the power lines could potentially interfere with operations at the new facility. He explained that there was currently \$400,000 in the fund and that undergrounding the power lines in front of the Village Center would utilize approximately half of the available funds. He also asked for direction from Council on whether the remainder of fund should be spent to underground power lines continuing down Quincy. He noted that there have

been a number of inquiries from residents over the past few years on how to access these funds to underground power lines throughout the community, but that no organized groups have come forward with support from an entire affected area.

Mayor Wozniak indicated he was in support of the project based on the safety issues for the new facility. He suggested that staff contact South Metro Fire Rescue to see if they would be willing to contribute to the cost of the project. He also suggested that Council not elect to spend the remaining funds on undergrounding power lines continuing down Quincy without neighborhood support.

Councilor VanderWerf suggested that the City could approach the affected homeowners.

Mayor Wozniak questioned if Council wanted to spend the entire fund.

Councilor Roswell indicated he would be happy to approach Chief Qualman.

Councilor Brown agreed that it was a site issue.

City Attorney Fellman suggested that he look at the Xcel Franchise Agreement because many franchise agreements require the utility to re-locate power lines if there is a public project underway. He also noted that Xcel does not have a good track record when it comes to actual costs lining up with estimated costs. He indicated that he would work with Jay on these issues.

Mayor Wozniak directed staff to bring the issue back to Council at the September 20<sup>th</sup> meeting.

Director Goldie reported that the East Cherry Hills Water District wished to continue with the dissolution process and that he believed the City should require an escrow account first. He also noted that the City had received notice of Denver Water's new rates.

Mayor Wozniak suggested that a Council member attend a Technical Advisory Committee (TAC) meeting with Director Goldie to emphasize the importance of this issue to the City.

Councilor Griffin indicated that it was an important issues and that increased water rates might have a negative impact on City property values.

Councilor LaMair suggested that a community member could attend a TAC meeting as well.

Mayor Wozniak noted that the City does not have options as to where it gets its water from. He also thanked Deputy Chief Sansing for the itemized cost estimate for the new facility that was included in Council packets.

### **City Attorney**

City Attorney Fellman reported that he would be out of town on September 20<sup>th</sup> and that an Assistant City Attorney would attend the Council meeting. He also reported that the attorney for South Metro Fire Rescue had sustained serious injuries from a bike accident.

**ADJOURNMENT**

The meeting adjourned at 8:12 p.m.

  
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Michael J. Wozniak, Mayor

  
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Laura Smith, City Clerk