

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, October 18, 2016 at 6:30 p.m.
At the Village Center

The Council held a study session regarding capital projects funding at 6:01 p.m.

Mayor Laura Christman called the meeting to order at 6:47 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, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Linda Michow, Finance Director Karen Proctor, Police Chief Michelle Tovrea, Human Resource Analyst Kathryn Ducharme, Public Works Project and Right-of-Way Manager Ralph Mason, Accounting Clerk Jessica Sager, Special Projects Coordinator Emily Black and City Clerk Laura Smith.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

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

- a. Approval of Minutes – October 4, 2016
- b. Resolution 15, Series 2016; Appointing a New Member to the Public Art Commission

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

Continued from September 20, 2016 – Public Hearing to Consider a Request by David Mosteller of 1550 East Oxford Lane and 4180 South Humboldt Street for a Variance from Municipal Code Section 16-5-30(b) Concerning Minimum Lot Area for Approval of a Minor Lot Adjustment

Deputy City Manager/Director Goldie explained that the applicant had submitted two related applications, specifically (1) approval of a minimum lot area variance from Municipal Code Section 16-5-30(b) in order to seek (2) approval of a minor lot adjustment plat. The applicant owned or controlled both 1550 E. Oxford Lane and 4180 S. Humboldt Street. The minimum lot area variance was necessary because the

Humboldt Street lot was already legally non-conforming in lot area and the proposed, reconfigured Humboldt lot would also fail to meet the minimum lot area for the R-1 Zone District, which is a criterion of approval for a minor lot adjustment plat. The minor lot adjustment plat was separate from the variance request, and was approved administratively by staff. The purpose of the proposed lot line adjustment plat would be to allow the applicant to build a new 1,078 square-foot guest house that would meet the required accessory structure setbacks for the R-1 Zone District in addition to the existing 1,889 square-foot barn on the Humboldt lot. Alternatively the applicant could combine the two lots and request a variance for the number of accessory structures. Municipal Code Section 17-3-420 outlines the approval criteria that the City Council must use in determining whether or not to approve a variance request. For approval, the City Council must find that the request meets all criteria, as outlined in the table on page 4 of the staff report. Staff analysis for each criterion was included in the staff report. The Planning and Zoning Commission (P&Z) recommended approval of the variance request on July 12, 2016 with the condition that "the lots be maintained as one ownership". Following the P&Z meeting, City staff and the applicant discussed the specific terms of the condition and the extent of the proposed restriction. The question of whether P&Z intended the condition to run in perpetuity or only during the applicant's ownership of the properties is not fully answered by a review of P&Z's meeting minutes or audio tape. The applicant submitted a draft letter which proposed to address P&Z's condition of approval. In response to the applicant's letter, City staff and the City Attorney suggested a written agreement between the City and the applicant to be recorded against the properties to address P&Z's condition, which was drafted in the proposed motion to apply only to the applicant's ownership of the properties, and would not run in perpetuity. Upon transfer of both properties from the applicant to a third party purchaser, the City could pursue a lot merger as set forth in Section 16-2-70 of the Municipal Code.

Mayor Christman asked about the condition running in perpetuity or only during the applicant's ownership of the properties.

City Attorney Michow replied that it was not clear in the P&Z meeting minutes but discussions with P&Z members off record had demonstrated that P&Z had intended that the condition run in perpetuity. The applicant objected to the condition, and staff was suggesting a written agreement as a way to move forward with the application.

Councilor Hoellen asked if the written agreement would be binding.

City Attorney Michow replied that the City would not agree to the letter as proposed. She added that any letter agreed to by the City would be recorded against both properties.

Councilor Hoellen asked about P&Z's concern resulting in the condition.

Mayor Christman noted that the proposal conformed with the Master Plan and the neighborhood. She added that if a future owner of the Humboldt property wanted to tear down the barn and build a large house they would need to conform with zoning standards such as setbacks despite the lot being non-conforming.

Councilor VanderWerf added that the floor area ratio standard would restrict the size of a new home.

Councilor K. Brown questioned how the proposal would change the current situation to a point that the City would want to impose the condition that the lots be sold together.

Mayor Pro Tem A. Brown asked about Section 16-2-70 of the Code.

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City Attorney Michow replied that Section 16-2-70 of the Code stated that "Where two or more contiguous lots of record are under identical ownership upon or after the effective date of this Section (February 25, 2001, hereinafter the "Effective Date"), and all, one or more of such contiguous lots fails to conform to the applicable minimum lot area requirement for such lots, all such contiguous lots of record shall be merged and considered for the purpose of this Chapter and of Chapter 17 of this Code as a single and undivided lot." She indicated that Section 16-2-70 effectively created an automatic merger under law when the lots are under identical ownership.

Councilor Hoellen noted that the lots were currently not under identical ownership but if the two properties were sold to a single entity it would trigger the merger of the two lots.

City Attorney Michow agreed and noted that staff had only done this research recently and that the automatic merger was not evident at the time of the P&Z hearing. She added that for a six month period beginning in June 2014 Mr. Mosteller had owned both lots in his name. In December 2014 he conveyed the Humboldt lot to his LLC.

Councilor Hoellen questioned if the merger had been automatic when Mr. Mosteller had purchased both lots in June 2014.

Mayor Christman replied that the two lots did merge and therefore the proposed application would result in a more non-conforming situation.

Councilor K. Brown asked if it complicated matters that the deed to the Humboldt property had been conveyed.

City Attorney Michow noted that the applicant had stated the Humboldt property had been conveyed for tax reasons. She added that the City had no way to monitor ownership of properties and was only made aware of this issue when the applicant filed the application with the City.

Mayor Christman stated that if the merger took place then conveying the Humboldt property would have been an illegal subdivision.

Councilor Hoellen asked about the legal lot size for properties in the R-1 Zone District.

Deputy City Manager/Director Goldie explained that the City used gross lot size by measuring to the middle of the adjacent rights-of-way to meet the required lot size. He indicated that the minimum conforming lot size was 2.5 acres for the R-1 Zone District.

Councilor Hoellen suggested that when the proposal was finalized the precise acreage should be determined. He questioned the result of the illegal subdivision if the lots had merged when Mr. Mosteller purchased them.

Mayor Christman replied that the City would have to take action to undo the illegal subdivision or wait until the lots were sold to one owner.

Councilor K. Brown indicated that the letter recorded with the properties should reference Section 16-2-70 of the Code.

Councilor Hoellen questioned how City zoning ordinances could be enforced.

Mayor Christman replied that illegal subdivisions were not uncommon and the City could cause the property to be re-conveyed.

Deputy City Manager/Director Goldie noted that Council could deny the application, ask the applicant to merge the two lots and submit a request for a variance for the number of accessory structures.

Michelle Wilson of MMW Architects, indicated she represented the applicant, Mr. Mosteller, who was unable to attend tonight. She explained that the applicant had been working on this application for over a year. She noted that he had bought the properties from the Goff family. She indicated that he had been a resident for 15 years and had his current home on Mansfield. She noted that he had donated part of his property to the City for the park, and allowed an elderly resident to stay in another of his properties for \$1/month. She indicated that he had young children and had no intention of selling or subdividing his properties. She explained that the object of the application was to allow construction of a caretaker home. She noted that there were no living facilities in the barn. She indicated that they had examined various options including rezoning and combining the two lots, but the proposed minor lot adjustment would make the Humboldt property less non-conforming and would keep all the current structures and the proposed caretaker house conforming. She added that staff had been concerned that an approved variance for the number of accessory structures would set a precedent. She indicated that P&Z had been concerned that Mr. Mosteller would sell one of his properties and they asked if he would put the condition in writing. She explained that Mr. Mosteller was not concerned with the condition for his lifetime but was concerned about entering into a restrictive covenant. She added that he was concerned a lender would not accept the restrictive covenant and that it was not appropriate beyond his lifetime. She recognized that the restrictive covenant was P&Z's best proposal to achieve its goals and indicated that the applicant was open to doing what he could within reason.

Councilor Hoellen asked about the conveyance of the Humboldt property.

Ms. Wilson explained that it had been a tax issue.

Councilor K. Brown asked if Mr. Mosteller had purchased the two properties from a single party.

Ms. Wilson replied that the properties had been purchased in two separate sales, although they had been owned by the same family.

City Attorney Michow confirmed that one lot had been owned by one member of the family and the other lot had been owned by another member of the family.

Mayor Christman asked why the applicant did not merge the two lots and request a variance for the number of accessory structures.

Councilor K. Brown noted that Council could not guarantee that the Board of Adjustment and Appeals would grant such a request.

Ms. Wilson noted that the proposed scenario resulted in the least non-conforming elements and did not create a precedence of more accessory structures than allowed by the Code.

Councilor K. Brown questioned if the situation would meet the requirements for a variance.

Councilor Hoellen indicated that the two lots should have merged when they were first purchased by Mr. Mosteller and if that had occurred no more structures would be allowed.

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Councilor K. Brown agreed that while she had no particular concerns with the proposal, the two lots should have been merged into one lot when Mr. Mosteller purchased the properties.

Councilor Griffin noted that when Mr. Mosteller had conveyed the Humboldt property to his LLC it had been an unintended subdivision.

Mayor Christman agreed that Mr. Mosteller had not intended to violate the Code. She indicated that Council needed more facts and needed to know if the merger occurred. She noted that if it did not then the two lots would merge when Mr. Mosteller sold them.

City Attorney Michow advised that Council had the option to deny the request.

Councilor K. Brown asked if the situation had been explained to the applicant in these terms.

Councilor Hoellen agreed that he didn't think the applicant intended to violate the Code. However, he indicated that Council could still take action to correct the discrepancy of the lots not merging, and probably should take such action in the absence of any other action. He stated that this would be necessary in order to ensure that the Code is enforced fairly and consistently. He suggested, however, that there is also another action that Council could take to correct the problem, and that action would involve negotiating with the applicant in such a manner as to allow the additional structure, but also provide a firm agreement for the two properties to be merged upon any sale in the future. He noted that this would eliminate the City having to use resources now to take whatever action would be necessary to merge the two properties now, but ensure that they are merged sometime in the future.

Councilor VanderWerf noted that the future owner of the merged lots would not be able to replace a structure if they were to tear one down because the maximum number of accessory structures would be exceeded.

Councilor Griffin noted that the Code required dedication of open space for subdivision of property in the City. He indicated that a trail from Quincy ended at this property.

Deputy City Manager/Director Goldie noted that the trail was closed.

Councilor Griffin asked if either property was in the floodplain.

Ms. Wilson replied they were not.

Councilor Griffin suggested that Council table the issue in order to find a good resolution with the applicant.

Mayor Pro Tem A. Brown agreed and noted that tabling the issue would allow staff to conduct additional research for Council to consider and would allow the applicant to address Council directly at a future meeting.

Mayor Christman re-opened the public hearing at 7:48 p.m.

Councilor K. Brown moved, seconded by Councilor VanderWerf to continue the public hearing to November 15, 2016 at 6:30 p.m.

The motion passed unanimously.

Council Bill 7, Series 2016; Amending Section 10-5-40 of the Municipal Code Concerning Loitering (second and final reading)

City Manager Thorsen indicated there had been no changes to the council bill since first reading.

Mayor Pro Tem A. Brown moved, seconded by Councilor Griffin to approve Council Bill 7, Series 2016, amending Section 10-5-40 of the Cherry Hills Village Municipal Code concerning loitering on second and final reading.

The following votes were recorded:

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

Vote on the Council Bill 7-2016: 6 ayes. 0 nays. The motion carried.

NEW BUSINESS

None

REPORTS

Mayor's Report

Mayor Christman reported that staff continued to work with the City of Greenwood Village on a possible agreement for the beautification of the medians along Bellevue Avenue.

Members of City Council

Councilor Gallagher reported that the west side of the Village would hold their annual Halloween parade on October 31st at 4:30 p.m.

Councilor Griffin had no report.

Mayor Pro Tem A. Brown had no report.

Councilor VanderWerf reported that the dedication and reception, held at the Finger residence, for artist Emmett Culligan's *Rubric* series piece had been a great success. She indicated that the Fingers' sculpture garden was wonderful.

Councilor K. Brown reported that the Centennial Airport Community Noise Roundtable (CACNR) had been told by the FAA, upon review of the memorandum of understanding (MOU) with the Arapahoe Airport Board, that airport revenue should not be used by the CACNR and that it was solely a community organization funded and led by the surrounding communities. She indicated that she had chaired that meeting and had responded that if that was the case then the need for an MOU was in question.

Councilor Griffin asked about the minimum altitude for helicopters flying over the Village.

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Councilor K. Brown replied that it was very low and that the helicopters were often medical transport through Flight for Life.

Councilor Hoellen had no report.

Members of City Boards and Commissions

Public Art Commission Update and 2017 Proposed Budget

Councilor VanderWerf asked if Council had any questions about the Public Art Commission (PAC) report.

Mayor Christman stated that she thought that the Parks, Trails and Recreation Commission (PTRC) should approve the location of future artwork on a case by case basis, instead of approving eight locations without knowing what kind of art is proposed for the locations. She added that it was part of the PTRC's job to evaluate changes of that kind to a park, the effect it might have on park use and the response from the community.

Councilor VanderWerf replied that the PAC had discovered only recently that they needed approval from the PTRC to place artwork in the park areas that were not official parks of the City, such as the Denver Water park on the southeast corner of Quincy Avenue and Holly Street where the *Crew* series pieces had recently been relocated. She noted that the concern that a piece might interfere with park use was legitimate. She explained that in other communities the art selection process worked better if the artists knew the location where the artwork would be placed before they presented their proposals to the Commission.

Mayor Christman indicated that a large contingent of residents did not want art in parks.

Mayor Pro Tem A. Brown stated that he would like to see more aggressive public outreach beyond the PAC's proposal to involve a few residents in each art selection process.

Councilor VanderWerf replied that in other community art programs a vote on art resulted in the lowest common denomination of artwork, and the PAC was trying to avoid that result. She indicated that she would take Council's comments back to the PAC.

City Manager & Staff

City Manager Thorsen introduced Special Projects Coordinator Emily Black.

Special Projects Coordinator Black explained that she had graduated from Princeton University with a Master's in Public Administration, and before that spent four years managing a federal grant in Pennsylvania. She indicated that she was excited to be working for the City.

Chief Tovrea explained that the Police Department had two new officers, Brent Hokanson and Sheldon Gardner, and was now fully staffed.

City Attorney

City Attorney Michow had no report.

EXECUTIVE SESSION AND ADJOURNMENT

Mayor Pro Tem A. Brown moved, seconded by Councilor Griffin that Council enter into Executive Session pursuant to C.R.S. Sec. 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.

The following votes were recorded:

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

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

The Executive Session began at 8:08 p.m.

The meeting adjourned at 8:30 p.m.





Laura Christman, Mayor



Laura Smith, City Clerk