

RECORD OF PROCEEDINGS

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

Mayor Mike Wozniak called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Mike Wozniak, Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell, and Klasina VanderWerf 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.

Councilor Harriet LaMair arrived at 6:48 p.m.

Absent: none

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

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

- a. Approval of Minutes – February 21, 2012
- b. Denver Water Technical Advisory Committee (TAC) Intergovernmental Agreement and Consulting Agreements
- c. GOCO River Initiative Grant Support Letter

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS**Council Bill 4, Series 2012; Amending Section 16-16-180 Establishing Administrative Bulk Plane Variances Procedures (first reading)**

Director Zuccaro presented Council Bill 4, Series 2012 on first reading. The proposed bill would allow a 10% variance to the Bulk Plane angle, which would result in an encroachment into the Plan Plane from a couple of inches up to 1.3 feet at an allowed maximum height of 30 feet or up to 1.8 feet at an allowed maximum height of 35 feet. The overall height of a structure would still be limited to either 30 or 35 feet depending on the zone district. Any variance would also be limited to 200 square feet of additional

floor area. If a homeowner wished to seek a variance beyond the limits of the administrative variances they could still apply for a variance to the Board of Adjustment and Appeals (BOAA). The Planning and Zoning Commission (P&Z) reviewed a draft of the ordinance at their February 14, 2012 meeting. The P&Z recommended approval of the variance procedures for the Bulk Plane standards, but did not recommend approval of variance procedures for the FAR standards. The P&Z indicated that the FAR standards already allowed a reasonably sized home to be built and if there was an extraordinary circumstance that could justify a variance it would be better for that to be reviewed by the Board of Adjustment and Appeals (BOAA) under the City's current variance standards. Both the P&Z and staff recommend approval of the proposed bill.

Mayor Wozniak asked if the proposed ordinance would allow variances that would result in an increased footprint.

Director Zuccaro replied that variances allowed under the proposed ordinance would not change the setback requirements or allow, for example, a variance along the entire side setback.

Mayor Wozniak noted that the proposed ordinance did not allow the City Manager to approve variances based on aesthetics, but that many of the examples of variance situations given in the staff memo seem to be based on aesthetics.

Director Zuccaro explained that the proposed criteria for administrative variances were taken from BOAA criteria for variances. An example of a variance would be an applicant who wants to make a small expansion to an existing master bedroom that already encroaches into the Bulk Plane and the addition would encroach further into the bulk plane. This ordinance would allow administrative review of that application. Other situations that would justify a variance might be if the property had unique features such as being in the floodplain or a steep drop-off.

Mayor Wozniak indicated that the criteria might be difficult to meet.

Director Zuccaro noted that all the criteria in the proposed bill would have to be met for a variance to be granted. He explained that if the City Manager rejected a variance application, the applicant could appeal the decision to the BOAA. Alternatively, the applicant could present an entirely new application to the BOAA.

Mayor Wozniak questioned having both options available.

Councilor Stewart indicated that he did not like esoteric options.

Councilor VanderWerf asked if the criteria would be different in the two different types of hearings before the BOAA.

Mayor Pro Tem Stewart indicated that the proposed bill was attempting to give discretion to the City Manager to approve small variances.

City Attorney Ken Fellman indicated that the City Code gave the BOAA these two authorities – to hear appeals of decisions the City Manager has made, and to authorize variances that have not been reviewed by the City Manager. He indicated that the proposed bill does not change the current Code in allowing applicants to follow either route.

Councilor Brown asked what standard would be applied by the BOAA during an appeal of a decision by the City Manager.

City Attorney Fellman explained that the BOAA would be evaluating whether there was clear and convincing evidence to support the City Manager's decision and whether the City Manager acted beyond his scope. If the applicant chose to present a new application to the BOAA, then they would be evaluating the application as a variance and would need to show exceptional hardship.

Mayor Wozniak expressed his concern that the applicant would have the opportunity to present different evidence during an appeal to the BOAA than he originally presented to the City Manager.

City Attorney Fellman replied that any appeal would include information from staff which would include the application material presented to the City Manager and upon which he based his decision.

Mayor Pro Tem Stewart indicated that this was first reading of the proposed bill and that he was in favor of passing it as presented. He asked if staff had received any building applications that would have used this variance opportunity if the bill were approved.

Director Zuccaro replied that staff had received several applications for new homes since the bulk plane and FAR standards had been enacted, and that these applications had been in compliance with the new standards. There was only one application, for an addition, where the plans had encroached into the bulk plane, but the applicants had made the addition fit into the bulk plane after staff made them aware of the issue.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve Council Bill 4, Series 2012 on first reading; a bill for an ordinance amending Section 16-16-180 of the Municipal Code establishing administrative Bulk Plane variance procedures, as outlined in Exhibit A to the March 6, 2012 staff memorandum.

The following votes were recorded:

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|--------------------|-----|
| Mark Griffin | yes |
| Russell Stewart | yes |
| Scott Roswell | yes |
| Klasina VanderWerf | yes |
| Alex Brown | yes |

Vote on the Council Bill 4-2012: 5 ayes. 0 nays. The motion carried.

Council Bill 5, Series 2012; Amending Section 16-14-20 Concerning Nonconforming Lot Standards (first reading)

Director Zuccaro presented Council Bill 5, Series 2012 on first reading. He explained that during the City's recent review of the Bulk Plane and Floor Area Ratio (FAR) zoning amendments, several residents in the Southmoor Vista subdivision requested that the City consider eliminating the nonconforming lot restrictions for the subdivision given that the newly adopted FAR would provide a more equitable building restriction based on net lot area. The City's current nonconforming lot restrictions limit the amount of development on lots that do not meet the minimum lot area requirement for the zone district, and in some cases, require approval from the BOAA prior to development. The Council requested that the Southmoor Vista residents work with their Home Owners' Association (HOA) to determine if there was neighborhood support for the change. The HOA Board of Directors has since considered the issue and provided a letter formally recommending that the nonconforming lot restrictions be removed from lots in the Southmoor Vista subdivision. At the November 1, 2011 Council Meeting, staff presented a discussion item to get direction on how to proceed with addressing the request by the

HOA. Staff presented options for eliminating the regulations in the R-4 district only or eliminating the regulations in all zone districts. The Council expressed support for eliminating the regulations in the R-4 zone district and support for further consideration of eliminating the regulations in all zone districts. The P&Z reviewed two ordinance drafts at their February 14, 2012 meeting. One option exempted the R-4 zone district from the nonconforming lot development restrictions and the other option exempted all zone districts. After considerable discussion, the P&Z recommended that the option for removing the nonconforming lot development restrictions from all zone districts be approved. City-wide, staff estimated that there are 46 nonconforming lots. The breakdown of nonconforming lots by zone district was: 20 in the R-4 zone district (18 of which are in the Southmoor Vista subdivision and 2 in the Cherry Hills East subdivision); 6 in the R-3 zone district; and 20 in the R-1 zone district.

Director Zuccaro pointed out the four lots in the R-1 zone district that had lot sizes less than 20,000 square feet. He explained that the size of the lots combined with the size of the setbacks practically eliminated the building envelope for these properties, and that property owners would still have to go to the BOAA for a variance in order to build whether under the current Code or the proposed bill. The P&Z discussed the issue of whether the ordinance would create additional review requirements because of this, but expressed support for eliminating the regularions when it was determined that a variance would be needed even under the current ordinance .

Director Zuccaro outlined the range of additional square footage that would be allowed on the existing nonconforming lots by zone district and referred to a table in the staff memo with the additional square footage allowed for each lot.

Director Zuccaro stated that both the P&Z and staff recommend approval of the proposed bill.

Councilor Brown indicated that a uniform standard would simplify the Code. He noted that he appreciated Director Zuccaro's discussion of the small lots in the R-1 zone district.

Mayor Pro Tem Stewart agreed with Councilor Roswell, and indicated he was pleased that staff had support from Southmoor Vista on the proposed bill.

Mayor Wozniak noted that the residents from Southmoor Vista had been compelling in their arguments for removing the non-conforming lot restrictions. He indicated that he was more compelled to remove the restrictions from properties in the R-4 zone district than in other districts. He noted that many of the other non-conforming lots were still large and indicated that it was important to maintain space between houses as part of the rural quality of the City.

Councilor LaMair agreed and indicated that the RDSC had worked hard to present options for preserving the City's unique character. She asked if the RDSC had discussed the issue of non-conforming lots.

Director Zuccaro replied that they had discussed the issue but had not made any recommendations.

Councilor Roswell noted that two of the members of the RDSC were now on the P&Z.

Councilor Griffin asked if eliminating restrictions for just the R-4 district as opposed to the entire City would be a less defensible position.

Mayor Pro Tem Stewart indicated that either would be defensible.

Councilor LaMair expressed concern that the small lots in the R-1 zone district should not be excluded if Council decided to eliminate the restrictions for just the R-4 zone district.

Councilor VanderWerf noted that the bulk plane and FAR standards were initiated to limit the effect of residences on neighbors, and while the residents of Southmoor Vista had been asked about their opinions, the City had not been specific in soliciting comments from neighbors of non-conforming lots in other areas of the City.

Councilor Brown indicated that removing the non-conforming lot restrictions for all zone districts would not impact the City overall because development would still be restricted according to the lot size via the FAR standard.

Councilor Griffin and Mayor Pro Tem Stewart agreed with Councilor Brown.

Councilor Roswell moved, seconded by Councilor Brown to approve Council Bill 5, Series 2012 on first reading; a bill for an ordinance amending Section 16-14-20 of the Municipal Code concerning nonconforming lot standards, as outlined in Exhibit A to the March 6, 2012 staff memorandum.

The following votes were recorded:

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

Vote on the Council Bill 5-2012: 6 ayes. 0 nays. The motion carried.

Council Bill 6, Series 2012; Amending Section 16-8-80 Concerning R-3A Buffer Requirements (first reading)

Mayor Wozniak indicated that Mayor Pro Tem Stewart would recuse himself from the discussion of Council Bill 6, Series 2012.

Director Zuccaro presented Council Bill 6, Series 2012 on first reading. He explained that the proposed bill would change the allowed uses within the 50-foot buffers between R-3A and larger lots internal to a subdivision to include fences, walls, driveways, patios and decks. Under the current Code only landscaping and trails were allowed in the buffer. The proposed bill includes other changes to clarify the language for all R-3A buffer requirements, but no changes were proposed to the allowed uses in the 100-foot buffer required between R-3A lots and larger lots external to the subdivision or the 50-foot buffer required between R-3A lots and public road rights of way. There are two existing R-3A neighborhoods in the Village, the Buell Mansion Subdivision and Covington. Within the Buell Mansion Subdivision there were 14 properties impacted by the proposed changes to the internal 50-foot buffer. Within Covington there were no properties impacted by the proposed changes. The Buell Mansion Owners Association provided staff with documentation that all property owners burdened by the buffer and adjacent to the buffer were in support of changing the buffer restriction. The P&Z reviewed a draft of the proposed ordinance at their January 10, 2012 meeting. The P&Z voted to recommend approval of the ordinance with staff drafting new language to make clear that certain improvements would be permitted in the buffer, but that they would not need to be maintained in any particular way. The P&Z's revisions have been

incorporated into the proposed bill. There were provisions in the City's zoning and subdivision ordinances that would allow for removal of the 50-foot buffer with an application for an amended plat. However, an amended plat approval would require the consent of all mortgage and lien holders of the properties that contain the buffer. Because of the feasibility of having such a large number of property owners obtain this consent, the Buell Mansion Owners' Association requested that the proposed zoning amendment be considered instead. The proposed ordinance was intended to allow the same uses in the buffer that would be allowed under the City's current provisions for removing the buffer by a plat amendment. Both the P&Z and staff recommend approval of the proposed bill.

Councilor LaMair asked if staff had received approval from homeowners on both sides of the buffer.

Director Zuccaro replied that staff had received consent letters from all those property owners burdened by and adjacent to the buffer.

Mayor Wozniak asked about the difference between a patio vs. a deck vs. a gazebo and how staff determined if one was an accessory structure or not.

Director Zuccaro replied that a gazebo was an accessory structure because it is not connected to the main residential structure. A covered patio attached to the main residential structure was not considered an accessory structure. He added that playhouses would not be allowed in the buffer, but that swing sets would be allowed.

Councilor Brown indicated that incidental uses of the buffer would be acceptable and that the proposed bill had initiated a healthy discussion and was consistent with prior deliberations.

Councilor LaMair asked if any research had been done as to the reasoning behind the creation of the buffers.

Mayor Wozniak explained that the buffers had been created originally to protect the City's open spaces while the subdivision was being created and before the lots were sold. He indicated that the buffers were less needed now that the lots were established.

Councilor Brown moved, seconded by Councilor VanderWerf to approve Council Bill 6, Series 2012 on first reading; a bill for an ordinance amending Section 16-8-80 of the Municipal Code concerning R-3A zone district buffer requirements, as outlined in Exhibit A of the March 6, 2012 staff memorandum.

The following votes were recorded:

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

Vote on the Council Bill 6-2012: 5 ayes. 0 nays. The motion carried.

REPORTS

Members of City Council

Councilor Brown reported that he and Director Zuccaro had sent the draft language for the pre-application neighborhood input meeting, presented tonight in Item 8d(ii), to all the City's contacts for Homeowners Associations (HOA) and had received several favorable responses. He noted that one representative had initially been concerned about the proposal but once Councilor Griffin had explained the intent the representative was supportive. He added that Director Zuccaro might arrange another meeting with architects and developers to get their input on the proposal. He explained that one change to the proposal was being discussed, and that was to change the proposal from requiring the neighborhood input meeting only when a project would construct a new large structure or increase the square footage by 50% or more, to adding a requirement for projects that would add a second story to a main structure, even if the addition is under 50%. He noted that a second story was a meaningful change. He stated that staff would present the proposal on first reading at the next Council meeting.

Councilor Roswell encouraged staff to reach out to neighborhoods without HOAs as well.

Councilor Griffin agreed with Councilor Roswell.

Councilor VanderWerf indicated that she was sorry to see that the RDSC's recommendation to have a mediator attend the neighborhood meetings had been dropped from the proposal.

Councilor Brown replied that it had been discussed and ultimately dropped due to the expense and the fact that staff could act as mediators for the meetings.

Councilor VanderWerf agreed that as long as staff was present to mediate then she agreed with not requiring a professional mediator.

Councilor LaMair noted that she would send the proposal to residents who she knew would be interested.

Councilor VanderWerf had no report.

Councilor Roswell thanked Mayor Wozniak and Deputy Chief Sansing for attending the South Metro Fire Rescue Authority meeting.

Mayor Wozniak expressed his thanks to the South Metro Fire Rescue Authority Board and noted that it was wonderful when government entities are able to work together as well as the City and the Authority.

Mayor Pro Tem Stewart reported that the Kent Place development at Hampden and University was progressing and that traffic seemed to be getting better at that intersection. He also indicated that neighborhood meetings should be required for significant changes such as second stories, even if they are less than the 50%.

Councilor LaMair reported that she would miss the next Council meeting.

Councilor Griffin reported that a resident on Cherryvale was upset with ice build-up on the street near his home, and that staff had spent significant time evaluating the situation. He complimented staff on their work regarding this issue. He also reported that the City's new Tree Planting Program was a success and that it had sold out very quickly. He indicated he hoped the program could be expanded next year.

Director Goldie confirmed that the 25 trees the City had for this year's program had sold out in approximately 24 hours.

Mayor's Report

Mayor Wozniak thanked the Soderbergs for hosting and the LaMairs for their help with the Board and Commission thank you party last week. He noted that there was a strong staff presence and thanked staff for attending.

Mayor Wozniak reported that he had received a request for funds from the Arapahoe County Youth Program and would follow the Council's recently adopted donation policy.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manager John Patterson reported that the Police Chief Assessment would be conducted at Colorado Community Church on Friday. He noted that the City's auditors had completed their on-site work and their initial analysis was favorable. He stated that work had begun on the joint public safety facility site relocating utility lines, and that he was working on organizing an official ground breaking for later in March.

Construction Time-Frames

Director Zuccaro noted that the staff memo included a summary of Council's discussion from the last meeting but that staff had no further information to present and was seeking direction from Council.

Councilor Roswell indicated that he was not in favor of increasing fines as a means of increasing incentive for builders to complete projects in a more timely manner, but that he was in favor of requiring a hearing before City Council when projects were not completed in the initial 26 month time-frame.

Councilor LaMair agreed with Councilor Roswell and indicated that she was also in favor of requiring a detailed construction time-frame for the neighborhood review process before a permit is issued.

Councilor Roswell noted that permits should not be issued for projects with construction time-frames beyond 26 months.

Director Zuccaro indicated that many projects with long construction time-frames know that the project will take several years to complete. He noted that staff could review a construction time-frame to ensure that the time-frame was reasonable.

Councilor LaMair suggested that staff could educate builders on ways to reduce the time-frame.

Councilor Roswell noted that the neighborhood meeting was non-binding.

Councilor Brown asked what the City's response would be if a builder says they can shorten their time-frame but only if they work until late at night.

Councilor Roswell replied that they would not be able to work past normal construction hours unless the Code was amended.

Councilor Brown expressed his concern over what would occur if a public hearing were required and a builder or home owner said they were 60 or 70% complete with the project. He indicated that City Council could not refuse to issue a new permit to allow the project to be completed.

Mayor Wozniak agreed that the public hearing would be required for the home owner to earn the right to complete the project. He noted that the average time-frame was 20 months and suggested that the public hearing would be required at some point after 20 months. He noted that Greenwood Village required all outside construction to be complete within one year and gave longer for interior work to be completed, and that he was interested in this model.

Councilor VanderWerf agreed that the Greenwood Village model was worth looking into.

Councilor Roswell noted that interior work often posed just as much disruption as exterior work.

Councilor LaMair suggested that the public hearing take place before the project begins in order to make sure the builders are taking mitigation measures into serious consideration.

Mayor Pro Tem Stewart suggested that two public hearings could be required – one before the project starts and one if the project continues for too long.

Mayor Wozniak cautioned that the City may have nearly 20 new homes built in a year and that may result in a lot of public hearings.

Mayor Pro Tem Stewart indicated that it would likely be only a handful of projects whose time-frame would require a public hearing.

Councilor Roswell stated that the Council had a responsibility to protect the residents.

Councilor Griffin asked if Greenwood Village's requirement that outside work be completed within one year included landscaping. He noted that landscaping equipment could be very disruptive.

Councilor VanderWerf noted that in many cases the landscaping could not be completed until the house was entirely complete because the construction vehicles needed access to the house.

Mayor Wozniak noted that the City was the most restrictive of the communities that staff researched.

Councilor LaMair suggested that a discussion with the applicant on ways to mitigate the construction time-frame would be productive.

Mayor Wozniak noted that the City already required a construction staging plan with the building application.

Director Zuccaro confirmed that a construction staging plan was required for all projects disturbing an acre or more.

Mayor Wozniak indicated that Council seemed to agree to require a public hearing for projects with long construction time-frames, and a heightened pre-application scrutiny

when the initial time-frame estimate is over 20 months. He suggested that the owner be required to attend the public hearing.

Councilor LaMair stated that the public hearing would be important for neighbors to feel that their concerns had been heard, respected and addressed.

Mayor Wozniak noted that he appreciated staff's hard work and efforts. He commented that the City was a mature area now and that would mean more major remodels in small lots.

Municipal Election Update

City Clerk Laura Smith requested that the April 3rd Council meeting be cancelled because it would be Election Day for the City. She noted that the organizational meeting for the newly elected Council would be Monday, April 9th, and that the other regularly scheduled April meeting would be the third Tuesday of the month.

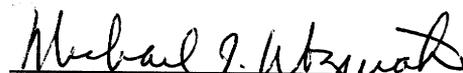
Mayor Wozniak confirmed that Council meetings were always cancelled on Election Day.

City Attorney

City Attorney Fellman reported that the City's attorneys were close to a settlement agreement in accordance with the discussion with Council for the City's pending litigation.

ADJOURNMENT

The meeting adjourned at 7:41 p.m.



Michael J. Wozniak, Mayor



Laura Smith, City Clerk