

## RECORD OF PROCEEDINGS

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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
Held on Tuesday, August 2, 2016 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 roll call. Also present were City Manager Jim Thorsen, City Attorney Linda Michow, Deputy City Manager and Public Works Director Jay Goldie, Finance Director Karen Proctor, Police Chief Michelle Tovrea, Special Projects Coordinator Emily Kropf, 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**

Mayor Christman explained that the Council could not hear comments about a pending application that had been filed with the City, but that there was not any application for the maintenance facility. She noted that this was public comment only and not a discussion with Council.

Eileen Weiss, 3711 S. Albion Street, indicated that she had been a resident for 39 years. She expressed her opposition to the proposed moving of the maintenance facility.

Mary Conroy, 3825 S. Colorado Boulevard, explained that her husband Thomas was out of the country and she would read his comments. She noted that he had two new objections since the last Council meeting based on the 2014 study and the 2013 survey. The first objection was that the new site would be more costly to the City as opposed to remediating the existing site, about \$900,000 compared to over \$1 million. The second objection was that moving the site would be in opposition to the desires expressed by residents through the 2013 survey.

Laura Shipman, 44 Covington Court, stated that she had lived at her residence for almost 16 years and had been told the property in question could not be rezoned. She indicated that she would be directly affected by a maintenance facility at the proposed location. She explained that she had two young children and that there were three special needs children in the neighborhood, and she was concerned with their safety walking and biking in the area with maintenance trucks. She stated that on a snowy night there might be 50 to 70 truck trips in the facility and that would negatively affect her family. She noted that they had dealt with the church to change the timing of a 4am trash truck and that the proposed facility would be much worse.

Robert Rhyme, 40 Covington Court, reiterated his opposition to the proposal to move the maintenance facility. He noted that neighboring Harvest Bible Chapel had not known about the proposal. He added that Denver First Church was not aware of what the City intended to do with the land when they had entered into the option to sell the lot to the

City. He indicated it was disappointing and odd that those property owners were not aware of the City's proposal. He stated that it seemed apparent that this was done under a cloak of secrecy and it did not inspire confidence. He added that most of the property owners that would be directly affected had not known until very late. He implored Council to consider an alternate option for the benefit of all residents, and to slow the process down in the spirit of transparency. He added that a number of property owners were still unaware of the proposal and it would not be prudent or in the best interest of the City to push forward.

Winslow Waxter, 3625 S. Albion Street, thanked the Mayor and the Council members who had been to her home to see her backyard and the impact the proposed facility would have on her property. She noted that her property was directly east of the proposed site. She indicated that the proposal would directly impact her property values, view and use of her backyard. She stated that she understood this was a "not in my back yard" issue but pleaded with the Council not to put the facility in the City's front yard. She noted that this entrance to the City was one of the busiest and most travelled. She asked Council to consider other locations. She noted that there were vacant lots at Logan and Hampden, Clarkson and Hampden, and Union and Niagra. She indicated that the current location was perfect, central, historical and that there were opportunities to mitigate the floodplain. She asked Council to consider how they would evaluate an application from an outside source. She indicated that she had lived at her home for 11 years and a municipal facility had not been part of her consideration in purchasing her property.

Scott Rovira, 49 Covington Court, stated that he had been a resident for two years. He expressed concern with the City's understanding of the efforts that would be necessary to mitigate the noise from the proposed facility so that residents were not disturbed. He indicated that it was difficult and costly to mitigate sound. He noted that sound walls were unattractive especially at an entrance to the City. He asked Council to make sure they fully vetted and understood the mitigation options and issues.

Brandon Collier, 3801 S. Albion Street, explained that he had bought his home on July 11<sup>th</sup> and most likely would have broken his contract if he had known about the proposal. He indicated that the proposed facility would adversely affect property values but assumed that Council had already considered that issue. He asked Council to consider the mitigation necessities. He noted that he had two young children and was willing to accept the traffic on Colorado Boulevard but hadn't known he would also have to worry about the traffic and noise that would result from the proposed facility.

John Koslosky, 27 Covington Drive, stated that he had lived in the City for 14 years and he agreed with everything that had been said. He reiterated that he had worked for 30 years rezoning property for commercial use. He stated that it was appalling that the City was even considering this type of use at the entry way to the City and in a neighborhood. He respectfully asked that Council not move forward with the proposal.

Steve Canale, 3601 S. Albion Street, indicated that neighbors should have been notified of the proposal sooner. He explained that from a property values standpoint the proposal was a disaster; from an engineering standpoint it would be cheaper to mitigate the floodplain at the existing site; and from an accounting standpoint it would cost the City a lot more to do the environmental impact study, traffic study, noise study, and to fight the residents at the proposed site. He expressed concern at the amount of money that would need to be spent to complete the proposal.

Rich Imber, 17 Covington Drive, stated that he had lived in the City for 37 years and this was his second residence in the City. He expressed shock that the City would move the maintenance facility to the proposed location. He noted that the City had always known

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about the floodplain. He asked why the City would move the maintenance facility to another neighborhood that never expected to have it. He indicated the suddenness of the proposal was a shock to residents. He stated that he would not have bought his current home if there had been a maintenance facility in the neighborhood. He indicated that moving the facility was not cost effective and was a negative for a lot of residents.

Marigold Hakanson, 3700 S. Colorado Boulevard, explained that she had lived at her residence since 1973 and that she knew Mr. Meade in her nursing home. She indicated that she believed Mr. Meade would be concerned that the Village remained pastoral. She noted that there was a walking path along Colorado Boulevard. She indicated that the noise difference between construction trucks and cars was noticeable. She expressed concern with the amount of noise that would be created by maintenance trucks. She indicated that the residents lived in their homes every day and would have to deal with this. She stated that she was opposed to the proposal and asked the City to keep the facility where it was.

Morey McDonald, 3875 S. Colorado Boulevard, stated that he had lived in his home since 1959. He indicated that he was appalled at the people who the residents had hired and voted to represent the City. He explained that the traffic noise on Colorado Boulevard was already high and that vehicles travelled an average of 40-45 miles per hour even though it was a 30 mph speed limit. He noted that a weight limit for trucks used to be posted by the Denver First Church but was no longer there. He added that Sundays were the noisiest because of motorcycle racing at the church. He indicated that residents were not allowed to build a four foot berm with a six foot fence on top of it but that the City proposed to do so at its facility. He added that he did not understand the costs. He explained that the floodplain at the current location had not been an issue. He suggested building a new administrative building somewhere else and using the existing site to do what was needed with the public works facility. He indicated that staff and Council were not supporting the community with the current proposal.

September Hakanson Rank, 3700 S. Colorado Boulevard, noted that she had grown up in the City and was speaking on behalf of her mother, Marigold Hakanson, and her neighbor, Sundru Moodley, at 3699 S. Albion Street. She explained that her property looked directly across at the proposed property. She expressed concern about increased noise, increased cut-through traffic on Albion and about the safety of the neighborhood children. She indicated that she was strongly opposed to the proposal.

Mayor Christman indicated that this issue would be placed on the August 16, 2016 Council agenda in order to provide the opportunity for a discussion between residents and Council.

### **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 – July 19, 2016

The motion passed 5 yes, 0 no, 1 abstained.

### **ITEMS REMOVED FROM CONSENT AGENDA**

None

## **UNFINISHED BUSINESS**

### **Public Hearing, continued - Council Bill 5, Series 2016; Amending Section 16-2-40 Concerning Procedures for Text Amendments and Rezoning of Property and Adding a Definition of Text Amendment to Section 16-1-10 (Public Hearing, second and final reading, continued from July 19, 2016)**

Special Projects Coordinator Kropf presented Council Bill 5, Series 2016 on second and final reading. She explained that the council bill would amend Section 16-2-40 of the Municipal Code to clarify the procedures for text amendments and rezoning of property and would update the notice requirements to be consistent with the City's current practices. Council approved the council bill on first reading at their June 7, 2016 meeting. Council reviewed the draft ordinance on second reading on July 19, 2016 and continued the public hearing to the August 2, 2016 meeting in order for staff to gather information about noticing requirements in other municipality for rezoning. She explained that peer communities had notice requirements ranging from 200 feet to 2,000 feet. She indicated that if Council decided to increase the notice requirements beyond adjacent property owners then staff recommended a 500 foot radius to be consistent with other sections of the Code. She added that staff recommended the addition of subsection (c)(3) to the proposed ordinance regarding substantial compliance. The public hearing for the proposed ordinance was published in the July 30, 2016 issue of the Villager Newspaper.

Mayor Christman asked about Greenwood Village's notice requirements.

Special Projects Coordinator Kropf replied that there were two different notice requirements in Greenwood Village, one being adjacent property owners and the other 2000 feet, depending if the property in question was within a Council Approved Development Impact Zone.

Mayor Christman reopened the public hearing at 7:16 p.m.

Mayor Christman explained that the proposed ordinance did not deal with any particular application but rather dealt with the notice requirements that an applicant would have to meet for any rezoning application. She indicated that currently the notice requirement was to adjacent property owners only but at the last meeting, during the public hearing, a resident asked Council to consider increasing the notice radius. Council asked staff to research peer communities and now Council was considering increased notice requirements. She explained that Council had already proposed that notices be sent by both certified and regular mail in order to better ensure that residents receive the notice. She added that this would be in addition to signage at the property.

Councilor K. Brown suggested the Mayor explain the changes to the Planning and Zoning Commission (P&Z) portion of the process that the Council had also proposed.

Mayor Christman explained that under the current Code there was no requirement for a public hearing with P&Z, but with the proposed ordinance the Council was adding a public hearing for the P&Z portion of the application process. With this addition the public would have two opportunities to give public comment, one with P&Z and one with City Council. She noted that the current code required that notices be mailed to adjacent property owners which included owners across street and rights-of-way from the property in question, and the Council was now considering extending that notice requirement.

Councilor Hoellen added that with the proposed ordinance Council was increasing the opportunity for public input and expanding the notice requirement.

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Scott Rovira, 49 Covington Court, asked Council to consider the radius for the notice requirement as it related to noise. He explained that 500 feet was not far enough to reach all of the residents who may be affected by and may file a complaint against excess noise. He indicated that a receptor based noise complaint had no distance requirement.

Councilor K. Brown noted that noise limits were consistent in all zone districts in the City, but that Mr. Rovira's point was taken that noise could travel farther than 500 feet.

Mr. Rovira challenged the proposed 500 foot notice radius and suggested 2,000 feet.

Councilor Hoellen replied that most peer communities used a radius of 200-600 feet, and that the 2,000 foot radius at Greenwood Village was an outlier.

Morey McDonald, 3875 S. Colorado Boulevard, noted that in the R-1 zone district, 500 feet would not cover very many properties as compared to the number it would cover in an area with smaller lots.

Eileen Weiss, 3711 S. Albion Street, asked if notice would be sent once an application was filed.

Mayor Christman clarified that no application had been filed and that the proposed ordinance did not relate to any particular application, rather to the process in general for any future application.

Councilor Hoellen added that the community input meetings that the City had organized regarding the proposed rezoning and relocation of the municipal services facility had nothing to do with the zoning ordinance that the council bill currently under discussion would amend. He explained that if Council approved this council bill then any future application would have to follow all the enhanced notice requirements in the proposed ordinance.

Ms. Weiss noted that it seemed the Council had done a lot of pre-work on the proposed rezoning and relocation of the municipal facility but the neighbors were only just hearing about it.

Mayor Christman replied that Council had decided that notifying the neighbors before confirming that property was even an option would have created unnecessary stress for the neighbors.

City Manager Thorsen warned that the discussion was getting off-topic.

Marigold Hakanson, 3700 S. Colorado Boulevard, asked what Council meant when they referred to the application.

Mayor Christman explained that the proposed ordinance referred to filing an application to rezone a property within the City and the requirements for the process that would follow.

Ms. Hakanson asked if the City was the applicant.

Mayor Christman replied that any property owner could be an applicant, including the City.

Steve Canale, 3601 S. Albion Street, indicated that the proposed ordinance was positive and that he supported additional opportunities for public input and expanded notification.

Brandon Collier, 3801 S. Albion Street, thanked Council for proposing to increase notice requirements.

Mr. Rovira asked what checks and balances were in place if the applicant was the City.

Mayor Christman replied that the process was outlined in the ordinance. She added that the proposed changes included limiting an application to a property owned by the applicant.

Winslow Waxter, 3625 S. Albion Street, asked if this would affect the notice requirements for a variance proposal.

Mayor Christman replied it would not and that it only applied to rezoning applications.

Hearing no further comments the public hearing was closed at 7:45 p.m.

Councilor VanderWerf acknowledged that comparing a distance between different zone districts could be problematic and that it was difficult to measure the impact distance of traffic and noise. She suggested amending the notice requirement to be more subjective by using the wording "...the applicant shall send written notices of the public hearing to all property owners contiguous to, including across any street from, any portion of the subject property and all properties within any immediately impacted neighborhoods as determined by the Community Development Director."

Councilor Hoellen replied that it was an interesting idea but noted that while everyone was thinking about this in terms of the City's proposed rezoning it would apply to any rezoning application including one from a resident. He indicated that he did not support governments being subjective rather than specific regarding requirements for residents.

Councilor VanderWerf noted that other parts of the Code gave discretion to the City Manager or director for various issues.

Councilor Hoellen added that he did not support the optional motion in staff's memo that stated "the Director, at his or her discretion, may require an expanded notification area."

Councilor Griffin suggested adding a maximum of 1,000 feet to Councilor VanderWerf's suggested language.

Councilor K. Brown noted that the applicant would be required for the cost of the notification and warned against adding additional cost to a resident's application. She added that she did like that other communities included notification of the applicable Homeowners Association (HOA) in addition to property owners. She noted that this might be a way to increase notice without placing the burden on the applicant.

Mayor Christman indicated that in Denver each HOA was required to register with the city. She added that not all HOAs wanted to do that in Cherry Hills Village, many of them wished to remain informal.

Councilor Hoellen suggested that there not be a requirement for HOAs to register with the City, but that those that had registered would receive a notice.

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Mayor Christman agreed that if HOAs did not keep their information up to date then they would not be included in the notice requirement.

Mayor Pro Tem A. Brown indicated that in Denver the terms were outlined in an ordinance and that Cherry Hills Village would have to pass a similar ordinance to set up the process. He agreed that it could be an optional registration.

Councilor K. Brown warned against creating an undue burden by making a legal requirement to notify someone who didn't exist.

Mayor Christman noted that some HOAs were not actually legal entities.

Councilor Gallagher asked if informal HOAs had mailing addresses.

Mayor Pro Tem A. Brown noted that many Denver neighborhood associations were not formal HOAs, but their contact information was used for notice purposes.

Councilor Hoellen indicated that whatever Council's decision, the notice radius and requirements should be specific for any rezoning applicant.

Mayor Christman stated that informal HOAs could create issues.

Special Projects Coordinator Kropf noted that when the pre-application neighborhood input meeting process had begun, staff had sent registration forms to all the known HOAs in the City and asked that they be returned in order to include the HOAs in the notice for that process. She explained that some HOAs had returned registration forms but that she did not believe staff had repeated the process to update the information.

Councilor VanderWerf indicated that many rezoning applications did not have much impact and that, if left to the discretion of staff, a larger impact area would rarely be triggered.

Mayor Christman suggested that if the ordinance stated that the notification radius was not to exceed 1,000 feet, then it would usually go to 1,000 feet. She noted that subjective decisions could be incorrect.

Councilor Gallagher expressed concern that a large notification radius would cover many homes in the R5 zone district and thus be a larger cost than in the R1 zone district.

Mayor Christman suggested that the notification requirement could differ by zone district.

Councilor K. Brown indicated that the impact of rezoning a property was based on distance, not number of homes. She added that anyone could see the sign posted at the property in question or see the public hearing notices and attend either or both of the public hearings at the P&Z and City Council meetings.

Councilor Griffin noted he could not remember more than a few rezoning applications during his time on Council. He suggested setting the notification radius to 1,000 feet in order to give everyone the opportunity to be aware of an application.

Councilor Hoellen questioned staff's recommendation for a 500 foot notification radius.

City Manager Thorsen replied that staff recommended a 500 foot notification radius for ease of implementation and consistency with other sections of the Code. He added that

staff preferred specific rather than subjective regulations regarding the requirements for an applicant.

Councilor VanderWerf moved, seconded by Councilor Griffin to approve on second and final reading Council Bill 5, Series 2016 as submitted in Exhibit A of the August 2, 2016 staff memorandum, amending Municipal Code Section 16-2-40 concerning procedures for text amendments and rezoning of property and adding a definition of text amendment to Section 16-1-10, with the following amendment to subsection (c) of Section 16-2-40 to read as follows:

(2) For rezonings, in addition to newspaper publication, the applicant shall send written notices of the public hearing to all property owners located within a radius of one thousand (1,000) feet from all points on the perimeter of the subject property. Said notice must contain a typewritten identical copy of that notice required to be posted in the Village Center, and shall be mailed by certified mail and regular U.S. mail at least fifteen (15) days prior to the scheduled public hearing. In addition, any proposed rezoning must be advertised by a posted notice at least two (2) feet by three (3) feet in size and with a caption "NOTICE OF PUBLIC HEARING" or similar language, with each letter of the caption at least two (2) inches in height, containing the same data as above, posted continuously for at least fifteen (15) days prior to the hearing and located on the subject property in a conspicuous location clearly visible from an adjoining roadway, if practical.

Councilor Hoellen noted that the new subsection (c)(3) should be added.

Councilor VanderWerf amended her motion to include:

And to add a new subsection (c)(3) to address substantial compliance standard for notices to read as follows:

(3) The standard for compliance with the notice provisions of this Section shall be substantial compliance. The City Manager shall determine if substantial compliance with these provisions has been demonstrated and that administrative decision shall be final and binding. In the event the City Manager determines that the notice does not meet the substantial compliance standard, such noticed hearing shall be vacated and the matter re-noticed.

Councilor Griffin seconded the amended motion.

The following votes were recorded:

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

Vote on the Council Bill 5-2016: 6 ayes. 0 nays. The motion carried.

## **NEW BUSINESS**

### **Resolution 11, Series 2016; Approving an Intergovernmental Agreement with Arapahoe County for Participation in the November 8, 2016 Election**

City Clerk Smith explained that the City would hold its regular municipal election as a coordinated election with Arapahoe County on Tuesday November 8, 2016. She indicated that the proposed resolution would approve an Intergovernmental Agreement

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(IGA) with Arapahoe County for participation in the coordinated election. She noted that the City had budgeted \$6,000 for the 2016 Election, and although final election costs would not be known until after the election, Arapahoe County had estimated that this election would cost the City \$3,939.14 based on four Council positions and no ballot measures for the City. The four Council positions on the ballot would be Mayor, District 1, District 3 and District 5.

Councilor Griffin moved, seconded by Councilor Gallagher to approve Resolution 11, Series 2016; approving an intergovernmental agreement with Arapahoe County for participation in the coordinated November 8, 2016 election.

The motion passed unanimously.

### **REPORTS**

#### **Mayor's Report**

Mayor Christman reported that she would report to the Metro Mayor's Caucus on the High Line Canal Conservancy with Harriet LaMair. She noted that this was a highly important issue as demonstrated by the attendance of both the Denver and Aurora mayors and she was proud of the Village community's involvement in this regional issue.

#### **Members of City Council**

Councilor Hoellen had no report

Councilor K. Brown reported that she would attend the Centennial Airport Noise Roundtable meeting tomorrow. She added that the first two rounds of High Line Canal Conservancy meetings had been well attended and she looked forward to the third round of meetings coming up.

Councilor VanderWerf reported that the Village Crier would be over budget this year due to this being the first full year of the new format and due to several long articles. She noted that this would help in determining the budget for next year.

Councilor Hoellen noted that communication with the public was a good item to be over budget.

Mayor Pro Tem A. Brown noted that much of the community did not have the benefit that Council had of being aware of all the research and work that had gone into the Village Center issues over the years. He encouraged the City Manager and staff to prepare an overview of the history, past and future options and price ranges in anticipation of the August 16<sup>th</sup> meeting.

Mayor Christman indicated that to the credit of staff they had already been busy doing just that.

Councilor Griffin expressed concern that the process be perceived as transparent. He stated that he empathized with the community's concerns. He noted that there were currently a lot of misconceptions. He acknowledged Chief Tovrea's work in purchasing basically brand new motorcycles at 40% cost. He encouraged the Police Department to be visible on the motorcycles in the school zone on University. He reported that over the past three weeks his neighborhood had experienced four power outages of long time periods but had not received an explanation from Xcel.

Deputy City Manager/Director Goldie replied that Xcel had identified the cause as a main cable that was grounding out. He explained that Xcel had dug it up yesterday so the issue should be fixed. He noted that the outages had affected a large area around the University and Belleview intersection including the Cherryridge and Cherry Hills Farm neighborhoods.

Councilor Griffin asked about a damaged fence.

Mayor Christman replied that Deputy City Manager/Director Goldie had done a good job in determining that Cherry Hills Village Sanitation District had damaged the fence and communicating with them and with the resident.

Deputy City Manager/Director Goldie added that the repair was scheduled.

Councilor Griffin asked that staff keep a good presence with the resident.

Councilor Gallagher indicated that he appreciated the public feedback on the proposed rezoning/relocation issue and that Council would thoroughly examine all the options. He stated that the Parks Department had done an outstanding job notifying residents of the resurfacing project for the High Line Canal.

Councilor VanderWerf added that the postcard about upcoming City events was also very nice.

Councilor Hoellen noted that the City's trails looked very good.

### **Members of City Boards and Commissions**

None

### **City Manager & Staff**

City Manager Thorsen reported that Special Projects Coordinator Kropf was leaving the City to be the Assistant to the City Manager in Louisville Colorado. He noted that she had worked for the City for the last five years and presented a plaque in appreciation of her service and dedication to the citizens of Cherry Hills Village.

Council thanked Special Projects Coordinator Kropf.

Special Projects Coordinator Kropf thanked Council and staff.

### **City Attorney**

City Attorney Michow reported that she would not be at the August 16<sup>th</sup> meeting and that her associate Kathie Guckenberger would attend instead.

### **ADJOURNMENT**

Mayor Pro Tem A. Brown moved, seconded by Councilor VanderWerf that City Council enter into Executive Session pursuant to C.R.S. Section 24-6-402(4)(a) for the purpose of discussing matters related to the acquisition of real property and pursuant to C.R.S. Sec. 24-6-402(4)(e) to develop strategy for negotiations and to instruct negotiators relating to possible acquisition of real property, and upon completion of Executive Session, Council will be adjourned.

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The following votes were recorded:

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

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

The Executive Session began at 8:21 p.m.

The meeting adjourned at 9:00 p.m.



  
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Laura Christman, Mayor

  
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Laura Smith, City Clerk