

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, April 9, 2012 at 6:30 p.m.
At the Village Center

REGULAR MEETING

Mayor Mike Wozniak called the meeting to order at 6:15 p.m. He acknowledged and thanked the many public officials and members of the press for being present at the meeting.

ROLL CALL

Mayor Mike Wozniak, Councilors Mark Griffin, Russell Stewart, Alex Brown, 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, Acting Police Chief Pat Weathers, Parks, Trails & Recreation Administrator Ryan Berninzoni, Human Resources Analyst Kathryn Barlow, and City Clerk Laura Smith.

Absent: Councilors Scott Roswell and Klasina VanderWerf

AUDIENCE PARTICIPATION PERIOD

Acting Police Chief Pat Weathers presented Mayor Wozniak with a plaque on behalf of the Police Department as a small way of expressing their gratitude for his outstanding leadership, unwavering support, and all the kindness he has extended to all of them at the Police Department.

MAYOR'S COMMENTS

Mayor Wozniak acknowledged each Council member and the complementary background and skills they brought to the Council. He acknowledged and thanked City staff. He noted several accomplishments of the City during his time as Mayor, including the beginning of construction on the new Joint Public Safety Facility, which the City was paying for in cash; balanced budgets in difficult economic times; improved cellular service, and improved relationships with residents, City clubs, churches and schools, municipal groups such as Metro Mayors Caucus, and neighboring cities. He noted that much of the City staff and Council's time and efforts are spent ensuring that everyday services such as plowed roads and functioning sewers continue uninterrupted. He indicated that the people of a city are its fabric, and its leaders are its protectors of civic culture.

CONSENT AGENDA

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair to approve the minutes of March 20, 2012.

The motion carried unanimously.

The meeting was adjourned at 6:25 p.m.

ORGANIZATIONAL MEETING OF THE NEW COUNCIL

OATH OF OFFICE

Municipal Judge James E. Turre administered the Oath of Office for Council members Mark Griffin and Alex Brown, and Mayor Doug Tisdale.

Mayor Doug Tisdale called the meeting to order at 6:35 p.m.

ROLL CALL

Mayor Tisdale noted that with the exceptions of Councilors Scott Roswell and Klasina VanderWerf all members of the Council were present.

PLEDGE OF ALLEGIANCE

Mayor Tisdale led the Council, staff, and public in the Pledge of Allegiance.

MAYOR'S COMMENTS

Mayor Tisdale thanked Mayor Wozniak for his 18 years of service with the City. He noted that Mayor Wozniak served on the Planning & Zoning Commission from 1994 to 1999, on the Board of Adjustment and Appeals from 1999 to 2004, as City Council member from 2004 to 2006, and as Mayor from 2006 to 2012. Mayor Tisdale presented Mayor Wozniak with a plaque to thank him for his service. He noted that Mayor Wozniak had successfully reconnected the Council and citizens, and had promoted civility, cooperation, and compromise during his tenure as Mayor. He indicated that he was honored and intimidated to be Mayor Wozniak's successor.

Mayor Tisdale acknowledged and thanked the many public officials and members of the press for being present at the meeting.

APPOINTMENT OF MAYOR PRO TEM

Councilor LaMair moved, seconded by Councilor Brown, to nominate Councilor Stewart as Mayor Pro Tem.

The motion carried unanimously.

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. Appointment of City Clerk, City Treasurer and City Attorney
- b. Appointment of Municipal Court Judge
- c. Kent Denver Landscaping Agreement
- d. Denver Water Easement Agreement

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

NEW BUSINESS**Cherry Hills Country Club Expanded Use Application for Driving Range Fence (Public Hearing)**

Community Development Director Rob Zuccaro explained that Cherry Hills Country Club (the Country Club) proposed to replace their existing 40 foot tall driving range fence with a 60 foot tall fence. The fence extension would help protect traffic on S. University Blvd. The 60 foot tall fence would also be able to accommodate temporary expansion to 90 feet for special events such as the upcoming 2012 US Amateur Championship. The proposal includes installing 11 steel poles that will be 24 inches at the base. The total length of the fence is approximately 500 feet. The Country Club will be required to maintain a landscape buffer between the fence and S. University Blvd. The proposal was reviewed by the Planning & Zoning Commission (P&Z) on February 28th and the P&Z approved the application with three conditions. Two of these conditions had been met and a third, to paint the poles in a color scheme that camouflages, was included in the recommended motion for Council. Director Zuccaro indicated that staff recommended approval of the proposal.

Kevin Hood, manager of the Country Club, explained that the motivation for the application was for the Country Club to continue the tradition of being a good neighbor to the City and to promote safety, as well as maintain its standing as a location for amateur and professional golf events. He noted that a storm had damaged the existing fence last year and so repair was necessary, and that the Country Club was taking this opportunity to propose replacing the fence. He stated that golf balls cleared the existing 40 foot fence fairly frequently, although he only knew of one reported incident of a golf ball hitting a car on S. University Blvd. He explained that several alternatives had been explored but that replacing the existing fence with a 60 foot fence was the best option. He indicated that the Country Club had mailed notices to neighbors and had not received any negative responses. He explained that the new fence would reduce the number of posts from 27 to 11, and that the poles and netting would be colored a forest green to facilitate camouflaging behind the landscape buffer. He noted that guide wires would be put in place when the fence was extended to 90 feet for certain special events.

Councilor Griffin asked if the Country Club had mock-up photographs of the 90 foot fence.

Mr. Hood replied that they did not.

Councilor LaMair expressed concern with how well the new fence would stand up in windy conditions.

Mr. Hood replied that the new fence would be engineered differently than the current fence, including 15 foot deep pilings and guide wires for the 90 foot extension. He stated that he was confident the design of the fence would be safe in high winds.

Councilor LaMair asked if there was any danger of the netting coming apart from the poles and causing a safety hazard.

Mr. Hood responded that it was highly unlikely because the netting was attached at multiple places to the poles.

Councilor Griffin asked what wind speed the fence would withstand.

Mr. Hood replied that it would withstand 90 miles per hour wind.

Councilor Brown asked if the 90 foot extension would be limited to approval by Council through a special event permit.

Mr. Hood confirmed that was correct. He added that installing the extension was a significant cost to the Country Club and that this would be another factor limiting its use.

Mayor Pro Tem Stewart asked how the extension would be installed.

Mr. Hood replied that it would be installed by a 100 foot crane on the Country Club side.

Mayor Tisdale opened the Public Hearing.

Bob Lego of 5 Cherrymoor Drive commented that he had lived in the City for 40 years and believed that the current fence was an eyesore. He indicated that he was not convinced by the Country Club's presentation of the public need or justification for a taller fence and he protested the proposal.

Mayor Tisdale invited the applicant to respond to the public comment.

Mr. Hood indicated that he appreciated Mr. Lego's perspective on the issue. He noted that a large number of the Country Club's members were residents of the City, and therefore many residents received a direct benefit from the Country Club. He added that the Country Club provides non-monetary benefits such as hosting the best caddie scholarship program west of the Mississippi. He stated that the Country Club was founded in 1922, several years before the City was incorporated in 1945. He emphasized that the 90 foot fence extension would only be for approximately 2 week periods during special events.

Mayor Tisdale thanked the applicant and asked Council for their thoughts on the public comment.

Councilor Brown indicated that he was impressed with the analysis of possible reconfigurations examined by the applicant. He noted that the Country Club was not the only course with a constrained driving range and asked if the Country Club had considered using lower compression golf balls to restrict the distance they will be hit.

Mr. Hood replied that the Country Club had explored the possibility but because the United States Golf Association and Professional Golf Association do not support use of lower compression golf balls for tournaments the option was rejected. He added that lower compression golf balls would change the members' experience at the Country Club and would have a negative impact on the standing of the Country Club as a premier practice facility.

Councilor LaMair indicated that the P&Z had conducted an extensive hearing that had thoroughly explored a number of issues. She added that the P&Z and the applicant had examined numerous alternative proposals and that she was comfortable that the proposal presented tonight was the best of the alternatives.

Steven Barlow, president of the Country Club, explained that he was an engineer and was very involved in the design of the new fence. He noted that in order to have the option of the 90 foot extension, the new fence had to be 60 feet tall because a shorter fence would not support a taller extension. He added that both residents and the Country Club membership wanted the fence to be as aesthetically pleasing as possible and that the Country Club would make every effort to camouflage the fence.

Mayor Tisdale asked if there were any further public comments. Hearing none, the public hearing was closed.

Councilor Griffin asked Director Zuccaro about the City's height restrictions for this type of structure.

Director Zuccaro replied that normal fences were restricted to six feet, or eight feet if they were adjacent to a major roadway. However the City Code allowed increased heights for recreational fences, and there was no maximum height for these types of fences in the Code. The 30 or 35 foot structure height limitation could be applied to flag poles.

Mayor Tisdale indicated that Council had heard an adequate presentation from the applicant and acknowledged that concerns had been expressed during the public hearing. He noted that the P&Z had spent a good deal of time discussing the proposal. He indicated that with the review of the proposal by P&Z and staff, their recommendation for approval, and the change in color to camouflage the fence materials, it appeared that Council had an adequate record upon which to approve the application.

Councilor Brown indicated he agreed with Councilor LaMair that the P&Z review was detailed and thorough. He noted that the Country Club was landlocked as are many older courses, and that the alternatives available were less attractive than the current proposal. He indicated that he often rode his bicycle along S. University Blvd. and that there was a collection of range balls along the street. He explained that while he was not necessarily a fan of the increased height but that it would address a real issue. He emphasized that the 90 foot extension would be limited to special events.

Mayor Pro Tem Stewart agreed that the P&Z discussion had been thorough and that the proposal was necessary for public safety.

Councilor LaMair noted that the two alternatives presented would result in a much more visible fence. She reiterated that she was in support of the proposal.

Councilor Griffin agreed that the new fence was needed for public safety and that the proposal had been thoroughly vetted by P&Z.

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair to recommend approval of the requested Expanded Use Permit for a 60 foot tall driving range fence as proposed in Exhibit B to the memorandum prepared by staff dated April 9, 2012.

Mayor Tisdale suggested that the motion be amended to include the condition that the Country Club would paint the poles in a color scheme that camouflages.

Mayor Pro Tem Stewart amended his motion with the condition that the Country Club use the color scheme presented here tonight. Councilor LaMair seconded.

The motion carried unanimously.

UNFINISHED BUSINESS

Council Bill 4, Series 2012; Amending Section 16-16-180 Establishing Administrative Bulk Plane Variances Procedures (Public Hearing and second reading)

Director Zuccaro presented Council Bill 4, Series 2012 on second and final reading. He noted that no changes had been made since first reading on March 6, 2012.

Mayor Tisdale opened the public hearing. Hearing none, the public hearing was closed.

Mayor Pro Tem Stewart moved, seconded by Councilor Griffin to approve Council Bill 4, Series 2012 on second 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 April 9, 2012 staff memorandum.

The following votes were recorded:

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

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

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

Director Zuccaro presented Council Bill 5, Series 2012 on second and final ready. He noted that at no changes had been made since first reading on March 6, 2012.

Councilor LaMair asked about staff's plans to notify homeowners of the change.

Director Zuccaro replied that staff could send letters explaining the ordinance to all affected homeowners. He noted that the ordinance would allow more flexible development in most cases.

Councilor Brown suggested the letters caution homeowners about other zoning regulations that still apply to their properties and explain that the ordinance addressed one standard of several.

Mayor Tisdale opened the public hearing. Hearing none the public hearing was closed.

Mayor Tisdale requested that in Section 1 of the Council Bill, Section 16-14-20(a), the "which" be changed to "that".

Councilor LaMair moved, seconded by Mayor Pro Tem Stewart to approve Council Bill 05, Series 2012 on second 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 April 9, 2012 staff memorandum, with a change from "which" to "that" in Section 1, Section 16-14-20(a).

The following votes were recorded:

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

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

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

Director Zuccaro presented Council Bill 6, Series 2012 on second and final reading. He noted that no changes had been made since first reading on March 6, 2012.

Mayor Pro Tem Stewart recused himself from the discussion and vote.

City Attorney Fellman noted that there was no longer a quorum.

Councilor LaMair moved, seconded by Councilor Brown to continue Council Bill 6, Series 2012 to the April 17, 2012 meeting.

The motion passed unanimously

Council Bill 7, Series 2012; A Bill for an Ordinance Authorizing a Supplemental Appropriation for Additional Litigation Expenses in Fiscal Year 2012 (second reading)

City Attorney Fellman presented Council Bill 7, Series 2012 on second and final reading. He noted that the proposed bill would appropriate funds for litigation that has been concluded.

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair to approve Council Bill 7, Series 2012; A Bill for an Ordinance of the City of Cherry Hills Village Authorizing a Supplemental Appropriation for Additional Litigation Expenses in Fiscal Year 2012 on final reading as outlined in the staff memorandum dated April 9, 2012.

The following votes were recorded:

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

Vote on the Council Bill 7-2012: 4 ayes. 0 nays. The motion carried.

REPORTS

Mayor's Report

Mayor Tisdale thanked the voters for their support in this election. He thanked his opponents for running a vigorous race and for putting a hard choice to the voters which helped to create a lively discussion in the City. He indicated his respect for his opponents and that he looked forward to working with both in their continued capacities in the City. He thanked staff for the orderly transition and thanked Council for their cooperation during the transition. He noted that he had consulted with the Council members individually and had updated Council liaison assignments. He stated that he would like to add a liaison assignment for Denver Water and the High Line Canal and asked for Council's input on that issue at a later time. He indicated that he had humbly and respectfully, with input from a number of people including members of the Council, put together a list of proposed initiatives that he believed with the aid and assistance of Council could be pursued to the betterment of the City. He added that the list would be posted on tisdalecherryhills.com. He noted that the initiatives were not in order of importance. He added that he would be using his own funds to meet with the mayor of Beverly Hills, California to discuss issues that were shared by both cities. He emphasized that he hoped Council could work through his initiatives collaboratively.

Members of City Council

Councilor Brown reported that he had heard a rumor that the farmer who leases a property in the City was interested in bringing cows to the property.

Director Zuccaro noted that a fence permit for the western boundary had been issued for the property, but that no applications had been made for fences for other boundaries of the property.

Councilor Brown indicated that he had also been considering priorities for the City. He noted that the Mayor's priorities for the City were good ideas and added that he had composed a list of items for the City Manager to focus on that included many of the same topics. He hoped these lists would help Council's discussion to frame a near-term work agenda for the City Manager to pursue. He noted that the Council was more effective if they communicated with staff through the City Manager as one voice for clarity. He suggested that Council review these priorities and have a discussion at the next meeting.

Mayor Tisdale agreed that a discussion at the next Council meeting would be helpful.

Mayor Pro Tem indicated that he applauded the examination of Council's priorities. He suggested that Council keep the Master Plan in mind when moving forward with any priorities. He noted that he was working with staff to propose several ordinances. The first would allow residents to sell fruits and vegetables grown on their property from their home by redefining home occupation. The second would prohibit picketing within 1000 feet of churches in order to prevent disturbance or interference with religious services. He added that he was working with Parks and Trails staff on projects that Eagle Scout groups could help with.

Councilor LaMair indicated her approval of the Council being pro-active with regards to a work plan that would encourage the group to prioritize issues together. She reported that the Arapahoe County application for Great Outdoors Colorado that the City is a part of had been submitted. She added that there would be a tour of pertinent City properties that would need to be kept confidential. She noted that she would brief Mayor Tisdale separately. She suggested that a large sign be erected at the development site of the new joint public safety facility to let residents know what was being built.

Director Zuccaro indicated that a banner had been designed and staff was in the process of getting it erected on the site.

Councilor Griffin indicated that he looked forward to working with Council to prioritize Mayor Tisdale's and Councilor Brown's lists. He reported that a resident in the Cherry Vale area was disputing the City's re-engineering of the street, and that he had been in contact with the City Manager and Public Works staff regarding the issue. He noted that the City is standing firm backing up the staff's efforts and that the City might be hearing from the resident's attorney.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manager John Patterson introduced Human Resource Analyst Kathryn Barlow to the new Council and noted that she would be attending Council meetings from now on.

He reported that Director Zuccaro would be hosting the annual Home Builders and Architect Informational Breakfast Meeting on Friday at 7:30 at the Village Center. Councilor Brown would attend as would the City's Code Enforcement Officers and Building Inspectors. Director Proctor and Director Goldie would be meeting with South Metro Fire Rescue Authority regarding financing for the new joint public safety facility. Progress on the new facility was going well. The Cherry Hills East Home Owners Association would have their annual meeting on Wednesday, April 18th from 7:30 – 9:30 pm.

Election Results Report

City Clerk Laura Smith reported that the canvass of the election had been completed Friday, April 6, 2012. A total of 3,980 ballots were mailed and 1,173 ballots were counted for a participation rate of 29.47%. She explained that the main issue with the election was that some residents did not receive their ballots in a timely manner. Staff worked with the City Attorney's office and members of Council to ensure that the City made every effort to advise residents who did not receive ballots in the mail that they could come to the Village Center to get a replacement ballot. The Village Center had extended hours the Friday and Monday before the election as well. A total of 46 replacement ballots were issued to residents who had not received their original ballots. In the 2006 election, 8 replacement ballots were issued to residents who had not received their original ballot. She explained that staff was still researching the reasons behind the late ballots and was in contact with the Postal Service and the City's ballot printer. While staff had many ideas of how to prevent this type of issue in the future, the passage of Issue #3 on the ballot would allow the City to coordinate with the County for all future regular municipal elections. Therefore many of the election tasks would be handled by the County.

Councilor Brown calculated that approximately 4% of residents did not receive their ballots in a timely manner. He asked if the number of replacement ballots was typical of other cities.

City Clerk Smith replied she would gather information from other cities in order to form a comparison.

Mayor Pro Tem Stewart noted that there may have been more residents who did not receive their ballots in a timely manner but that the City would only be aware of those who came in for a replacement ballot.

Councilor Brown agreed. He explained that he made an assumption that the 46 replacement ballots compared to the total ballots received of 1,173 was a representative sample of the City, but acknowledged that there could be many more residents who did not receive their ballots than the City was currently aware of.

Mayor Tisdale noted that coordinating with the County for future regular municipal elections would hopefully eliminate many of the problems with this election. He added that Council would be interested in any information City Clerk Smith discovered as to the reason for the late ballots. He thanked staff for taking the initiative with the City Attorney's office and extending the Village Center office hours the Friday and Monday before the election.

City Attorney

City Attorney Ken Fellman noted that City Clerk Smith had done a great job with an incredibly challenging and stressful situation. He indicated that staff had done the best they could have given the circumstances.

He reported that there were two bills of interest currently in the legislature. The first was Senate Bill 155, which was a bipartisan bill that sought to distinguish voted ballots from other types of public records and place additional requirements on records requests for ballots to assure secrecy of voter identity. The second was House Bill 1319 that would remove the requirement that plumbing and electrical inspections for schools be performed by state inspectors instead of local inspectors.

He noted that he would be late to the April 17th meeting and that Assistant City Attorney Nancy Rodgers would be present for the beginning of the meeting.

ADJOURNMENT

Mayor Pro Tem Stewart moved, seconded by Councilor LaMair that Council proceed into Executive Session pursuant to C.R.S. Sec. 24-6-402 (4)(b) and (e) for the purposes of receiving legal advice on specific legal questions and developing positions relative to matters that may be subject to negotiations in relation to an unemployment compensation appeal, and thereafter immediately upon completion of the Executive Session to be adjourned.

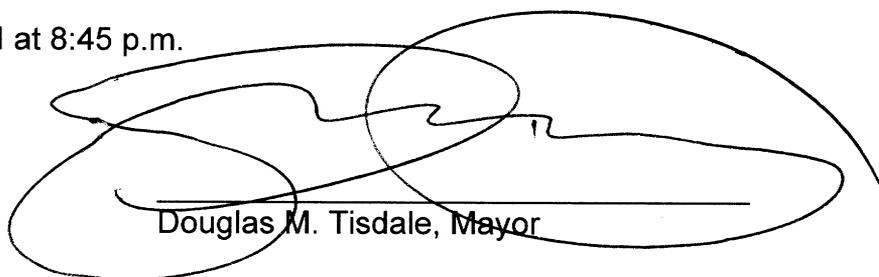
The following votes were recorded:

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

Vote on the Executive Session: 4 ayes. 0 nays. The motion carried.

The executive session began at 8:15 p.m.

The meeting adjourned at 8:45 p.m.



Douglas M. Tisdale, Mayor



Laura Smith, City Clerk