

RECORD OF PROCEEDINGS

Minutes of the
 City Council of the City of Cherry Hills Village, Colorado
 Held on Tuesday, January 3, 2012 at 6:30 p.m.
 At the Village Center

Mayor Pro Tem Stewart moved, seconded by Councilor Roswell to move into executive session for the purpose of receiving legal advice and discussing strategy for negotiations with the City Attorney and the City's outside legal counsel, in connection with pending litigation, as authorized by C.R.S. § 24-6-402(4)(b) and (f).

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

Vote on Executive Session: 6 ayes. 0 nays. The motion carried.

The Executive Session began at 6:00 p.m.

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 John Patterson, City Attorney Ken Fellman, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Public Works Director and Deputy City Manager Jay Goldie, Deputy Chief Jody Sansing, Parks, Trails & Recreation Administrator Ryan Berninzoni, Crew Chief Ralph Mason, and City Clerk Laura Smith.

Absent: none

STAFF AWARD

Deputy Chief Sansing indicated that he would like to recognize Sergeant John DeFelice, who had been promoted to the rank of Sergeant effective January 1, 2012. He noted that Sergeant DeFelice had been with the City for over 27 years and had trained nearly every officer in the department. He noted that the Sergeant position is perhaps the most important in the Police Department and indicated that Sergeant DeFelice brings an incredible amount of experience and maturity to the position. He stated that Sergeant DeFelice would be an asset to the department and the community for years to come.

Mayor Wozniak congratulated Sergeant DeFelice and thanked him for his service.

Sergeant DeFelice thanked the Mayor, City Council, City Manager, Deputy Chief, and Commander. He also thanked his wife and daughter for their continuing support. He noted that his career with the City had provided him a good life and stated his appreciation. He indicated that he enjoyed working in the City and with the fine officers of the department. He noted that when he trained new officers he impressed upon them that Cherry Hills Village is unique and special and that that officers should behave with the highest level of professionalism. He indicated that he himself would continue to strive to maintain that goal.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

Mayor Wozniak indicated that he was removing the Donation Policy, Item 5d, from the Consent Agenda so that staff could incorporate City Attorney Fellman's suggestions and bring it back for Council consideration at the next meeting.

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

- a. Approval of Minutes – December 13, 2011
- b. Resolution 1, Series 2012; Designating a Public Place for Posting Notices of Regular and Special Meetings
- c. 2012 Agreement for Animal Sheltering Services

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Council Bill 1, Series 2012; A Bill for an Ordinance Amending Section 16-11-40 Concerning Area and Dimensional Requirements for the O-1, Open Space, Parks and Recreation District

Community Development Director Rob Zuccaro presented Council Bill 1, Series 2012 on first reading. Director Zuccaro explained that the proposed bill would amend Section 16-11-40 to clarify the area and dimensional requirements for the O-1, Open Space, Parks and Recreation District, as well as update the requirements with the Bulk Plane and Floor Area Ratio (FAR) standards. He noted that prior to 2007 the section referred to Zone District R-1 primary structure setbacks for all structures in Zone District O-1. A 2007 ordinance added language to the section that could be interpreted to extend both the primary and accessory structure setbacks of Zone District R-1 to Zone District O-1. Staff believes that the original intent of the O-1 standards was to apply the stricter principal structure setback standards to all structures in the O-1 Zone District, and the proposed ordinance would clarify those standards. In addition, the proposed ordinance would update the O-1 Zone District standards to include the Bulk Plane and FAR requirements. Director Zuccaro noted that the Planning & Zoning Commission (P&Z) had unanimously recommended approval of the proposed ordinance at their November 22, 2011 meeting.

Councilor LaMair thanked staff for finding the error and asked how it was discovered.

Director Zuccaro replied that the issue had come up related to a recent building application from Glenmoor Country Club.

Mayor Wozniak asked that the minutes from the Council meeting during which the 2007 ordinance was discussed be included in staff's memo for second reading of the council bill. He indicated that his recollection was that a property in the O-1 Zone District could be reverted to an R-1 Zone District and that one of the intentions of the 2007 ordinance was to address that possibility.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve Council Bill 01, Series 2012; A Bill for an Ordinance Amending Section 16-11-40 of the Municipal Code Concerning Area and Dimensional Requirements for the O-1, Open Space, Parks and Recreation Area District, as outlined in Exhibit A to the January 3, 2012 staff memorandum, 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 1-2012: 6 ayes. 0 nays. The motion carried.

Council Bill 2, Series 2012; A Bill for an Ordinance Amending Section 16-17-60(F) Concerning Procedures for Development for Dredging Ponds and Lakes Located within the Floodplain

Director Zuccaro presented Council Bill 2, Series 2012 on first reading. He explained that the proposed bill would amend Section 16-17-60(f) to clarify the application requirements related to compliance with applicable water law when dredging ponds and lakes within the floodplain. He noted that the section requires applicants to provide documentation for the Office of the State Engineer demonstrating that the dredging activities were in compliance with all applicable water rights. Since passage of the ordinance in June 2010 staff had learned that the Office of the State Engineer is not able to provide such written verification. Therefore the proposed bill would broaden the requirements to allow "documentation satisfactory to the City that evidences that the dredging activities are consistent with all of the requirements of Colorado water law." In addition, the proposed bill moves the requirement to demonstrate compliance with state dam safety requirements from subsection (5) to (1) so that subsection (5) only addresses water law issues. Director Zuccaro noted that the P&Z had unanimously recommended approval of the proposed ordinance at their November 22, 2011 meeting.

Councilor Brown asked why the status of water rights was relevant to a floodplain development permit.

Director Zuccaro explained that there are several cases where City applications required demonstration that applicants are in compliance with applicable state and federal regulations, such as an Army Corps of Engineers 404 permit.

Councilor Brown indicated that he understood the nexus between the 404 permit and a floodplain development permit but did not understand why the City would be involved with regulating water rights.

Mayor Pro Tem Stewart indicated that the issue of water evaporation from ponds involved water rights.

Mayor Wozniak added that if the City approved a new pond or an expansion but the applicant did not have water rights then the result could be an empty pit. He noted that the application asked that applicants demonstrate to the City that they have the right to do the activity they are proposing.

Director Zuccaro noted that the proposed bill was related to dredging only and agreed with Mayor Pro Tem Stewart that evaporation was the issue most often faced with dredging.

Councilor Brown indicated that water rights was a very contentious issue and questioned placing the burden of judging documentation on staff.

Councilor Roswell noted that the intent of the 2010 ordinance was to encourage dredging of ponds.

Mayor Wozniak agreed with Councilor Brown that the burden for judging documentation should not be on staff, rather it should be on the applicant. He noted that questionable documentation might require the City to hire an expert for determination of satisfaction.

Director Zuccaro noted that the City Engineer and City Attorney reviewed all applications and documentation and would assist staff in determining document satisfaction. If staff is uncomfortable with documentation provided they will require a full floodplain permit that would go before City Council.

Councilor Brown indicated that this would remove an additional burden on the applicant in the process of dredging their ponds.

Councilor Roswell indicated that he believed the process was sufficient.

Mayor Pro Tem Stewart indicated that the word "satisfactory" could be removed.

Mayor Wozniak agreed with Mayor Pro Tem Stewart that "satisfactory to the City" could be removed from subsection 5 of the proposed bill. He indicated that if staff did not find the application to be complete then they could direct the applicant to go through the floodplain application process which would be heard before Council.

Councilor LaMair suggested that the term "full documentation" could be used.

Councilor Roswell indicated that the determination would still be subjective even without the "satisfactory" language.

Mayor Wozniak agreed with Councilor Roswell that, upon reflection, the "satisfactory" language could be left in.

Mayor Pro Tem Stewart agreed. He indicated that he also agreed with Councilor Roswell that the intent of the ordinance was to make the process of pond dredging easier in order to encourage residents to maintain their ponds.

Councilor Roswell noted that the expense to applicants of public hearings could be prohibitive.

Mayor Pro Tem Stewart added that the time associated with a permit could be prohibitive as well and that the ordinance shortened the time it took to receive a permit.

Councilor Roswell moved, seconded by Mayor Pro Tem Stewart to approve Council Bill 2, Series 2012; A Bill for an Ordinance Amending Section 16-17-60(f) of the Municipal

Code Concerning Dredging Ponds and Lakes Located within the Floodplain, as outlined in Exhibit A to the January 3, 2012 staff memorandum, on first reading.

The following votes were recorded:

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

Vote on the Council Bill 2-2012: 6 ayes. 0 nays. The motion carried.

Council Bill 3, Series 2012; Vacation of Meade Lane Right-of-Way

Public Works Director Jay Goldie presented Council Bill 3, Series 2012 on first reading. He explained that the proposed bill would vacate a portion of Meade Lane approximately 540 feet from Quincy Avenue south, as well as amend Ordinance 6, Series 2005 to delete the condition of construction for the vacation. He noted that the utility easement would not be effected by the proposed bill.

Mayor Wozniak asked Director Goldie to identify the vacation on the plat included with the staff memo.

Director Goldie indicated that another portion of Meade Lane would not be vacated but would be used for a driveway for the new facility. He also noted that half of the vacation would go to 135 Meade Lane.

Councilor Brown asked about the status on the driveway shown in the diagram.

Director Goldie replied that the driveway was part of the agreement with the owners of 135 Meade Lane and was still under negotiation. He noted that the driveway would be moved as part of construction of the new public safety facility.

Councilor Brown moved, seconded by Councilor VanderWerf to approve on first reading Council Bill 3, Series 2012; the vacation of a portion of Meade Lane as depicted in Exhibit A of the bill and repeal Section 2(b) and 3 that requires the new section of Meade Lane to be constructed.

The following votes were recorded:

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

Vote on the Council Bill 3-2012: 6 ayes. 0 nays. The motion carried.

REPORTS

Members of City Council

Councilor Griffin had no report.

Councilor LaMair indicated she looked forward to Mayor Pro Tem Stewart's report. She reported that Callae Gilman had passed away peacefully on Christmas Day. She was 89 years old and had lived in the City her entire life.

Councilor VanderWerf noted that Ms. Gilman had grown up in the Buell Mansion area of the City and indicated that the Cherry Hills Land Preserve was putting together a video about the Gilman property and had filmed Ms. Gilman before she passed.

Councilor LaMair commented that the Gilman family had been pleased with the film and noted that it would be a wonderful documentation for the community. She also mentioned that the Gilman family had found old films taken by Temple Buell of the area around the Gilman property.

Mayor Pro Tem Stewart indicated that he had raised the issue of a Charter amendment to Section 3.9 to add parks in public trust at the previous meeting and presented language to Council for discussion. He noted that City Attorney Fellman had made a suggested addition which was highlighted in Council's copies. He indicated that City Attorney Fellman had asked if the amendment should include trails as well as parks, but that he believed trails should be left out in order for Council to retain flexibility to negotiate, trade, move, or develop trails as they saw best.

Councilor LaMair noted that she had contacted the Trust for Public Lands (TPL) and that staff there had assured her that such an amendment to the Charter would make any open space grant proposal to GOCO (Great Outdoors Colorado) from the City very favorable. The TPL staff had also indicated that if the City applied for public funding to purchase a piece of property for open space there would have to be more stringent restriction that would prohibit sale of the property even by a vote of the people.

Mayor Wozniak indicated that he agreed with Mayor Pro Tem that trails should not be included. He noted that the proposed language would prohibit parks from being sold or conveyed but would not prohibit changing the use of the park to a casino, recreation center, or soccer field, for example.

Mayor Pro Tem Stewart indicated that without City Attorney Fellman's added language any change would require a Charter amendment.

Councilor VanderWerf indicated that the language was too vague in the second part of the proposed amendment and suggested that the City may want to convey a park at some point.

Mayor Wozniak indicated that under the proposed amendment the City would have to get a conveyance approved by the voters.

Councilor LaMair agreed with Mayor Wozniak that the language related to acceptable use of parks should be more restrictive.

Councilor Roswell noted that the proposed amendment would impose a heavy restriction on Council's ability to trade park land.

Councilor VanderWerf commented that it was unlikely the City would want to trade any of its current parks.

Mayor Wozniak noted that smaller parks such as the pocket park on Hampden Ave. may present an opportunity for a trade in the future but that if such an opportunity presented itself then it could be accomplished with a vote of the people.

Councilor Roswell indicated that the timeframe needed for an election might be detrimental to negotiations.

Councilor Brown noted that the City could hold a special election at any time.

Mayor Wozniak replied that the only issue would be the cost to the City of holding an election. He noted that even without City Attorney Fellman's added language any change would still have to go to the voters for a Charter amendment.

Mayor Pro Tem Stewart indicated that many cities have similar Charter language regarding parks and that the City's Master Plan discusses these parks as central elements to the City.

Councilor Roswell noted that there may not be much time to have discussions with the public or to have an election.

Councilor Brown asked if the City had a process to distinguish parks from open space.

Mayor Pro Tem Stewart indicated that parks were defined in the City Code by the ordinance passed during the City's exclusion from South Suburban but that there was no official process to designate an area as a park.

Councilor LaMair indicated that Council should consider that there was a strong constituency in favor of a Charter amendment because the community wants an extra assurance that the City will not change the parks. She noted that this constituency had originally wanted stronger language that would prevent any change regardless of a vote of the people but that Mayor Pro Tem Stewart had negotiated the language currently being discussed. She indicated that she believed the proposed language was a good compromise and a good idea not only because the idea came from residents but because adding such language to the Charter would help the City to get outside funding for future open space projects.

Councilor Griffin asked if the language "maintained in perpetuity" could be used.

City Attorney Fellman replied that the language in the proposed amendment was the same as that in the City Code.

Mayor Pro Tem Stewart indicated that using the language "maintained in perpetuity" would not bind future residents to the amendment and that such an amendment could still be changed by a Charter amendment through a vote of the people.

Mayor Wozniak indicated that he was appreciative of Mayor Pro Tem Stewart's time working on this issue and directed staff to put it on the agenda at the next meeting for further discussion.

City Attorney Fellman noted that there is no generic broad definition of "parks" in Charter 11, Article 3 of the City Code. Instead the definition is a list of the City's current parks. He suggested that, as a separate issue, he work with staff to present an ordinance to Council to add a broader definition to the Code.

Councilor LaMair asked if there was a definition in the proposed Charter amendment.

City Attorney Fellman explained that the whereas clauses are not law and that the proposed language would not define parks. Because the Code defines parks with a list of current parks, if a new park were to be added then the Charter language would apply

to the new park but the Code language would not apply to it until it was added to the definition of park by an ordinance.

Councilor LaMair expressed the need to be consistent and clear.

Mayor Pro Tem Stewart indicated that he had referred to the 2008 Master Plan in the resolution containing the Charter amendment language to make it clear what was covered by the amendment and why.

Councilor Roswell reported that he was working on a council bill with Director Zuccaro and City Attorney Fellman related to short-term rentals. He also noted that he would be absent from the January 17, 2012.

Councilor VanderWerf had no report.

Councilor Brown had no report.

Mayor's Report

Mayor Wozniak reported that he had received a letter from the Arapahoe County Open Space Director indicating that a resolution by the County had modified the allowed use of open space funds for maintenance from 10% to 20%. The letter also cautioned municipalities to use the funds appropriately. He stated that maintenance was just as important as new acquisitions. He noted that the City would comply with the rules associated with use of open space funds.

He also reported that he had received a letter from Mr. Harding of 3 Walden Lane which indicated Mr. Harding's positive experience with the City's Building Department. The letter particularly mentioned Community Development Clerk Emily Kropf and Building Inspector Rich Beckman. He noted that the positive comments were wonderful to read.

Councilor VanderWerf noted that Mr. Harding was in her neighborhood and that she and her neighbors were happy to see someone renovating the house at 3 Walden Lane.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manager John Patterson thanked Councilors Griffin and LaMair for their help in choosing a search firm for the Police Chief selection process. He indicated that staff expected the process to be complete by the end of April and that he would be requesting Council's assistance during the interview process as well. He thanked Councilors Griffin and Brown for their assistance with the 2012 budget. He noted that Finance Director Karen Proctor was estimating revenues will exceed expenditures by about one million dollars, in part due to higher than expected vehicle use tax revenues. He reported that staff expected to break ground on the joint public safety facility in March 2012 and thanked the City Council and the community for their support of the project and the staff for their hard work. He reported that staff had received notice that Irwin Pepper of 5070 East Sanford Circle West had passed away over the holidays at the age of 83.

Mayor Wozniak noted that an email link did not work on the website and asked staff to address the issue.

City Clerk Laura Smith presented updated information on a possible Charter amendment to move regular municipal elections from City run April elections to coordinated November elections with the County. She explained that staff estimated that voter participation would be higher and cost would be lower for coordinated November elections. She noted that state statute prevented the shortening of terms of officials in office when regular elections are changed, which would mean that Council and Mayor terms for those officials in office in April would be extended by seven months. She noted that November elections would fall in the middle of the City's current budget review timeline and that staff anticipated some change would be necessary if elections were changed to November. One option would be to pass the budget in September or October and then to make appropriations as necessary in December when the final property tax numbers are received from the County. Another option would be to wait until the new Council was seated and to have both readings of the budget in November and December. The third option, a model followed by the City of Centennial, would be to keep the same budget review timeline as the City currently has and have officials elected in November seated in January. This option would require a Charter amendment to Section 2.7 of the Charter regarding terms of office. Finally she presented a table included in the staff memo that compared the election calendar of a City-run election vs. a coordinated election and noted that Council would still have the option of cancelling an election but that the decision would have to be made 60 days before a coordinated election as opposed to 29 days before a City run election. She noted that staff's recommendation was to place this issue on the April ballot due to higher voter participation and lower cost. She added that staff recommended following the City of Centennial's model of having officials elected in November be seated in January to deal with the budget timeline issue. This would require an additional Charter amendment that could also be placed on the April ballot but would not pass unless the change to November elections passed. She also recommended that any issues to be placed on the ballot be passed by resolution at the February 21, 2012 meeting.

Mayor Wozniak noted the benefits of higher voter participation and lower cost with a coordinated election. He suggested that the issue be placed on the ballot if the election is not cancelled. He asked when the next election would be if the issue were approved.

City Clerk Smith replied that it would be November 2014.

Councilor Roswell indicated that the City was a small community and that April elections were a touchstone for residents. He noted that there might be more apathy from residents when faced with a longer ballot including issues from multiple levels of government.

Councilor Brown indicated that he was unsure of this issue and could see both the benefits and drawbacks. He suggested that Council may want to pursue aggressive dialogue with the community about this issue and noted that there was not time for such dialogue before the April election.

Mayor Wozniak indicated that it was rare for people to pay attention to issues until a couple of months before an election and that he supported putting the issue on the ballot. He noted that discussions might occur during the election once residents were considering the issue on their ballots. He stated that he was in favor of placing the issue on the ballot if the election was not otherwise able to be cancelled. He directed staff to bring the issue back to Council for further consideration at the first meeting in February.

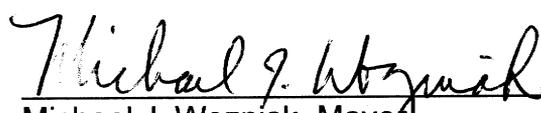
Mayor Pro Tem Stewart indicated that if Council decided to place this issue on the ballot then he would like to see the accompanying Charter amendment to seat elected officials in January be placed on the ballot as well.

City Attorney

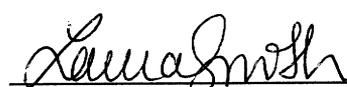
City Attorney Fellman had no report.

ADJOURNMENT

The meeting adjourned at 7:40 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk