Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, October 7, 2014 at 6:30 p.m.
At the Village Center

The City Council held a study session at 6:00 p.m. to discuss the proposed 2015 budget.

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

ROLL CALL

Mayor Doug Tisdale, Councilors Mark Griffin, Russell Stewart, Alex Brown, Scott Roswell, 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, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Barlow, Special Projects Coordinator Emily Kropf, Accounting Clerk Jessica Sager, Parks, Trails & Recreation Administrator Ryan Berninzoni, Public Works Project and Right-of-Way Manager Ralph Mason, and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

The Council recited the pledge of allegiance.

MEMBERS OF CITY BOARDS AND COMMISSIONS

There were no reports.

AUDIENCE PARTICIPATION PERIOD

Laura Christman, 18 Cherry Lane Drive, commented that the proposed Bulk Plane/Floor Area Ratio Evaluation Committee should include members of the Residential Development Standards Committee (RDSC) and the Planning and Zoning Committee (P&Z). In relation to the Public Works Facility Review Final Report she cautioned the City to hire a negotiator who was experienced with Denver Water in order to save the City time and money. She warned that the alternative for a Public Works facility within Meade Park was not consistent with the Master Plan.

Fred Abrams, 105 Meade Lane, indicated that the City should hold a candidate forum in order to allow residents the opportunity to learn about the different opinions and plans for the City from each candidate.

Mark Van Loucks, 1515 E. Tufts Avenue, joined Mr. Abrams in support of a candidate debate, especially the mayoral candidates, as an appropriate use of public funds. He volunteered his services and equipment to film such a debate so that it could be more widely distributed on the City's government access cable channel.

CONSENT AGENDA

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

a. Approval of Minutes – September 16, 2014
b. Contract for Services – City Auditor; John Cutler and Associates

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Public Hearing - Council Bill 4, Series 2014; Amending Municipal Code Section 17-4-30 Concerning Engineering and Construction Standards (*Public Hearing and second and final reading*)

Special Projects Coordinator Kropf presented Council Bill 4, Series 2014 on second and final reading. She noted that there had been no changes since first reading.

Mayor Tisdale opened the public hearing at 6:45 p.m. Hearing no comments the public hearing was closed at 6:46 p.m.

Councilor Roswell moved, seconded by Councilor VanderWerf to approve on second and final reading Council Bill 4, Series 2014, amending Municipal Code Section 17-4-30 updating the engineering and construction criteria in conjunction with the subdivision of land, as submitted in Exhibit C of the October 7, 2014 staff memorandum.

The following votes were recorded:

Katy Brown	yes
Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes

Vote on the Council Bill 4-2014: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

Council Bill 6, Series 2014; Amending Municipal Code Section 16-20-10 Establishing Expanded Use Review Criteria (*first reading*)

Special Projects Coordinator Kropf presented Council Bill 6, Series 2014 on first reading. She explained that Municipal Code Section 16-20-10 establishes the expanded use permit process for nonprofit institutions, private clubs, public recreational facilities and nonprofit recreational facilities. An expanded use permit is required for the establishment of new institutions, clubs and facilities; the physical alteration of any building or structure by more than 1,000 square feet; the creation, addition, modification or increase in size of any parking area; the addition or increase in number, size or intensity or a change or modification in the direction of existing exterior lighting; and the creation, addition, modification or increase in outdoor recreational fields or facilities.

Under the current Code, P&Z reviews an expanded use proposal to determine whether the application meets the requirements of the zoning ordinance based on the application, evidence and testimony presented at a public hearing and makes a recommendation to the City Council. The City Council then determines whether the application meets the same requirements based on the application, evidence and testimony and P&Z's recommendation. There are no other specified review criteria to base decisions on other than the technical zoning criteria. She indicated that staff believed a typical planning review process should include more specific criteria so that both P&Z and the City Council can make more consistent and legally defensible decisions. She explained that P&Z and the City Council have been asked to review options for adding general criteria to the expanded use permit process to ensure that development is regulated and the character of the City is maintained. She noted that a summary of the criteria used in several peer communities was included in staff's memo. She indicated that the P&Z held a study session on July 22nd and reviewed draft council bills on August 12th and September 9th.

Councilor K. Brown clarified that recreational facilities were reviewed by the Parks, Trails and Recreation Commission rather than the Planning and Zoning Commission.

Councilor VanderWerf indicated that proposed criteria #2, "The proposed use is consistent with the goals and strategies of the Master Plan, including preservation of the semi-rural character of the City" reintroduced a subjective element.

Director Zuccaro replied that the current criteria only required that the application comply with zoning requirements and that staff could evaluate the technical criteria. Therefore staff believed that other criteria should be established for P&Z and PTRC to consider in order to meet the intent of the Master Plan. He added that additional criteria would provide more legally defensible findings.

Councilor A. Brown noted that the table in the staff memo showing criteria used by peer municipalities did not include view corridors or remedial grading above a certain volume.

Special Projects Coordinator Kropf replied that view corridors had been included in an early draft of the council bill but had been removed because view corridors were covered by the Master Plan.

Director Zuccaro added that a concern with remedial grading would overlap with existing criteria and that height from natural grade was already addressed specifically by the current Code.

Councilor A. Brown suggested that the proposed language of Section 16-20-10(c) be changed from "comply" to "be evaluated" because of the subjective nature of the criteria. He added that criteria #2 of that section be changed from "is consistent" to "furthers" or "implements". He questioned criteria #4 of that section because most institutions in the City will be surrounded by residential neighborhoods and questioned how their compatibility with the surrounding area would be evaluated since by their nature they have a different bulk and scale compared to residential neighborhoods. He also asked how criteria #7 would work with the existing parts of the Code that address parking requirements.

Director Zuccaro replied that criteria #7 would be in addition to the existing parking regulations in the Code.

Councilor A. Brown noted that criteria #8 also needed clarity as to whether the intent was to mitigate only those adverse impacts associated with the improvement or if it would also include any existing adverse impacts.

Councilor Roswell suggested that Council consider tabling the council bill.

Councilor K. Brown indicated she agreed with Councilor A. Brown. She noted that many of the criteria were subjective and ambiguous which would make it more difficult to defend a decision and therefore does not achieve the objective. She asked who would define "adverse" in criteria #8.

Councilor A. Brown agreed with Councilor K. Brown and questioned how the City would reach a conclusion that an application complied with such criteria.

Mayor Tisdale noted that a Rule 106 action could occur if the City denied an expanded use permit application based upon the proposed criteria.

City Attorney Michow explained that the purpose of the council bill was to improve upon the current analysis conducted by City Council, P&Z and PTRC when evaluating expanded use applications. She noted that currently there were no criteria and that posed a greater legal risk than the proposed criteria. She appreciated Councilor A. Brown's suggested revision from "comply" to "be evaluated" as that was a more accurate description. She added that Colorado courts have long upheld municipal criteria with the proposed level of subjectivity and that such compatibility standards had been long on the books. She noted that these criteria were not like those used for lighting standards where lumens could be clearly measured and that subjectivity was necessarily built into these criteria.

Mayor Tisdale acknowledged P&Z's work on the proposed council bill.

Councilor A. Brown indicated he supported the adoption of additional criteria but was uncomfortable with the proposed council bill.

Councilor A. Brown moved, seconded by Councilor K. Brown to table Council Bill 6, Series 2014.

The motion carried unanimously.

Board and Commission Terms

City Clerk Smith presented Council Bill 7, Series 2014 and Resolution 18, Series 2014 for Council's consideration. She explained that at the September 16th meeting Council had discussed changing board and commission terms to end at the same time with consideration for the election timeline. She noted that terms for the Board of Adjustment and Appeals (BOAA) and Parks, Trails and Recreation Commission (PTRC) ended in May, terms for the Public Art Commission (PAC) ended in various months, and terms for the Planning and Zoning Commission (P&Z) ended in Septembers. Staff had prepared the proposed changes which would adjust the terms for P&Z and PAC so that terms ended in May, joining BOAA and PTRC.

Councilor Roswell indicated that this issue should be addressed by the new Council in January rather than the current Council.

Councilor A. Brown suggested that having all board and commission terms end at the same time may not be the most desirable system and that staggering them throughout the year might be beneficial as it would allow Council to revisit past applicants as new positions became available over the course of the year. He indicated that formalizing Council's policy on board and commission recruitment and terms would be helpful for future Councils and volunteered to work with staff on writing such a policy.

Mayor Pro Tem Stewart agreed with Councilor Roswell that the issue should be addressed by the new Council. He noted that even if all terms ended in May positions would still open up throughout the year as members resigned and new committees were formed.

Councilor Roswell moved, seconded by Councilor K. Brown to table Council Bill 7, Series 2014 and Resolution 18, Series 2014.

The motion carried unanimously.

Council Bill 8, Series 2014; Authorizing a Supplemental Appropriation to Reimburse the Western Golf Association for Major Event Permit Review Fees (*first reading*)

Director Proctor presented Council Bill 8, Series 2014 on first reading for Council's consideration. She explained that based on Council's decision at the July 15th meeting the City would reimburse the Western Golf Association $20,000 of their major event permit fees for the 2014 BMW Golf Championship. She explained that because this expenditure was not included in the 2014 budget a supplemental appropriation was required.

Councilor K. Brown moved, seconded by Mayor Pro Tem Stewart to approve on first reading Council Bill 8, Series 2014; authorizing a supplemental appropriation in the amount of $20,000 to reimburse the Western Golf Association for major event permit review fees.

The following votes were recorded:

Mark Griffin	yes
Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Katy Brown	yes

Vote on the Council Bill 8-2014: 6 ayes. 0 nays. The motion carried.

Candidate Forum Policy Discussion

City Clerk Smith asked Council for direction regarding a candidate forum for the 2014 election. She explained that staff had received requests from a candidate and an anonymous resident that the City host a candidate forum. She noted that staff had assisted with the 2012 candidate forum but that it had been hosted by Village residents. She explained that staff had found little indication in the City's historical records of the City hosting a candidate forum in the past. She noted that most other municipalities were not involved in candidate forums and that they were typically hosted by other organizations such as a chamber of commerce or the League of Women Voters. She explained that staff was concerned that expending public funds on a candidate forum could be interpreted to be in violation of the Fair Campaign Practices Act. She presented several options to Council as to how to move forward.

City Attorney Michow added that in reference to the Fair Campaign Practices Act the courts have interpreted expenditure of public funds to include in-kind contributions such as staff time. She advised being conservative in order to avoid being involved in a campaign violation complaint.

Mayor Tisdale asked City Attorney Michow if the proposed option to ask candidates to pay the City for staff time was a feasible work around to the FCPA issue.

City Attorney Michow replied that it was feasible.

Councilor A. Brown indicated it was his understanding that state statute emphasized that public entities should not be involved in election campaigns.

City Attorney Michow agreed and added that courts have interpreted urging and advocacy to mean informing the electorate.

Councilor Roswell agreed and indicated that this was a slippery slope and recommended the City take no action and allow other organizations to host a candidate forum if they so desired.

Mayor Pro Tem Stewart indicated that the City should formalize a strict policy that the City should never be involved in any candidate forum through expenditure of funds, staff time, City facilities, or the City website. He added that the candidate information currently on the City website could be interpreted as advocacy and should be removed. He volunteered to work with the City Attorney to write a policy.

Councilor Griffin agreed with Mayor Pro Tem Stewart that the City had no business being involved in a candidate forum and that the City should adopt a formal policy.

Councilor VanderWerf stated that she was disappointed no group had stepped forward to host a candidate forum and agreed that the responsibility for a candidate forum should not fall to the City.

Councilor K. Brown abstained from the discussion as a candidate.

Councilor Roswell agreed that the candidate information should not be on the website.

Mayor Tisdale asked if the City had posted candidate information on the website in the past.

City Clerk Smith replied that she was unsure.

Alice Abrams, 105 Meade Lane, asked City Clerk Smith about the 2012 candidate forum and if staff time was paid for by the City.

City Clerk Smith confirmed that staff time was spent on the 2012 candidate forum and that staff was paid for that time by the City.

Ms. Abrams concluded that there was therefore a precedent for expenditure of City funds on a candidate forum.

Mayor Tisdale noted that the staff memo identified the 2012 candidate forum and added that candidate forums had been held at the City in 2004 and 2002. He noted that Council's decision appeared to be to take no action.

Councilor Roswell clarified that the candidate information on the website should be removed and that staff should work with Mayor Pro Tem Stewart on a formal policy stating that the City should not be involved in candidate forums.

Mayor Tisdale directed the City Clerk and City Attorney to confer and determine the appropriate approach for the information on the website. He clarified that there was no issue with having the factual summary for the ballot question on the website.

Councilor A. Brown noted that the City's ability to produce a factual summary was expressly provided for in state statute.

City Attorney Michow verified that was correct.

Mayor Tisdale directed staff to take no action related to a candidate forum for the 2014 election.

REPORTS

Members of City Council

Councilor A. Brown suggested that the Quincy Farm Visioning Committee Final Report should not be constrained to a half hour study session but rather should be presented during the regular meeting at the October 21st meeting in order to allow Council sufficient time for discussion. He reported that the Utility Line Undergrounding Study Committee (ULUSC) was working on a draft report to present to Council and had decided to wait until after the November 4, 2014 election to finalize the report based on the outcome of the fiber optic ballot question. He further reported that based on a conversation with a resident from the Glenmoor subdivision he was interested in exploring a possible amendment to the allowed uses in the setback if Council had no objection. He noted that some accommodation of allowing expanded uses in the setback might be accomplished without conflicting with the intent and purpose of the setbacks.

Councilor VanderWerf reported that the City's newest loan of public art, *Colorado Loop #6* by Yoshi Saito, would be dedicated on October 14th at 11am at the southeast corner of University Boulevard and Quincy Avenue at a ceremony attended by the artist.

Councilor Roswell suggested that Councilor A. Brown work with P&Z on his proposed amendment to the setback regulations for the Glenmoor subdivision. He reported that Old Cherry Hill's Oktoberfest had been a success. He noted that he would attend the retirement party for South Metro Fire Rescue Authority Chief Qualman on November 13th. He stated that Chief Qualman had been a great friend to the Village and had been instrumental in advocating the Joint Public Safety Facility.

Councilor K. Brown reported that the Quincy Farm Visioning Committee had completed its final report and would present to PTRC on October 9th and to City Council on October 21st. She added that she joined staff and PTRC Chair Bill Lucas in reviewing proposals for the John Meade Park planning consultant and that they hoped to bring a contract to Council for consideration in October. She indicated that she would be open minded about Councilor A. Brown's possible proposed amendments to the Glenmoor setbacks but noted that the intent of setbacks was very important to maintain.

Councilor Griffin agreed with Councilor K. Brown in relation to Councilor A. Brown's exploration.

Mayor Pro Tem Stewart agreed with Councilor Griffin.

Mayor's Report

Mayor Tisdale reported that he would attend the swearing in of the new Chief for the South Metro Fire Rescue Authority on October 16th. He noted the sad passing of George W. Calkins and his great status, stature and significance to the City.

City Manager & Staff

City Manager Patterson reported that the Police Department was conducting interviews for a new Police Officer and the City continued the process to find a new Code Enforcement Officer; the Land Preserve's Barn Tour had gone well; the Public Art Commission was again organizing the snow plow painting project with the City's schools; the Quincy Farm Visioning Committee would present their final report to PTRC on October 9th; PTRC would hold a retreat October 24th and 25th. He noted that the City had received the final BMW excise tax payment of $95,000 for a total to $387,000, $150,000 of which would go into the General Fund and the remainder would go into the Cat Anderson fund. The City was still waiting for the final sales tax payment from the golf tournament. He indicated that the Public Works and Community Development Departments had officially received accreditation through the APWA and Director Proctor was working on a GFOA award for the City's budget and finances. He stated that these awards ensured that City staff meets professional standard. He complimented staff on the success of several significant projects in recent months including the BMW Championship, preparation for the 2015 budget; Summer Movie Night; Exotic Car Show; assisted the Land Preserve with the Barn Tour; Woodie Hollow bank stabilization; Prescription Drug Take Back Event; street repair work throughout the City - City streets are in the best shape in 30 years; staff works closely with several citizen committees to address community concerns; completion of a Transportation Improvement Program grant application through DRCOG to connect the High Line Canal between CHV and Denver; and Public Works accreditation. He noted that staff is dedicated to providing high quality services to the community. He stated that Chief Qualman had ensured fire services would stay in the City for the next 25 years through completion of the Joint Public Safety Facility.

Mayor Tisdale noted that he served on the Metro Vision Issue Committee of DRCOG which set the criteria for the TIP grants.

<u>Public Works Facility Review Final Report</u>

Deputy City Manager/Public Works Director Goldie presented the Public Works Facility Review Final Report to Council. He indicated the report would be helpful as a historical record for future reference. He noted that the views of the City Center Citizens Committee had been included in the report and the link to the CCCC final report on the City website had been added to the Public Works Facility Review Final Report. He noted that the Denver Water site was the best option and that staff hoped the City could move forward with that option. He cautioned that Public Works should not be relocated just to relocate it as that would make it more difficult for staff to provide services to residents.

Mayor Pro Tem Stewart thanked staff for the report and the work that had gone into it. He agreed that the Denver Water site was ideal and noted that the City had a good relationship with Denver Water.

Mayor Tisdale added that he was working with Mayor Hancock of Denver and Denver Water CEO Jim Lochhead on this project.

Councilor Roswell thanked staff for their work.

Deputy City Manager/Public Works Director Goldie asked Council for approval to place the Public Works Facility Review Final Report on the City website.

Council approved the request.

Bulk Plane/Floor Area Ratio Evaluation Committee

Special Projects Coordinator Kropf presented the proposed Bulk Plan/Floor Area Ratio Evaluation Committee which would consist of one or two Council liaisons, two members of P&Z, and all available members of the RDSC.

Councilor Roswell applauded the proposed committee. He emphasized the importance of this committee as a continuation of the RDSC and the necessity of participation by those members.

Council discussed Council liaison assignments and determined that Councilors VanderWerf and Griffin should serve as Council liaisons to the new committee.

Councilor K. Brown suggested that a fresh set of eyes could be valuable in addition to the RDSC members when evaluating the bulk plan and FAR standards.

Councilor VanderWerf agreed.

Mayor Pro Tem Stewart suggested including a builder or architect on the committee.

Director Zuccaro replied that the evaluation process would include focus groups with builders and architects who lived and/or worked in the City.

Mayor Tisdale suggested that a builder or architect from outside the City could give a fresh perspective.

City Attorney

City Attorney Michow reported that she was working with City Clerk Smith on new elected official training that would occur in January. She added that she would attend the Colorado Municipal League's City Attorney Conference on Friday and Saturday.

ADJOURNMENT

Mayor Pro Tem Stewart moved, seconded by Councilor VanderWerf that the Council proceed into Executive Session pursuant to C.R.S. Section 24-6-402(4)(b) and Section 24-6-402(4)(e) for purposes of receiving legal advice and determining positions relative to matters subject to negotiations regarding *City of Cherry Hills Village v. Cooper* and immediately upon completion of the Executive Session to stand adjourned.

The following votes were recorded:

Russell Stewart	yes
Scott Roswell	yes
Klasina VanderWerf	yes
Alex Brown	yes
Mark Griffin	yes
Katy Brown	yes

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

The regular meeting adjourned at 8:04 p.m.

The executive session adjourned at 8:20 p.m.

Douglas M. Tisdale, Mayor

Laura Smith, City Clerk