

## RECORD OF PROCEEDINGS

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Minutes of the  
City Council of the City of Cherry Hills Village, Colorado  
and of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing  
General Improvement District Board of Directors  
Held on Tuesday, February 19, 2019 at 6:30 p.m.  
At the Joint Public Safety Facility

### **MEETING OF THE CHERRY HILLS VILLAGE CITY COUNCIL**

The City Council held a study session at 6:00 p.m.

Mayor Russell Stewart called the meeting of the Cherry Hills Village City Council to order at 6:39 p.m.

#### **ROLL CALL**

Mayor Russell Stewart, Councilors Al Blum, Mike Gallagher, Dan Sheldon, 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 Kathie Guckenberger, Police Chief Michelle Tovrea, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

Absent: Councilors Afshin Safavi and Randy Weil

#### **PLEDGE OF ALLEGIANCE**

The Council conducted the pledge of allegiance.

#### **APPROVAL OF AGENDA**

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve the agenda.

The motion passed unanimously.

#### **AUDIENCE PARTICIPATION PERIOD**

None

#### **REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES**

None

#### **CONSENT AGENDA**

Mayor Pro Tem Brown removed Item 7a.

Councilor Gallagher removed Item 7d.

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

- b. Resolution 9, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Approving the Updated Emergency Operations Plan

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- c. Resolution 10, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Concerning the Appointment of a New Member to the Board of Adjustment and Appeals

The motion passed unanimously.

**ITEMS REMOVED FROM CONSENT AGENDA**

Approval of Minutes – February 5, 2019

Mayor Pro Tem Brown noted edits to pages 8, 9 and 15 in the draft minutes.

Mayor Pro Tem Brown moved, seconded by Council Blum to approve the minutes as amended.

The motion passed unanimously.

Resolution 11, Series 2019; A Resolution of the City Council of the City of Cherry Hills Village Appointing a New Member to the Quincy Farm Committee

Councilor Gallagher indicated he had mistakenly removed Item 7d.

Councilor Gallagher moved, seconded by Mayor Pro Tem Brown to approve Item 7d.

The motion passed unanimously.

**UNFINISHED BUSINESS**

Council Bill 1, Series 2019; A Bill for an Ordinance of the City of Cherry Hills Village, Colorado Amending the Budget for Fiscal Year 2019 by Creating a Fund for the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District and Appropriating Funds Therein (second and final reading)

Director Sager presented Council Bill 1, Series 2019 on second and final reading. She explained that there had been no changes to the bill since first reading, but that staff had reduced the expenditures in the fund shown in Exhibit B to the staff memorandum based on the cash flow analysis provided by Stifel.

Mayor Pro Tem Brown moved, seconded by Councilor Gallagher to approve Council Bill 1, Series 2019, a bill for an ordinance of the City of Cherry Hills Village, Colorado, amending the budget for fiscal year 2019 by creating a fund for the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District and appropriating funds therein on second and final reading.

The following votes were recorded:

Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on the Council Bill 1-2019: 4 ayes. 0 nays. The motion carried.

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### NEW BUSINESS

#### Board, Commission and Committee Member Terms

City Clerk Gillespie explained that staff was seeking Council direction on several board, commission and committee terms that would end in May. She indicated that Parks, Trails and Recreation Commission (PTRC) member Joshua DiCarlo did not wish to be reappointed, and she noted that staff had six applications from 2018 for PTRC and asked if Council wished to select a replacement from those applicants or advertise for additional applicants in the Village Crier. She noted that PTRC member Robert Eber would be completing his second term and asked if Council preferred to reappoint him to a third term without a recruitment process or to solicit applications for the position. She indicated that the remaining members would be ending a partial term or their first term and typically they would be reappointed without a recruitment process unless there was a concern. She noted that attendance information was included in the staff memo for all the members and only one member, Quincy Farm Committee (QFC) member Katie Agron, had missed several meetings, although she had contributed significantly to the Open House event.

Councilor Blum asked who had interviewed the 2018 PTRC applicants.

City Clerk Gillespie replied that Mayor Pro Tem Brown and former Mayor Christman had conducted those interviews.

Mayor Pro Tem Brown agreed and noted that PTRC was a unique commission because the Code directed Council to appoint a member from each Council district if possible.

City Clerk Gillespie noted that one of the applicants from 2018 lived in District 2 which was the only district not represented on PTRC.

Councilor Gallagher indicated his support of not wasting the time of the other applicants with additional interviews if the District 2 applicant was qualified.

Councilor Blum asked if the District 2 applicant was qualified.

Mayor Pro Tem Brown replied that they were and that they had been eager to contribute to the City.

Council agreed to appoint the District 2 applicant to fill the PTRC position in May and not solicit additional applications or conduct interviews.

Councilor Gallagher asked about the QFC member Agron.

Mayor Stewart suggested that it was the role of the QFC Chair to discuss attendance with QFC member Agron and recommend appointment or not to Council.

Councilor Gallagher indicated that the message of Council's concern about attendance should be clearly communicated.

City Clerk Gillespie asked for Council direction on reappointing PTRC member Robert Eber, who would complete his second full term in May.

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Councilor Sheldon indicated he supported reappointing Commissioner Eber to maintain continuity on PTRC in light of the large projects that were currently in the works. He asked if the PTRC member DiCarlo had indicated why he did not wish to be reappointed.

Coordinator Black replied that she believed Commissioner DiCarlo had a busy family life and felt his two terms on PTRC were sufficient.

Councilor Blum agreed with reappointing Commissioner Eber to a third term.

City Clerk Gillespie asked if Council had any concerns with reappointing the other members whose terms would end in May that had not yet been discussed.

Council indicated they did not.

### Discussion of Amendments to the City Council Rules of Procedure

City Clerk Gillespie explained that staff was seeking Council direction on changes to the City Council Rules of Procedure. She indicated that Mayor Stewart had noted that recent changes in the order of items on the Council agenda and the Council packet timeline should be updated in the Rules. She noted that staff also believed it would be beneficial to establish a policy regarding participation in meetings by phone. She explained that if Council wished to allow participation by phone some questions for them to consider included if participation would be allowed during executive sessions; how many members could participate by phone per meeting; how many times per year a member could participate by phone; and if the policy for City boards, commissions and committees would differ from that of City Council. She also noted that staff strongly recommended against allowing participation by phone for quasi-judicial matters.

City Attorney Guckenberger agreed.

Councilor Blum asked if the new City Hall would have better technology to allow participation by phone.

City Manager Thorsen replied that it would.

City Attorney Guckenberger noted that the new technology was only in the Council Chambers and not in the room that would be used for executive sessions.

Mayor Stewart suggested that the boards, commissions and committees should have the same procedure as Council, and that participation by phone should only be allowed for emergency situations.

Mayor Pro Tem Brown noted that attendance at Council was not an issue but for some boards, commissions and committees participation by phone had been used frequently and it was often very disruptive and difficult. She agreed that she was leaning towards only allowing participation by phone in emergencies.

Councilor Blum agreed and noted that the member participating by phone would not be able to see visuals presented at the meetings. He suggested that it only be allowed for emergency situations where a quorum was needed.

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Councilor Sheldon indicated that he believed participation by phone should be allowed on a limited basis, by only one member per meeting and only once per year per member. He agreed that it should not be allowed for quasi-judicial matters. He noted that while attendance had not been an issue on Council it would be nice to have the option on a limited basis.

Councilor Gallagher noted the importance of the technology for successful participation by phone.

Councilor Sheldon agreed and suggested that Council table the issue until they could experience the technology in the new City Hall.

City Attorney Guckenberger added that the parameters for an emergency where participation by phone would be allowed would have to be determined.

Councilor Blum suggested that the necessity of a quorum would constitute an emergency.

Mayor Pro Tem Brown asked how the one member allowed to participate by phone would be determined if more than one member wanted to participate by phone.

City Manager Thorsen replied that in his past experience it was on a first come first served basis. He indicated that staff could set up a demonstration of the technology in the new City Hall.

Mayor Pro Tem Brown noted that Councilor Weil might want to participate by phone.

Councilor Sheldon indicated that he believed Councilor Weil's circumstances were extenuating and he would not want to impose the once per year restriction on him.

### **RECESS**

Mayor Pro Tem Brown moved, seconded by Councilor Blum to recess the City Council meeting and call to order the meeting of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District Board, and to reconvene the City Council meeting upon adjournment of the Board meeting.

The motion passed unanimously.

### **MEETING OF THE CHERRY HILLS VILLAGE CHARLOU PARK 3<sup>RD</sup> FILING GENERAL IMPROVEMENT DISTRICT BOARD**

Mayor Russell Stewart, serving ex-officio as the GID Chairperson, called the meeting to order at 7:02 p.m.

### **ROLL CALL OF MEMBERS**

The City Council for the City of Cherry Hills Village serving ex-officio as the Board of Directors of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District: Mayor Russell Stewart, Councilors Al Blum, Mike Gallagher, Dan Sheldon, and Katy Brown were present on roll call.

Absent: Councilors Afshin Safavi and Randy Weil.

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The administrative staff of the City serving as the administrative staff of the GID: City Manager Jim Thorsen, Deputy City Manager and Public Works Director Jay Goldie, City Attorney Kathie Guckenberger, Police Chief Michelle Tovrea, Finance Director Jessica Sager, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

### **BUSINESS**

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon that the designated posting location for meeting notices of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District be the same as the designated posting location for meetings of the City Council and advisory boards and commissions of the City of Cherry Hills Village.

The motion passed unanimously.

#### **Resolution 1, Series 2019; A Resolution of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District (GID) Board of Directors Adopting the GID's Official Seal**

City Clerk Gillespie presented Resolution 1, Series 2019 to the GID Board, adopting the GID's official seal as required by state statute.

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve Resolution 1, Series 2019 of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District Board of Directors adopting the GID's official seal.

The motion passed unanimously.

#### **Board Bill 1, Series 2019; A Bill for an Ordinance of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District, in the City of Cherry Hills Village, Colorado, Providing for the Issuance of General Obligation Bonds of Such District, Series 2019, in an Aggregate Principal Amount Not Exceeding \$550,000, to Finance the Cost of Certain Improvements Approved at a District Election Held on November 6, 2018; Ratifying Actions Heretofore Taken; Authorizing the Execution by the District of the Bonds and Related Documents Required in Connection Therewith; and Making Determinations as to Other Matters Related to the Bonds (first reading)**

Director Sager presented Board Bill 1, Series 2019 on first reading. She explained that the board bill provided for the issuance of general obligation bonds not to exceed \$550,000, and make other determinations related to the bonds. Currently all parties anticipated issuing the bonds in the principal amount of \$375,000. A breakdown of the amount and cash flow analysis was included with the staff memorandum.

Mayor Pro Tem Brown moved, seconded by Councilor Gallagher to approve Board Bill 1, Series 2019; A Bill for an Ordinance of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District, in the City of Cherry Hills Village, Colorado, providing for the issuance of General Obligation Bonds of such District, Series 2019, in an aggregate principal amount not exceeding \$550,000, to finance the cost of certain improvements approved at a District election held November 6, 2018; ratifying actions heretofore taken; authorizing the execution by the District of the Bonds and related documents required in connection therewith; and making determinations as to other matters related to the Bonds.

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The following votes were recorded:

Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

Vote on the Board Bill 1-2019: 4 ayes. 0 nays. The motion carried.

Resolution 2, Series 2019; A Resolution of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District (GID) Board of Directors Approving the Public Service Company of Colorado (Xcel Energy) Letter Agreement Dated December 5, 2018, and Authorizing the City Manager to Execute the Letter Agreement on Behalf of the GID

Deputy City Manager/Director Goldie presented Resolution 2, Series 2019 to the GID Board, approving a letter agreement with Xcel Energy. He explained that the account number would change so that the GID had its own account, but the cost amount would not change.

Councilor Blum asked about the project schedule.

Deputy City Manager/Director Goldie replied that Xcel would not schedule the work until they received the signed letter agreement.

Councilor Sheldon asked if the residents of the GID had reviewed the work plan.

Dave Charles, 4799 S. Dasa Drive, replied that they had.

Deputy City Manager/Director Goldie added that staff was also working with Crown Castle to move their cell tower.

Mayor Pro Tem Brown moved, seconded by Councilor Blum to approve Resolution 2, Series 2019, a resolution of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District (GID) Board of Directors approving the Public Service Company of Colorado (Xcel Energy) Letter Agreement dated December 5, 2018, and authorizing the City Manager to execute the Letter Agreement on behalf of the GID.

The motion passed unanimously.

Resolution 3, Series 2019; A Resolution of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District (GID) Board of Directors Approving the CenturyLink Special Construction Proposal Dated January 16, 2019, and Authorizing the City Manager to Execute the Proposal on Behalf of the GID

Deputy City Manager/Director Goldie presented Resolution 3, Series 2019 to the GID Board, approving a construction proposal with CenturyLink.

Councilor Sheldon noted that this proposal did not have a map exhibit like the Xcel agreement had.

Deputy City Manager/Director Goldie replied that staff had provided the same map to CenturyLink.

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Councilor Sheldon asked about service for the residents.

Deputy City Manager/Director Goldie replied that it would be the responsibility of the individual homeowners to bury the lines from the rights-of-way to their properties.

Mayor Pro Tem Brown moved, seconded by Councilor Sheldon to approve Resolution 3, Series 2019, a resolution of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District (GID) Board of Directors approving the CenturyLink Special Construction Proposal dated January 16, 2019, and authorizing the City Manager to execute the proposal on behalf of the GID.

The motion passed unanimously.

### **ADJOURNMENT**

The meeting of the Cherry Hills Village Charlou Park 3<sup>rd</sup> Filing General Improvement District Board adjourned at 7:21 p.m.

### **RECONVENE MEETING OF THE CHERRY HILLS VILLAGE CITY COUNCIL**

The meeting of the Cherry Hills Village City Council reconvened at 7:21 p.m.

### **REPORTS**

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

Mayor Stewart reported that Congressman Crow had written a letter to the FAA regarding Metroplex Denver after meeting with local mayors. He noted that the mayors of the municipalities in Arapahoe County would be reaching out to Congresswoman DeGette and Senator Gardner about sending letters. He indicated that the FAA public comment period would be May through September. He noted that he and Mayor Pro Tem Brown had attended the CML Policy Committee meeting. He reported that State House representative Froelich would like to hold a meeting of her mental health first aid series at the City. He indicated that when CDOT repaved University they restriped the exit/entrance to the Cherrymoor South neighborhood, removing the turn lane, and many residents were concerned about the impact of that change on vehicle safety. He asked staff to communicate with CDOT about restriping to the original turn lanes.

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

Councilor Blum reported that the next meetings of the Code Modernization Steering Committee would be February 21<sup>st</sup> and 28<sup>th</sup>, followed by the joint study session with the Planning and Zoning Commission on March 5<sup>th</sup>.

Councilor Sheldon reported that the applicant for the renaming of Swastika Acres was making progress and he hoped that the issue would come to Council at the March 19<sup>th</sup> meeting. He noted that the proposal was to rename the subdivision to Old Cherry Hills.

Councilor Gallagher noted that the monthly Police Department report showed that the five vehicle trespasses last month were unlocked vehicles. He noted that the City would continue to educate residents through the Crier.



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Mayor Pro Tem Brown indicated that while Representative Crow's letter to the FAA was much appreciated it was important to note that there were a few factual errors in the letter. She reported that she had visited Councilor Weil and that he was welcoming visitors.

Councilor Sheldon reported that he had received two comments from neighbors that Monaco had a lot of pot holes that were ruining tires and asked if staff could communicate with the City of Denver about getting the road repaired.

Mayor Stewart asked about posting crime reporting on the City website.

City Manager Thorsen replied that Chief Tovrea and Commander Weathers had done a great job working on the crime reporting map through LexisNexis and it would be posted on the City website soon.

Mayor Pro Tem Brown asked how often the data was updated.

Chief Tovrea explained that there was an issue with the data getting updated between the Police Department's records management system and LexisNexis and Commander Weathers was working to determine if the updates could be done by the Police Department staff in house. She noted that it was not a real-time system and she believed the data was updated approximately every month.

Mayor Stewart noted that residents he had spoken with were looking forward to the crime reporting map.

### **City Manager & Staff**

None

### **City Attorney**

City Attorney Guckenberger indicated that Mayor Stewart had asked her to determine if a private meeting or corporate retreat would be allowed at the Quincy Farm Main Residence per the conservation easement, in response to a request from St. Gabriel's Church. She noted that this was the first time the City Attorney had been asked to interpret the conservation easement. She reviewed the basis for the conservation easement and that general principles for interpreting conservation easements based on the Colorado Supreme Court. She indicated that her interpretation was that the language of the deed of conservation easement related to the permitted uses of the Main Residence was unambiguous and that outside circumstances bolstered the unambiguity of the language. She reviewed the language of Paragraphs 4(A), 5(A), 4(A)(4), and 4(A)(2)(b) pertaining to the structures and uses of the West Area and specifically of the Main Residence. Paragraph 4(A)(2)(b) stated that "...the Main Residence may be used only as a caretaker's residence for a caretaker of the Property or as a nature center/interpretive facility." She indicated that the East Area structures had different uses outlined in the easement that provided more flexibility. She added that Paragraph 6(D) stated that industrial uses were prohibited and commercial uses "inconsistent with the preservation and protection of the Conservation Values of the Deed are prohibited." She indicated that the conservation values were paramount. She noted that she had spoken with Melinda Beck who had represented Cat Anderson in the drafting of the conservation easement and it was Ms. Beck's recollection and understanding that Ms. Anderson had no understanding of the Main Residence being used as a

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gathering place, which added to the unambiguity of the conservation easement. She added that she had spoken with Cheryl Cufre of Colorado Open Lands and she had agreed with City Attorney Guckenberger's interpretation of the limitations of uses of the Main Residence.

Mayor Pro Tem Brown noted that the Denver Botanic Gardens was a nature center and that varying types of events were hosted there.

City Attorney Guckenberger replied that there was some room for interpretation and there was still work to be done to determine what exactly would be allowed but she believed the Church's request was beyond the allowed uses of the Main Residence.

Mayor Pro Tem Brown asked if school fundraisers would be allowed at the Main Residence as they were at Denver Botanic Gardens and Four Mile Historic Park.

City Attorney Guckenberger replied that would not be allowed because it would not be consistent with the preservation values.

Mayor Pro Tem Brown did not agree that school fundraisers would be inconsistent with the preservation uses outlined in paragraph 5(A).

City Attorney Guckenberger explained that she had asked Ms. Cufre at Colorado Open Lands if, for example, the High Line Canal Conservancy held an event on the lawn for their donors, would they be allowed to use the bathrooms in the Main Residence. She indicated that Ms. Cufre had agreed that the event would be allowed on the lawn but she did not want to make a determination regarding the allowed use of the bathrooms in the Main Residence. City Attorney Guckenberger suggested that she and staff meet with Colorado Open Lands to determine the details of what would be allowed and what would not.

Councilor Gallagher agreed that a meeting would be helpful to provide the Quincy Farm Committee and the Cherry Hills Land Preserve direction moving forward.

Mayor Pro Tem Brown noted it was ironic that the Main Residence was the most restricted but was also the only structure that could currently be reserved.

Mayor Stewart noted that it was also the only structure that could be demolished.

Coordinator Black clarified that while the Main Residence was on the National Historic Registry, it was allowed to be demolished per the conservation easement.

Mayor Stewart noted that determining the allowed uses of the Main Residence was important for development of the Quincy Farm master plan.

City Attorney Guckenberger noted that the Quincy Farm Vision Plan had envisioned much broader uses of the Main Residence.

Mayor Pro Tem Brown agreed.

Mayor Stewart noted that the Vision Plan included a lot of high level hopes and aspirations, but with the caveat of being consistent with the conservation easement.

Mayor Pro Tem Brown indicated that the Quincy Farm Visioning Committee had discussed use of the Main Residence as a nature center per the conservation easement, but that they had been considering the Quincy Farm nature center to be similar to the Denver Botanic Gardens or Four Mile Historic Park as far as what would be allowed at the nature center. She noted that many places that were mainly used for one purpose, such as schools, could be rented out for other types of events. She added that weddings could be held in many different types of facilities.

City Attorney Guckenberger warned that a wedding could be considered a commercial activity that would be prohibited by the conservation easement.

Mayor Pro Tem Brown indicated that she agreed with City Attorney Guckenberger up to the point where all uses of the nature center had to be completely nature related.

Councilor Gallagher asked if Council agreed that the next step would be for City Attorney Guckenberger to put together a list of hypothetical situations for Colorado Open Lands to review and then hold a meeting with the City Attorney, City staff and Colorado Open Lands to discuss the allowed uses of the Main Residence.

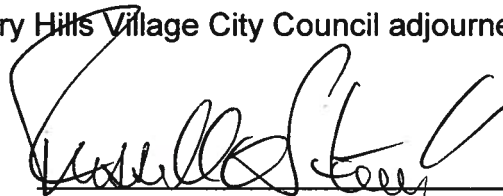
Mayor Stewart agreed that concrete hypotheticals would be the most useful.

City Manager Thorsen suggested that Council submit questions to him to work with City Attorney Guckenberger to compile and send to Colorado Open Lands.

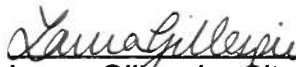
Mayor Stewart added that the Quincy Farm Committee could also submit questions.

### **ADJOURNMENT**

The meeting of the Cherry Hills Village City Council adjourned at 8:06 p.m.



Russell O. Stewart, Mayor and GID Chairperson



Laura Gillespie, City Clerk and GID Secretary

