

ORDINANCE NO. 05
Series 2007

February 20, 2007: Introduced as Council Bill 02, Series 2007 by Councilmember Doug Tisdale, seconded by Councilmember Bonnie Blum, and considered by the title only on first reading. Passed unanimously.

March 20, 2007: Considered in full text on second reading. Passed unanimously.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
VACATING THE CITY'S INTEREST, IF ANY, TO AN EASEMENT FOR A NON-
MOTORIZED PUBLIC TRAIL LOCATED BETWEEN LOT 12, CHERRY HILLS
MEADOW AND LOT 14, SOUTH BROADWAY HEIGHTS ADDITION

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village is expressly authorized to own, possess, and hold real property and to sell and dispose of such real property; and

WHEREAS, Colorado state statutes, at Title 43, article 2, part 3, C.R.S., authorize every municipal governing body to divest the municipality's interest in platted or designated public streets, roads and other public ways in accordance with the municipality's charter and laws; and

WHEREAS, the vacation and disposition of municipal interests in public rights-of-way and other public property is identified by the appellate courts of the State of Colorado as a legislative and discretionary function of the local governing body; and

WHEREAS, pursuant to its Home Rule Charter and state law, the City Council holds the power and authority to specify the terms and conditions under which the City will consider and dispose of public interests in rights-of-way, easements, and other property; and

WHEREAS, the vacation of public rights-of-way are governed by Article V of Chapter 11 of the City Code; and

WHEREAS, the owner of properties identified as Lots 12 and 13, Cherry Hills Meadow, and Lot 14, South Broadway Heights Addition, has petitioned the City Council for the City's vacation of an easement for a non-motorized public trail located between Lot 12 and Lot 14, which is 16 feet wide and approximately 285.26 feet in length, for a total area to be vacated of approximately 4,542 square feet, and

WHEREAS, in exchange for such vacation, the owner wishes to (1) dedicate to the City an easement for a substitute non-motorized public trail sixteen feet wide and approximately 590.16 feet, for a total area to be dedicated of approximately 9685 square feet, which shall be located entirely on Lot 14, and (2) construct such substitute non-motorized public trail at petitioner's expense; and

WHEREAS, the vacation of the City's interest in the easement for the non-motorized public trail described in the petition would not decrease the length nor total square footage of non-motorized public trails in the City; and

WHEREAS, the City provided public notice of the proposed vacation in accordance with law; and

WHEREAS, having received a favorable recommendation from the Parks and Trails Committee, the Planning and Zoning Commission considered the petition for vacation, found that the vacation will serve the public interest and recommended the proposed vacation be approved. The Planning and Zoning Commission, finding that certain conditions of approval are necessary or desirable to protect the public health, safety and welfare, conditioned its approval of the petition on the petitioner's dedication of an easement for the substitute non-motorized public trail, on the petitioner's construction and establishment of the proposed substitute non-motorized public trail, including the provision of certain public and private improvements at petitioner's sole expense, and on such improvements mitigating the impact of the substitute non-motorized public trail on those property owners whose property will abut the substitute non-motorized public trail; and

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WHEREAS, the City Code, at Section 17-4-10 and 17-4-20, provides that requirements for public and private improvements be memorialized in a development agreement; and

WHEREAS, the City desires to vacate the easement for the non-motorized public trail identified in the petition and to accept the easement for a substitute non-motorized public trail in accordance with Chapter;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. The City Council finds that the easement for a non-motorized public recreational trail, more particularly described in **Exhibit A** and depicted in **Exhibit B**, below, is no longer necessary for use by the public, that the vacation of the easement for the non-motorized public trail serves the public interest and is in the best interest of the City of Cherry Hills Village. Based upon such findings, the City's title or claim to ownership of the easement for the non-motorized public recreational trail is hereby vacated subject to the conditions stated in Section 3, below.

Section 2. The City Council accepts the dedication by petitioner of the substitute easement for non-motorized public trail, more particularly described in **Exhibit C** and depicted in **Exhibit D**, below, subject to the conditions stated in Section 3, below.

Section 3. In accordance with Section 11-5-30(b) of the City Code for the City of Cherry Hills Village, the City Council conditions the vacation and dedication approved by this Ordinance upon the satisfaction of the following events:

(A) The petitioner shall enter into a development agreement with the City pursuant to Sections 17-4-10 and 17-4-20 of the City Code and in substantially the form of **Exhibit E**, below, which, in addition to meeting the requirements of those Code sections, requires the petitioner to make certain public and private improvements, including:

(1) The construction and installation of a public improvement in the form of three-rail split rail fence, located as depicted on **Exhibit D**, which shall be dedicated to the City and warranted by the petitioner for one year after its completion and which, if acceptable to the City, shall be thereafter accepted and maintained by the City after the one-year warranty period has elapsed;

(2) The installation, establishment and maintenance of private improvements consisting of landscaping to be installed pursuant to the landscaping plan, depicted in **Exhibit F**, below, and a fence segment, which shall consist of a three-rail, white plastic fence, which is identical to the existing fence surrounding the Cherry Hills Meadow subdivision, and shall be located as depicted by the heavy black line on **Exhibit G**, below.

(B) The petitioner shall enter into an easement agreement for non-motorized public trail with the City in substantially the form of **Exhibit H**, below, by which the petitioner dedicates to the City a non-exclusive, permanent and perpetual easement for the non-motorized public trail described and depicted in Exhibits C and D, respectively.

(C) The receipt by the City of letters from the property owners whose property abuts the substitute non-motorized public trail (the Spiegals and the Shpalls) stating that they approve of the landscaping plan depicted in Exhibit F.

(D) The acceptance by the City of the public improvement, pursuant to the terms of the development agreement, Exhibit E, below.

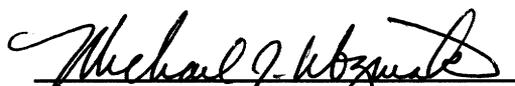
(E) The non-motorized public trail that currently exists on the easement for non-motorized public trail being vacated by this Ordinance shall not be closed to public use until the substitute non-motorized public trail is properly established and the public and private improvements have been properly constructed and/or installed, as determined by the City in its sole discretion, the easement for the new non-motorized public trail and the public improvement has been accepted by the City and the easement vacated by this Ordinance has been finally approved by the City.

Section 4. Ownership of the City's interest in the portion of the easement for non-motorized public trail vacated by this Ordinance shall vest in accordance with

Section 11-5-60 of the City Code and Section 43-3-302, C.R.S. only upon satisfaction of the conditions of approval. Satisfaction of the conditions of approval shall be deemed conclusive upon (1) the City's recording of the following documents with the Arapahoe County Clerk and Recorder's Office: (a) this Ordinance, (b) the development agreement, (c) the easement for non-motorized public trail; and (2) construction and acceptance of the public improvements.

Section 5. No Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall render the remaining portions or applications of this Ordinance invalid. It is the express intent and declaration of the City Council that the Council would not approve the vacation of the easement vacated hereby without all provisions of this Ordinance being valid and effective.

Adopted as Ordinance No. 05 Series 2007, by the City Council of the City of Cherry Hills Village, Colorado this 20th day of March, 2007.


Michael J. Wozniak, Mayor

ATTEST:



Karen C. Losier, City Clerk

APPROVED AS TO FORM:



Thad W. Renaud, City Attorney

Published in the Villager
Published _____
Legal # _____

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