

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 27, 2020

The Billings City Council held the regular meeting via virtual video-conferencing due to the COVID-19 response. Mayor Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. He provided an explanation for the virtual meeting setting and stated Council was cooperating with the CDC guidelines for social distancing to flatten the curve of the COVID-19 infection rate. He continued that Council was doing everything they possibly could to protect citizens' rights to participate in public meetings by having it televised live, and offering a call-in period for public comments. Councilmember Neese gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Shaw, Yakawich, Neese, Ewalt, Joy, Choriki, Ronning, Boyett and Brown. Due to technical difficulties, Councilmember Purinton did not appear on the meeting until 5:48 p.m.

### MINUTES:

**June 22, 2020** – Councilmember Neese moved for approval, seconded by Councilmember Choriki. By a show of hands vote, the motion was approved 10-0, Councilmember Purinton was absent due to technical difficulties.

**July 13, 2020** – Councilmember Joy moved for approval, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved 10-0, Councilmember Purinton was absent due to technical difficulties.

### COURTESIES:

Mayor Cole stated many on the Council had received a letter from the Billings Area Chamber of Commerce announcing they, as part of the Economic Recovery Team, would have free distribution of face masks to the public at the Downtown Billings Alliance, 116 N. 29<sup>th</sup> St., Ste. A; Farmers Insurance – Angela Stiller, 2646 Grand Ave, Ste. 9; and Boothill Inn, 242 East Airport Road on July 29<sup>th</sup>.

Councilmember Ronning invited everyone to wear blue and masks and attend a 1 block walk around the Yellowstone County Courthouse on Thursday, July 30<sup>th</sup>, from 5:30 pm to 6:30 pm, beginning at the Yellowstone County Courthouse Lawn. The event is in recognition of World Day Against Trafficking in Persons.

Councilmember Yakawich recognized the Parks Department ribbon cutting ceremony at Ponderosa Park and said it was a good investment in the community. He complimented Councilmembers Joy and Choriki for their orations.

## **PROCLAMATIONS:**

Mayor Cole proclaimed the month of July as Parks and Recreation Month.

## **COUNCIL REPORTS:**

There were no council reports.

## **ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

Mr. Kukulski stated there were no ex-parte communications received after 3:00 p.m. concerning items on the agenda.

Mr. Kukulski reviewed the educational materials for the Public Safety Mill Levy on the City's website and advised that educational presentations to staff would conclude by the end of the week. He stated staff was working with KTVQ-2 and Community 7 TV to create videos of information that would also be placed on the City's website. Community groups would start presentations soon and Ward presentations would be held in parks located within the Wards.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 ONLY. Speaker sign-in required.** (Comments are limited to three (3) minutes or as set by the Mayor. During COVID-19, the method to take and hear public comment has changed. Individuals wishing to give public comment will call a dedicated phone line (237.6196) and held in queue until it is their turn to comment. Comments on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, in reference to Item 1E2, questioned the invoices from Moulton, Bellingham et al., and asked the Council to research the validity of the charges.

There were no further callers and the public comment period was closed.

### **1. CONSENT AGENDA:**

#### **A. Bid Awards: None**

**B. Professional Services Contract for W.O. 20-46: Landfill Compost Facility; Great West Engineering; \$176,000.**

**C. Donation to Fire Department from Phillips 66 to replace one standby generator; \$20,000.**

D. **Donation** to Police Department from Yellowstone County DUI Task Force to fund overtime for special DUI shifts; \$4,000.

E. **Bills for the Weeks of:**

1. June 22, 2020
2. June 29, 2020

Councilmember Brown separated Consent Agenda Item 1E2, in order to abstain, because his employer was the beneficiary in each of these agenda items.

Councilmember Joy moved for approval of the entire Consent Agenda, with the exception of Item 1E2, seconded by Councilmember Shaw.

Councilmember Ewalt asked if Item 1B would be the complete expense for professional services and Council could expect that there would be no future change orders for this service that would increase this portion of costs significantly. Debi Meling, City Engineer, responded this should be everything up to construction.

Mayor Cole acknowledged Phillips 66 and Yellowstone County DUI Task Force for their generous donations to the Fire and Police Departments, respectively.

Councilmember Ewalt asked whether the Council should not approve the invoices from Moulton Bellingham contained in the June 29<sup>th</sup> bills, until verification could be made concerning possible duplication. Chris Kukulski, City Administrator, stated that if there was any duplication of payments, he was certain Moulton Bellingham would issue a refund or apply a credit toward future charges. He asked that Council approve the payment at this time.

Councilmember Neese called point of order stating that Item 1E2 was not being voted on at the present time.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Item 1E2, was approved unanimously. Councilmember Purinton was present during the vote.

Brent Brooks, City Attorney, provided an email from Attorney Doug James that explained the Moulton Bellingham invoice in question. Mr. Brooks continued that the Legal Department reviewed every invoice for payment before authorizing such.

Councilmember Joy moved for approval of Consent Agenda Item 1E2, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING to receive input on the need for senior low-income rental housing project at 78 27th Street West (Central Court Village). No action necessary, no action taken.**

Stephen Sandberg and Spencer Hansen with Peak Capital Partners gave an explanation of the project. Mr. Hansen stated there were 39 units leased to tenants who qualified for 50% or lower of the median income and 42 units leased to tenants who qualified for 60% of the area median income. He continued that Peak Capital was very familiar with low-income properties. Mr. Sandberg stated that being before the City Council was a perfunctory function necessary to qualify for property tax abatement with the Montana Department of Revenue and was a state requirement that a public hearing be held. He continued that a change in ownership occurred and an extension of the tax abatement was asked. Mr. Sandberg provided Section 15-6-221, MCA, which states in part that during the application process, a public hearing must be held before a local government body. He continued that the Montana Department of Revenue was the entity that approved or denied property tax abatements.

Council discussed tax abatements and the impact to the community and expressed overall confusion about the process in which no action was required of them. Chris Kukulski, City Administrator, stated that the Council meeting was a venue to seek public comment about the project, whether it was in favor or against. He continued that should the record indicate a large outcry against the project, the investor/owner and Department of Revenue may choose to apply the tax abatement elsewhere.

Mayor Cole asked that in the future the staff memos contain more information concerning tax income, etc.

The public hearing was opened. There were no callers and the public hearing was closed.

### **3. PUBLIC HEARING AND RESOLUTION 20-10895 FOR ANNEXATION 20-02: a property located at 1053 Lincoln Lane. Propriedad, LLC, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Monica Plecker, Planning Division Manager, provided a brief PowerPoint presentation regarding the .745 gross acres subject for annexation and she reviewed the surrounding zoning. She stated the parcel was located within the Limits of Annexation and the City was able to adequately provide services to the property. Ms. Plecker continued that any proposed public improvements within the area to be annexed would meet City standards. Ms. Plecker stated that all property owners within the area to be annexed must sign a Waiver of Right to Protest future SIDs and the proposed conditions of annexation would ensure that the Waiver was signed and the Waiver would be contained in the future Development Agreement.

Ms. Plecker answered Council's questions about separate entrances and exits to the duplex on the property; attaching to City services within 6 months of annexation; and curb, gutter and sidewalk improvements.

Scott Aspenlieder, Performance Engineering, agent, answered Councilmember Ewalt's question about providing a 10-foot right-of-way easement to the City on this property and stated it was contained in the Development Agreement.

Councilmember Yakawich stated there had been a few annexations along Lincoln Lane and he wanted to know at what point would there be enough annexations along Lincoln Lane to allow for improvements to the entire roadway. Debi Meling, City Engineer outlined the options available to developers and property owners for the improvements – cash, SIDs, or they can arrange, privately, to do the improvements. She said at the present time it was very difficult to run an SID because the properties along Lincoln Lane were half in the County and half in the City, so with each annexation, it helped the City get closer and closer to developing the infrastructure. She stated the Engineering Division had paid visits to many of the property owners along Lincoln Lane to see if there was interest in annexing more properties into the City, but many of them preferred to stay in the County and did not wish to annex. Mayor Cole stated he did not want there to be a time limit on the Waivers of SIDs.

Councilmember Ewalt noted that the house numbering along Lincoln Lane was not contiguous and for safety reasons should be reviewed for change so fire and police calls could be expedited without confusion that the non-contiguous numbering could cause.

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Yakawich moved for approval of Item 3, as recommended by staff, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 978: a zone change from Entryway Light Industrial (ELI) to Highway Commercial (HC) on a parcel of land located in Montana Sapphire Subdivision to facilitate the construction of a new apartment complex located at 4160 King Avenue West. Montana Sapphire, LLC, owner, Performance Engineering, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, gave a PowerPoint presentation and explained the reason for the zone change. She stated the Zoning Commission held its public hearing on July 7<sup>th</sup> and forwarded a recommendation of approval based on the 10 criteria. She continued that the zone change was in conformance with the 2016 Growth

policy and 2001 West Billings Neighborhood Plan. She stated it allowed for development of mixed-use neighborhoods and provided services close to residences. She stated there were existing City services to the area that could accommodate the proposed use.

Council discussed zoning preferences, distances between casinos, and the area.

Scott Aspenlieder, Performance Engineering, agent, addressed the Council's concerns about area casinos and restaurants. He stated there were no violations with developing residential on the subject property. He stated the zoning choice made sense because utilizing any other zoning could create a "spot" zoning situation, which was undesirable.

Ms. Cromwell addressed questions about the differences between the present zoning and Highway Commercial zoning. She said the present ELI zoning would not allow for alcoholic beverages to be served within a restaurant or gaming uses and would not allow for a bar without a restaurant. She continued that the HC zoning allowed for on-premise service of alcohol with or without gaming. Ms. Cromwell stated that ELI zoning was generally located near interchanges along the interstate where there was a lot of traffic and travelers and allowed for larger format uses, i.e. postal facilities, warehouses, and Fed Ex, and it would not allow for residential uses.

The public hearing was opened.

- **Blaine Poppler, 6403 King Avenue West, Billings, Montana**, stated there was no desire to place a bar or casino on the property. The property owner wished to place a nice multi-family project on the property. He stated it was a logical location for this project and there was a huge need for apartments.

There were no further callers and the public hearing was closed.

Councilmember Boyett moved for approval of Item 4, and adoption of the 10 criteria, as recommended by the Zoning Commission, seconded by Councilmember Shaw.

Councilmember Ewalt asked about parking along the street in the subdivision. Debi Meling, City Engineer, stated the streets in the subdivision were private, but whatever construction was built would be required to have a specific number of parking spaces in its lot.

Councilmembers Brown and Choriki stated they would support the motion.

By a show of hands vote, the motion was approved unanimously.

Mayor Cole called for a recess at 7:23 p.m.

Mayor Cole reconvened the meeting at 7:30 p.m.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**

**979: a zone change from R-70-R, a single family only zone district, to R-50 to allow the development of two-family dwellings on a 2.4 acre parcel of land, described as Lots 17-25, Block 31 of High Sierra Subdivision, 16th filing. Gary Owen, owner; Sanderson Stewart, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint presentation and explained the reasoning behind the zone change. She stated the Zoning Commission held its public hearing on July 7<sup>th</sup> and forwarded a recommendation of approval of the zone change to R-50, based on the findings of the 10 review criteria. She continued that the proposed zoning conformed to the 2016 Growth Policy and the 2006 Billings Heights Neighborhood Plan. She noted that the existing zoning was restricted to single-family housing only on lots of at least 7,000 square feet; wherein the proposed zoning would allow a two-family townhome on lots of at least 8,000 square feet. Ms. Cromwell stated the proposed zone change would allow up to 18 townhome units and was a small increase in density. She also noted there were 3 letters of opposition received. She provided a history of the area from the time it was annexed into the City and the zone R-70-R was established, along with various zones bordering the subject parcel. She noted that current development in the area indicated the subject parcel is located at least 600-800 feet away from existing developed lots and the subject parcel was located directly across from School District 2 property. She reminded Council that in March of 2020, Council approved the preliminary plats for High Sierra Subdivision, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Filings.

Councilmember Shaw asked about the concerns expressed in the letters of opposition. Ms. Cromwell stated concerns raised in the opposition letters were the lot sizes; having attached homes in a predominately detached home area; and having multi-family homes in a predominately single-family home area. Discussions continued about creating diversity in neighborhoods and creating housing choices for a more stabilized and resilient community.

Councilmember Purinton asked about the development and maintenance costs of the dedicated parkland in the subdivision. Ms. Cromwell responded that a certain amount of land is required to be dedicated for parks or a cash in lieu of payment and the Parks Department accepted the land as a dedication. Nothing in the subdivision law requires a developer to fund or develop a master plan for a park. The responsibility is left with the Parks Department to develop it. Landy Leep, Oakland Company, mentioned that prior to preliminary plat approval, the developer agreed to dedicate the portion of land as parkland to the City to meet that requirement. He continued that the developer had no plans to develop the parkland and it would be left to the City to develop it.

Councilmember Neese noted that the development indicated there would be 3-car garages for each unit and the units appeared to be very nice. Discussions followed concerning comparable lot sizes and pricing to units on Cherry Creek Hill Drive.

Councilmember Ewalt asked about plans to deter stormwater from the properties. Mac Fogelson, Sanderson Stewart, responded that the developer had purchased an additional 50 acres to the north of the subdivision to construct stormwater detention so there would not be any offsite run-off.

Councilmember Ewalt inquired of the 50% lot coverage. Nicole Cromwell responded that 40% was allowable, but the developer had gone to the Board of Adjustment prior to the zone change request for approval to allow for 50% lot coverage, which was approved

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Boyett moved for approval of Item 5, and adoption of the 10 criteria, as recommended by the Zoning Commission, seconded by Councilmember Ewalt.

Council discussed parkland dedication and maintenance for future subdivisions. Councilmember Ewalt called point of order, stating that the discussions had nothing to do with the zone change at hand and the discussion could continue at a more appropriate time.

By a show of hands vote, the motion was approved unanimously.

**6. PUBLIC HEARING AND SPECIAL REVIEW 982: a special review to expand Gordy's Casino building at 2244 and 2248 Grand Avenue. G Rock Building, LLC, owner; Gordy Roma, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint presentation and explained that Gordy's Casino was an existing business and the building in which it existed was a 2-tenant space. She continued that the space next to Gordy's Casino was vacant and the owner of Gordy's wished to expand into that space. She stated that due to COVID-19, the small space that Gordy's was in, made it difficult to create distances between patrons and the added space would allow the business to operate under the new distancing restrictions. She stated the Zoning Commission held its public hearing on July 7<sup>th</sup> and forwarded a recommendation of conditional approval based on the 3 criteria. Ms. Cromwell continued that Gordy's Casino was within a zone district that allowed all beverage service and gaming; was consistent with the 2016 Growth Policy; was screened and separated from adjacent uses; and there were no letters of objection received from surrounding property owners. She reviewed the Zoning Commission's

proposed conditions as: limited expansion to 2,160 square feet of existing interior space at the location; continuous maintenance of buffer along the south property line; no outdoor seating, music or public announcement system; any new outside lighting would have full cut-off shields; and the development shall comply with all other City codes and limitations.

Councilmember Boyett asked for clarification on whether additional gaming machines could be added to the new space. Ms. Cromwell responded they could not add additional gaming machines, they could only space them more.

Councilmember Ronning focused on the amount of crime reported in the area and asked how the Zoning Commission viewed that information when considering a recommendation. Ms. Cromwell stated the standard for special review considers whether a particular business added to criminal behavior and whether an area was saturated with businesses that served alcohol, had gambling or was a cash-heavy business which tended to increase opportunities for more crime. In this case, the area tended to have a healthy mix of businesses.

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Purinton moved for approval of Item 6, along with the 6 conditions and adoption of the 3 criteria, as recommended by the Zoning Commission, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

**PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required.**

(Comments are limited to three (3) minutes or as set by the Mayor. During COVID-19, the method to take and hear public comment has changed. Individuals wishing to give public comment will call a dedicated phone line (237.6196) and held in queue until it is their turn to comment.)

The public comment period was opened. There were no callers and the public comment period was closed.

**COUNCIL INITIATIVES:**

There were no Council initiatives.

There was no further business, and the meeting adjourned at 8:22 p.m.

CITY OF BILLINGS



By: William A. Cole  
William A. Cole, Mayor

ATTEST:

By: Denise R. Bohlman  
Denise R. Bohlman, City Clerk

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