

APPROVED AS SUBMITTED ON MARCH 1, 2005

MINUTES OF PROCEEDINGS

LITTLETON CITY COUNCIL

February 15, 2005

The Littleton City Council met in regular session on Tuesday, February 15, 2005, in the Council Chambers of the Littleton Center, 2255 West Berry Avenue. The regular meeting convened at 7:00 p.m.

**THOSE PRESENT:** JOHN OSTERMILLER  
Mayor  
RAYMOND C. KOERNIG, JR.  
Mayor Pro Tem  
AMY S. CONKLIN  
Council Member  
PAT CRONENBERGER  
Council Member  
REBECCA KAST  
Council Member  
TOM MULVEY  
Council Member  
JAMES A. TAYLOR  
Council Member

**THOSE ABSENT:** None

**ALSO PRESENT:** Jim Woods  
City Manager  
Larry Berkowitz  
City Attorney  
Julie K. Bower  
City Clerk

1. **ROLL CALL**

Upon a call of the roll, seven members were present. The following business was transacted.

2. **AGENDA**

**ACTION: APPROVED**

**3. (a) MINUTES - MINUTES OF REGULAR MEETING FEBRUARY 1, 2005**

**ACTION: APPROVED**

**4. INTRODUCE NEW CITY EMPLOYEES – None**

**5. (a) CITIZEN APPEARANCES – GUEST CITIZENS – LITTLETON RECIPIENTS OF THE METROPOLITAN MAYORS AND COMMISSIONERS YOUTH AWARD**

Council Member Conklin said the Metropolitan Mayors and Commissioners Youth Award (MMCYA) was an opportunity for front range communities to recognize youth who have overcome difficult situations in their lives by making positive changes and by exhibiting strength and determination in the face of adversity and to offer these young people opportunities for further development. The recipients of the award had broken through barriers, conquered limitations and overcome a major adversity in their lives. Council honored the following young people:

Jessi Wilkerson, Options High School  
Brittany Cook, Options High School  
Eric Locker, Options High School  
Joey Leitner, Options High School  
Adam Finnen, Arapahoe High School  
Daniel Heinly, Arapahoe High School  
Samantha Preslan, Arapahoe High School  
Elizabeth Patterson, Arapahoe High School  
Sarvara Ganiyeva, Options High School

**5. (b) CITIZEN APPEARANCES - SCHEDULED PUBLIC APPEARANCES – None**

**5. (c) CITIZEN APPEARANCES – UNSCHEDULED PUBLIC APPEARANCES –**

MARTY BRZECZEK  
2000 W. ARAPAHOE RD

Mr. Brzeczek wished to discuss actions taken by Council at the executive session held on January 11, 2005. A confidential memo from City Attorney Larry Berkowitz, entitled “Fees Collected by City for Utility Services” was discussed. The Littleton Independent reported on January 13<sup>th</sup>, that Council decided not to release the memo regarding the water fund and Mr. Woods said the decision was made during the executive session.

Colorado statute 24-6-402, known as the Sunshine Law, clearly outlined the guidelines for executive sessions. It stated that executive sessions could only be called during a

regular or special meeting. It also stated that the reason for authorizing the executive session must be given including specific citation to the provision of the subsection. Mr. Brzeczek said Mr. Berkowitz indicated the session would be convened for attorney/client privilege but did not cite the provision of the subsection.

The Sunshine Law stated that no adoption of any proposed policy, position, resolution, rule, regulation or formal action, except the review, approval and amendment of the minutes of an executive session shall occur at any executive session that was not open to the public. Mr. Brzeczek had asked Mr. Woods what action was taken by Council to make the decision not to release the attorney's memo and Mr. Woods stated Council voted, which seemed to be a direct violation of the law.

Mr. Brzeczek asked why Council was exempt from provisions of the Sunshine Law. He understood the need to meet with an attorney in private but the decision making process needed to take place in public. The public's business needed to be discussed in public not in secrecy behind closed doors.

Mayor Ostermiller said the study session was a regular session of Council.

Mr. Brzeczek said no minutes were kept of the study sessions and therefore there was no record of motion for the executive session.

Mr. Berkowitz said every executive session and the motions relating to the executive session were taped. The tapes were maintained by the legal assistant of the City Attorney's office. The tapes contain the motion made in public session to go into executive session, including the reasons and the specific statutory citation when required. In addition, the tapes record in the executive session portion, other material required to be recorded under the public meetings law, including the time of the meeting, those in attendance and in most cases the entire discussion. When executive sessions were called for the attorney/client privilege, which in Mr. Berkowitz's opinion was governed by a different section, those discussions were not recorded pursuant to the statute. In his opinion, executive sessions conducted by the city were done in strict accordance with the open meetings law.

Mr. Brzeczek said at the Council meeting of November 16, 2004, Council Member Kast moved that an executive session be held for the purpose of obtaining attorney/client privileged information. There was no specific citation of the provision of the subsection.

Mr. Berkowitz said that was because the entire discussion was subject to attorney/client privilege and that was acknowledged by C.R.S. 24-6-402(2)(d.5)(II)(b).

Mr. Brzeczek asked why there was a vote at the executive session on January 11<sup>th</sup>.

Mr. Berkowitz said it was important to put the meeting of January 11<sup>th</sup> in appropriate context. The context was that Council received a memo regarding the use of various

funds and what was not appropriate. The status quo at the meeting of January 11<sup>th</sup> was that the communication was confidential and covered by the attorney/client privilege. It was protected from disclosure and Council had taken no action to disclose it. There was no decision to waive the attorney/client privilege. He did not believe it was necessarily appropriate to characterize that as a vote. Directions were given to the city attorney all the time and there was no decision to waive the attorney/client privilege and the status quo remained the same; therefore no decision was made.

DOUG CLARK  
2454 HOUSTOUN WARING CIR.

Mr. Clark was curious to know if the vote to go into executive session was on tape?

Mr. Berkowitz said the motion was taped but the discussion was not on tape pursuant to law.

Mr. Clark said Council could have Mr. Berkowitz write a memo on anything, claim it was attorney/client privilege and therefore talk about in executive session. Mr. Clark said Mr. Berkowitz claimed Council was his client. The organizational chart of the city showed the citizens in the top box. It was nothing other than what Council wanted to talk about in secret. The memo said what Council was doing was illegal.

Mr. Berkowitz said the memo did not say what Council was doing was illegal.

Mr. Clark said the memo had four points: 1) the fees could not be spent because of a Colorado Supreme Court case; 2) the fees could not be spent because it violated the City Charter; 3) it would violate the ordinance; and 4) someone had filed a suit against the state of Colorado for taking fees from funds. When Council voted to spend \$200,000 of the water participation fund interest, it violated the Charter and the ordinance.

ROBERT BRAM  
5626 S. CROCKER ST.

Mr. Bram wanted to address the recent Planning Commission meeting concerning the proposed Littleton Station. The public hearing was a final process and people were allowed to make extremely limited comments. The Planning Commission chair said traffic, density and parking would not be discussed and those were the items the people attending the meeting wished to discuss. Mr. Bram heard a lot about what could happen not necessarily what should happen. Parts of the COMPLAN were over 20 years old. He said Council would be hearing from the Old Littleton Citizens Alliance, made up of residents of neighborhoods north and south of Littleton Boulevard. Mr. Bram was not against redevelopment of the site but felt the thirty-seven residential housing units was a huge increase in the density compared to neighboring areas. The area was trying to maintain its identity. The proposed development would lead to traffic problems. He said

there was a big disconnect between the Planning Commission and the citizens and there was a major feeling of having been railroaded to a certain extent.

Mayor Ostermiller said it was use by right and had nothing to do with a rezone or the COMPLAN.

Mary Roberts, Community Development Director, said the Planning Commission heard a planned development overlay application for a project at the former Littleton Community Center site. The reason it went to the Planning Commission was because that site was in the Transit Impact Overlay Zone and required Planning Commission approval to insure the architecture complied with design guidelines and was compatible with the area. The site was also in the Littleton Boulevard Corridor Design area and was identified as a catalyst site. It was located in a T-Zone which allowed for both office and residential uses. The proposal was for office use on the ground floor and 37 or 38 condo and town home units on site which was allowed under the existing zoning. The applicant had requested 3-foot height variances at the northwest corner of the property and for three parking spaces. The Planning Commission felt it was appropriate to allow a slight decrease in the parking.

Council Member Kast said the reason the chair said density would not be discussed was because the property was already zoned for that density and the Commission was not allowed to change it and was not trying to stifle public comment.

Mayor Ostermiller said the property had been zoned that way for at least thirty years and those allowed uses had been in place that long including the density. The only thing that brought the development before the Planning Commission was the fact that, two years ago, Council put in the Transit Impact Zone which required property owners to bring the plans before the Planning Commission. Prior to that, the developers could have just pulled building permits and started the project because the uses were permitted.

Council Member Conklin said it had to do with property rights and the owners bought the property with those rights which were protected.

Council Member Cronenberger said light rail precipitated the Littleton Boulevard Corridor Study and the plan was very carefully crafted with a lot of public participation, recognizing there would be pressures for redevelopment. That site was a key site.

JIM DUBOIS  
6877 S. PRINCE CIR.

Mr. DuBois had been attending Council meetings for almost two years. He asked Council to consider starting the meetings with the Pledge of Allegiance and having the flags displayed proudly.

6. **CONSENT AGENDA** - (ordinances and resolutions read by title) –

**ACTION: APPROVED – ITEMS 6(A) – 6(B)**

- (a) Motion approving 2005 contractual service agreements
- (b) Motion approving supplemental funding from Conservation Trust Fund for Promise Park Renovation

It was moved by MAYOR PRO TEM KOERNIG and seconded by COUNCIL MEMBER TAYLOR TO APPROVE CONSENT AGENDA ITEMS 6(A)-6(B).

Ayes: Council Members Mulvey, Kast, Koernig, Ostermiller, Cronenberger, Taylor and Conklin.

Nays: None.

MOTION CARRIED: 7 to 0

**7. (a) SECOND AND FINAL READING ON ORDINANCES AND PUBLIC HEARINGS – ORDINANCE ON SECOND READING AUTHORIZING CONVEYANCE BY QUIT CLAIM DEED OF A DRAINAGE EASEMENT IN A PORTION OF OVERVIEW SUBDIVISION**

**ACTION: ORDINANCE NO. 1, SERIES OF 2005**

Mr. Berkowitz read the ordinance by title.

Charlie Blosten, Public Services Director, said the Overview subdivision was located west of South Gallup Street and south of West Littleton Boulevard. A 10-foot wide drainage easement was reserved across Lots 1 and 2, Block 1. A 12” storm sewer pipe was installed in the easement many years ago. The pipe was not adequate to handle the drainage runoff and in 2003, a 36” storm sewer was constructed in South Gallup Street. The old storm sewer was abandoned.

A photography studio has operated on the property for several years. The owner was planning to construct a building addition onto the area of the abandoned pipe and had requested the city vacate the drainage easement. Staff proposed to release by quit claim deed any interest the city had in the drainage easement.

Mayor Ostermiller opened the public hearing. No one wished to address Council.

It was moved by COUNCIL MEMBER MULVEY and seconded by MAYOR PRO TEM KOERNIG THAT THE PUBLIC HEARING BE CLOSED; THAT THE ORDINANCE AUTHORIZING THE CONVEYANCE BY QUIT CLAIM DEED OF THE DRAINAGE EASEMENT WITHIN LOT 1, BLOCK 1 OVERVIEW SUBDIVISION

BE APPROVED ON SECOND AND FINAL READING; ORDERED PUBLISHED BY TITLE ONLY; AND THAT THE COUNCIL PRESIDENT BE AUTHORIZED TO AFFIX HIS SIGNATURE THERETO.

Ayes: Council Members Mulvey, Kast, Koernig, Ostermiller, Cronenberger, Taylor and Conklin.

Nays: None.

MOTION CARRIED: 7 to 0

8. **(a) GENERAL BUSINESS** – None

9. **(a) CONSIDERATION OF COMMITTEE, COMMISSIONS AND BOARD MATTERS** – None

10. **(a) ORDINANCES ON FIRST READING** – None

11. **(a) RESOLUTIONS** – None

12. **REPORTS** -

- (a) **CITY MANAGER** – Mr. Woods had been contacted by South Suburban park staff with a request from the Superchi family to construct a shelter on the former Central Construction property in memory of Bud Superchi, next to the dual trail. The master plan had not been totally completed but staff said the shelter would not conflict with the master plan. The Superchis would like to move ahead with construction this spring.

Council agreed.

Mr. Woods asked that comments on the draft workshop report be submitted by Friday.

Mr. Woods reported only half of the members of the Centennial City Council were available to attend the breakfast meeting next Thursday and staff suggested the breakfast be rescheduled for June.

- (b) **CITY ATTORNEY** –Mr. Berkowitz said the city had closed on the sale of old Fire Station 12.

- (c) **COUNCIL MEMBERS** -

**COUNCIL MEMBER MULVEY** – None

**COUNCIL MEMBER KAST** – Council Member Kast had been on the new dual trail and reported it was very popular. She complimented South Suburban.

**MAYOR PRO TEM KOERNIG** – Mayor Pro Tem Koernig was a member of the Executive Board of the Colorado Municipal League (CML). He said CML was conducting a legislative workshop on February 23<sup>rd</sup> with a reception for the legislators following the workshop. He reported on the following bills: SB63 – on urban renewal that severely restricted municipal authority to designate blighted areas – CML opposed the bill unless substantially amended; a bill exempting machines used in telecommunication from state sales and use taxes – opposed by CML; HB1018 – regarding workers compensation that could be very expensive for cities – opposed by CML; HB1148 - modifying the statewide tolling enterprises – supported by CML; HB1158 – exempting voice-over-internet protocol from state and local taxes – opposed by CML; a bill regarding manufactured housing land use had not been presented – opposed by CML; SB135 prohibiting the contracting for specified services contingent upon a successful election – opposed by CML; and SB177 regarding just compensation for a new land use – opposed by CML.

Mayor Pro Tem Koernig said the Governor had finally recognized there was a TABOR problem and a compromise was being discussed. He said the city could be facing the same situation as the state. As the city's cap went down, the city could be in the position of having to cut services while having surplus money.

Council Member Kast asked if the state was able to put a proposal before the voters, would it impact the city, if it passed?

Mayor Pro Tem Koernig said it would not and would address the state budget only.

**COUNCIL MEMBER CRONENBERGER** – None

**COUNCIL MEMBER TAYLOR** – Council Member Taylor said someone had suggested the design of the entry artwork at the museum be put on a t-shirt and the t-shirts be sold in the museum store.

Council Member Kast said she would forward the suggestion to the Museum Board.

Council Member Taylor made the following report on South Suburban

news: the Buck center was progressing but the outdoor whirlpool might not be ready by March 23<sup>rd</sup>; the Carson Nature Center solar classroom would start construction in April; good progress on the crusher fines trail at the Mary Carter Greenway; second roundabout was finished at Lee Gulch; a reception for Delores Hernandez at the Littleton Community Center was scheduled for March 25<sup>th</sup>; and the Roxborough sewer line alignment through South Platte Park was approved.

Council Member Taylor reported the following Littleton Housing Authority items: a very good report was received from CHAFA and audits would now be conducted every other year; \$7,500 was saved by installing new toilets at Bradley House; a new furnace compressor unit was needed at Amity Plaza at a cost of \$45,000; move-ins were scheduled for this week at Geneva Village; and the small office building was ready for staff to move into near Bradley House.

Council Member Taylor attended the Historic Downtown Merchants meeting. He said it was an exciting, active group.

Council Member Taylor had attended the Tri Cities meeting. The agenda included items such as: Santa Fe Corridor developments; the Juvenile Assessment Center funding situation; reports from South Suburban staff, Arapahoe County Commissioner Beckman and the truck enforcement on Santa Fe.

Council Member Taylor suggested Council discuss Golden's request for a resolution at a study session.

**COUNCIL MEMBER CONKLIN**– Council Member Conklin thanked reporter Jon Lloyd for the article in the Littleton Independent.

Council Member Conklin attended her first meeting with the Euclid Accountability Committee.

Council Member Conklin had distributed a memo to Council regarding pursuing a visioning exercise for Littleton. She said it would probably require a study session. She suggested Council forward suggestions for study session topics to Mr. Woods to be compiled and then prioritized by Council.

Mr. Woods said there would be study session items generated by the Council workshop regarding visioning, the COMPLAN and the action plan from the workshop.

Council Member Conklin had attended a meeting of the Air Force Plant PJKS Remedial Action Board that was looking at the clean-up at Air Force Plant PJKS.

Council Member Conklin would be attending a meeting of the CML Water Issues Committee on Friday.

Council Member Taylor found the article in the paper regarding Centennial's discharge into Marcy Gulch disturbing. He believed it affected the quality of water downstream from the plant and suggested a water quality monitoring station.

Mr. Woods said the allegations had never been documented and conducting sampling would be an expensive process. There was a concern about the amount of sedimentation that was occurring. He would discuss the issue with Mr. Berkowitz and the staff at the Bi-City Treatment Plant.

Council Member Taylor said the city was responsible for monitoring the water quality after it left the plant which also included what was already flowing down the river.

Mr. Woods said there was the issue of the water quality in South Platte Park and the issue of what was flowing past Bi-City.

Mr. Berkowitz said at an earlier time, the city was concerned about the water quality standards and the review of the segment that included South Platte Park and the treatment plant. What ended up happening was there would be water quality figures out of the plant at Centennial.

- (d) **MAYOR OSTERMILLER** – Mayor Ostermiller said 9News had aired a report regarding a contractor who was ripping off elderly people throughout the metro area. Littleton was the only jurisdiction who had cited the contractor into court.

Mr. Berkowitz said the contractor had failed to appear twice for court. He finally appeared with an attorney and a bond was posted.

Mayor Ostermiller said the interview was very positive and the city had regulations in place to go after contractors.

Mayor Ostermiller said a new shop was opening on Main Street called Gigi's. The shop's owner was surprised by the amount of help she received from BIA and the city staff.

Mayor Ostermiller had lunch with the Mayor and the Economic Development Director of Dubuque, Iowa, who were in Littleton to investigate the city's economic gardening program. It was good to see the BIA department receiving national and international recognition for its programs.

Mayor Ostermiller said the Elks "Citizen of the Year" Award Banquet was March 5<sup>th</sup> at 6:30 p.m.; Pathway Achievement Awards ceremony was scheduled for March 4<sup>th</sup>; and the Colorado Women's Hall of Fame celebrating Women's Lifetime Achievements was scheduled for March 22<sup>nd</sup>.

- (e) **DRCOG** – Council Member Cronenberger said a new system for amending the Metro Vision plan would be discussed. The Administrative Committee would be selecting the John V. Christensen Award winner and conducting a review of the executive director.

- 13. **ADJOURNMENT** - There being no further business, Mayor Ostermiller adjourned the meeting at 8:50 p.m. on Tuesday, February 15, 2005.

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Julie K. Bower  
City Clerk/Recording Secretary

IMMEDIATELY FOLLOWING THE REGULAR MEETING COUNCIL CONDUCTED A STUDY SESSION TO DISCUSS DOWNTOWN HISTORIC DISTRICT GRANT FUNDS