Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 7, 2019 at 6:30 p.m.
At the Village Center

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

Mayor Russell Stewart called the meeting to order at 6:30 p.m.

ROLL CALL

Mayor Russell Stewart, Councilors Randy Weil, Afshin Safavi, 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, Commander Pat Weathers, Parks and Recreation Coordinator Emily Black, Finance Director Jessica Sager and Deputy City Clerk Terri Littleford

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the Pledge of Allegiance.

APPROVAL OF AGENDA

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

a. Approval of Minutes – April 16, 2019
b. Resolution 16, Series 2019; Reappointing a Member to the Board of Adjustment and Appeals
c. Resolution 17, Series 2019; Reappointing Members and Appointing a New Member to the Parks, Trails and Recreation Commission
d. Resolution 18, Series 2019; Reappointing a Member to the Cherry Hills Village Art Commission
e. Resolution 19, Series 2019; Reappointing Members to the Quincy Farm Committee
f. Metro Denver Homeless Initiative Donation

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None
UNFINISHED BUSINESS

Mayor Stewart presented the request from Kent Denver for an Amendment to the 2018 Development Agreement to Eliminate from Exhibit D “Traffic Improvements” Conditions B, C, and D and also Eliminate Exhibit F.

City Manager Jim Thorsen presented the staff report and explained that in September 2017 Kent Denver applied for an expanded use permit for a new building that would add approximately 28,000 square feet to their campus. He said as part of the application the City required that they perform a traffic study on Quincy Avenue. He stated that traffic engineers from Matrix Design Group reviewed the levels of service for the Kent Denver driveway at Quincy Avenue, and the intersection at Quincy Avenue and Colorado Boulevard. He explained that the levels of service are much like the school grades, A through F. It was determined that the levels of service at both of those intersections are insufficient today and will remain that way in the future. He advised that the Matrix Design Group was tasked with evaluating several options of mitigating the traffic on Quincy Avenue. He noted that the City routinely receives several complaints from residents regarding the congestion on Quincy. He stated at least six options were studied that would allow Kent Denver’s driveway to remain in its current location. Among those options would be to add a single lane roundabout at either the driveway or Colorado Boulevard, and add left and right turn pockets along Quincy Avenue as well as adding a uniformed police officer at different locations. City Manager Thorsen said several other options that were evaluated included the realignment of the Kent Denver’s driveway to Colorado Boulevard. This would combine the intersection into one, rather than having two congested intersections. Options included adding a 4-way stop at Colorado Boulevard in combination with a uniformed officer or installing a traffic signal. He explained the traffic engineers determined realigning Kent Denver’s driveway and installing a single-lane roundabout would provide the optimum improvement as the Level of Service would improve from an F to a B, a vast improvement. He stated the City Council asked for public input, and as a result denied the proposal to install a single-lane roundabout at Colorado Boulevard and Quincy. He advised Kent Denver has since asked for an amendment to the Development Agreement to eliminate conditions B, C, and D related to the roundabout and also to eliminate one of the exhibits since the roundabout would not be constructed. He explained that Condition B required the dedication of right of way for the roundabout and if the roundabout was not constructed the land would go back to Kent Denver after eight years. He said Condition C stated that if the City did construct a roundabout, they would provide notification to Kent Denver when the construction would begin and end, and Kent Denver would have 60 days to complete a realignment of their driveway to tie into the proposed roundabout. He mentioned the conditions of the development agreement relieved Kent Denver from having a uniformed traffic control officer at that location as a roundabout does not need one. He further stated that Condition D required Kent Denver to submit engineer drawings for the realignment of their driveway to ensure they are in conformance with Exhibit F which depicted the roundabout as well as the realigned driveway for the school.

Jerry Walker, 4000 East Quincy Avenue, applicant and Associate Headmaster from Kent Denver thanked the Council for the consideration of the removal of those sections from the development agreement which involved the conveyance of land for the City. He stated the school’s position was simple: if the City is no longer planning to build a roundabout, a conveyance was no longer needed. He explained there would be two reasons to keep the conveyance. One reason would be if the City were still planning on building a roundabout, and if that was the case, he said the City should state that. He said the school entered into an agreement with the City in good faith and they will honor the agreement stating if the City is going to build a roundabout, they will convey the land to the City. He said the only other reason to keep the conveyance was if it had some other value; that it could possibly be used as leverage in a negotiation so that the land could be used in some other way. He explained that if this were the case, he had some concerns about how that agreement was reached. He said if the real motivation was to use the conveyance for leverage for other purposes, it was grossly unethical and possibly illegal. He questioned the nature of the relationship that the school has always

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enjoyed with the City, which is one of compromise and partnership. He explained that in addition to the late start time on Wednesdays, one additional late start day will be added to the next school year on Fridays to further ease traffic congestion in the mornings. He said a delayed start tends to spread out the traffic flow from 8:00 to 9:00. He explained that some of the current congestion has to do with Cherry Hills Village Elementary School (CHVE) and all of the Cherry Creek School District moving their start time to 8:00. He said that a permanent late start was considered but would impact after school sports because of the lack of field lights. In addition to the late start days, the school will be offering preferred parking to students who carpool, increasing the number of bike racks, and encouraging bus ridership. He said between 30 and 55 kids per day currently ride the bus to school. He explained that Kent Denver wants to be a good neighbor and to continue the relationship with the City. Although a compromise was reached a year and a half ago regarding the roundabout, Mr. Walker said they do not feel they were the sole reason for the traffic problems in the City. The population growth in Denver has added to the issue. He stated that Kent Denver capped their enrollment, and it would not increase with construction of the new building. He said their enrollment was right around 700 and the plan was to stay at that level. Mr. Walker stated that he was not authorized to negotiate any other terms and that if the City were to use the conveyance for some other purpose, that is not in the spirit of compromise, and it’s a bad faith effort by the City to leverage their power to extract something else from the school. He again thanked Council for considering the removal of the sections that have to do with the conveyance of their property to the City for the purpose of building a roundabout. He reiterated that if the City no longer needed a roundabout, they no longer need the conveyance.

Mayor Pro Tem Brown thanked Mr. Walker and stated that she appreciated the spirit of compromise and hoped that they continue that moving forward. She said that unequivocally, neither of the two reasons he suggested were ever discussed and were not part of this conversation and she was taken aback by his mention of them.

Mr. Walker said according to previous Planning and Zoning (P&Z) minutes the feeling expressed was that the conveyance could be used for some other purpose.

Mayor Pro Tem Brown advised that there was no indication by anyone at this meeting or City staff that this was the case.

Mr. Walker stated he was glad that he could preempt any of that discussion because if that was the case, they would convey the land tomorrow and be done. He said it would become a political question for the residents of Cherry Hills Village and Council.

Mayor Pro Tem Brown assured Mr. Walker that was not the nature of this discussion. She explained that the decision not to build a roundabout was decided in April 2018 and the discussion had not resurfaced in any Council discussion since then. She said the issue before Council was not about a roundabout, but about a request to modify a development agreement that was negotiated as part of an expanded use application.

Mr. Walker stated the sections they are seeking to remove have to do with a roundabout.

Mayor Pro Tem Brown said those sections were negotiated in response to one of the standards for approval which specifically stated the applicant would be responsible for mitigating and managing traffic and pedestrian safety, Standard #5. It was determined when the application came forward to Council in early 2018, that the applicant did not satisfy that requirement because it provided no alternative to manage traffic. She said City staff then negotiated with Kent Denver, who was represented by counsel and that City Council was not part of those negotiations because they were quasi-judicial.

Mr. Walker clarified that Kent Denver was not represented by counsel during the negotiations.
Mayor Pro Tem Brown stated that in Walker’s comments at the February 20th meeting he stated that he was represented by Otten Johnson.

Mr. Walker clarified he had conferred with Otten Johnson about the questionable legal standard regarding conferring a nexus on that traffic intersection based on the fact that they were not increasing the number of students on use, and the questionable logic that was used was that if Kent Denver eventually sold the property, that 28,000 square foot property could be used for some other purpose, or in the future they could grow and would therefore have an impact on traffic. He said at that point, when they sought advice from Otten Johnson, they were clear that they did not see the nexus and they thought that was a very defensible position on their end, but they were not represented by Otten Johnson in negotiations with the City. He said those negotiations took place directly between City Manager Thorsen and himself, and no one else was present.

Mayor Pro Tem Brown said Mr. Walker’s comments were not about nexus during that conversation; they were simply that Kent Denver was represented by Otten Johnson.

Mr. Walker said he was glad he could advise Council about the nature of those discussions.

Mayor Pro Tem Brown said Condition 5 stated the proposed use would not result in unreasonable traffic congestion or create a safety hazard to vehicular or pedestrian traffic and adequate provisions would be provided to manage any traffic related issues. She said it was determined that the application did not meet the standard at the time so negotiations continued. She stated the development agreement was brought forth to City Council two meetings later on February 20, 2018. She advised at that time Mr. Walker was asked if they were comfortable with the agreement Walker stated “We are very comfortable with this agreement as written and do not seek any modification to this agreement.” Mayor Pro Tem Brown asked what had changed.

Mr. Walker questioned why, if as Mayor Pro Tem Brown stated, the roundabout issue was dead, and it was not reoccurring, and no one on the Council is interested in a roundabout, why they need a conveyance.

Mayor Pro Tem Brown responded that the conveyance is Condition B, and she agreed that the City has no need for the land in Condition B. She advised the land was not the only thing achieved by that development agreement. She said that development agreement was negotiated in an attempt to meet the traffic mitigation standard. She asked Mr. Walker if he believed the City’s decision not to pursue a roundabout relieves Kent Denver from doing any traffic management.

Mr. Walker reiterated the plans that will be implemented next year to mitigate traffic. He said the school has not grown in enrollment from 2016 to 2019 and therefore, traffic has not increased. He said because of this, they have met the standard. He asked if the City is no longer building a roundabout, why they need the conveyance.

Mayor Pro Tem Brown agreed that Condition B, the conveyance of land was not needed, but there were other conditions. She reiterated that the conveyance of land was a specific proposal to address traffic management but eliminating that condition should not relieve the requirement for any traffic mitigation. She said Mr. Walker has stated that Kent Denver has no intention of increasing enrollment, but the development agreement allows Kent Denver to increase the enrollment and asked if Kent Denver would be willing to revise the agreement to limit enrollment to the current enrollment. Mayor Pro Tem Brown commented a limit on enrollment would solve the traffic problem because there would be no increase in traffic.

Mr. Walker stated that in a previous development agreement they did agree that if the student population ever increased by 15%, they would have to come back to City Council before any other improvements were allowed. He said Kent Denver does not have enough space to house that many students and therefore it is a de facto cap that is
already in existence. He questioned what Condition C related to other than the roundabout.

Mayor Pro Brown answered Condition C would potentially realign the driveway or potentially some other traffic solution.

Mr. Walker stated Condition C referred to realigning the driveway to intersect with a roundabout.

Mayor Pro Tem Brown stated she would be happy to remove the reference to a roundabout everywhere it is mentioned in the development agreement.

Mr. Walker advised removing the roundabout would eliminate Conditions B and C.

Mayor Pro Tem Brown confirmed that if there is not a land conveyance, Condition B and Exhibit F could be omitted.

Mr. Walker asked what in the other conditions would be beneficial to keep.

Mayor Pro Tem Brown answered the potential to realign the driveway, or some other traffic solution. She stated negotiating a contract during a City Council meeting was not an appropriate forum and that the development agreement before Council tonight was negotiated in an attempt to address traffic concerns. She stated that although Mr. Walker disagreed that there are concerns, they do exist. She confirmed again that the City is not moving forward with the roundabout. She said she would be happy to remove the roundabout from the agreement but was not in favor of eliminating any traffic mitigation requirements. She stated that she appreciated the ideas Mr. Walker proposed, but they were not part of the development agreement and therefore were not requirements. She clarified that the student enrollment was limited to 805 students, which is a 15% increase of the current enrollment. She said that if the school is not going to increase the enrollment beyond 700, the development agreement could be revised again to reflect that and the need for traffic management goes away.

Mr. Walker stated limiting the enrollment in the current agreement was not an option and he had not been authorized to accept any other negotiated term, nor was the Council meeting the place to negotiate the agreement. Mr. Walker reiterated that Kent Denver was not open to negotiating or revisiting enrollment caps. He said the alignment issue Mayor Pro Tem Brown referred to was an alignment to a roundabout, therefore if the Council wants to take out the roundabout, those sections would have to be eliminated as well.

Mayor Pro Tem stated that in Mr. Walker’s comments from February 6th, he said he had previously presented changing start times as an option and the City staff refused to consider that as a valid option. She said changing the start times has become a recurring theme in feedback received by City Council and asked if adjusting the start time was off the table.

Mr. Walker said a 9:00 start time every day would destroy the outdoor sports program unless they eliminated a significant portion of the academic day. He said the only way that could be a viable solution was if lighting were added to the fields. He reiterated that the compromises Kent Denver made were the two late start days. He stated that was a significant change overlooked by the Planning & Zoning Commission (P&Z). He said the congestion would be reduced four days out of seven for about 20 minutes. He added this this would also allow them to keep their sports program.

Mayor Pro Tem Brown said citizens had suggested that the City restrict Quincy Avenue and Colorado Boulevard’s traffic to residents of Cherry Hills Village only. She asked what percentage of Kent Denver’s students were Cherry Hills Village residents and how other students would be able to get to school if that were the case.
Mr. Walker stated that was not an option presented by Kent Denver and added that between one half and one third of their students live in the Cherry Hills Village.

Mayor Pro Tem Brown reiterated that part of the standard for the application was safety. She asked how the suggestions made by Kent Denver would improve safety into and out of the driveway with conflicting left turns, combined with the bike trail and pedestrians in the intersection.

Mr. Walker stated that a well-trained uniformed traffic control officer was as safe as it could get, and also the most efficient. He said the school has already agreed to this solution at their cost and that it is a viable, real solution that does improve traffic now, and the safety at the intersection. He stated that there was an accident study done at the intersection of Quincy Avenue and Colorado Boulevard as well as the intersection at the entrance to the school and it was determined that these were not unusually unsafe intersections.

Mayor Pro Tem Brown questioned if Mr. Walker believed any of the proposals he was suggesting would have an impact on safety.

Mr. Walker stated that if more students arrived at school via busses and carpools, there would be less traffic actions at the intersection. He said he continuation of a uniformed traffic control officer was something they have already agreed to and was in the best interest of both the City and Kent Denver.

Mayor Pro Tem Brown asked what percentage students carpool.

Mr. Walker answered between 5 and 25% depending on the sports season, faculty and siblings.

Mayor Pro Tem Brown asked what effect Kent expects priority parking would have on traffic.

Mr. Walker stated that the effects were not known but he expected the 20 priority parking spaces would take approximately 20 drivers off the road.

Mayor Pro Tem Brown clarified that the 20 priority parking spaces could be consumed by people who are already carpooling.

Mr. Walker acknowledged that possibility and that Kent has no data to support expected impact of traffic.

Mayor Pro Tem Brown asked how many students rode bikes.

Mr. Walker stated that weather was a big determining factor in students that ride bikes and advised about 15-50 students ride their bike on a nice day.

Mayor Pro Tem Brown asked if Mr. Walker felt that the lack of bike racks was the reason more students did not ride bikes to school.

Mr. Walker stated that Kent Denver was making incremental improvements and the biggest change would be another late start day. He said that most 16-year olds do not want to ride their bikes and that middle school students bike more.

Mayor Pro Tem Brown asked if Kent expected additional bike racks to reduce traffic.

Mr. Walker replied that these were incremental improvements.

Mayor Pro Tem Brown said the P&Z meetings were not recorded and the minutes are summary minutes and not a transcription of the meeting. She asked Mr. Walker to clarify the following statement attributed to him in the minutes: "Walker stated it would be difficult for the Kent Denver School Board of Trustees to accept conditions recommended by City Council."
Mr. Walker advised the first and second motions failed, and the third motion was a hybrid that the City recommended which included eliminating those conditions if Kent Denver would consider an enrollment cap or another way to mitigate traffic. He said his response to P&Z was that those conditions would be very difficult. He stated some of the items that were identified were things they are already doing and also included a laundry list of things that might happen in the future.

Mayor Pro Temp Brown advised she understood Planning and Zoning’s decision as a request to do all the things Walker just stated and more. She asked if Kent Denver expected the City to amend the development agreement by removing the conditions and not expect the school to assist with traffic mitigation.

Mr. Walker replied there were several things the school will be implementing to mitigate traffic.

Mayor Pro Temp Brown asked if Kent Denver would be willing to put any of those items in the development agreement.

Mr. Walker replied no.

Councilor Safavi clarified that Kent Denver had a piece of land they conveyed to the City to build a roundabout. He continued that the City was not going to construct a roundabout and Kent Denver was asking the City to return the land to them and to remove the conditions that were part of that deal.

Mr. Walker confirmed that this was correct.

Councilor Safavi commented that Mr. Walker was not there to tell City Council how to fix the traffic in Cherry Hills Village, Arapahoe County, Denver or the State of Colorado.

Councilor Weil confirmed that Mr. Walker was not authorized to negotiate. He further commented that there are 700 students and Kent Denver’s future plans were not to go beyond that, yet there was no willingness to negotiate what he thought should be a threshold rather than a cap on enrollment. He thought it was a moot point since the school suffers the most because of the traffic problems. He asked if the cap of 700 students was a moment in time and if there could be a possibility that the student count would increase.

Mr. Walker said that admissions at a private school are more of an art than a science and depend on matriculation rates and yield rates. He stated that that the variation in enrollment ranged from 695 to 715. He said 700 was a consistent number. He explained that Kent had agreed to that limitation because if the enrollment grew to 805 students, a 15% increase, they would need to build new facilities and would have to come back to Council anyway. He said he could not imagine the school growing to that size, without building a whole new school.

Councilor Weil said that does not give him direction on how to interpret the 805 versus the 700 student cap.

Mr. Walker stated that even if the cap were at 722, the school would run the risk of violating the terms of the agreement or having to accept students in another fashion because there is that plus or minus range.

Councilor Weil thanked Mr. Walker for his explanation and his efforts to mitigate the issue expeditiously. He stated that Kent Denver is an asset to the community, and it was appreciated.

Councilor Gallagher stated that status quo was good, and that the City should preserve what it has. He said he was in favor of the amendment and it would close a sad chapter, which started out with an expanded use application for building and ended up...
as a very contentious and embarrassing scenario for the community. He asked if the amendment passed and in ten years the community continued to grow would Kent Denver be a good partner to the community.

Mr. Walker stated that yes, the school absolutely would. He agreed that it had been a sad chapter and did not like that it had turned adversarial. He commented that it did not make the school eager to enter into a partnership with their adversary. He said in the past when the City or community has asked, they have always said yes to things like keeping the campus open to function as a park for the community, or other city related events they have hosted. He stated that they are looking to partner with the City on how the City’s open space might work with Kent’s property. He said the structure of the development agreement process makes it adversarial and encouraged the Council to revise it. He further stated they would be willing to assist with the revision process. He said if the City came to them with a true solution and it was a true partnership, not one where someone has the power of imminent domain, they would be very willing to participate in those conversations.

Councilor Sheldon thanked Mr. Walker and Kent Denver for being a good steward of the land. He commented that it was a hot topic for Council, staff and the community. He stated there were a couple dozen emails in their file and said the feedback was good. He explained, through the fault of no one, the Council rushed to a conclusion so that Kent could break ground on Kent’s new building in order to meet the school’s opening date. He said the City ran with the idea of a roundabout until hundreds of people expressed their opposition. He stated in hindsight, the language in the agreement could have been tailored to reflect “in the event of a traffic solution is found that meets with our joint approval then the following conditions would apply.” He said the land would then be dedicated to meet that improvement, Kent Denver would agree to realign their driveway and the City would agree to make public improvements on the public side of the street. He stated that if there had been time to do that jointly, the situation would have ended up very differently. He questioned, since the City does not need that right of way, if Kent Denver would agree to a plan to realign the driveway, or some other traffic solution in the future if needed. He stated that Council wants Kent Denver to get the certificate of occupancy and also to get back in the good graces with Kent Denver; however it was incumbent upon Council to protect the citizens and those passing through. He commented that in five to ten years there could be an interchange or major realignment on I-25 causing the resulting traffic traffic on Quincy Avenue to double or triple, which would not be a result of Kent Denver. He stated he was not looking for a traffic solution today but would like assurance that Kent Denver and the City could work together moving forward.

Mr. Walker acknowledged the time pressure to came from Kent Denver. He said the school has an amazing relationship with the City and that they were willing to take a thoughtful look at traffic solutions if it was a true partnership.

Councilor Blum asked if there was a way to memorialize Kent Denver’s commitment to work as a partner and find a long-term solution in a development agreement.

Mr. Walker stated in principle, yes, and it would show good faith on part of the City if the conveyance was removed. He said if they went into an agreement that was not a development agreement, but one that looked at traffic solutions over a period of time, he could take that to the board of trustees. He said that students and faculty are affected by traffic and he would support a solution that moves traffic more efficiently, but does not encourage more traffic to flow through the City.

Councilor Blum stated that Kent Denver’s commitment is important. He asked if they were committed to adding a second late start day.

Mr. Walker confirmed that they were committed.

Councilor Blum asked Mr. Walker to describe how many periods students would have during the day and what the start and end times would be.
Mr. Walker said it would be a six period day that would start at 9:00 and upper school sports would start at 4:00. He said on late start days, the periods would be shorter and the sports programs would run later.

Councilor Blum stated the word roundabout would be taken out completely and asked if they would consider realigning their entry to another location as a long term solution.

Mr. Walker stated he would not consider that option tonight, but would discuss it as a long term solution. He said the risks with that option could be the unintended consequence of losing some of the open space.

Councilor Blum suggested another long term solution could be a 4-way stop.

Mr. Walker said an uncontrolled 4-way stop does not improve traffic any more than a uniformed traffic control officer.

Mayor Stewart added that the letters received by residents regarding the development agreement would become part of the public record.

Mayor Stewart opened the Public Hearing at 7:30 p.m.

Earl Hoellen, 3 Vista Road, urged Council to deny approval of Kent’s request to amend the development agreement. He explained a little over a year ago, the City negotiated the agreement with Kent as part of an expanded use permit. He said traffic mitigation was one of issues that was discussed at the time. He said several possible alternatives to mitigate the traffic issues were considered including revised enrollment triggers, revised start and dismissal times, realignment of Kent’s entrance irrespective of the type of intersection installed at Colorado Boulevard and Quincy Avenue, and others. He said some of these alternatives were not acceptable to Kent, which Mr. Walker has confirmed during his statements, that would have resulted in something that didn’t involve the transfer of land. He stated the negotiations continued and led to the terms currently in the development agreement before Council tonight, and that Kent Denver would transfer some land to the City, and if within 8 years the City built a roundabout, Kent would commit to realigning their driveway to that intersection. He said if the City did not build a roundabout within 8 years, the land would revert back to Kent. He noted that the 8-year time condition was added near the end of the negotiations, limiting the flexibility and the time the City would have to deal with the traffic problems at that location. He said that as a former Council Member, this was a concern to him because the previous Council did not know when it would be able to proceed since it was always going to be subject to public input. He added the previous Council did take steps to proceed apace with that project, but after getting significant opposition from the public, Council decided not to proceed. He said at no time, however, did the previous Council decide that if the project couldn’t happen right away, then they didn’t want the public to have the option to consider such a project in the future. He noted that while the public clearly did not want a roundabout in early 2018, they also still recognized that there was a traffic problem that needed to be solved, and they still do. He said he has no doubt that this Council, like the previous Council, would not proceed with this project without widespread public support. As such, he stated, the roundabout was not on the table. He stated no one has any idea what traffic conditions might be like in 2026. He further added that no one knows what the citizens of Cherry Hills Village might think about traffic problems 2026 and how to solve them. He said in all likelihood, no one sitting on the Council tonight would be sitting there in 2026. He stated it was always intended that this provision of the development agreement would give the City an option to deal with traffic problems at that location, adding that options have value and that optionality is what gives organizations the chance to optimize solutions. He said to simply give away an option like this is no different than giving away any other asset of the City. He said he is not against the City renegotiating the agreement with Kent to the extent that Kent would be willing to reconsider some of the things he mentioned earlier and make commitments. He said some of those things in combinations would seem a reasonable tradeoff for revising the current provisions. He suggested that rather than transferring
the land right now, make a commitment to transfer it sometime in the future, if the City decides to build a roundabout, or not, do something in exchange for that and change the time frame from eight to 15 years. He explained that way there would be no transfer of land, no reversion and the City would get additional time. He said this provision, negotiated in good faith, gives the City a significant option to deal with traffic in the future, if the public so desires, which has always been the case. He added that it has real value to the City and shouldn’t be given away. He recommended that Council vote not to approve the amendment as it was written and thereafter if thought fit, to sit down with Kent to renegotiate a broader agreement with regard to traffic mitigation. He mentioned that he does not consider the P&Z minutes official and they did not accurately reflect what happened at the meeting. He said he did not understand the comments made about leveraging by Chairman LaMair at that meeting. He agreed with Mayor Pro Tem Brown that at no time, certainly on the previous Council, was there a discussion about leveraging anything in the agreement or to do anything other than deal with traffic at that location. He said the roundabout was only part of the agreement because it was the only way that Kent, at the time, was willing to talk about realignment of their driveway. He said if they are willing to talk about and commit otherwise, then it would need to be part of the agreement. He stated the agreement had value to the City going forward, and for future Councils citizens.

Laura Christman, 18 Cherry Lane Drive, said she doesn’t care whether or not there is a roundabout. She said the issue was traffic and safety at the time. She stated that the City was not going to improve traffic and that most of the complaints came from Kent Denver parents who were objecting to how long it took to get their children to school. She said that traffic was something that most of the residents of Cherry Hills Village were accepting of and it made it less desirable for citizens of other communities to drive through the City. She stated that Kent Denver benefits most from traffic mitigation. She commented that if the community and Kent do not care about real traffic mitigation then it should go away, which is what Council decided before. She stated that as a result, before the Council was a proposal to amend the agreement, but it does not take away the safety issue. She said if safety or extreme traffic becomes an issue, that there should be some kind of enforceable agreement. She said she was present because of the possibility of using lights on the field as leverage. She reiterated that Kent stated many times that the only way to deal with true traffic mitigation is by installing field lights. She said many residents have contacted her with concerns about this possibility. She asked if that there was any possibility of the City and Kent amending the agreement in a way that involves field lights, that there be a broad public meeting so all in the community can have input.

Laura Lopez, 4245 South Forest Circle, voiced her approval of the amendment and asked for a straightforward vote. She said since there would be no roundabout every condition should be removed in relation to it. She stated that she researched the legal issues regarding the conveyance and that she was troubled by the potential liability for the City if the taking of Kent’s land occurs. She added that Kent’s new building had no impact on traffic and yet the permit for the building was conditioned on taking the land from Kent for a completely unrelated traffic solution. She said in her legal opinion it is possible that the condition violated the 5th Amendment and other state laws. In addition, she said it would set a dangerous precedent for private property rights in Cherry Hills Village. She stated she was disturbed at the attempt to renegotiate the agreement at the meeting, again focusing on traffic. She said it was the same legal problem; there is no nexus of the building in question and the traffic issue the City wanted to solve. She stated using an unconstitutional taking as a bargaining chip to get something from Kent would put the City in legal jeopardy. She said land conveyance is not an asset, but a liability and the citizens of Cherry Hills Village did not want to pay legal bills for defending the mistake. She said she was distressed by how Kent Denver was treated throughout the process adding that they have opened their lands to the public, and it was an oasis of undeveloped land. She further stated that the City should be proud of the public and private school options in the City and there should be a spirit of cooperation between the two. She asked Council to approve the amendment without any additional conditions.
Liz CRollins, 1 Haystack Row, expressed her concern about how hostile the discussion had become and asked why Kent Denver was being held accountable for the traffic problems. She asked why the same questions weren't being asked of Cherry Hills Village Elementary (CHVE) parents and staff. She said seven to eight years ago she asked CDOT to extend the light at Quincy Avenue and University Boulevard in order to improve traffic flow, and their observation was that CHVE parents do not carpool. She stated that it was not just a Kent Denver problem. She added that installing school lights, like those at St. Mary's School could reduce cut through traffic. She commented that changing start times was a revolving issue, stating that Cherry Creek School District has changed their start time three times since her children have been in school. She noted that although Kent's traffic mitigation initiatives were not in the development agreement, if there was a collaborative relationship between the City and Kent, it would not have to be in writing to be effective.

Chris Haymons, 4050 South Hudson Way, said he understood that options have value but it should be a collaborative partnership between the City and Kent. He said he attended the hearing when Kent was granted their building permit. He concurred that this was an embarrassing moment for the City and hoped the City could move past it.

Mayor Stewart closed the Public Hearing at 7:47 p.m.

Councillor Safavi thanked everyone who voiced their opinions regarding the issue. He added that Kent Denver has been a big part of the community for almost 100 years that they are there to stay. He stated that Kent has been a great partner to the City that has educated not only residents but citizens from surrounding communities. He noted the relationship was solid and strong, however, that solidarity was not evident now. He stated the relationship was important to maintain based on the residents' passionate support for Kent. He said the relationship was long in the making and based on mutual trust and consent involving open discussions. He stated in such partnerships, seeking leverage for influence in later negotiations is unacceptable. He added the City does not need to keep the conditions on a piece of land that does not belong to them. He stated the land needed to be returned to its rightful owner, Kent Denver, and asked that the Council reverse the mistake.

Councillor Safavi moved, seconded by Councillor Weil to approve the requested amendment of the 2018 Development Agreement for the Kent Denver Upper School building project by eliminating conditions B, C, and D of Exhibit D and removing Exhibit F.

Mayor Pro Tem Brown stated that the City was not holding Kent Denver responsible for the City's traffic problems. She explained that the original proposal was that Kent would construct all of this at their own expense and everyone on the Council at the time said that was not appropriate. She stated the way the development agreement was currently worded, despite Kent's assurances that the student enrollment would not increase, Kent can increase their enrollment by 105 students without any input from the community or traffic mitigation, resulting in an additional 200 to 300 trips per day through that intersection. She said this was, is and always has been about traffic mitigation. She didn't think anyone spoke in favor of requiring the land dedication, and as a result there is a willingness on the part of Council to consider other alternatives which would amend the agreement. She said she has heard a lot about working in partnership, but that Kent's unwillingness to consider alternative solutions did not sound like a partnership. A partnership would involve a discussion about what works for everyone. She said the City does not need the land, but it does need to solve the traffic problem, which she has heard from many residents. She said Council heard from hundreds of people that a roundabout was not wanted, but fewer than five of those people said they did not want to do anything. She said that doing nothing was what was before Council tonight. She noted that Council did not have the solution and concurred with Councillor Sheldon that Council was being rushed to make a decision, adding that the original decision to table the roundabout was made over a year ago. She said the request to remove the conditions could have been brought forth at any point, but it was brought forth instead after the TCO had already been issued adding to the hastiness.
She said she had learned from experience that rushing to make a decision did not work out well.

Mayor Pro Tem Brown moved to include an amendment restricting the enrollment of Kent Denver to 720 students.

Mayor Stewart asked the other members of Council if there was a second to Mayor Pro Tem Brown’s amended motion.

There was not a second to the motion so the motion fell to the floor.

Councilor Gallagher applauded Kent Denver for constructing a beautiful building that met their purposes to remain competitive. He stated they started with a building permit that went in a bad direction. He added he was in support of the amendment and noted that the community had spoken. He further added that the community did not want a roundabout, yet they want to support Kent. He said sometimes the best thing to do is nothing. He stated maintaining the pastoral environment of Cherry Hills Village was critical as evidenced by the over 100 letters Council received. He said Kent Denver, which had been in the Village since 1922, was a very good neighbor and they are accomplished at promoting inclusiveness, not exclusiveness. He added that their open campus was appreciated and the value was recognizable. He said as a City it is important to maintain and foster this strong relationship. He stated that by adding a second late start day, preferred parking for those who carpool, adding more bike racks and encouraging bussing, Kent Denver was putting the rewards in the right places and he thanked them for their effort.

Councilor Sheldon stated the City and Council were in a tough spot and he was torn. He proposed that Council take two weeks to think about this issue rather than be rushed. He stated this might give Council the opportunity to discuss changes to the development agreement that could be amiable to both the City and Kent. He said the proposal doesn’t work as is because the intent of the document was to work collaboratively on a traffic improvement. He noted the flaw was that Council specifically called the solution a roundabout. He said if Council had called it a traffic improvement, the right of way would be a separate issue. He stated he thought the majority of Council was willing to give up on Condition B which was the requirement for Kent to dedicate that land to the City. He stated that the issue was how to solve a potential problem that may occur in the future. He did not want to make a motion without collaboration from Kent Denver. He was worried about the certificate occupancy but stated that they could operate under a temporary certificate of occupancy for a couple of more weeks.

Councilor Blum stated there were four points in the report that Kent Denver was already committed to doing, that were not in the development agreement and he concurred with Councilor Sheldon that it was wise to take two weeks to discuss the issue with them. He said the City does not want the land, and it belonged to Kent Denver.

Councilor Blum moved, seconded by Councilor Sheldon to table the decision to approve the requested amendment of the 2018 Development Agreement for the Kent Denver Upper School building project by eliminating conditions B, C, and D of Exhibit D and removing Exhibit F to May 21, 2019.

Mayor Stewart said he believed there were constitutional issues. He said the agreement tied a legislative decision on whether or not to build a roundabout with quasi-judicial decision on this one piece of property that belongs to Kent. He said whether the City were to build roads in an effort to solve traffic problems is a legislative issue that should not be decided within the context of the development agreement. He said imposing conditions on the development agreement for Kent Denver to solve legislative problems is a problem. He said the difficulties result because there is no nexus and no proportionality for what Council is asking Kent to do. He stated the fundamental issue to imposing conditions at this time would be a violation of the Regulatory Impairment of Property Rights Act (RIPRA). Section 1 of the Act states in “imposing conditions upon the granting of land-use approvals, no local government shall require an owner of
private property to dedicate real property to the public, or pay money to a public entity in an amount that is determined on an individual and discretionary basis, unless there is an essential nexus between the dedication or payment and a legitimate local government interest, and the dedication or payment is roughly proportional both in nature and extent to the impact of the proposed use or development of such property. This section shall not apply to any legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners by local government”. He added section 2 states “no local government shall impose any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner”. Mayor Stewart said the second section of the Act is most important because the City had not adopted any of the necessary standards required to start a discussion with Kent about what the City can do regarding conditions imposed on them. He said it would be improper to have the discussion in context to a development agreement or in his legal opinion we will violate RIPRA and there would be consequences for doing so. He agreed that there are issues, but did not agree the City would need to make it easy to allow for cut through traffic. He further added that the Master Plan states that cut through traffic should be reduced. He said at this point if Council were to approve conditions they would be in legal jeopardy. He concluded that the City cannot adopt conditions without standards.

City Attorney Guckenberger asked to confirm a date and time certain for the motion.

Councilor Blum stated May 21, 2019.

Mayor Pro Tem Brown questioned if the item was a land-use application.

City Attorney Guckenberger stated the development agreement was entered into as part of the criteria that was pursuant to the required process for the land use approval.

Mayor Pro Tem Brown clarified that the application and land-use was granted and is moving forward.

City Attorney Guckenberger stated this was true.

Mayor Pro Tem Brown asked if changing a development agreement pertained to land-use. She said in 2006, in a previous development agreement, Kent Denver had a restriction on sophomore parking, and due to some changes in state law, came back to the City and asked to have that provision removed and it was renegotiated and changed.

City Attorney Guckenberger stated it could have been changed via administrative process, but she was not aware of the history regarding the previous agreement. She said the agreement entered into in a quasi-judicial process and in order to protect due process for all parties involved the City Attorney’s position has been to approach the agreement through the quasi-judicial form.

Mayor Pro Tem Brown asked the City Attorney’s opinion on nexus.

City Attorney Guckenberger said it was the City Attorney’s legal position that a valid contractual agreement had been entered into by both parties. She said she did have an email from legal counsel on behalf of Kent Denver that requested specific amendments to the development agreement, and some were accepted and some were not. She stated she had some legal authority that the negotiation takes the conditions out of the imposition context and into a mutually beneficial negotiated agreement, on which there are benefits and obligations and that is still the City Attorney’s position today.

Mayor Stewart stated that Kent Denver no longer agreed to those conditions, so anything the City imposed would be a violation of RIPRA.

Councilor Blum stated that was why he moved to table the issue for two weeks.
Councilor Weil said Council was told the enrollment would be 700, so Council would be solving a phantom problem. He asked what the effects would be if it went up to 805. He said Council had assurances from Kent Denver that they would be willing to work with the City if traffic became a bigger problem. He said that 60% of the traffic problems on Quincy Avenue are because of Kent Denver, and Kent Denver is 100% affected. He said as a result, Kent Denver would be coming to the City for help and did not understand what would be accomplished by prolonging the decision for two weeks.

Councilor Safavi stated that in the spirit of partnership the City should give Kent Denver their land back without conditions. There were conditions with a roundabout, and since there would not be a roundabout, Council should give it back. He said Council should make it equal ground and then discuss the traffic.

Councilor Sheldon stated these are all reasons that the item should be tabled. He said Council should take the time to study the RIPRA case law as stated by the Mayor. He expressed concern that the City was approached only 60 days ago about this issue even though the deal was made over a year ago, and said he would like time to think about it.

Mayor Stewart questioned if the issue was tabled, it would not need to be re-noticed.

City Attorney Guckenberger confirmed this was true if it was set for a date and time certain.

Councilor Gallagher stated this was a good test of the relationship, and that he was certain Kent Denver would be trustworthy over a long period of time.

The following votes were recorded for the motion to table the decision to approve the requested amendment of the 2018 Development Agreement for the Kent Denver Upper School building project by eliminating conditions B, C, and D of Exhibit D and removing Exhibit F to May 21, 2019:

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Vote on: 3 ayes. 4 nays. The motion failed

The following votes were recorded to the motion approve the requested amendment of the 2018 Development Agreement for the Kent Denver Upper School building project by eliminating conditions B, C, and D of Exhibit D and removing Exhibit F:

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Vote on: 4 ayes. 3 nays. The motion carried

**NEW BUSINESS**

None
REPORTS

Mayor's Report

Mayor Stewart said he reviewed the environmental assessment from the FAA and Appendix I sections 5.2 and 5.3 indicate that if the new flight path is adopted, Cherry Hills Village would see a decrease in noise and Jefferson and other counties would see an increase. He said the FAA will hold more study sessions and he encouraged people to attend. He noted it was great news if it was true. He stated the study areas were broken down into areas such as: Allan Hutto Memorial Commons, CHVE, Dahlia Hollow Park, St. Mary's School, Cherry Hills Country Club, and Southmoor Park and all areas would have a decrease in noise. He cautioned that the City should be careful and understand what the conditions were, however, it was potentially good news. He advised the Arapahoe County Shareback meeting is June 28th and all cities receiving shareback funds were invited. He stated Sherriff Brown would hold a meeting May 16th at 6:30 regarding the need for new county jail and courthouse. He said he would be attending the Colorado Municipal League Conference June 19-21st and that City Attorney Guckenberger would also attend. He commented he had been speaking to Denver Water regarding issues with Quincy Farm and he has provided them with the well report and irrigation plans. He reported that they will give the City a water assessment in return for contract rights. He also advised him met with Bill Klingensmith regarding flooding issues from several years ago and Mr. Klingensmith had identified they are getting infiltration in their sewer system and in the sump pumps, which are a violation of the code. Mr. Klingensmith was asking for the City's help in redirecting the water from the sump pumps to the sanitary sewer system. He talked to City Manager Thorsen regarding notifying HOAs when permits have been issued. He said his HOA newsletter pictured a bald eagle, wild turkeys and a red fox in Buell Mansion. He mentioned he would like to set up regular office hours, stating those hours would probably be on Mondays at 9:00.

Members of City Council

Councillor Blum stated there were two more Denver Metroplex FAA meetings at Arapahoe County.

Mayor Pro Tem Brown stated that regardless of the numbers in the FAA report, there is a concentrated flight path over Cherry Hills Village and the flights are currently dispersed, which is indicated in the drawing. She said that if performance based navigation is implement, the arrival path will produce flights directly over the City. She reminded everyone that this process has had disastrous impacts in other cities where it has been implemented. She cautioned Council from changing course and urged them to continue to fight the issue. She said it was also important to look at Centennial Airport and their flights. She reminded the Council that May 15th is a meeting regarding the potential crosswalk that will be installed at Dahlia Street and South Hudson Way. She said the crosswalk was requested by residents in the Cherry Hills North neighborhood, but there had been an objection from a resident who were not happy about having a large crosswalk signs in their yard.

Councillor Weil mentioned he has asked the impacted Cherry Hills Farm HOA to show plans of what they would like to do with regards to the security shack. He said the problem is the City's code would not allow the building permit to be issued and BOAA has suggested that Council revise the code. He will recommend to the HOA that both processes be conducted on a parallel basis. He was hoping to have this process to the Council members by mid-May to early June.

Mayor Stewart commented that the community shelter was a method of keeping eyes on one's own community and was a positive plan.
City Manager & Staff

City Manager Thorsen reminded Council and the audience that there was a Volunteer Recognition Celebration on Saturday, May 11th from 12:00 to 4:00 p.m. He stated that all current and past members of Council, Boards and Commissions had been invited. He said he would follow up on the security shelter issue, and that he had been in contact with City Attorney Guckenberger to discuss and explore additional options.

City Attorney
No report

ADJOURNMENT

The meeting adjourned at 8:37 p.m.

Russell O. Stewart, Mayor

Terri Littleford, Deputy City Clerk