Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, August 18, 2015 at 6:30 p.m.
At the Village Center

Mayor Laura Christman called the meeting to order at 6:31 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 Deputy City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Finance Director Karen Proctor, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, Parks, Trails & Recreation Administrator Ryan Berninzoni, Public Works Project and Right-of-Way Manager Ralph Mason, Special Projects Coordinator Emily Kropf and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

The City Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

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

a. Approval of Minutes – August 4, 2015
b. Resolution 34, Series 2015; Appointing an Interim City Manager
c. Resolution 35, Series 2015; Appointing Lucinda Greene to the Quincy Farm Committee

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Public Hearing - Council Bill 4, Series 2015; Amending Section 16-16-130 of the Municipal Code Concerning Wireless Communication Facilities (*Public Hearing and second and final reading*)

Special Projects Coordinator Kropf presented Council Bill 4, Series 2015 on second and final reading. She explained that the proposed ordinance would amend Municipal Code Section 16-16-130 to include wireless co-location rules as adopted by Congress and interpreted by the Federal Communications Commission. The proposed rules required the approval of collation requests for wireless equipment on existing support structures if they do not result in a substantial change. She noted that the proposed ordinance had

been revised since first reading as directed by Council, and the public hearing notice had been published in the July 30, 2015 issue of the Villager Newspaper. No public comments had been received by staff.

Mayor Christman confirmed that one of the revisions to the proposed ordinance as directed by Council was to require that any proposal for facilities within a 50-foot radius of a public trail, park or open space shall also be reviewed by the Park, Trails and Recreation Commission.

Special Projects Coordinator Kropf replied that was correct.

Mayor Christman opened the Public Hearing at 6:35 p.m. Hearing no comments the Public Hearing was closed at 6:35 p.m.

Councilor K. Brown moved, seconded by Councilor VanderWerf to approve on second and final reading Council Bill 4, Series 2015 as submitted in Exhibit A of the August 18, 2015 staff memorandum, amending Municipal Code Section 16-16-130 to include new wireless co-location rules.

The following votes were recorded:

Gallagher	yes
Griffin	yes
A. Brown	yes
VanderWerf	yes
K. Brown	yes
Hoellen	yes

Vote on the Council Bill 4-2015: 6 ayes. 0 nays. The motion carried.

<u>2015 November Election</u>

City Clerk Smith reported that a Public Information Session for the 2015 November Election was scheduled for Thursday August 27, 2015 at 6:30 p.m. at the Village Center. She added that a letter had been sent to all residents explaining the proposed building materials use tax and inviting residents to the August 27th meeting. She indicated that staff's memo included a draft resolution with slightly revised ballot language, which staff would bring back for Council's consideration on September 1st.

Councilor K. Brown asked staff what comments they had received from residents in response to the use tax letter.

Director Proctor reported that staff had received five phone calls from residents in response to the use tax letter. She explained that residents' concerns were varied and included concern that the proposed use tax would be a tax increase because of the City's exemption on sales tax for deliveries into the City; another resident was not in favor of making the building permit process more cumbersome; a resident was supportive of undergrounding utility lines but wanted to know which ones would be undergrounded in what timeframe; another resident was concerned that undergrounding utilities would benefit all Villagers and so all residents should pay for it, not just those doing construction on their homes; a different resident was in favor of the proposed use tax for undergrounding utility lines but not for open space. She noted that the residents who had contacted the City seemed to be concerned with what the tax revenues would be used for and it was perhaps not clear to them that in many cases they were already paying the tax as sales tax to other municipalities.

Mayor Pro Tem A. Brown questioned if the sales tax letter on the City's website explaining that the City did not collect sales tax on deliveries into the City applied to only tangible personal property and not to building materials.

Director Proctor replied that it was her understanding that tangible personal property included building materials.

City Attorney Michow indicated that she would do further research to definitely answer that question. She noted that state statutes did not clearly define the inclusion of construction materials within tangible personal property and that was why use tax on construction and building materials was collected by municipalities.

Councilor Hoellen clarified that the estimate of up to $1.4 million in revenue from the proposed use tax would come from building materials that were both picked up in other municipalities and delivered into the Village. The portion of the proposed use tax revenue from materials picked up in other municipalities would be a reallocation of tax, while the revenue from materials delivered into the City would be a tax increase.

Mayor Christman questioned if appliances were treated differently than construction materials when determining the City's exemption of sales tax on deliveries.

Mayor Pro Tem A. Brown indicated that he would welcome clarification on that question. He noted that the Municipal Code did exempt building materials purchased in the City if another municipality's use tax had been paid on them.

Councilor Hoellen stated it was necessary for Council to receive clarification on these issues prior to the August 27th public information session.

Councilor K. Brown noted that residents may be paying sales tax on deliveries of building materials even if the Municipal Code exempted sales tax on deliveries.

Councilor Hoellen suggested that Council should compare the proposed use tax to what residents would be paying in sales tax if they were optimizing their circumstances.

City Attorney Michow noted that this was a state-wide issue because every municipality had different rates and procedures resulting in various scenarios that made it difficult to explain.

Mayor Pro Tem A. Brown indicated that other municipalities' Codes required evidence of use tax being paid in order for building materials to be exempt from their sales tax. He questioned whether the City's exemption for sales tax on deliveries, explained in the letter available on the City website, would be accepted by other municipalities as satisfying their Code's requirements.

Councilor K. Brown agreed that City residents would not have any evidence of paying a City use tax to present as a basis for exemption from other municipalities' sales tax.

Councilor Hoellen asked who received sales tax for items being delivered into the City.

Mayor Pro Tem A. Brown explained that for tangible personal property such as furniture, the vendor administered the taxes based on the delivery address of the person buying the materials. In contrast, when a contractor or homeowner purchased building materials it was standard practice in the Denver metro area to present evidence of having paid a use tax so that they are exempt from paying the sales tax to the vendor.

Councilor Griffin noted that a contractor or homeowner might bring their Cherry Hills Village building permit to Home Depot and not be charged sales tax anyway, because use tax on building materials is standard in other municipalities.

Director Proctor noted that the City's permits did show the Arapahoe County Open Space use tax, which might be mistaken for a building materials use tax.

Councilor Gallagher indicated that clearly communicating all the nuances was important.

Mayor Christman asked if Council should hold a special meeting with an executive session to clarify all these questions with the City Attorney.

Council agreed to hold a special meeting with an executive session on Monday August 24th at 4pm.

Contract for Professional Services with Maintenance Design Group LLC

Interim City Manager/Public Works Director Goldie explained that after the August 4th meeting staff had met with Mayor Pro Tem A. Brown and Councilor Hoellen to ensure that staff addressed all of Council's concerns related to the contract with Maintenance Design Group (MDG). He noted that staff then met with MDG to ensure that all of Council's concerns were addressed in the revised scope of services though the addition of Exhibit A, included with staff's memo. He indicated that MDG had adjusted their proposed timeline to 60 days at which point the final report would be presented to Council. He noted that two other changes included the cost benefit analysis and work flow analysis, which were amended to include increased analysis of the various sites and a recommendation for the most efficient and effective use based on MDG's professional knowledge. He explained that staff did not keep records of how much time it took them to complete various tasks so MDG would take a holistic approach to determining the change in operations that would result from moving to the various sites.

Councilor K. Brown asked if the changes were on page 4 of the scope of services.

Interim City Manager/Public Works Director Goldie replied that was correct. He noted that MDG would not do a full environmental analysis since that would be done separately.

Councilor K. Brown asked if references to "the site" included all the sites under consideration.

Interim City Manager/Public Works Director Goldie replied that was correct.

Councilor Hoellen noted that the second Council meeting in November was November 17th and that was when the final report would be presented to Council.

Interim City Manager/Public Works Director Goldie replied that was the goal.

City Attorney Michow advised that the contract for services be amended to require MDG to comply with the project schedule.

Interim City Manager/Public Works Director Goldie agreed that the project schedule would be included with the scope of work with the contract.

Mayor Pro Tem A. Brown moved, seconded by Councilor Griffin to approve the Contract for Services with Maintenance Design Group, LLC for the Preliminary Design of the Cherry Hills Village Public Works Facility for a cost not to exceed $32,520.00.

The motion passed unanimously.

NEW BUSINESS

South Dahlia Speed Hump Installation Request

Mayor Christman noted that she had asked staff to move this item from the Consent Agenda to New Business to facilitate discussion regarding the criteria in the Traffic Calming Policy.

Interim City Manager/Public Works Director Goldie presented a request from residents at the dead end of South Dahlia Street for the installation of a speed hump just north of the intersection with Countryside Lane. He noted that seven of the eight residents had signed the petition in favor of the speed hump which satisfied the City's requirement for consideration of the request as established by the Traffic Calming Policy. He noted the Traffic Calming Policy was written to be flexible as every case has its own circumstances. He indicated that the residents requested the speed hump be installed without a speed survey which is allowed by the Policy if the speed hump is funded entirely by the residents. He explained that the residents were concerned that traffic speed from cut-through traffic seeking an alternate route to Belleview Avenue would increase after that portion of S. Dahlia Street is paved.

Mayor Christman asked if the installation of a speed hump made a street more expensive to maintain for the City.

Interim City Manager/Public Works Director Goldie replied that when the street was repaved the speed hump would have to be removed and re-installed, but beyond that there was no repair or extra maintenance.

Councilor Hoellen asked if there was signage indicating that Dahlia was a dead-end.

Interim City Manager/Public Works Director Goldie replied there was signage but that staff was working to improve the signage since cut-through traffic still drove down Dahlia Street not realizing it was a dead-end.

Councilor Griffin asked if a speed study would be done.

Interim City Manager/Public Works Director Goldie replied that because the residents did not wish to have a speed study done and were willing to pay for the speed hump themselves staff was not planning to conduct a speed study.

Mayor Pro Tem A. Brown noted that the case resulting in the speed hump on Albion Street had been installed at the City's expense because a speed problem was identified through a speed study. He noted that the case under consideration tonight was a unique circumstance.

Interim City Manager/Public Works Director Goldie noted that the Traffic Calming Policy was flexible and allowed the City to approve a speed hump without a traffic study if there was documented 80% support from the affected neighborhood and residents paid for the installation.

City Attorney Michow added that the City and Council retained their veto power to deny a request if it would not maintain or improve the health, safety and welfare of the City.

Councilor Hoellen indicated that he did not want to set a precedent by approving a speed hump that did not maintain or improve the health, safety and welfare of the City, regardless of the cost to the City.

Interim City Manager/Public Works Director Goldie replied that staff would not recommend approval if there were a health, safety or welfare issue. The impact area of the proposed speed hump was small and the City Engineer had reviewed the proposal and found no issues.

Councilor VanderWerf noted that there was a belief that unpaved roads helped to slow traffic and as the City's unpaved roads became paved residents might perceive that change as resulting in increased speed and request traffic calming measures.

Councilor K. Brown asked about the cost associated with removing and re-installing a speed hump during repaving.

Interim City Manager/Public Works Director Goldie replied that the City's current street maintenance plan would result in repaving occurring no more than every 25 years.

Councilor Griffin suggested that staff work with the residents of Dahlia Street on mitigation rather than install the speed hump. He indicated that if there was a health and safety issue then Council should be made aware of it. He advocated lesser impact mitigation first. He noted that speed humps increase wear and tear on cars.

Councilor K. Brown noted that future owners of those homes would not have a say in the speed hump, and if the speed hump was not addressing a real issue then the burden fell on future residents.

Councilor Gallagher asked if staff planned to install the speed hump when the street was paved.

Interim City Manager/Public Works Director Goldie replied that there was no inappropriate time to install the speed hump.

Councilor Gallagher asked about the specific location of the proposed speed hump.

Interim City Manager/Public Works Director Goldie replied it would be at the bottom of the hill where the pavement ends now.

Mayor Pro Tem A. Brown noted that the request was submitted under an active City policy and that this portion of Dahlia was a unique situation. He added that he wouldn't be surprised if other neighborhoods concerned with traffic requested more traffic calming devices.

Councilor Hoellen agreed that the request was consistent under the current policy. He noted that the appropriateness of the current policy was another issue.

Councilor Griffin asked about the percentage of affected residents required for the City to approve a request with no supporting speed data.

Interim City Manager/Public Works Director Goldie replied it was 80%.

Mayor Christman noted that staff was working towards a traffic study and that as traffic increased in the Village speed hump requests could become more frequent. She suggested that Council could re-examine the Traffic Calming Policy in conjunction with the forthcoming traffic study.

Councilor Gallagher indicated he had no issue with the request if the residents were in agreement and the speed hump would only affect those residents.

Councilor Hoellen noted that it was a dead end street.

Councilor VanderWerf indicated that there was a trail crossing at that section of Dahlia and it was important to keep traffic at a low speed.

Councilor K. Brown noted that the policy allowed the request but did not require approval.

Councilor Griffin agreed that the residents had a right to request the speed hump. He noted that he was generally opposed to speed humps. He indicated that concern over a possible future problem was not reason enough to install one and he preferred mitigation and a speed survey.

Mayor Pro Tem A. Brown moved, seconded by Councilor VanderWerf to approve the installation of the proposed speed hump on South Dahlia Street with the understanding that the City will not be responsible for the cost of the materials for the speed hump.

The motion was tied 3 for and 3 against. Mayor Christman voted against. The motion failed.

REPORTS

Mayor's Report

Mayor Christman indicated she appreciated how the Council conducted itself during the John Meade Park Master Plan discussion at the last meeting.

Members of City Council

Councilor Gallagher had no report.

Councilor Griffin had no report.

Mayor Pro Tem A. Brown reported that the data analysis of the proposed traffic light on Belleview at Glenmoor had been reviewed by CDOT and they had determined that the data did not warrant a traffic light. He indicated that Interim City Manager/Public Works Director Goldie and Greenwood Village city staff were collecting additional data to present to CDOT. He added that the issue was becoming increasingly worse for Glenmoor residents. He noted that the Greenwood Village City Council was committed to supporting the proposed traffic light and the parties involved would not give up.

Councilor VanderWerf had no report.

Councilor K. Brown reported that she had attended the Centennial Airport Noise Roundtable meeting two weeks ago. She asked Public Works staff to follow up on the request from Cherry Hills North HOA regarding installation of a crosswalk at Hudson Street.

Councilor Hoellen had no report.

Members of City Boards and Commissions

None

City Manager & Staff

Interim City Manager/Public Works Director Goldie noted that department monthly reports and unaudited financial statements were available in Council packets. He reported that Urban Drainage had informed the City that the Federal government had not declared the June flood in Arapahoe County as a disaster and thus no Federal funding would be available. He noted that the State, County and Urban Drainage were still looking into other sources of funding. He indicated that other entities had larger issues with the June flood than Arapahoe County.

Mayor Christman commended the Police Department for their hard work during a busy time including coordinating with other agencies for a visit to the City by Vice President Biden. She noted that it was a credit to the Police Department that their activities were not widely broadcast.

Councilor Hoellen noted that every Police Department monthly report included destruction of mailboxes.

Chief Tovrea replied that it was usually kids. She indicated that the Police Department was concerned about theft of mail and resulting fraud or identity theft issues and would be increasing their crime prevention efforts.

Councilor Hoellen asked about the City's fence Code.

Director Zuccaro replied that any fence adjacent to a public street either had to be staggered with indents or landscaped.

Councilor Hoellen asked about the new fence on the east side of Colorado Boulevard near Mansfield.

Director Zuccaro replied that the plans for that fence included a tree buffer that had not yet been installed.

Councilor Hoellen noted that solid fences changed the character of an area and represented one facet of open space in the Village.

Mayor Christman agreed.

Director Zuccaro added that there was a fence just south of Hampden on Colorado that was eight feet tall and had been granted a variance in the 1980's.

<u>Board and Commission Member Terms</u>

City Clerk Smith explained that several Planning and Zoning Commission (P&Z) terms would end on the second Tuesday of September. She noted that three of the members were completing their first term and wished to be reappointed, and a fourth member was completing his second term and did not wish to be considered for another term. Staff indicated that Mayor Christman and Councilor Hoellen had been appointed by Council to conduct interviews and make a recommendation to fill a vacancy on P&Z in July, and suggested that they could make a recommendation from that same group of applicants

to fill the position that would become vacant in September. She also asked for Council's direction to reappoint the three members to a second term.

Council agreed to reappoint the three members completing their first full terms and to have Mayor Christman and Councilor Hoellen recommend an applicant from the current group to fill the position that would become vacant in September.

City Attorney

City Attorney Michow reported that she continued to work with Dan Lynch on the City's ground lease with Englewood and would present a draft to Council in the near future.

Councilor K. Brown asked about the expired lease agreement with Denver Water for recreational use of the High Line Canal that was included in Council packets.

Mayor Christman replied that Council would address that at the next meeting.

Councilor Hoellen asked about the City's liability regarding the expired lease agreement.

City Attorney Michow replied that the City had governmental immunity.

Councilor Hoellen asked what would happen if there were an issue before the new lease agreement becomes effective.

Mayor Christman replied that the new lease agreement draft did not acknowledge the time elapsed between the leases.

ADJOURNMENT

The meeting adjourned at 7:55 p.m.

Laura Christman, Mayor

Laura Smith, City Clerk