

RECORD OF PROCEEDINGS

Minutes of the
City Council of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 19, 2020 at 6:30 p.m.
Virtual Meeting

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

ROLL CALL

Mayor Russell Stewart, Mayor Pro Tem Katy Brown, Councilors Randy Weil, Afshin Safavi, Al Blum, Mike Gallagher, and Dan Sheldon 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, Community Development Director Chris Cramer, Parks and Recreation Coordinator Emily Black and City Clerk Laura Gillespie.

Absent: none

PLEDGE OF ALLEGIANCE

The Council conducted the pledge of allegiance.

AUDIENCE PARTICIPATION PERIOD

None

REPORTS FROM CITY BOARDS, COMMISSIONS AND COMMITTEES

None

CONSENT AGENDA

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

- a. Approval of Minutes – May 5, 2020
- b. Resolution 14, Series 2020; Appointing a New Member to the Parks, Trails and Recreation Commission
- c. Resolution 15, Series 2020; Appointing a New Member to the Quincy Farm Committee
- d. Resolution 16, Series 2020; Supporting Food Bank Donation Drive

The following votes were recorded:

Safavi	yes
Weil	yes
Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

The motion passed unanimously.

ITEMS REMOVED FROM CONSENT AGENDA

None

UNFINISHED BUSINESS

None

RECORD OF PROCEEDINGS

NEW BUSINESS

Construction Contract with C&L Water Solutions, Inc.

Deputy City Manager/Director Goldie presented the contract with C&L Water Solutions, Inc. for the Sewer Trunk Line Rehabilitation Project. He explained the project involved significant work to repair, reconstruct, and modernize the trunk line through which the City's sewage is transported to ensure the health, safety, and welfare of its users. The project had been delayed in the past and costs continue to escalate. Staff felt the project could no longer be postponed. The project was complicated because three other districts were responsible for a share of the project costs. The project was first started in 2008 and completion had been delayed due to numerous issues such as the availability of funding and cooperation with the other districts. In 2014, City Council approved a new fee structure for the 144 residents within the City-owned sewer districts to fund this work and the City now had the funds needed for this project. The original agreements with the other sewer districts did not allow for a yearly fee to be paid for maintenance and rehabilitation. Instead, the agreements allowed the City to bill for actual maintenance each year as well as a pro-rata share of any major reconstruction based on the total number of taps on the trunk line. This arrangement had made it difficult to secure the funding from the other districts. Staff began communicating with these districts in 2009 to inform them of the needed rehabilitation. More recently, in 2016, 2018 and 2019 the districts were given notice with estimates of their share of the estimated costs. These costs have since risen with the actual cost not being known until the project was bid in early 2020. Staff has talked to representatives from each of the districts after sending a letter of the actual costs. Southgate is prepared to pay their share in full as soon as the project is approved by City Council. The District has budgeted the funds for 2020. Country Homes has tentatively agreed to pay \$30,000.00 in 2020 and the remainder of \$22,777.00 in 2021. This has not yet gone to their Board of Directors. Cherryvale has tentatively agreed to pay \$45,246.00 in 2020 and have asked if they could pay \$40,000.00 a year for 4 years to pay their share in full. This will also need to be approved by the full Board of Cherryvale. If the City were to cover the upfront costs for these two districts that would leave \$530,000.00 in the Water and Sewer Fund for normal maintenance and any emergency repairs that might be needed. This amount should be sufficient to cover any emergency. This could be accomplished through an Intergovernmental Agreement with each of these districts. If Council approved the construction contract with C&L, staff would begin working with the districts on these IGAs to be brought to Council for consideration as soon as possible. The ultimate goal is to get the sewer system in a good state of repair so it could be transferred to another district. The City can not effectively operate a sewer system for 144 residents in a cost effective manner.

Councilor Blum asked if the project was for both the trunk line and the ad alt line shown in the map included as Exhibit B to the staff memo.

Deputy City Manager/Director Goldie confirmed that was correct.

Councilor Sheldon noted the City's COLOTRUST account received about a 1.1% interest rate and lending the districts the funds for this project would cost the City a couple thousand dollars in interest. He asked if the City could at least discuss the possibility of recovering the lost interest from the districts as part of the IGAs.

Councilor Gallagher asked why the smaller districts did not have funds for this project in their accounts after knowing about it for so long.

Deputy City Manager/Director Goldie replied the smaller districts were basically just the Homeowners Associations (HOAs) with minimum or no dues and no capital in the bank. He explained Southgate had been collecting funds for years and had funds in the bank, and Cherryvale voters approved a tax last year and was starting to collect funds. He

RECORD OF PROCEEDINGS

noted part of the impetus for this project overall was to consolidate the smaller districts in order to ensure better management.

Councilor Gallagher asked who would be responsible for paying for emergency sewer repairs in the smaller districts that did not have savings.

Deputy City Manager/Director Goldie and City Attorney Guckenberger replied that was unknown and they could research that issue.

Councilor Gallagher noted this project was in the current Master Plan and should be addressed in the Master Plan Update as well. He asked if any other progress had been made on the project.

Deputy City Manager/Director Goldie replied there had not.

Councilor Gallagher stated this was an accident waiting to happen and it was important for the project to move forward. He expressed concern that if there was a sewer emergency funds would be needed immediately to fix the lines.

Councilor Blum asked what would happen if the districts defaulted on payment to the City.

City Attorney Guckenberger replied that would be specified in the IGAs.

Mayor Pro Tem Brown indicated Councilor Sheldon made a good point and it should be part of the conversation. She stated the project was good for the City and it was important for the City to get out of the sewer business. She indicated she believed the benefit to the City was worth the interest the City would forego. She agreed with Councilor Gallagher that this was a long time coming and although it was an odd time for a project this large, it needed to get done.

Councilor Weil agreed with Councilor Sheldon that a competitive interest rate would be in order. He asked if the financing would delay the City's ability to find a sewer district to take on all the properties.

City Manager Thorsen replied the IGAs would be transferable to the purchasing district.

Councilor Weil asked if it would be simpler to consolidate the small districts into the City first and then turn over the properties to a larger district, and if so could the financing be used as leverage for consolidation.

Deputy City Manager/Director Goldie replied Country Homes had 18 homes and the system was in pretty good shape, but the cost estimates had gone up since the project started. He explained Cherryvale was in the same shape as the City's lines which was that they needed work. He indicated the planned process was the best way to move forward although it was patchwork. He added City Council's approval was enough incentive.

City Manager Thorsen indicated staff believed it was best to finish the work as planned then transfer to another district and encourage other small districts to join.

Councilor Gallagher asked if the City was obligated to get its sewer lines up to a certain standard before they could be transferred to another district.

Deputy City Manager/Director Goldie replied that was correct.

Councilor Gallagher asked who was responsible for an issue between the homes and the trunk lines.

RECORD OF PROCEEDINGS

Deputy City Manager/Director Goldie replied the houses connected to the main lines and that the homeowner was responsible for the sewer line between the house and the main line.

Councilor Gallagher asked how long it would take to upgrade the trunk lines and main lines to the standard needed to transfer them.

Deputy City Manager/Director Goldie replied the process would take a few years.

Councilor Gallagher asked if the issue would come back to Council.

Deputy City Manager/Director Goldie replied the main lines were all owned by the City and no other districts were involved.

Councilor Gallagher asked if the funds that would remain in the Water & Sewer Fund would be sufficient to complete the main line projects.

Deputy City Manager/Director Goldie replied staff believed it would but could not know for certain until the projects were put out to bid.

Councilor Sheldon asked when the bid for that project would go out.

Deputy City Manager/Director Goldie replied staff planned for December.

Councilor Sheldon asked if staff should consider putting the trunk line project back out to bid to get less expensive bids.

Deputy City Manager/Director Goldie replied the American Public Works Association and the Colorado Asphalt Paving Association members were reporting bids put out now were coming in at the same price as the City had received in January. He noted although the price of oil had decreased, the price of other products and cost of labor had not, so no one was seeing significant cost savings.

Councilor Sheldon asked why this project was different than the concrete and chip seal projects, which had been postponed due to concern with the impact of COVID-19 on the City budget.

City Manager Thorsen replied the concrete and chip seal projects would be paid from the Capital Fund, while this project would be paid from the Water & Sewer Fund.

Councilor Sheldon indicated the motion required the IGAs be fully executed with the other districts before the C&L contract was signed and asked that language also be added to the motion to cover the interest lost.

Councilor Safavi indicated good points had been raised by the other Councilors. He stated he was in support of the project and agreed with Councilor Gallagher this project was necessary. He agreed with Councilor Sheldon and Weil about charging an industry-standard interest rate. He agreed with Councilor Sheldon that rebidding should be discussed and suggested the City could wait a month or two before rebidding. He asked why the lowest bidder had been deemed unqualified.

Deputy City Manager/Director Goldie replied there were a number of reasons staff had determined the lowest bidder to be unqualified. He explained the bid documents had included specific instructions to include all subcontractor information, and the lowest bidder had put "TBD", which prevented staff from checking references. Furthermore, the bid documents specified that mobilization could not be more than 5% of the bid, but the lowest bid was 29% mobilization. Staff did not believe they could trust that contractor to follow instructions and therefore had disqualified them.

RECORD OF PROCEEDINGS

Councilor Safavi asked if the highest bidder was more expensive because they were higher quality.

Deputy City Manager/Director Goldie replied staff did not do background checks on the high bidder.

City Manager Thorsen explained as a public agency the City was limited by state statute and was required to take the lowest qualified bid and could not negotiate the bids.

Councilor Safavi asked if the City would receive more bids if the project was rebid.

City Manager Thorsen replied he had never found rebidding to be successful.

Mayor Stewart noted rebidding would break the trust of C&L after the value engineering they went through with staff.

Councilor Sheldon asked if C&L was still in business due to the COVID-19 pandemic.

Deputy City Manager/Director Goldie confirmed C&L was still in business and noted they provided service to the majority of small districts in the South Denver Metro Area. He added C&L was familiar with the City and the residents. He stated the bid numbers were good and he did not believe they would go down if re-bid.

Councilor Gallagher recognized these were tough projects because they would have to go through backyards and likely residents would be unhappy. He asked who paid for the landscaping that would have to be destroyed in the process.

Deputy City Manager/Director Goldie replied the contractor would replace the sod and irrigation, while larger landscaping like trees would be negotiated between the City and the homeowners. He noted most homeowners did not realize the easements existed on their property. He indicated the City would do its best to make the residents whole.

Councilor Gallagher asked how the City could mandate or encourage smaller districts to change their behavior and collect the funds needed to cover an emergency.

City Attorney Guckenberger replied she would research that question.

Mayor Stewart stated he suspected the City did not have much leverage but agreed that it was a problem waiting to happen.

Mayor Pro Tem Brown added it was likely not deliberate and many of the smaller districts were volunteer run and might be unaware of the financial requirements.

Mayor Stewart agreed HOAs were not sewer experts.

City Attorney Guckenberger added assessing fees against neighbors was unpopular and created a disincentive.

Councilor Safavi asked if staff had an estimate for the cost of repairing landscaping damaged during the project.

Deputy City Manager/Director Goldie replied it was hard to get an estimate, but the staff had included a 5% contingency in the total expenditure for Council's approval. He added part of the value engineering process with the contractors had been looking at some properties that were heavily landscaped.

Councilor Safavi noted landscaping could be very expensive and suggested 5% was too low.

RECORD OF PROCEEDINGS

Councilor Weil noted this project got the City much closer to having a transferable system and if significant savings could not be expected from rebidding then he supported moving forward with the contract.

Councilor Blum asked if staff believed the remaining balance in the Water & Sewer Fund would be sufficient for the work needed on the main lines and the timing for those projects.

Deputy City Manager/Director Goldie replied staff had an idea of the issues and locations on the main lines but did not have a firm cost estimate at this time. He noted most of the main lines were in the street which reduced the cost. He added the bids for the trunk line had come in very differently than the cost estimates.

Councilor Blum asked if staff was comfortable with the balance that would be left in the Water & Sewer Fund after the trunk line project.

Deputy City Manager/Director Goldie replied staff believed the remaining balance would be enough for emergencies and to start the main line projects.

Councilor Blum stated he supported the trunk line project. He asked if the City was prepared if the small districts defaulted on their payments.

City Attorney Guckenberger replied that would be addressed in the IGAs.

Councilor Sheldon moved, seconded by Councilor Blum to approve the Construction Contract with C & L Water Solutions, Inc. in the amount of \$1,172,835.50 and to approve an additional expenditure of a 5% owner contingency for a total maximum expenditure of \$1,231,477.00, with the condition that Intergovernmental Agreements with Country Homes and Cherryvale Districts for funding including enough to cover the City's lost cost of money for those amounts financed, and subject to staff and legal counsel confirming the City's protection under a default of payment scenario, be mutually executed prior to the final City signature of the construction contract.

The following votes were recorded:

Safavi	yes
Weil	yes
Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

The motion passed unanimously.

REPORTS

Mayor's Report

Mayor Stewart reported he was receiving questions about opening HOA pools and it was unclear how the Tri-County Health Department regulations applied. He added the Colorado Department of Public Health and Environment had issued draft restaurant guidelines for comments. He indicated the CML annual meeting had been cancelled and might be rescheduled on a smaller scale in the fall. He noted there was a telephone town hall Thursday at 7pm with Tri-County Health Department. He asked for Council feedback on holding the June 2nd Council meeting virtually or in-person. He noted governments were exempt from the 10-person gathering limit.

Councilor Sheldon noted virtual meetings had been effective and since Council did not currently have any land development cases or public hearings, he preferred virtual meetings.

RECORD OF PROCEEDINGS

Council agreed.

Councilor Sheldon asked about the Master Plan Update process.

Director Cramer replied the Planning and Zoning Commission (P&Z) had held two virtual meetings so far and was planning on another one next month. He stated that the process had slowed down since in-person public input was essential to the project, but P&Z was discussing a mailed survey in the meantime.

Members of City Council

Councilor Blum thanked Deputy City Manager/Director Goldie for borrowing a controller from CDOT for the new traffic signal at Glenmoor. He asked City Manager Thorsen to speak about the FEMA funds and asked Director Sager to clarify the sales tax collection dates reported in the April financial report staff memo.

Councilor Sheldon asked staff about sending letters to the residents along the section of Quincy where Council had approved undergrounding utility lines.

Deputy City Manager/Director Goldie replied the letters would be mailed tomorrow to adjacent homeowners and further communication with the HOAs and over social media would occur once the City had the construction schedule from Xcel Energy.

Councilor Gallagher recognized residents Jim Harwood and George Rentz for their grassroots efforts to raise funds for food banks during this difficult time. He also thanked Mayor Stewart for his assistance with the effort. He noted the residents had raised over \$900,000 so far.

Mayor Pro Tem Brown noted just before the coronavirus pandemic had come to Colorado, the signal at Colorado and Hampden had been changed by Denver resulting in timing issues and significant traffic backup problems. She indicated now that traffic was increasing somewhat the issues had returned and she asked staff to remind Denver that the problem was still there.

Mayor Stewart agreed.

Councilor Weil reported DRCOG meetings had focused on information rather than decision making.

Councilor Safavi had no report.

City Manager & Staff

City Manager Thorsen reported City Hall was open to the public with safety protocols in place, such as requiring masks; Plexiglas screens and tables for extra spacing between staff and customers; and increased sanitizing. He indicated the City would hold Municipal Court on May 27th with a limit of 10 people in the Court room at a time and protection for the Judge and Court Clerk. He reported the City's bailiff had given her notice and so the City would be looking for a new bailiff. He indicated Cherry Hills Village Elementary School had a drive-by graduation today and Denver First Church would have a drive-in service on Memorial Day. He replied to Councilor Blum's question that much was still unknown about what costs would be eligible for reimbursement by FEMA funds.

Director Cramer reported building activity and revenue had been down in April but the City had received three new single family home permits last week so revenue would be closer to normal for May.

RECORD OF PROCEEDINGS

Director Sager replied to Councilor Blum's question that the financial report reflected sales tax collections for January through March. She explained the City was starting to receive April sales tax with some vendors returning more than usual and others less. She indicated she would send Council more information when available.

City Manager Thorsen reported the Intergovernmental Agreement with Arapahoe County regarding CARES Act funds was being reviewed by the municipalities, city attorneys, and County. He indicated once the City received a final version he would sign it under the authority of the City's Emergency Declaration, then it would be brought to Council for ratification at the next meeting.

Councilor Sheldon asked if the CARES Act funds were a loan.

City Manager Thorsen replied the funds were reimbursement for specific expenditures and the City would have to justify any requests it made for the funds.

City Attorney Guckenberger added the funds would be subject to audit and constraints.

City Attorney

City Attorney Guckenberger reported she was busy with City business and was being careful to track her expenses for possible COVID-19 reimbursement.

City Manager Thorsen thanked the City Attorney's office for reducing their fees by 15% over the last month.

EXECUTIVE SESSION AND ADJOURNMENT

Mayor Pro Tem Brown moved, seconded by Councilor Weil to move into Executive Session pursuant to C.R.S. Sections 24-6-402(4)(e) and 24-6-402(4)(f) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators and discussing personnel matters concerning the City Manager position and upon conclusion adjourn.

The following votes were recorded:

Safavi	yes
Weil	yes
Brown	yes
Gallagher	yes
Sheldon	yes
Blum	yes

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

The Executive Session began at 7:45 p.m.

The Executive Session ended at 7:55 p.m.



Russell O. Stewart, Mayor



Laura Gillespie, City Clerk