

MINUTES  
MEETING OF  
COMERCE CITY COUNCIL

November 5, 2012

**CALL TO ORDER**

A regular meeting of the City Council of the City of Commerce City was called to order by Mayor Ford on November 5, 2012, at 5:30 pm

**ROLL CALL**

**Present:**

Mayor Ford – presiding  
Mayor Pro Tem Moreno  
Councilman Benson  
Councilman Bullock  
Councilwoman Carson  
Councilman Douglas  
Councilwoman Elliott  
Councilman McEldowney - excused  
Councilman Teter

A motion was made by Councilman Bullock, seconded by Mayor Pro Tem Moreno to excuse Councilman McEldowney's absence.

**VOICE VOTE: Unanimous; all present affirmed**

**EXECUTIVE SESSION**

A motion was made by Councilman Bullock, seconded by Councilman Teter that Council hold an executive session to (1) receive legal advice pursuant to CRS 24-6-402(4)(b) regarding DIA issues; and (2) regarding positions relative to issues pursuant CRS 24-6-402(4)(e) concerning incentives for economic development.

**VOICE VOCE: Unanimous; all present affirmed**

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**AUDIENCE INTRODUCTION**

The audience introduced themselves.

## **PRESENTATIONS & PROCLAMATIONS**

### **Parks Recreation & Golf Department Award Recognition**

Department Director Carolyn Keith introduced Stephanie Stevens, Executive Director of the Colorado Parks & Recreation Association, to present the department with the following awards:

Columbine Award: Veteran's Memorial Park Design Renovation  
Parks Professional of the Year: Tony Jaramillo

## **CITIZEN COMMUNICATION**

Colorado Department of Transportation Representative Kirk Webb appeared before council to inform them of upcoming public meetings regarding the I-70 East Corridor Project. Topics for the meetings will include: a new proposed alternative that puts the freeway below grade in the Swansea Neighborhood and the elimination of realignment alternatives. Realigning I-70 through Commerce City is no longer on the table.

## **APPROVAL OF MINUTES**

### **October 15, 2012**

A motion was made by Mayor Pro Tem Moreno, seconded by Councilman Bullock, to amend the minutes of October 15, 2012, to include a vote regarding public notice and approve the minutes as amended.

**VOICE VOTE: Unanimous; all present affirmed**

## **RESOLUTIONS**

### **2012-75**

A motion was made by Councilman Bullock, seconded by Mayor Pro Tem Moreno, to approve Resolution 2012-75.

City Attorney Gehler read the title of the resolution.

**Resolution 2012-75** RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT AMONG THE CITY OF COMMERCE CITY, THE CITY OF BRIGHTON AND BRIGHTON SCHOOL DISTRICT 27J REGARDING THE CONSTRUCTION, FUNDING AND MAINTENANCE FOR A SIDEWALK ON 120<sup>TH</sup> AVENUE NEAR PRAIRIE VIEW HIGH SCHOOL

**VOICE VOTE: Unanimous; all present affirmed**

**2012-85**

A motion was made by Mayor Pro Tem Moreno, seconded by Councilman Bullock, to approve Resolution 2012-85.

City Attorney Gehler read the title of the resolution.

**Resolution 2012-85** RESOLUTION SETTING FORTH PROCEDURES FOR APPEAL OF ADMINISTRATIVE DENIAL OF APPLICATION FOR MARIJUANA LICENCE.

**VOICE VOTE: Unanimous; all present affirmed**

**2012-88**

A motion was made by Councilwoman Carson, seconded by Mayor Pro Tem Moreno, to appoint Council members Carson and Bullock to the youth commission.

**VOICE VOTE: Unanimous; all present affirmed**

A motion was made by Councilwoman Carson, seconded by Mayor Pro-Tem Moreno to approve Resolution 2012-88.

City Attorney Gehler read the title of the resolution.

**Resolution 2012-88** RESOLUTION APPOINTING MEMBERS TO THE YOUTH COMMISSION OF COMMERCE CITY.

**VOICE VOTE: Unanimous; all present affirmed**

**2012-92**

A motion was made by Mayor Pro Tem Moreno, seconded by Councilwoman Elliott to approve Resolution 2012-92.

City Attorney Gehler read the title of the resolution.

**Resolution 2012-92** FIRST AMENDMENT TO THE APRIL 16, 2010 IGA BETWEEN THE NORTHERN INFRASTRUCTURE GENERAL IMPROVEMENT DISTRICT AND THE CITY OF COMMERCE CITY.

**VOICE VOTE: Unanimous; all present affirmed**

**PUBLIC HEARINGS**

**2013 Budget**

Mayor Ford re-opened the public hearing continued from October 15, 2012.

No one from the audience came forward to address council on the 2013 budget and the Mayor closed the public hearing portion of the meeting.

Councilman Benson stated that he will not be voting to approve the budget because there is no funding included for parks in the northern range nor lights along Tower Road.

Councilman Douglas felt the city could have tightened their belt further and, therefore, will not be voting to approve the budget.

City Attorney Gehler read the title of the resolution.

**Resolution 2012-80** ADOPTING THE BUDGET FOR THE CITY OF COMMERCE CITY, COLORADO FOR THE YEAR 2013 AND PROVIDING FOR 2012 COMMERCE CITY TAX LEVY.

**VOICE VOTE: 6 aye, 2 nay (Benson, Douglas), 1 excused (McEldowney)**

**Z-898-13**

A motion was made by Councilman Bullock, seconded by Councilman Teter to continue Ordinance Z-898-13 to January 7, 2013.

**VOICE VOTE: Unanimous; all present affirmed**

**CU-100-12**

Mayor Ford opened the public hearing.

Planner Jenny Axmacher presented the case. Ms. Axmacher stated that the applicant, Rocky Mountain Recycling, is seeking a conditional use permit to bring an existing rail spur into compliance, and to add a second spur. Approval of this permit will enable the applicant to expand storage of rail cars and increase their operational flexibility. The planning commission held a public hearing on October 2, 2012, and voted to forward the application to council with a favorable recommendation.

William Aronstein appeared on behalf of the applicant and asked council to approve the permit.

No one else from the public came forward to address council and the public hearing portion of the meeting was closed.

A motion was made by Mayor Pro Tem Moreno, seconded by Councilman Bullock to accept the findings and recommendations of the planning commission

**VOICE VOTE: Unanimous; all present affirmed**

A motion was made by Councilman Bullock, seconded by Mayor Pro Tem Moreno to approve CU-100-12.

City Attorney Gehler read the title of Conditional Use Permit CU-100-12

**CU-100-12** CONDITIONAL USE PERMIT FOR THE ADDITION OF A SECOND SPUR

**VOICE VOTE: Unanimous; all present affirmed**

**AP-15-12**

Mayor Ford opened the appeals hearing.

City Attorney Gehler stated that in accordance with council's rules of procedure adopted earlier in the meeting, the record should reflect the following:

- The date of the hearing is November 5, 2012
- Proper legal notice was given for the hearing
- David Foster of Foster, Graham, Milstein and Calisher is appearing on behalf of the applicant
- Deputy City Attorney Stevens, Interim Director of Community Development Chris Cramer, Interim Planning Manager Steve Timms, Planner Paul Workman and Parks Planning and Operations Manager Mike Brown are appearing on behalf of the city.
- The question before council is whether or not staff erred in administratively denying a conditional use permit application to operate a medical marijuana dispensary at 5500 Colorado Blvd. The application was denied because it failed to meet the distance requirement set forth in the Land Development Code. The planning commission held a public hearing on October 2, 2012, and voted 5-0 to affirm staff's decision of the denial. At the conclusion of this hearing, council must make a finding as to whether the administrative denial was made in error. If council finds the denial was not made in error, then council must affirm the planning commission's recommendation and deny the appeal. If council finds the denial was made in error, then council must send the case back for consideration of the conditional use permit application.

City Attorney Gehler entered the following exhibits into the record:

- Exhibit A: Planning commission minutes*
- Exhibit B: A set of definitions*
- Exhibit C: Development Review Application*
- Exhibit D: Medical Marijuana 1,000' property buffer map*
- Exhibit E: Conditional use permit application*
- Exhibit F: Statement of operations for the facility*
- Exhibit G: List of addresses within the buffer area*
- Exhibit H: Excerpt from the Land Development Code*
- Exhibit I: Statement from staff regarding hearing*
- Exhibit J: Appeal from applicant through their attorney*

Attorney David Foster appeared on behalf of the applicant and distributed exhibits to council. He stated that this is a de novo hearing, and that council sits as though they are making the initial determination as to whether or not this location is appropriate based on the 1,000' distance being met or not. At issue is that staff determined a trail head, located within 1,000' from the property line of the proposed site, is a park, as defined in the Land Development Code. Mr. Foster argued that a trail head is not a park, and that generally speaking, spacing is determined from property line to property line; and that where this business is located within the property is more determinative than the property line itself.

Attorney Foster asked to bring forth a witness as an expert witness.

Attorney Stevens objected to this witness being brought forward.

Mayor Ford overruled the objection.

Councilman Benson did not support the Mayor's decision for the following reason: the witness was not made known prior to the meeting.

Justin Hay, 8480 E. Orchard Rd, Director of CLC Associates appeared before council and was sworn in by City Attorney Gehler.

Mr. Hay testified that a trail head is for access and does not meet the Land Development Code's definition of a park.

Deputy City Attorney Stevens stated that based on the plain language of the land development code, adopted by council, they must uphold staff's decision. In the Land Development Code, a medical marijuana facility cannot be located within 1,000' of a park. A park is defined as a public-owned parcel of land, with or without improvements, that is set apart for the recreation of the public. In this instance, the greenway is publicly owned and has been improved.

Parks Planning and Operations Manager Mike Brown was called forward and sworn in by City Attorney Gehler. He stated that the Dahlia trail head happens to be located approximately midway along Sand Creek Regional Greenway. This particular trail head was built with an overlook in its design and was intended was a wildlife viewing point. His experience is that the site is not used exclusively to access the trail, but that many people, within the industrial area, use the trail head to enjoy their lunch.

Interim Director of Community Development Chris Cramer was called forward and sworn in by City Attorney Gehler. He stated that he reviewed the application, and concluded that the greenway trail head was a park, based on the definition in Article XI of the Land Development Code.

Mayor Ford closed the public hearing portion of the meeting.

After a brief discussion, a motion was made by Councilwoman Carson, seconded by Councilman Douglas, that after considering the evidence in Case AP-15-12, on the appeal of iVita Wellness, council finds that proper legal notice was given for the hearing, and that the recommendation of the planning commission is approved and adopted. Accordingly, the appeal of iVita Wellness is denied.

**ROLL CALL VOTE: 5 aye, 3 nay (Benson, Bullock, Teter), 1 excused (McEldowney)**

A motion was made by Mayor Pro Tem Moreno, seconded by Councilman Bullock, to direct staff to research and prepare an amendment to the Land Development Code under the 1,000' buffer for medical marijuana establishments that exempts trail heads.

**VOICE VOTE: Unanimous; all present affirmed**

### **ORDINANCES ON FIRST READING**

#### **Ordinance 1939**

In response to council questions, City Manager McBroom stated that the fire department supports this ordinance as reflected in the memo included in the packet. Interim Public Works Director Daren Sterling stated that the water department is covered under their industrial permit.

#### **Audience Input**

Fire Marshal Ron Lapenna

A motion was made by Councilman Bullock, seconded by Councilman Douglas, to introduce Ordinance 1939 and approve the ordinance on first reading.

City Attorney Gehler read the title of Ordinance 1939.

**Ordinance 1939** AN ORDINANCE AMENDING SECTION 10-3002 OF THE COMMERCE CITY REVISED MUNICIPAL CODE RELATING TO ILLEGAL DISCHARGES

**ROLL CALL VOTE: 8 aye, 1 excused (McEldowney)**

#### **Ordinance 1940**

In response to council questions, Interim Public Works Director Daren Sterling stated that a preliminary subdivision plot has been reviewed by staff and there is a 300' buffer around the well heads. Finance Director Tinklenberg stated that the actual terms of the loan have not been established. City Attorney Gehler stated that tax liens will secure the loan.

A motion was made by Councilman Benson, seconded by Councilman Bullock, to introduce Ordinance 1940 by council as seated and approve the ordinance on first reading.

City Attorney Gehler read the title of Ordinance 1940

**Ordinance 1940** AN ORDINANCE AMENDING THE 2012 BUDGET OF THE CITY OF COMMERCE CITY, COLORADO BY APPROPRIATING A PORTION OF THE UNENCUMBERED FUND BALANCE IN THE CIPP FUND TO THE 96<sup>TH</sup> AVENUE ACCOUNT IN THE AMOUNT OF \$274,615, TRANSFERRING PRIOR APPROPRIATIONS IN THE CIPP FUND IN THE AMOUNT OF \$4,218, 883 TO THE 96<sup>TH</sup> AVENUE ACCOUNT IN THE CIPP FUND, AND TRANSFERRING A PORTION OF THE UNENCUMBERED FUND BALANCE IN THE SOLID WASTE FUND TO THE 96<sup>TH</sup> AVENUE ACCOUNT IN THE CIPP FUND IN THE AMOUNT OF \$500,000, TOTALLING \$4,993,498 FOR A LOAN TO THE BUFFALO HIGHLANDS METROPOLITAN DISTRICT, AND AUTHORIZING THE EXPENDITURE THEREOF.

**ROLL CALL VOTE: 8 aye, 1 excused (McEldowney)**

**ORDINANCES ON 2<sup>ND</sup> READING**

**1934**

A motion was made by Mayor Pro Tem Moreno, seconded by Councilman Bullock, to approve Ordinance 1934 on second and final reading.

City Attorney Gehler read the title of Ordinance 1934

**Ordinance 1934** AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF COMMERCE CITY BY ADDING SECTION 2-3005 ENTITLED YOUTH COMMISSION TO ARTICLE III OF CHAPTER 2.

**ROLL CALL VOTE: 8 aye, 1 excused (McEldowney)**

**1936**

A motion was made by Councilman Bullock, seconded by Mayor Pro Tem Moreno, to approve Ordinance 1936 on second and final reading

City Attorney Gehler read the title of Ordinance 1936

**Ordinance 1936** AN ORDINANCE AMENDING THE 2012 BUDGET OF THE CITY OF COMMERCE CITY, COLORADO, BY APPROPRIATING A PORTION OF THE UNENCUMBERED FUND BALANCE OF THE PARK IMPACT FEE FUND IN THE AMOUNT OF \$947,745, FOR THE VAUGHN PROPERTY PURCHASE AND AUTHORIZING THE EXPENDITURE THEREOF.

**ROLL CALL VOTE: 8 aye, 1 excused (McEldowney)**

**ADMINISTRATIVE COUNCIL BUSINESS**

Councilman Douglas reported on cracks in the road at 10161 Chambers Drive.

Councilman Bullock gave kudos to the police department for responding to an incident involving a truck losing a load of ceiling tiles on the road.

**Winter Retreat**

City Manager McBroom stated that traditionally, council holds a planning retreat early in the calendar year. Staff is recommending that council set a date for a planning retreat in February 2013 after receiving recommendations from the Quality Community Initiative Stakeholder Group. It would also be beneficial to have a facilitator help guide council in the retreat.

Council tentatively agreed on February 8-9, 2013.



**REPORTS**

City Manager McBroom highlighted his weekly report.

Mayor and council reported on attending various meetings and events.

**ADJOURN**

The meeting adjourned at 10:26 pm.