

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 24, 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 Joy gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Shaw, Yakawich, Neese, Ewalt, Joy, Choriki, Purinton, Ronning, Boyett and Brown.

MINUTES:

August 10, 2020 – Councilmember Yakawich moved for approval, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

COURTESIES:

Mayor Cole mentioned Yellowstone County now represented 51% of the positive COVID-19 cases and generally the trend was going up. He stated a motion would be entertained to amend the agenda to allow for a COVID-19 update from John Felton, Yellowstone County Health Officer.

Councilmember Ewalt commended Police Chief St. John for his comments concerning the Public Safety Mill Levy during a broadcast interview with the Breakfast Flakes, KCTR Radio. He stated the Chief was invited because of a fundraising effort by KCTR to raise \$50,000 to donate to the City of Billings Police Department for body cameras. Mayor Cole mentioned that Yellowstone Valley Electric had donated \$10,000 toward that effort. Chief St. John stated he was humbled by the effort of the Breakfast Flakes and the community's response.

Councilmember Ronning thanked everyone who had attended a Ward Public Safety Mill Levy presentation at one of the area parks and she thanked staff who had participated in those presentations. Mr. Kukulski stated that anyone in the community wishing to have an educational presentation about the Public Safety Mill Levy could contact him at 581-7026 and he would make arrangements.

PROCLAMATIONS:

There were no proclamations.

COUNCIL REPORTS:

There were no council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski reminded Council that there would be no meeting on Monday, August 31st as it was the fifth Monday of the month and therefore, a bye week.

Mr. Kukulski also reminded Council about upcoming evening Public Safety Mill Levy presentations with the Heights Task Force; and others at Amend Park and North Park. He mentioned there were many others being held during the day, including radio interviews.

Mr. Kukulski stated that Mr. Felton was available to provide a COVID-19 update and if Council was interested a motion to amend the agenda was necessary and a ¾ vote was needed to add it to the agenda.

Councilmember Choriki moved to amend the agenda to add a COVID-19 update to be heard before Public Comment, seconded by Councilmember Purinton. By a show of hands vote, the motion was approved 10-1. Councilmember Ewalt voted in opposition.

COVID-19 UPDATE:

John Felton, Yellowstone County Health Officer, stated August saw increases in positive cases over July's numbers, which saw increases over June, and so on. He stated the majority of recent cases were found in the Yellowstone County Detention Facility. He stated that trending is not considered on a single day's data because of testing patterns, but rather the numbers are reviewed in 7-day increments to determine ratioing. He voiced concerns about children returning to area schools and spoke about the many entities involved in deciding athletic program restrictions, safety measures and policies for the County. He reminded everyone that the theory of opening everything all at once posed a problem because of the long incubation period of COVID-19. He continued that by the time one realized there was a problem, it would be too late to backtrack. He stated there were no good options to satisfy everyone. He provided current statistics of positive cases and the area hospitals' capacity and diversion of some patients to other hospitals to help with overflow. He addressed Council's questions about wearing masks to reduce the spread of the disease. He stated the matrices to be concerned about are the increase in numbers per 100,000 people; testing; school-based outbreaks and the age of people testing positive. He said that the increase in cases of persons 19 years of age and younger increased by a full percent in just 5 days. He confirmed that people who are asymptomatic could certainly spread the disease.

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

1. CONSENT AGENDA:

A. Bid Awards:

1. W.O. 20-36: WRF Piping Modifications. (Opened 8/11/20) Recommend Star Service, Inc.; \$274,500.

B. Agreement with Yellowstone County to transfer Rural Special Improvements Districts to the City of Billings.

C. Development Agreement with Propriedad, LLC for infrastructure improvements at 1053 Lincoln Lane.

D. 2020 Justice Assistance Grant (JAG) Application, Memorandum of Understanding (MOU) with Yellowstone County, and award to the City of Billings Police Department; \$84,237.

E. Utility Easement with Northwestern Energy for a power line north of the Shiloh Conservation Area.

F. Preliminary Subsequent Minor Plat of Lake Hills Subdivision, 37th Filing, located along Greenbriar Road, south of Annandale Road, east of Clubhouse Way; Ron Hill, owner; WWC Engineering, agent.

G. Final Plat of Grand Peaks Subdivision, 5th Filing.

H. Resolution 20-10897 relating to the financing of the West End Reservoir, establishing compliance with Reimbursement Bond Regulations under the Internal Revenue Code.

I. Bills for the Weeks of:

1. July 13, 2020
2. July 20, 2020
3. July 27, 2020

Councilmember Brown separated Consent Agenda Item 1I1, in order to abstain, because his employer was the beneficiary in each of these agenda items.

Councilmember Neese separated Consent Agenda Item 1E for discussion.

Councilmember Boyett moved for approval of the entire Consent Agenda, with the exception of Items 1E and 1I1, seconded by Councilmember Ronning.

Councilmember Ronning asked how the Billings Police Department determined how to spend grant monies it received. Police Chief St. John responded that grants are very specific as to how they can be spent, and the specifics are determined before the department applies for the grant.

Councilmember Ewalt, in reference to Consent Agenda Item 1H, asked if Deputy Public Works Director, Jennifer Duray, could provide the annual assessment amounts for the West End Reservoir and would that assessment be increased yearly to pay off the reservoir. Ms. Duray responded she could provide that information via email or place it in the Administrator's weekly report. On that note, Mayor Cole stated he spent some time with Senator Daines discussing the importance of the West End Reservoir to Billings' water security and he hoped to gain Federal dollars toward that project.

Councilmember Joy, in reference to Consent Agenda Item 1F, stated that neighborhood plans needed be considered, along with density and tax collection that will be sustainable for the future of the City.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Items 1E and 1I1, was approved unanimously.

Councilmember Neese, in reference to Consent Agenda Item 1E, stated he would vote in opposition of the easement because he did not want the conservation area to be marred by additional utility structures.

Debi Meling, City Engineer, explained that utility companies' had rights to be in the City's rights-of-way. She spoke about alternative placements for powerlines along busy roads. She continued that NorthWestern Energy needed to add powerlines to create a reliable energy system for the southwest corner of the Billings area and create redundancy. She stated the area was not used by the City and held little value to the City. She continued that weed maintenance was provided by the City at about \$800 to \$900 annually. She stated the new powerline would run adjacent to the existing powerline and would be larger and taller. Ms. Meling provided information about the appraisal process for the lease and stated the lease income made sense for staff to make the recommendation.

Council discussion continued regarding other options. Chris Kukulski, City Administrator, asked Council to consider weighing the information and provide staff with

direction for a bigger ask from NorthWestern Energy if that was what Council wanted, but to be fair and equitable.

Councilmember Boyett moved for approval of Consent Agenda Item 1E, seconded by Councilmember Shaw. Mayor Cole stated he would vote against the motion, because \$1,600 was too little for the easement.

Councilmember Joy moved to amend the motion to change the amount NorthWestern Energy would pay for the easement to \$3,000, based on the valuation provided in Exhibit A, a letter, dated July 15th, from Calista Montgomery, attached to the staff memo, seconded by Councilmember Ewalt. Debi Meling, City Engineer, provided clarification that the amount stated in the July 15th letter was for \$3,000 per acre and the actual area for the easement was .55 acres. Councilmember Ronning stated she would support the amendment, as did the Mayor and Councilmember Neese. By a show of hands vote, the amendment to the motion was approved unanimously.

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

Councilmember Shaw moved to approve Consent Agenda Item 111, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 20-10898 approving and adopting budget amendments for FY2020. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Andy Zoeller, Finance Director, reviewed six FY2020 4th quarter budget amendments as provided in the staff memo and provided explanations for those amendments.

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

Councilmember Yakawich moved for approval of Item 2, seconded by Councilmember Ronning. By a show of hands vote, the motion was approved unanimously.

3. PUBLIC HEARING AND RESOLUTION* authorizing the disposal and transfer of a parcel of land located at Sahara Park. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Michael Whitaker, Parks, Recreation and Public Lands Director, provided a PowerPoint presentation and spoke about the transfer options identified by staff. He stated the Better Billings Foundation requested the City donate 2.5 acres of land located

just adjacent to the Oasis Swimming Pool, which was operated by the Better Billings Foundation and the Parks Board made that recommendation as well. Mr. Whitaker stated that after the Agenda packet was published, further discussions ensued between City staff and representatives of the Better Billings Foundation (BBF) about leasing the land versus owning the land.

- **Chuck Barthuly, Better Billings Foundation**, addressed the Council and stated they looked forward to developing and improving the area for all citizens to enjoy. He continued that a lease option was best for their organization.
- **Andrew Billstein, attorney for the Better Billings Foundation**, asked that should Council support a lease option, that Council assign staff to work with him on verbiage and terms for the lease.

Chris Kukulski, City Administrator, stated this was an opportunity to become stronger partners with community entities willing to provide amenities that the City would not be able to provide. Mr. Kukulski supported the lease option because it would not burden the BBF with the development of the area and assessments that equaled approximately \$3,000 per year. He said the City pays the lighting district \$750 per year and that would continue under a lease arrangement. He asked the Council to give broad direction as to what they wanted in the lease, without being too detailed, and allow staff to work on the details of the lease.

Council discussions continued regarding donation of the land versus leasing it. Councilmember Neese asked how this property was different than Amend Park and its facilities. Mr. Whitaker explained that Amend Park was managed by another entity for the day-to-day operations and provided insurance to protect the City from liability concerning accidents, but the City was responsible for the maintenance. He continued that in this situation, BBF would be responsible for maintenance under the lease. Mr. Kukulski added this was a unique situation and he supported the BBF's development and installation of the improvements to the park, but the City would partner by paying future assessments, which it was already doing to the undeveloped property. He admitted that a lease arrangement was more complicated than an outright donation of the land, but staff would support a lease with option to obtain a deed in the future, in which BBF would then be responsible for everything, including the assessments.

Councilmember Shaw stated her support for the lease option and stated her requirements in the lease would be that it remain a public park. She asked about end of term considerations. Mr. Barthuly responded that a 25-year lease was agreeable or other long-term option.

Councilmember Boyett asked should the land be donated, could assessments be waived, i.e., arterial construction, light maintenance, etc. City Attorney, Brent Brooks, responded that he did not believe any assessments could be waived under any conditions.

The public hearing was opened.

- **Pam Ellis, 2000 Outlook Drive, Billings, Montana**, stated she supported Oasis Water Park, but was concerned about open records laws in regard to a lease. She stated that the published information contained nothing about a lease option until discussions during this meeting. Therefore, the public was not properly notified of the lease option and the matter should come back to Council with proper public notification of a proposed approval of lease.

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

Councilmember Ewalt moved to approve a resolution* authorizing the City to enter into a 25-year lease, with an annual fee of \$1, with Better Billings Foundation for a parcel of land located at Sahara Park, and directing staff to work on additional details of the lease to be brought back to Council for approval, seconded by Councilmember Neese.

Brent Brooks, City Attorney, stated his support to place a proposed lease on an upcoming Consent Agenda for public disclosure and comment and approval by the Council. He continued that the decision of the Council to enter into a lease now was acceptable.

Council discussions continued regarding lease term details, development of the land itself, and ancillary fees for usage of the property for special events versus it being open to the public, generally.

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

**Note: Legal staff determined a resolution was not necessary to enter into a lease and not resolution was prepared.*

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 980: a zone change from Entryway General Commercial (EGC) to Neighborhood Commercial (NC), on Block 5, Lot 1, Pinnick Subdivision, 3rd Filing, and Lot 24 of Sugar Subdivision, a 4.418 acre parcel of land. Christ the King Lutheran Church, owner; Collaborative Design Architects, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Karen Husman, Planner, provided a brief PowerPoint presentation concerning the zone change and reviewed the Zoning Commission's recommendation. She gave history about the zoning of the parcel and stated it had been changed to EGC zoning in the early 2000's to make it more desirable to sell to a commercial business. She continued that the church now had resources available to expand their facility and wished to use that land for the expansion, however EGC zoning does not allow for churches within that zoning, therefore, necessitating the zone change. Ms. Husman

stated the existing church would be demolished, a parking lot placed in its location and a newer, larger church would be built on the eastern side of the property.

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

Councilmember Shaw moved for approval of Zone Change 980 and adoption of the 10 criteria as recommended by the Zoning Commission, seconded by Councilmember Boyett.

- **Michael Burston, an officer with Christ the King Lutheran Church,** and additional representatives, addressed the Council stating it was an unusual, but blessed situation to be in to be able to serve the community in the location where the church was founded.

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

Mayor Cole called for a recess at 7:28 p.m.

Mayor Cole reconvened the meeting at 7:35 p.m.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 981: a zone change to add auto sales as an allowed use in the Yellowstone Planned Development - Neighborhood Commercial (NC) zone, on Block 4, Lot 27-31 and 26A, 26B of the Yellowstone Addition Subdivision, a 24,450 square foot parcel of land. Russ and Colleen Cherry, owners; Dusty and Tiffany Sims, agents. 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 gave an explanation of the zone change and reviewed the Zoning Commission's recommendation. She stated the subject property had been used for some type of auto services for many years and the potential owners wished to conduct auto sales from the location.

- **Russ Cherry, owner,** gave a history of the property and asked the Council to support the Zone Change so an auto sales business could operate from that location.
- **Dusty Sims, applicant,** stated he had been looking for a building in which to own and relocate his auto sales business to. He planned to update the exterior and expand his business on the lot.
- **Carlos Davey, agent,** stated the business would be an improvement to the location and he asked for the Council's support and approval of the Zone Change.

Council discussion continued concerning future maintenance of landscaping, etc., the existing City's code and expected changes through Project ReCode. Mayor Cole asked that the Planned Development Agreement contain language that states, "the landscaping shall be maintained to those standards," and the applicant, Dusty Sims, agreed to that change.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, cautioned Council about enforcement of maintaining landscaping standards on private individuals and businesses, when the City did not hold itself to the same standards. He continued that he would not support the City replacing its dead trees and shrubs throughout the City because they would just die again anyway and it was expensive.

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

Councilmember Shaw moved for approval of Zone Change 981 and adoption of the 10 criteria as recommended by the Zoning Commission, seconded by Councilmember Neese. By a show of hands vote, the motion was approved unanimously.

6. PUBLIC HEARING AND SPECIAL REVIEW 985: a special review to allow a drive through service across the alley from a residential zone for a new 860 square foot coffee shop located at 446 Grand Avenue. Wag Tag, LLC, owner; Lawrence A. Smith, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Karen Husman, Planner, provided a brief PowerPoint presentation concerning the Special Review and reviewed the Zoning Commission's recommendation. She reminded Council of the 3 criteria -- that it was an allowed use in the zone; it met requirements in the zoning district; and did not impose unmitigated negative effects on surrounding uses. She stated the applicant planned to demolish the existing structure on the property and construct a coffee shop in its place. She stated that the City's Engineering Department expressed concerns about additional traffic impacts to the intersection and a queue analysis or traffic study may be required at the time of development plans.

Council discussion followed about delaying approval for a traffic impact study to be completed; a queue analysis; number of vehicles that could be held in the drive-through queue; concerns about high school pedestrians; right turn only exit onto Grand Avenue; neighborhood complaints received; and installation of a fence on the east side of the property.

Ms. Husman stated that whatever restrictions were deemed necessary by the Engineering Department would have to be addressed and agreed to prior to any development. She stated the Special Review was for approval of the use of the land only and that the Planning Department had received no complaints from neighbors whatsoever.

- **Drew Smith, agent**, stated he was working with representatives of City Brew on the project and A&E Architects for design. He stated the design would be walk-up and drive-through services with no inside dining.
- **Jared Smith**, addressed the Council and stated a right turn only exit was intended for the location. He stated the stacking of vehicles was about 15 to 17 vehicles, depending on the length of the vehicle, which was significant, and there would be 2 lanes.
- **James Kordonowy**, provided a visual of the design concept. He acknowledged that the site was small and was located in a complex traffic area.

Councilmember Boyett asked if the sound from the speakers in which one ordered coffee could be adjusted. He mentioned that because this business would be butted against residences, it would be important to keep the noise from the speakers to a minimum. Jared Smith stated there were volume controls on the unites, but there would be a certain amount of noise pollution even with diesel trucks waiting in line. He continued that fencing would be installed on the south side of the property to try to mitigate the noise coming from the business. He stated there would also be hand-held devices for taking customers' orders at their vehicle and that would not require a speaker.

Council discussions continued concerning noise, noise violations, the noise ordinance and sign illumination and how it all applied to this property.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, stated he was concerned the business would create similar traffic problems as Kings Hat does on First Avenue South.

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

Councilmember Shaw moved to approve Special Review 985, and adoption of the 3 criteria as recommended by the Zoning Commission, and added a condition that the east side of the property be fenced, unless the adjacent property owner objects, seconded by Councilmember Joy. By a show of hands vote, the motion was approved unanimously.

PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Sign-in required.
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The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, in reference to Billings Operation Center land purchase, stated his discontent that Council would approve taking 20 acres of prime commercial property off the tax rolls and stated an RFP process should have been done to seek other eligible properties. He asked Council to back away from the purchase of the land to allow for taxpaying commercial businesses to gain access to the land and see what other opportunities could be found through an RFP process.

There were no further 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 8:50 p.m.

CITY OF BILLINGS



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

ATTEST:

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