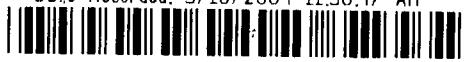


RETURN TO:

CITY OF CHERRY HILLS VILLAGE  
2450 E. QUINCY AVE  
CHV CO 80113

Arapahoe County Clerk & Recorder, Nancy A. Doty  
Receipt #: B4046378  
Pages Recorded: 4  
Recording Fee: \$21.00  
Date Recorded: 3/16/2004 11:30:47 AM

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## ORDINANCE NO.4 Series 2004

February 17, 2004: Introduced as Council Bill 03 Series 2004 by Doug Tisdale, seconded Bonnie Blum, and considered by the title only on first reading. Passed unanimously

March 2, 2004: Considered in full text on second reading. Passed unanimously.

### A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE VACATING THE CITY'S INTEREST, IF ANY, TO A PORTION OF OLD HAMPDEN AVENUE BETWEEN U.S. HIGHWAY 285 AND SOUTH LAFAYETTE STREET

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

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

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

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

WHEREAS, the owner of property addressed as 3530 South Lafayette Street petitioned the City Council, through its authorized agent, for the City's vacation of approximately one-half of the 60 foot right-of-way of Old Hampden Avenue lying between U.S. Highway 285 and South Lafayette Street adjacent to the owner's property; and

WHEREAS, the majority of the portion of Old Hampden Avenue described in the petition is a publicly improved and maintained paved road originally dedicated to the public by plat or other document of conveyance; and

WHEREAS, the portion of Old Hampden Avenue described in the petition is limited in use to providing access or parking area serving 3530 South Lafayette Street only because access from U.S. Highway 285 is limited to one-way for west bound traffic only; and

WHEREAS, the vacation of the City's interest in the portion of Old Hampden Avenue described in the petition would not deny access to any property because 3530 South Lafayette Street maintains frontage and access from South Lafayette Street and from portions of Old Hampden Avenue not subject to vacation; and

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

WHEREAS, the Planning and Zoning Commission recommended that the proposed vacation be approved based on findings that the portion of the right-of-way described in the petition is no longer necessary for use by the public and the vacation of the portion of the right-of-way described in the petition would not leave any property without access to a public thoroughfare; and

WHEREAS, the City desires to vacate that portion of Old Hampden Avenue adjacent to the property addressed as 3530 South Lafayette Street in accordance with Chapter 4 of Title 8 of the City Code and Part 3, Article 2, Title 43, C.R.S.

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

Section 1. The City Council finds that the portion of the right-of-way known as Old Hampden Avenue described below in **Exhibit A** is no longer necessary for use by the public, that the vacation of such portion of Old Hampden Avenue would not leave any property without access to a public thoroughfare, and that the vacation of such portion of right-of-way is in the best interest of the City of Cherry Hills Village. Based upon such findings, the City's title or claim to ownership of the described right-of way is hereby vacated subject to the condition(s) stated in Sections 2 and 3 below and subject to the following reservation of interest by the City of Cherry Hills Village:

The City of Cherry Hills Village hereby reserves from such vacation, pursuant to Section 11-5-30(C) of the City Code, an easement for public utilities (electric, water, sewer, cable, gas, telephone, communications) and an easement for public traffic control devices (specifically including traffic signs, lights, signals, and directional striping).

Section 2. In accordance with Section 11-5-30(B) of the City Code for the City of Cherry Hills Village, the City Council conditions the vacation approved by this Ordinance upon the satisfaction of the following events:

- (A) The City's approval of a lot consolidation plat, plat amendment, or other appropriate form of subdivision application that evidences the vesting of ownership in the vacated portion of Old Hampden Avenue with the ownership of adjacent property (Tract 2, Verona Place Situate subdivision or plat) in accordance with Section 11-5-60 of the City Code and Section 43-3-302, C.R.S; and
- (B) The execution by the landowner of the property addressed as 3530 South Lafayette Street of a development agreement with the City of Cherry Hills Village pursuant to which the landowner is obligated to incorporate the vacated portion of Old Hampden Avenue into the redevelopment of a commercial/retail site at 3530 South Lafayette Street and pursuant to which the landowner is obligated to construct and install, at the landowner's cost and expense, public improvements for the property addressed as 3530 South Lafayette Street (including but not limited to curb, gutter, sidewalk, landscaping, and parking areas).

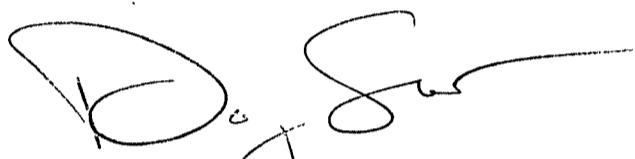


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Section 3. Ownership of the City's interest in the vacated portion of Old Hampden Avenue shall vest in accordance with Section 11-5-60 of the City Code and Section 43-3-302, C.R.S. only upon satisfaction of the conditions of approval. Satisfaction of the conditions of approval shall be deemed conclusive upon the City's recordation with the Arapahoe County Clerk and Recorder's Office of both: (1) a fully executed copy of this Ordinance; and (2) a document titled "Satisfaction of Conditions of Right-of-Way Vacation" signed by the City Manager for the City of Cherry Hills Village confirming satisfaction of the conditions stated in Section 2 of this Ordinance.

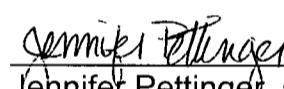
Section 4. No Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall render the remaining portions or applications of this ordinance invalid. It is the express intent and declaration of the City Council that the Council would not approve the vacation of right-of-way without all provisions of this ordinance being valid and effective.

Adopted as Ordinance No. 04 Series 2004, by the City Council of the City of Cherry Hills Village, Colorado this 2<sup>nd</sup> day of March, 2004.



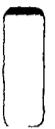
Douglas Scott, Mayor

ATTEST:

  
Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:

  
Randy Funk, City Attorney



## EXHIBIT A

## DESCRIPTION OF RIGHT-OF-WAY

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## GENERAL DESCRIPTION:

The approximately southernmost 30 feet of the 60 foot wide right-of-way of Old Hampden Avenue lying within the City of Cherry Hills Village located between U.S. Highway 285 (commonly known as Hampden Avenue) and South Lafayette Street more particularly described as follows:

FROM A STARTING POINT OF: NW CORNER TRACT 2 (MONUMENT 1) S89 — 53'—30" E — 182.81' (MONUMENT 4) THENCE S 89 — 53' — 30" E — 82.00' THENCE ALONG AN ARC OF 61.10' ON A RADIUS OF 731.40' WITH A CHORD OF N 60 — 49' — 18" E — 61.09' THENCE N 90 — 06' — 30" W 318.07' THENCE S 00 — 06' — 30" W 29.89' TO POINT OF BEGINNING.

[LEGAL DESCRIPTION COPIED FROM VACATION APPLICATION SUBMITTED BY APPLICANT]

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