

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, September 1, 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 Finance Director Karen Proctor, City Attorney Linda Michow, Community Development Director Rob Zuccaro, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, Public Works Project and Right-of-Way Manager Ralph Mason, and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

J. Brian Searles, 5623 E. Southmoor Circle, indicated that he had attended the public information session held last Thursday regarding the proposed use tax on construction and building materials. He noted that he was in favor of a single zip code for the City. He explained that he had emailed Council earlier that afternoon. He read his email which stated that the title of the Village Crier article and letter sent to all residents was not true and he did not approve of the proposed use tax until a proper public hearing was held to retract the incorrect information. He reviewed the City's budget for 2015 including revenue and fees and noted that the proposed use tax would be an increase of 20.7% in general fund revenues and 73% in fees. He noted he was checking his numbers with Director Proctor. He stated that he was in favor of a use tax on construction and building materials and he was in favor of undergrounding utility lines but was only in favor of a temporary tax that was specifically earmarked to fund undergrounding utility lines. He suggested the Council wait until the 2016 election as the rush for the 2015 election had probably contributed to the unintentional errors.

Breck Larson, 5683 E. Southmoor Circle, indicated that he had been unaware of the Council's retraction of their statement that the proposed use tax would not be a tax increase. He stated that the retraction should be publicized in the same method and manner as the initial communication. He added that it appeared Council had lied about the proposed tax issue and then retracted during a secret meeting.

CONSENT AGENDA

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

- a. Approval of Minutes – August 18, 2015
- b. Approval of Minutes – August 24, 2015

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

NEW BUSINESS

Resolution 36, Series 2015; Approving a Ballot Issue and Advisory Question to be Submitted to the Voters at the Coordinated Election to be Held November 3, 2015 Related to the Implementation of a Construction and Building Materials Use Tax

City Clerk Smith presented Council with a draft resolution placing the proposed use tax for construction and building materials on the November 3, 2015 ballot.

Mayor Christman noted that the proposed ballot language did not include the tax exemption for religious institutions although that language was included in the recitations of the resolution. She asked if it was common to include the tax exemption in the ballot language.

City Attorney Michow replied that it was not common, but Council could choose to include that language if they wished. She also noted that TABOR required the ballot language to include the phrase "tax increase" so the nature of the tax would be clear to voters.

Councilor Gallagher indicated that he was concerned with the process. He noted that Council's marketing of the proposed tax had turned out not to be the whole story. He added that if Council repealed the service expansion fee then the net revenue from the proposed use tax would be even less than anticipated. He expressed unease with moving forward with the issue for this election.

Mayor Christman asked Director Zuccaro about the net revenue from the proposed use tax after repeal of the service expansion fee.

Director Zuccaro replied that based on building permit valuations the revenue from the proposed use tax would have ranged between \$600,000 and \$1.4 million over the last 10 years, with an average between \$800,000 and \$900,000. He noted that the revenue from the service expansion fee averaged between \$150,000 and \$200,000, and therefore the estimated net revenue was between \$600,000 and \$700,000 a year.

Mayor Christman noted that Council had originally supported this new revenue source in order to fund undergrounding utility lines, however \$600,000 a year was not enough to fund that project.

Councilor VanderWerf indicated that the proposed use tax had seemed like a good option. She noted that property tax increases had been voted down in the past. She stated that part of the issue with earmarking revenue that was it limited the ability of the City to respond to emergencies.

Mayor Pro Tem A. Brown noted that the City would need a revenue source for undergrounding utility lines with or without a bond but the amount of funds needed was not yet known. He indicated that presenting a bond issue to voters at this election would be premature.

Councilor VanderWerf noted that Council could sunset the proposed use tax with an option for the voters to approve it again in the future. She added that the pros and cons of the proposed issue would be included in the Blue Book.

City Attorney Michow clarified that the City could produce a factual summary, while the pro/con statements included in the Blue Book would be submitted by voters.

Mayor Pro Tem A. Brown asked if the factual summary could be mailed to all residents.

Mayor Christman noted that it was a two week process to get something into the mail.

Councilor Hoellen indicated that he was still in favor of the proposed use tax for the City to be consistent with other Denver metropolitan area municipalities, but that Council had moved too quickly and it was too late for this year's election. He recommended that the Council table the issue for now and take it up for next year's election with a well thought-out comprehensive strategy. He indicated that he appreciated all the comments from residents during tonight's meeting and last week's public information session. He regretted that more residents had not attended. He responded to the public comments by clarifying that while the letter sent to all residents contained incorrect information it was not a lie because a lie connoted intent, while at the time the letter was sent out Council believed it to contain correct information. He also clarified that the meeting last week had been a public and noticed meeting attended by the press and not at all secret with a formal presentation by Mayor Pro Tem A. Brown. He noted that the request to retract the misinformation in the same method the original information had been disseminated was reasonable. He indicated that because of the short timeline Council did not get the opportunity to fully reflect with thoughtful consideration on this issue as they normally would, and that jeopardizes accomplishment of Council's objectives.

Councilor K. Brown agreed with Councilor Hoellen and reaffirmed that it had never been Council's intention to deceive. She agreed that after re-examining the numbers with the repeal of the service expansion fee the resulting revenue would not be enough to fund undergrounding utility lines and the City may have to go back to the voters in the future even if the proposed use tax were to pass in order to secure more funding. She stated that this might be confusing to the voters if they had recently approved the use tax.

Mayor Christman agreed that the proposed use tax would not result in enough new revenue for the City to accomplish the projects they intended and would preclude future ballot issues to generate additional revenue, and therefore would create expectations that could not be met by Council.

Mayor Pro Tem A. Brown indicated his belief that Council was underestimating the revenue from the proposed use tax which he believed would be nearer to \$1 million annually, most of which would come from new home construction. He noted that the proposed ballot language had to include a high estimate of the revenue because of TABOR's requirement to rebate excess revenue. He noted that the idea had begun because the Master Plan identified undergrounding utility lines as important for the semi-rural character of the Village, and there was community support for undergrounding and for broadband services. He indicated that the misinformation was inadvertent. He stated that even if Council could send a letter correcting the information he worried that the confusion would dominate the discussion between now and November and overshadow the issue of the proposed use tax. He noted that the City was unique in not charging sales tax on deliveries and that fact had also been missed during the discussion of the Marketplace Fairness Act. He agreed that Council could consider incorporation of a sunset clause into the proposed use tax issue.

Councilor Griffin agreed with Council's comments. He indicated that all members of Council were Village residents and did not contrive to have secret meetings. He noted that Council had made a mistake and that had clouded the waters for this issue. He agreed that the discussion would likely focus on the mistake instead of the issue between now and November. He expressed his regret that the Utility Line Undergrounding Study Committee (ULUSC) had spent so many hours of thoughtful work on this issue and it may not move forward. He noted that Council consisted of citizen soldiers and there was no conspiracy. He indicated that there were good arguments for the use tax but that Council should regroup and revisit the issue at a later date.

Councilor K. Brown asked what would be lost if Council did move forward with the proposed use tax for this year's election, even if the issue failed.

Councilor Gallagher replied that the Council had many priority projects besides undergrounding utility lines, including John Meade Park, Public Works, and the Village Center. He indicated that Council needed the trust and confidence of its citizens to secure funding for these projects and it would be unfortunate if moving forward with the proposed use tax inhibited those other priorities.

Councilor Hoellen agreed and added that Council should not spend its political capital on the proposed use tax issue this year. He indicated that Council did not think through the issue thoroughly enough and had sent out mistaken communications. He stated that undergrounding utility lines was still a high priority for Council with or without the proposed use tax. He supported bringing the use tax issue back for the 2016 election, with more time to solicit public input and involvement. He noted that a use tax was still the right thing to do to be consistent with other communities.

Mayor Pro Tem A. Brown indicated that the City could still move forward with undergrounding utility lines in the test section along Quincy Avenue in order to gain more clarity about the cost of undergrounding and to demonstrate the project for the community.

Mayor Christman noted that in several ULUSC meetings the committee had discussed the issue of fairness with regards to all residents paying for undergrounding on the main roads if they did not live on a main road. She indicated that the use tax had been appealing in part because the revenue came from construction of new homes usually by new residents who had not already paid for undergrounding utility lines. She agreed that the timing was wrong to place this issue on the ballot and that it might impede Council's progress on their other priorities and projects.

Councilor VanderWerf agreed that it would be an uphill battle to correct the misinformation that had been communicated. She agreed with Councilor Griffin and indicated that the Council members were simply neighbors who studied the issues as best they could and made decisions for the public good to the best of their ability.

Council decided not to make a motion for Resolution 36, Series 2015.

Council Bill 5, Series 2015; Approving a Supplemental Appropriation for the High Line Canal Conservancy (first reading)

Director Proctor presented Council Bill 5, Series 2015 on first reading. The High Line Canal Conservancy (HLCC) worked to ensure that the future of the High Line Canal was preserved and protected forever. She noted that Ms. Harriet LaMair, Executive Director of the HLCC, had given a presentation to Council about the history and initiatives of the group. Ms. LaMair had asked the City to participate in funding a long-

term visioning process for the High Line Canal. Staff had been in contact with Arapahoe County Open Space and a draft IGA with the County was included with staff's memo.

Mayor Pro Tem A. Brown asked about the signatory for Arapahoe County on the IGA.

City Clerk Smith replied staff would check with Arapahoe County.

Mayor Christman asked if giving the funds to Arapahoe County Open Space was consistent with Council's donation policy.

Mayor Pro Tem A. Brown noted that Council had passed the donation policy because they decided the City should not spend tax monies on other nonprofits. He indicated that funding the HLCC through Arapahoe County Open Space was investing in the Village. He stated that he supported the supplemental appropriation.

Mayor Pro Tem A. Brown moved, seconded by Councilor VanderWerf to approve on first reading Council Bill 5, Series 2015 for a Supplemental Appropriation in the amount of \$10,000 for a contribution to Arapahoe County for the High Line Conservancy efforts to help fund a long term visioning process.

The following votes were recorded:

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

Vote on the Council Bill 5-2015: 6 ayes. 0 nays. The motion carried.

Resolution 37, Series 2015; Approving an Intergovernmental Agreement with Denver Water to Reaffirming, Amending and Extending the Lease Agreement for Recreational Use of the High Line Canal

City Attorney Michow explained that the proposed Intergovernmental Agreement (IGA) with Denver Water reaffirmed, modified and extended the lease agreement between the City and Denver Water for recreational use of the High Line Canal. The City and Denver Water entered into a lease agreement dated July 13, 2005 concerning the City's management of the High Line Canal for recreational use through the City's borders. The term of the lease expired in July, 2015, and the parties desired to reaffirm and extend the lease for an approximate five year term. Through the proposed IGA, a new provision will be added to the lease concerning the legal status of the High Line Canal. In recognition of the coordinated efforts of various agencies and working groups to maintain and fund projects that preserve and enhance the recreational uses of the High Line Canal, Section 1.7 provides that neither the City nor Denver Water will alter the legal status of the High Line Canal as it runs through the City for the duration of the extended lease term to October 2020. As defined in the proposed IGA, "legal status" means the zoning, title, existing and permitted recreational uses, ownership, and development of the High Line Canal within City limits. Maintaining the status quo of the High Line Canal will enable all affected agencies to work together on the intergovernmental planning process without risk of altering zoning of or ownership rights to the High Line Canal.

Mayor Christman added that the IGA would be recorded with Arapahoe County which would help to ensure that any new residents who purchased property adjacent to the High Line Canal would be aware of the agreement.

Councilor VanderWerf noted that "Partnership" was an old title and should be removed from the fifth whereas clause.

Councilor Griffin moved, seconded by Councilor Gallagher to approve Resolution No. 37, Series 2015; Approving an Intergovernmental Agreement by and between the City of Cherry Hills Village and the City and County of Denver acting through its Board of Water Commissioners Reaffirming, Amending, and Extending that Certain Lease Agreement for Recreational Use of the High Line Canal.

The motion passed unanimously.

REPORTS

Mayor's Report

Mayor Christman reported that she had received a call earlier that day from a land use attorney whose client was interested in building a luxury higher care facility, including assisted living, in Village church properties. She noted that the attorney had discussed the project with both Interim City Manager/Director Goldie and Director Zuccaro who had both said the project was unlikely to be supported by Council, and she had told the attorney the same thing and added it was not supported by the City's Master Plan. She noted that higher care facilities by their nature used a higher level of public service but did not pay tax because they were nonprofit. She added that the attorney might contact individual Council members.

Councilor Griffin asked about zoning.

Mayor Christman replied that Council would have to approve a new zone district.

Councilor Griffin noted that the new zone district would apply to all church properties in the City.

Councilor K. Brown mentioned the religious land use law that would affect such a change.

Mayor Christman indicated she was saddened that Council was not moving forward with the proposed use tax and that Council's intentions had been in the right place.

Members of City Council

Councilor Hoellen had no report.

Councilor K. Brown reported that the Centennial Airport Noise Roundtable would meet tomorrow and that she would discuss the Quiet Skies Caucus during Council's meeting with Congresswoman Diana DeGette tomorrow.

Councilor VanderWerf reported that the annual movie night had been a success and thanked staff for their work. She added that the Cherry Hills Land Preserve Barn Party would be September 19th and the Public Art Commission fundraiser at Cherry Hills Country Club would be September 30th.

Mayor Pro Tem A. Brown reported that the City had received proposals from 12 executive search firms for the City Manager vacancy and he would review the proposals with Councilor Hoellen and HR Analyst Ducharme to shorten the number of firms who would make presentations. He invited the entire Council to view the presentations.

Councilor Griffin reported that the Board of Adjustment and Appeals had no meeting in September. He suggested that the upcoming sewer agreement renewal between the City and the Cherry Hills Village Sanitation District might be an opportunity to reopen the discussion about sewer consolidation.

Councilor Gallagher reported that Director Zuccaro was discussing a new fence ordinance with PTRC and P&Z and would bring a draft to Council for consideration soon.

Members of City Boards and Commissions

None

City Manager & Staff

Director Proctor reported that the annual exotic car show was scheduled for September 27th and noted that staff had received 22 entries out of 50 spaces so far.

City Attorney

City Attorney Michow reported that she was working on the ground lease with Englewood and would hold a work session for Council if they wished.

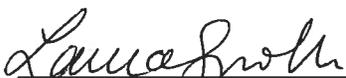
Council decided to hold executive sessions on open space acquisition and legal advice concerning the Cooper v. Cherry Hills Village litigation at the next meeting.

ADJOURNMENT

The meeting adjourned at 7:48 p.m.



Laura Christman, Mayor



Laura Smith, City Clerk

