

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, February 3, 2015 at 6:30 p.m.
At the Village Center

Mayor Laura Christman called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Laura Christman, Councilors Mark Griffin, Earl Hoellen, Alex Brown, Mike Gallagher, 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, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Barlow, Parks, Trails & Recreation Administrator Ryan Berninzoni, Public Works Project and Right-of-Way Manager Ralph Mason, Street Operations Supervisor Josh English and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

Farrah Bendell, Jack Diamant, Suzanna DiCarlo, Abby Goldberg, Sophia Grossman, Brady Kaelberer, Alana Maxey, Elizabeth McMillen, Melodie Nekoerad, Davis Patteson, Ruby Silverman and Margaret Szalaj from the Cherry Hills Village Elementary School Student Council led the City Council in the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

Kelley Digby, 21 Cherry Hills Farm Drive, stated that she was the president of the Cherry Hills Farm Home Owners Association (HOA), and supported Council Bill 1, Series 2015. She explained that the HOA was requesting this code amendment to remove the current restriction that only allowed guard houses to be placed in private streets. She indicated that the HOA was concerned about crime and wanted to update their surveillance equipment, but that would require a structure in which to house the systems. Additionally the HOA wanted the structure to serve as a "comfort station" for their security guards as an alternative to the guards being in their cars all day, and the HOA wanted to switch to electric cars for their guards that could be plugged into the structure. Finally the structure would include rest rooms and avoid the need for port o potties at the subdivision entrance when construction projects occurred. She clarified that the HOA did not propose a stop sign or any barrier with the guard house.

Bill Lucas, 42 Sedgwick Drive, explained that as a member of the Parks, Trails and Recreation Commission (PTRC) he was often considering the Master Plan which promoted the openness and semi-rural character of the Village. He indicated that gated communities and security guards were contrary to the Master Plan and Blue Ribbon Panel Report. He noted that while these things made people feel safer studies showed that they did not actually result in safer neighborhoods. He indicated that while he did not want to offend anyone the City's gated communities did not feel connected to the rest of the City. He noted that the City had an excellent Police Department that could address any safety concerns.

CONSENT AGENDA

Councilor Hoellen removed Item 5f.

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

- a. Approval of Minutes – January 20, 2015
- b. Resolution 4, Series 2015; Adopting Nonconforming Short Term Rental License Fees
- c. Resolution 5, Series 2015; Appointing Members to the Board of Adjustment and Appeals
- d. Resolution 6, Series 2015; Appointing Members to the Planning and Zoning Commission
- e. Resolution 7, Series 2015; Appointing Members to the Parks, Trails and Recreation Commission
- g. Highway User Tax Funds (HUTF) Mileage Certification

The motion carried unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

Item 5f. Resolution 8, Series 2015; Quitclaim Property to CDOT

Deputy City Manager/Director Goldie explained that the City had purchased the triangle shaped lot to the south of Hampden Avenue from CDOT in 2000 and CDOT recently advised the City that the City also owns a small portion on the north side of Hampden Avenue. CDOT had approached the City about deeding back that small northern portion to CDOT. The small portion consisted mostly of the Englewood alley and CDOT sidewalk, and CDOT wanted to deed that portion back to Englewood. Staff proposed to quitclaim a small triangle of land located in the Englewood city limits to CDOT. He indicated that the property was approximately 275 square feet. He explained that staff believed the property to be more of a liability to the City than an asset and recommended deeding the property to CDOT, who would then deed it back to Englewood.

Councilor Hoellen asked if the City had any controlling ordinances or statutes regarding disposition of assets.

City Attorney Michow replied that staff had examined the Charter and Code and the only restriction to disposal of property existed when the property was a park, in which case voter approval was required. She explained that without any regulations the issue became a policy decision for Council's considerations.

Councilor Hoellen asked about the absence of the property from the original deed from CDOT.

Deputy City Manager/Director Goldie explained that it was not included in the original deed but was revealed by a recent CDOT survey.

Councilor Hoellen asked if CDOT's intention to deed the property back to Englewood to complete the alleyway was a verbal or written intention.

Deputy City Manager/Director Goldie replied that it was written in an email to staff and that Englewood also agreed to the plan.

Mayor Christman asked why the City did not quitclaim the property directly to Englewood instead of going through CDOT.

Deputy City Manager/Director Goldie replied that all but 100 square feet of the property would be deeded to Englewood, and the 100 square feet would remain with CDOT.

Councilor Griffin asked about the other sections of CDOT deeded property nearby.

Deputy City Manager/Director Goldie explained that the parcel on the south side of Hampden was owned by the City with an easement to CDOT for their traffic sign.

Mayor Pro Tem A. Brown moved, seconded by Councilor VanderWerf to approve Item 5f.

The motion carried unanimously.

UNFINISHED BUSINESS

None

NEW BUSINESS

Council Bill 1, Series 2015; Amending Sections 16-1-10 and 16-18-20 of the Municipal Code Concerning Guard Houses (first reading)

Director Zuccaro presented Council Bill 1, Series 2015 on first reading. He indicated that the Cherry Hills Farm HOA requested the proposed amendments in order to allow consideration of a guard house on an existing tract of land at the South University Boulevard entrance to the subdivision. He explained that the Cherry Hills Farm Drive streets were public and the amendment would remove the current restrictions stating that subdivision guard houses shall only be allowed for monitoring private streets. He noted that, according to the HOA, the guard house would not include a gate or be intended to restrict access to the subdivision.

Councilor Hoellen disclosed that his son played on lacrosse teams with Ms. Digby's son.

City Attorney Michow noted that this was not a quasi-judicial matter.

Director Zuccaro explained that under each of the City's residential zone districts a guard house is allowed as a conditional use. Conditional use procedures and review criteria are outlined in Article XVIII of the Zoning Ordinance. A conditional use proposal is reviewed at public hearings before the Planning and Zoning Commission (P&Z) and City Council based on the general review criteria in Section 16-18-10. If Council Bill 1, Series 2015 was adopted, the HOA would still be required to apply for a conditional use permit that would be reviewed by P&Z and Council. This would include reviewing the design and layout of the guard house and could include reasonable conditions on the use..

Director Zuccaro noted that the conditional use review process for guard houses was adopted on June 15, 1999 as Ordinance 7, Series 1999. The City adopted the ordinance in reaction to a request by the developer of the Buell Mansion Subdivision to allow a guard house for the E. Hampden Avenue entrance to the subdivision. Prior to the adoption of this ordinance, guard houses were not listed as an allowed use in any of the City's zone districts. The review process included a restriction that guard houses only be allowed on separate tracts of land surrounded by or adjacent to a private street. Since adoption of the conditional use permit for a guard house, permits have been approved for the Buell Mansion subdivision in 1999 and for Cherry Hills Park subdivision in 2004. The only other guard house in the City is for the Glenmoor

Subdivision, which was approved by the City's Board of Adjustment and Appeals (BOAA) as a special exception in the F-1 Zone District as part of the overall development plan for the Glenmoor Country Club. The BOAA special exception review process has since been replaced with the City's current expanded use permit review process. The Cherry Hills Farm Subdivision was approved by the City in 1978. The subdivision included a separate tract of land platted and dedicated to the HOA for the purpose of installing a guard house. The Conceptual Development Plan submitted with the 1978 subdivision application included a guard house for "observation only". The restriction for "observation only" appears to recognize that the streets would be open to the public without restriction. The subdivision includes a secondary entrance on East Belleview Avenue. This entrance has an automated gate access without a guard house and is located on a private road tract that was dedicated to the HOA. In 1985, the developer and residents of the subdivision approached the City Council to request approval of a guard house and restricted access. After considering several options to allow restricted access, the City Council appears to have determined that the best option was for the street to be vacated and ownership taken over by the Cherry Hills Farm Metropolitan District. For this to occur, unanimous support from the residents of the subdivision was needed. There was one resident who ultimately would not agree to vacating the streets and the construction of the guard house.

Director Zuccaro noted pros and cons for Council's consideration. Pros include allowing a guard house that does not restrict access to the subdivision would implement what appears to be the original intent of the subdivision; the guard house would provide a safe and secure place out of the weather for the patrol service employed by the HOA, who currently spends most of their time in a patrol vehicle parked at the entrance when not patrolling the subdivision; the guard house could improve the safety and security for residents in the subdivision and provide a place to house security cameras and monitoring equipment; staff does not believe there are any other existing subdivisions with platted tracts for guard houses with access to public roads. Therefore, if the amendment is passed, this would likely be the only guard house constructed for public roads. Cons included the guard house could give the impression of a gated and restricted community and the general public would not feel welcome on the public roads; vehicles entering the subdivision may feel compelled to stop at the guard house and check in even though they would not be legally obligated to do so; guard houses and the appearance of restricted access subdivisions could be considered inconsistent with the Master Plan Vision statement that the Village is defined by having a semi-rural character with an open feel.

Director Zuccaro indicated that P&Z reviewed the proposed code amendments on January 13, 2015 and recommended approval as drafted and staff recommends approval of Council Bill 1, Series 2015 as drafted.

Councilor Hoellen asked if staff believed a guard house on a public road was consistent with the Master Plan.

Director Zuccaro replied that because of the history with this case staff could recommend approval on a limited basis, but did not necessarily support guard houses throughout the City as being consistent with the Master Plan.

Councilor Hoellen noted that a guard house represented a level of restriction by definition.

Director Zuccaro explained that staff had attempted to fit the desired structure into the City's current Code parameters and noted that staff could examine creation of a new category if preferred by Council.

Councilor VanderWerf noted that the letter from the HOA indicated that the proposed Code change would benefit other similarly situated neighborhoods, but that staff did not believe other subdivisions would meet the requirements of the proposed Code amendment.

Director Zuccaro confirmed that was correct. He explained that staff was unaware of any other subdivisions with a private tract in their public road entrance, as was the case with Cherry Hills Farm, so other subdivisions would have to subdivide a tract of land on which to place a guard house if they wished to do so under the proposed amendments.

Mayor Christman noted that an alternative to that process would be for another subdivision to request a further amendment to the Code. She indicated that Council should not change the Code to benefit one neighborhood.

Councilor K. Brown expressed concern with establishing a policy of allowing guard houses on public roads. She noted that all other guard houses in the City were restrictive and any new guard house would appear restrictive even if it technically was not. She indicated that she was uncomfortable with a guard house on a public road and uncomfortable with third party surveillance of public property.

Mayor Christman agreed and noted that when three of the candidates campaigned in the neighborhood during the last election they were told to leave by the security guard. She indicated that the neighborhood was treated as though it was private and she had no confidence that a guard house would not stop people coming into the subdivision.

Mayor Pro Tem A. Brown agreed with Councilor Hoellen that the word used should reflect the meaning intended, and a guard house had a clear meaning. He noted that the HOA wanted a shelter rather than a guard house, and it was a mistake to label the structure a guard house when it was not. He added that subsequent people might interpret that to mean that the City approved a guard house and all that it implies. He noted that this was a miscommunication and if the HOA required a shelter any proposed ordinance should deal with the structure as a separate category and differentiate shelter from guard house. He asked staff if they would be comfortable rewriting the ordinance to include a new category.

Councilor Griffin asked if the shelter could be built to the side of the road so that it did not present a barrier to the entrance.

Director Zuccaro replied to Mayor Pro Tem A. Brown that staff could attempt to draft a new category, with additional direction from Council, which would have similar criteria to a conditional use permit and be reviewed by P&Z and City Council. He replied to Councilor Griffin that building the structure somewhere other than the tract in the middle of the road owned by the HOA would involve some kind of land swap with the City.

Councilor Griffin suggested constructing the structure south of the parking spaces on the south side of the entrance.

Director Zuccaro noted that staff could research that option.

Councilor K. Brown suggested that instead of amending the Code the subdivision might prefer to become private.

Director Zuccaro replied he could discuss that with the HOA. He noted that another option might be a revocable encroachment permit to allow construction in the public right-of-way.

Councilor Hoellen indicated he was not in favor of amending the Code for one circumstance and assuming that other circumstances would not apply.

Mayor Christman agreed that if an amendment to the Code was made it should be for the entire City. She also noted that the Master Plan had to be considered.

Councilor Griffin stated that the proposed ordinance was not consistent with the Master Plan.

Councilor Gallagher agreed and noted the Master Plan's emphasis on openness and inclusiveness.

Mayor Pro Tem A. Brown asked if the revocable encroachment permit process was available in the current Code.

Director Zuccaro replied that it was and noted that a revocable encroachment permit application would come to City Council for approval.

Mayor Pro Tem A. Brown asked if the right-of-way was paved.

Director Zuccaro replied that there was a paved portion in the right-of-way that included striped parking spaces on the south side of the subdivision entrance.

Councilor Griffin asked if a shelter were placed there if it would have to comply with sight triangle regulations.

Director Zuccaro replied that it would have to comply with both the City Code and CDOT's regulations to ensure that the view was not obstructed, since it was on the corner of a state highway.

Mayor Christman asked if the HOA could apply for a variance.

Director Zuccaro replied that they could apply for a variance but at the P&Z public hearing the discussion had led to the proposed ordinance instead.

Mayor Christman asked if the proposed ordinance was the chosen alternative because it was staff's opinion that the HOA probably would not meet the requirements for a variance.

Director Zuccaro replied that it was staff's opinion that it would be difficult for the HOA to get a variance for a guard house.

Mayor Christman asked if it was the normal procedure to seek a variance.

Director Zuccaro replied that it is standard procedure for residents to seek a variance if they can't comply with the Code.

Councilor K. Brown noted that even if Council approved the proposed ordinance and the HOA applied for a conditional use permit, they might have trouble meeting all the criteria and would have to apply for a variance in any case.

Councilor VanderWerf asked what size structure was needed just for the security equipment.

Councilor Griffin replied that in his neighborhood the security equipment was stored in a small box mounted on a wall.

Mayor Pro Tem A. Brown indicated he would like staff to research the possibility of a revocable encroachment permit and would prefer that Council wait to act until further options had been explored.

Councilor K. Brown stated that she was not comfortable approving guard houses on public roads.

Councilor Hoellen agreed that other alternatives should be investigated and was comfortable tabling this council bill.

Councilor Gallagher indicated that an alternative that conformed to the Master Plan should be found.

Mayor Christman stated that it needed to be clear that the guards could not tell people to vacate public roads.

Mayor Pro Tem A. Brown moved, seconded by Councilor Hoellen to table Council Bill 1, Series 2015 for future consideration.

Mayor Pro Tem A. Brown asked City Attorney Michow if a date certain had to be identified.

City Attorney Michow replied that it did not.

The motion carried unanimously.

REPORTS

Mayor's Report

Mayor Christman reported that she had met with Denver Water CEO Jim Lochhead in order to clarify their position regarding the City's public works facility moving to the Denver Water Hillcrest site. She explained that Mr. Lochhead had indicated that while Denver Water wants to work with the City on this issue they may need more storage space than previously anticipated and are accelerating their decision making process regarding that property.

Members of City Council

Councilor Hoellen had no report.

Councilor K. Brown reported that the Centennial Airport Noise Round Table next meeting was coming up.

Councilor VanderWerf reported concerns from several residents regarding a drone with a camera in their neighborhood and suggested this might be a good topic for a Council study session.

Mayor Pro Tem A. Brown thanked City staff for their quick response to the snow on Sunday. He reported that the Utility Line Undergrounding Study Committee (ULUSC) would meet on Thursday. He thanked the Mayor for giving the ULUSC a new resource. He noted that Xcel was slowly progressing on design work and staff had sent out the request for information approved by Council at the January 20th meeting. He added that

the number of communities looking into these issues was increasing and the FCC seemed serious about preempting state laws that would restrict local broadband.

Councilor Griffin reported that the Board of Adjustment and Appeals (BOAA) would not meet this month but that City Attorney Michow would provide training at their organizational meeting on March 5th.

Councilor Gallagher recognized two sons of the local Shore family who played for the National Hockey League, Drew for the Calgary Flames and Nick for the Los Angeles Kings.

Members of City Boards and Commissions

PTRC Chair Bill Lucas reported that the PTRC was working on the John Meade Park Master Planning process. They had a decent turnout for the last public meeting with great input from the community. The survey had been sent out and they had received a good response which was in the process of being analyzed. They would meet an hour before each regular PTRC meeting as well as on the fourth Friday of each month. They hoped to have a report to Council by mid-summer. They were excited for Councilor Gallagher's move from PTRC to Council and welcomed their newly appointed member John Kokish.

Mayor Pro Tem A. Brown asked about the response to the survey.

Councilor K. Brown replied that they had received over 100 responses.

Chair Lucas added that the consultants believed that to be a good response rate and would provide statistically helpful information. He noted that some residents seemed confused about the Alan Hutto amphitheater and the fact that it was part of the agreement for the open space. He added that the younger Shore brothers were equally talented.

City Manager & Staff

City Manager Patterson reported that staff was conducting background investigations on three police officer applicants; staff would be interviewing applicants for a heavy equipment operator position; staff would be conducting a sergeant promotional process with three internal applicants; he recognized Supervisor Josh English and the Public Works and Parks staff for their efforts with snow removal over the weekend; the John Meade Park Master Planning process was underway; the City audit would begin February 23rd; the Police Department conducted lock down exercises at Kent Denver and Cherry Hills Village Elementary which went very well; Chief Tovrea was working with the County to coordinate school lock down procedures. He asked Mayor Christman about the next Council study session.

Council decided to hold their next study session on Tuesday February 10th from 4-5:30 p.m. at the Village Center.

City Manager Patterson noted that a letter from Finance Director Karen Proctor explaining that the City does not charge City sales tax on deliveries into the City, only on tangible personal property sold within the City limits, was available at the Village Center and on the city website that residents could take to businesses outside the City. He thanked Mayor Christman for her assistance with this letter.

Mayor Christman noted this was an important because Cherry Hills Village residents often ended up paying Englewood sales tax. She indicated that she was working with Director Proctor to attempt to recover some of this tax.

Councilor Gallagher indicated that would be a good article for the Crier.

City Attorney

City Attorney Michow reported on several pending bills in the state legislature: banning photo red light systems; regarding special district annexation which was strongly opposed by the Colorado Municipal League; regarding the timeline for reissuing expired liquor licenses; regarding DUI laws; regarding Police Department procedures and policy requirements. She indicated that she would continue to track and report on these bills.

Mayor Christman asked if the City Attorney conducted training for all new board and commission members.

City Attorney Michow replied that she did.

Mayor Christman asked City Attorney Michow to notify the Chair of the board or commission if any new member did not participate in training.

City Attorney Michow replied she would do that. So far all new members had been able to attend trainings.

ADJOURNMENT

The meeting adjourned at 7:40 p.m.





Laura Christman, Mayor



Laura Smith, City Clerk