

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, September 3, 2013 at 6:30 p.m.
At the Village Center

Mayor Doug Tisdale called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Doug Tisdale, Councilors Mark Griffin, Russell Stewart, Alex Brown, Klasina VanderWerf, and Katy Brown were present on silent roll call. Also present were City Manager John Patterson, City Attorney Linda Michow, Deputy City Manager and Public Works Director Jay Goldie, Finance Director Karen Proctor, Police Chief Michelle Tovrea, Parks, Trails & Recreation Administrator Ryan Berninzoni, Street Superintendent Ralph Mason, and City Clerk Laura Smith.

Absent: Councilor Scott Roswell

PLEDGE OF ALLEGIANCE

Julia Donovan and Audrey Graves, daughters of Cherry Hills Elementary School's new Parent Teacher Community Organization Presidents, led the Council in the pledge of allegiance.

PRESENTATION BY QUINCY FARM VISIONING COMMITTEE CONSULTANTS

Administrator Berninzoni introduced Quincy Farm Visioning Committee (QFVC) Chair Charles Maguire and Tina Bishop of Mundus Bishop.

Chair Maguire indicated that Ms. Bishop was proving to be invaluable to the QFVC's process. He noted that it was an extremely cohesive group, but that they were struggling to focus on the management plan for the Cat Anderson property as well as the vision. He explained that the deed to the land required that a management plan must be produced one year after the City acquires the property, which the QFVC thought was not realistic as the property had many complex issues. He indicated that the QFVC was on track to present a report to Council in December.

Ms. Bishop noted that she was also impressed with the cohesiveness of the group. She explained that they were currently working on project goals and the vision for the property as opposed to the management plan in order to identify potential uses for the site. She noted that the studies done previously on the pond and utilities infrastructure were very useful to the QFVC. She indicated that the group was working on identifying strategies for short and long term care of the property, including funding and partnerships for programs. She stated that one of the first tasks for the group was to compile all the documents related to the site. Ms. Bishop described the property to Council using a map. She explained that the site had important national historical value and natural resources and habitat value, and included many agricultural uses. She noted that the buildings were a combination of high style housing and utilitarian, and that maintaining the authenticity of the site was a strong focus of the QFVC. She noted that the High Line Canal went through the property and that there was a lot of tree cover in that section. She indicated that Kent Denver School was to the south and west of the property and that there were also neighbors to the south.

Councilor Griffin asked about the available water on the property.

Ms. Bishop replied that the pond provided irrigation for the property but that the QFVC was discussing the pond's roll in conservation and long term water storage. She noted that it may not need to be as big as it currently is. She noted that many of the utilities and infrastructure would likely have to be upgraded when the property moved from private residential use to public use.

Councilor Griffin asked about the source of the water in the pond.

Ms. Bishop replied that it received water from the High Line Canal.

Administrator Berninzoni added that there was a well on the property.

Councilor K. Brown confirmed that the property had High Line Canal rights.

Councilor Griffin asked about the depth of the well and the source of its water.

Administrator Berninzoni replied that it was about 175 feet deep and got water from the Arapahoe Water Basin.

Councilor Griffin noted that the Arapahoe Water Basin was depleting quickly.

Mayor Pro Tem Stewart indicated that there was a second well on the property that wasn't being used.

Mayor Tisdale clarified that the second well was functional.

Councilor Griffin asked about the depth of the second well.

Administrator Berninzoni replied that staff did not have information about the second well.

Mayor Pro Tem Stewart asked about the use of the wells.

Administrator Berninzoni replied that the well in use provided water to the pond and was also used for irrigation. He added that City water was used in the homes.

Mayor Tisdale asked Ms. Bishop to speak to the Council about the QFVC's vision for the property.

Ms. Bishop explained that the QFVC had toured the property and had worked on compiling images, visions and words that represented their vision for the site. She noted that the concept of "authentic" was very important to the QFVC. She indicated that some experiences under consideration included connecting children to agriculture and exploration and to maintain the property as informal and not manicured. She stated that the QFVC had discussed public access to the pond and were considering having it be open to the public only for special events. She indicated that the property had many unique aspects, including historic, agricultural and equestrian. She explained that the property resonated with the community and told a story about the City. She noted that all this complexity had led the QFVC to consider identifying zones on the property where different uses and experiences would be more appropriate. She indicated that the programs being considered were focused on interpretation and education and were intended for youth and families. She commented that some of the programs being considered included on-site animals, farm to table, and a garden. She noted that the QFVC also wanted to repurpose and use the existing buildings, even if they were not historic, rather than building new buildings. She explained that the garage could be

repurposed as a kitchen, restroom or for storage, and that the main house could be used for community events.

Councilor VanderWerf added that an important word for the QFVC was "catalyst".

Ms. Bishop explained that this site could be a catalyst for the rest of the parks system in the City.

Councilor Griffin asked if the neighbors had been identified and approached.

Administrator Berninzoni replied that the QFVC had not contacted the neighbors, but did plan interactive group meetings eventually.

Councilor VanderWerf added that Cat Anderson had been very proactive about reaching out to her neighbors when she started the conservation easement process to make sure they were supportive of the process.

Ms. Bishop indicated that the QFVC had plans to discuss the project with the neighbors and Kent Denver Schools as part of the partnership aspect of their work.

Mayor Tisdale recognized Parks, Trails and Recreation Commission (PTRC) Chair Bill Lucas.

Chair Lucas stated that the PTRC felt that the QFVC was conducting a positive and productive process and that they were on target to complete their work in December.

Mayor Tisdale indicated that the Council appreciated the work the PTRC and QFVC had done and looked forward to providing support.

Chair Lucas reported that the Exotic Car Show would be September 15th and the Barn Tour would be October 5th and 6th. He indicated that the PTRC would be discussing 2014 priorities and how the budget related to those goals at their meeting next week.

Mayor Tisdale indicated that the Council welcomed the PTRC's input into the budget.

AUDIENCE PARTICIPATION PERIOD

QFVC member Jeff Welborn asked Council to have an open mind when it came to creating a vision for the Cat Anderson property. He indicated that expecting a final report by December was very aggressive and it was not for lack of effort, but rather that the property had many complex issues.

CONSENT AGENDA

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

- a. Approval of Minutes – August 20, 2013

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Discussion Regarding Special Event Permits at the Joint Public Safety Facility

Mayor Tisdale noted that Council would hear public comments on this matter. He recognized the presence of Public Art Commission (PAC) Chair Ann Polumbus and Commissioner Gay Warren. He added that Councilor Roswell had not been able to attend tonight's meeting but had expressed his views on this topic via email to the Council members. He indicated that this item was before Council for discussion and was not an action item as this time.

City Manager Patterson explained that the PAC was planning to hold a reception for an art show in the Community Room at the Joint Public Safety Facility (JPSF) on October 4th. They wished to serve wine at this event; however the building agreement between the City and South Metro Fire Rescue (SMFR) prohibits alcohol. He indicated that serving alcohol at a public facility that housed Police and Fire Departments had the potential for adverse publicity and liability.

Mayor Tisdale indicated that there was no prohibition in the state laws or City Code, but rather the agreement between the City and SMFR. He noted that the PAC has made a tremendous effort to bring art to the City and that the Community Room was a blank canvass for indoor art. He reported that he had discussed the issue with the mayors of neighboring municipalities at a recent lunch and they all served wine through a special event permit at city-owned facilities for city events. He acknowledged that the distinction was that many larger cities had facilities separate from their police departments where wine could be served, whereas at Cherry Hills Village the options were very limited.

Mayor Tisdale asked for public comments.

Chair Polumbus explained that Mayor Tisdale had approached the PAC with the idea of holding art shows in the Community Room, but that since there was no hanging system on the walls Commissioner Warren had invested a lot of time in researching different systems. The PAC had now chosen a system and City staff would help to install it. It was a similar system to what was currently in the hallway in the Village Center displaying photographs of the public art sculptures throughout the City. Installation of the hanging system now would make future shows much easier. Commissioner Warren's art group was scheduled to hold the first art show, the reception for which would be the evening of October 4th. Although the art show was not related to the Barn Tour it would coincide on the same weekend. The next show would feature art by resident Peter Roosevelt. Mr. Roosevelt would donate 100% of the proceeds to the PAC. She commented that every art show she had ever been to had served wine and cheese.

Commissioner Warren explained that her art group had been together for 20 years. They had originally been located on Lawrence Street and had been called the Lawrence Street Artists, but had moved and were now called the Inca Street Artists. The PAC had initiated the show and the artists were ready as soon as the hanging system was installed. She agreed that wine and food was always served at her group's shows and there had never been a problem. She noted that the October 4th reception would probably last a couple hours and that it would be advertised as opening the weekend of the Barn Tour. She indicated there would be as many paintings in the show as could fit on the hanging system.

Councilor VanderWerf added that the JPSF was part of the Barn Tour.

Mayor Tisdale asked how long the art would be on display.

Commissioner Warren replied it would be up for almost two months until the weekend before Thanksgiving and would be open to the public when the Community Room was open.

Councilor Griffin asked if these pieces would be for sale.

Commissioner Warren replied that they would.

Chair Polumbus added that the funds from the sales would go to the Inca Street Artists.

Councilor VanderWerf indicated that there had been an expectation of wine at every art show opening she had ever been to, but that she understood that was more of an issue at the JPSF. She noted that if a new administration building had been built first this may have been easier. She stated that she understood the concerns of SMFR and the City Manager, and that up until now the Community Room had been used as a meeting room. She indicated that the PAC would go ahead with the show regardless of being able to serve alcoholic beverages. She noted that she had never seen alcohol abused at these social gatherings.

Chair Polumbus reported that they were in the process of organizing a dedication for Duke Beardsley's art which would be placed on the stone wall in the entrance hall of the JPSF. The dedication would involve students from Cherry Hills Village Elementary as Mr. Beardsley's daughters were students there.

Commissioner Warren added that the PAC hoped to have lots of art shows in the Community Room.

Mayor Tisdale asked for City Attorney Michow's opinion.

City Attorney Michow indicated consumption of alcohol to the public in otherwise unlicensed public places was permitted through special event permits. She explained that it was a common practice in other municipalities to serve alcohol at public events through this process. She noted that in this particular case the location of the art event at the JPSF complicated the issue due to the internal rules and regulations established between the City and SMFR which prohibited consumption of alcohol at the facility. She stated that this prohibition in the rules and regulations needed to be worked out between the two entities in order for consumption of alcohol during the art event to be permitted through a special event permit.

Mayor Tisdale asked if staff had approached SMFR about changing the rules and regulations.

Police Chief Tovrea replied that staff had not yet contacted SMFR about this issue.

Councilor A. Brown asked if a special event permit would allow the City to serve the alcohol or have an outside vendor serve the alcohol.

City Attorney Michow replied that either case would be permitted.

Councilor A. Brown asked if the City was insured to serve alcohol.

City Attorney Michow replied that staff could confirm coverage through its insurance provider.

Councilor K. Brown asked about the special event permit process.

City Clerk Smith replied that the City had issued several special event permits over the years but that she was not aware of the City ever having issued one to itself.

Mayor Tisdale asked if staff could anticipate SMFR's response.

Police Chief Tovrea explained that the agreement that included the rules and regulations had begun with a template from SFMR and then added to by herself, City Attorney Michow, and Director Proctor. She indicated that the rule prohibiting alcohol had been included by SMFR from the beginning and that it made sense to have such a prohibition at a police or fire facility. She noted that if there is any possibility of alcohol being served at a SMFR social function such as a retirement party, on duty fire officers cannot attend. She commented that most other municipalities that served alcohol at events in their municipal buildings had facilities that did not include the police department, and that she was not aware of alcohol being served in a facility that included police or court services in any municipality.

Councilor Griffin indicated that Council was somewhat dealing in the dark without SMFR's input. He noted that if the hanging system was being installed then the event should occur with or without alcohol.

Mayor Pro Tem Stewart suggested that non-alcoholic beverages be served at the event, or that the event or portions of the event be held at an alternative location such as the Village Center or the new Alan Hutto Memorial Commons. He indicated that the duties being performed at the JPSF were important, serious, and not compatible with the serving or consumption of alcohol. He indicated that he was not in favor of changing the policy to allow consumption of alcohol in the JPSF.

Councilor Griffin noted that while he and the Council appreciated and supported the PAC's work he was concerned for the precedent and perception that allowing alcohol would create.

Mayor Tisdale noted that the allowance of alcohol would be limited to City-sponsored events. He asked if any Council member would object to staff asking SMFR if they would consider a change in the policy.

Councilor A. Brown indicated that he had no objections to the inquiry but that he would have trouble supporting a change in the policy. He stated that he did not believe it was a good idea to allow the City to serve alcohol, and that the policy was recently created and quite clear on this point.

Mayor Pro Tem Stewart agreed that he would not vote to change the policy but had no objection to the inquiry.

City Attorney Michow clarified that the rules and regulations were an attachment to the agreement, which was a separate document from the Intergovernmental Agreement (IGA) between the City and SMFR. She indicated that IGA had directed the agreement which was intended for outside groups using the facility. She noted that the rules apply to this situation regardless.

City Manager Patterson indicated that he and Police Chief Tovrea would discuss the issue with SMFR and report back to Council at the September 17th meeting.

Mayor Tisdale indicated that the PAC would work with City Clerk Smith on the special event permit process. He noted that the concerns that Councilor Roswell had expressed in his email had been raised by other Council members tonight including the question should the City as a policy matter be in a position to serve alcohol and the possible liable repercussions. He directed City Attorney Michow to confirm coverage through the City's insurance provider.

Councilor Scott Roswell's email dated September 3, 2013 added for reference:

From: Scott Roswell Sent: Tue 9/3/2013 11:52 AM
To: John Patterson, Linda Michow, Doug Tisdale, Laura Smith, Jay Goldie, Michelle Tovrea, Russell Stewart
Subject: RE: Urgent: Serving Wine in the Community Room

All -

My apologies for missing tonight's council meeting. I noted that tonight's new business will include discussion regarding this matter.

I have considered the matter - and although there will be further discussion at tonight's meeting, I cannot support a request to purchase and provide alcoholic wine in the community room at our police/fire station. After reviewing the License Agreement that John provided - it is clear that the City and SMFR do not permit serving wine or other alcoholic beverage for third party use at the facility.

Although I will not be present to formally express my thoughts, please let other Council members know that I do not support granting a special event permit that includes serving of wine or other alcoholic beverages at the Joint Public Safety Facility.

Thank you -

Scott

REPORTS

Mayor's Report

Mayor Tisdale reported that the annual Summer Movie Night had been a success despite the rain and congratulated Administrator Berninzoni, Assistant Pamela Broyles and the other Parks staff. He noted that he had been in contact with residents regarding school content for Ch. 22 and had been reminded that a small section in the extreme northwest corner of the City was in the Englewood School District and so he would extend his invitation for content to those schools as well. He reported that he had attended the Urban Land Institute program at the Arvada Center as a DRCOG representative where the Belleview Station developers explained their goal was to create a walkable community that was not car dependent. He indicated that he had followed-up on Councilor K. Brown's concern from the last meeting regarding the light at Hampden and Dahlia/Happy Canyon and determined that the light was controlled by Denver rather than CDOT. He noted his attendance at the Mayor's lunch in Littleton. He thanked Villager Newspaper reporter Jan Wondra and the Villager Newspaper for the article about KCHV-TV. He commented that the Englewood street signs for the shops at Hampden and Lafayette that had been replaced with Cherry Hills Village street signs and that the previous signs had been returned to Englewood. He reported that a resident had expressed concern about the Labor Day fireworks at Glenmoor Country Club but noted that the event had been properly permitted and noticed. He indicated the Exotic Car Show would be held September 15th. He presented a Mayoral Proclamation for retired Sergeant John DeFelice and asked Police Chief Tovrea to forward it to him.

Members of City Council

Councilor VanderWerf reported that the PAC had several art openings planned and that the dedication and reception for Reven Swanson's Flying Cranes sculpture was scheduled for September 18th.

Mayor Pro Tem Stewart had no report.

Councilor Griffin reported that he was not able to attend the September 5th Board of Adjustment and Appeals (BOAA) meeting and that staff would contact Councilor Roswell as the alternate.

Councilor A. Brown reported that he was working with Administrator Berninzoni on improving safety features at the High Line Canal crossing over Quincy Avenue and was pleased with the range of options. He indicated that the issue would be discussed by PTRC prior to making a recommendation to Council. He noted that Denver Water had reported a 92% water storage rate.

Councilor K. Brown thanked Mayor Tisdale for following up on her concern regarding the traffic light at the Hampden/Dahlia/Happy Canyon intersection and thanked City Manager Patterson for his follow up on her concern about air traffic noise in the City. She noted that staff had yard signs advertising the Exotic Car Show and indicated that Council members who were interested could post them on their properties for additional advertising.

Members of City Boards and Commissions

There were no reports.

City Manager & Staff

City Manager Patterson reported that the study session for the proposed 2014 budget would be held September 17th. He noted that the Exotic Car Show would be September 15th from 10am to 1pm. He indicated that Human Resources Analyst Kathryn Barlow was getting married September 7th. He added that the Police Department was in the process of a self-assessment. He reported that staff had met with Diana Rael of Norris Design last week. He noted that the Thursday BOAA meeting would likely be continued.

City Attorney

City Attorney Michow added that the BOAA would have to open and continue the two public hearings that were scheduled for Thursday. She indicated that staff would advise the applicants of the continuance.

Sales Tax Collection Discussion

City Attorney Michow explained that this discussion was a follow-up to the general discussion at the Council retreat regarding collection of sales tax on purchases from vendors located outside the City and delivered to customers inside the City, such as furniture and computer equipment. She noted that a more detailed and confidential memo had been distributed to Council separately from the general and public memo included in Council packets. She indicated that although the policy to not collect sales tax on deliveries had been in place for some time, the City did regularly receive and accept sales tax returns on deliveries into the City. She noted that she was not aware of any other municipality that did not collect sales tax on deliveries. She explained that if

the vendor meets the definition of “engaged in business” under the applicable code, a taxable sale occurs within the city if the product is delivered to an address inside the city limits. She explained that customers still paid sales tax even if it was not remitted to the City. In those cases the vendor will remit sales tax to the municipality in which they are located. She indicated that the term “engaged in business” had been removed from the City Code in 2010 in relation to collecting tax on residential businesses, referred to as home occupations in the Code. She noted that while she was not familiar with the context surrounding the 2010 Code amendment, it appeared that the City had not been collecting sales tax on deliveries for quite some time and the 2010 amendment sought to clarify this policy within the Code. She indicated that if the Council decided to move forward with changing the Code to collect sales tax on deliveries they would have to consider TABOR. She noted that the staff memo discussed the 2009 Colorado Supreme Court case *Mesa County Board of County Commissioners v. Ritter*, which has been construed to permit interpretation of tax code language or permit sales tax code amendments in a way that increases tax revenue collected without an election, where such additional revenues do not exceed the TABOR limit, as may be amended or overridden as a result of a successful de-Brucing voter question. She noted that the City had de-Bruiced in 1999. She added that shortly after the Colorado Supreme Court decision, the State approved several separate bills removing exemptions on the sale of items of tangible personal property in the 2009 and 2010. Many governmental attorneys cautiously agree that the 2009 Supreme Court case may be read to allow the State's action to eliminate exemptions as long as the tax revenue increase – as a result of the elimination – does not exceed the limits dictated by TABOR or by the de-Brucing provisions of the particular jurisdiction. The City's de-Brucing measure, passed in 1999, coupled with recent case law and State legislation, lend support for changing the City's sales tax provisions to clarify that sales tax may be collected on deliveries into the City.

Councilor A. Brown clarified that in the case of a Denver-based vendor, if tax is not remitted to the jurisdiction to which the tangible personal property is being delivered then it would be remitted to Denver. In either case the tax is being paid, the difference is to which jurisdiction.

City Attorney Michow confirmed that was correct.

Councilor Griffin asked about enforcement of sales tax on deliveries.

City Attorney Michow replied that the City would perform an audit of vendors and educate retailers. She noted that this would require additional staffing and resources, or the City could use third party contractors.

Councilor Griffin asked about the additional revenue that the City might see if it began to collect sales tax on deliveries.

Director Proctor replied that it was difficult to estimate because many vendors already remitted sales tax on deliveries to the City even though the City did not require it. Additionally other municipalities did not distinguish between sales tax collected from sales within the jurisdiction versus deliveries from outside. She estimated the additional revenue would be a million dollars or less.

Mayor Pro Tem Stewart asked how much sales tax on deliveries the City currently received.

Director Proctor replied that she did not have exact numbers but that it was a significant percentage of all the sales tax remitted to the City.

Mayor Tisdale thanked Councilor A. Brown for his work on this issue. He indicated that it appeared that a TABOR election was not required to collect sales tax on deliveries. He noted that the tax was already being collected and being remitted to other cities instead of to Cherry Hills Village.

City Attorney Michow added that the City was shouldering the burdens of large delivery trucks using the City's roads without the revenue stream from those deliveries.

Mayor Tisdale directed staff to work with Councilor A. Brown on a proposed ordinance for collection of sales tax on deliveries.

Councilor K. Brown asked that the meeting minutes regarding the 2010 ordinance be included in the staff memo of the proposed ordinance.

ADJOURNMENT

The meeting adjourned at 8:18 p.m.



A large, stylized handwritten signature in red ink, which appears to be "Douglas M. Tisdale". The signature is written over a horizontal line.

Douglas M. Tisdale, Mayor

A handwritten signature in black ink, which appears to be "Laura Smith". The signature is written over a horizontal line.

Laura Smith, City Clerk