

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 26, 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 pm. 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 Boyett gave the invocation.

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

MINUTES:

October 13~~2~~, 2020 – Mayor Cole noted the agenda had the wrong date for the Minutes. Councilmember Yakawich moved for approval of the minutes with the correction to the date from October 13, 2020 to October 12, 2020, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

COURTESIES:

Mayor Cole reminded Council there were 6 public hearings and it was important to stay on point and work expeditiously.

Councilmember Neese asked the Mayor to remind participants, that were not Councilmember, on the Zoom meeting to mute and turn off their video until their item was reached on the agenda.

Councilmember Shaw stated she forwarded an email with a proposed initiative that she had planned to bring forth at the end of the meeting. She stated she had changed her mind and would not bring it to Council at this meeting after all.

PROCLAMATIONS:

There were no proclamations.

COUNCIL REPORTS:

There were no council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski stated that Project ReCode would be on the November 2nd, Work Session meeting and explained the process in which answers to Council questions would be disseminated. He stated this was in preparation of the Public Hearing and First Reading scheduled November 9th.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 8 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. City Vehicles.** (Opened 10/13/20) Recommend Schedule 1: Billion Auto Group, \$36,082; Schedules 2, 4 and 5: Yellowstone Country Motors, \$140,257; Schedule 3: Ressler Motors, \$45,012; and Schedule 6: Bison Ford, \$54,140.40, plus the add-on amount for lift gates of \$4,410 for a total amount of \$58,550.40.
- 2. Household Hazardous Waste Collection.** (Opened 10/13/20) Recommend rejection of all bids.
- 3. Roll-Off Truck.** (Opened 10/13/20) Recommend Western System; \$173,073.85, with 5-yr. warranty.
- 4. Three New Side Load Trucks.** (Opened 10/13/20) Recommend SWS Equipment; \$907,854, with 5-yr, warranty.

B. Professional Services Contract with Karpel Solutions for the initial installation, implementation, data conversion, licensing and training in the amount of \$95,600; and for continued support and maintenance in the amount of \$14,800/yr. for the Legal Department.

C. Memorandum of Understanding between the City of Billings and the Downtown Billings Partnership (DBP) concerning future sale and disposition of funds, YesterYears Building, 102 North 29th Street.

- D. **Declaration** of surplus property and authorizing the Street/Traffic Division to sell a road patching unit to the City of Miles City; \$22,000.
- E. **Preliminary Major Plat** of Western Sky Subdivision, Second Amended, Lot 5A, generally located at South of King Avenue West and east of South 48th Street; Western Sky Billings, LLC, owner; Sanderson Stewart, agent.
- F. **Bills for the Weeks of:**
 - 1. September 21, 2020
 - 2. September 28, 2020

Councilmember Boyett separated Consent Agenda Item 1E, for discussion.

Councilmember Ewalt separated Consent Agenda Item 1C, for discussion.

Councilmember Brown separated Consent Agenda Items 1F1 and 1F2, in order to abstain, because his employer was in receipt of payment for claims.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Items 1C, 1E, 1F1 and 1F2, seconded by Councilmember Shaw.

Councilmember Ewalt noted there were no Billings auto dealerships that submitted bids for the City Vehicles Bid in Item 1A1. He asked whether the dealerships were aware of the opportunity. Kevin Iffland, Assistant City Administrator, responded that invites were forwarded to all dealerships in the Billings area, but they chose not to participate and had not for many years.

Councilmember Yakawich stated his appreciation to staff for selling the City's surplus items to smaller towns as in Item 1D.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Items 1C, 1E, 1F1 and 1F2, was approved unanimously.

Councilmember Ewalt, in reference to Consent Agenda Item 1C, stated there was a mistake in the purchase amount in the MOU. City Attorney, Brent Brooks, stated that in Section 2(D) of the MOU, the amount was written \$835,750,000, but should read \$835,750. He suggested Council move to approve with the correction being made in the motion. Councilmember Ewalt moved to remove the item from the agenda to be placed on a future agenda once the correction was made, seconded by Councilmember Purinton.

Council discussions continued about it being a mistake that could easily be addressed through a motion to approve with the correction noted in the motion, so the item could move forward. Councilmember Joy stated "Wordsmithing" occurred regularly

during meetings and she would not support the motion. Councilmembers voiced their frustration with items brought for approval that contained mistakes or were incomplete.

Councilmember Choriki made a substitute motion that Item 1C be approved with the noted correction to the purchase price in Section 2 (D) to \$835,750, seconded by Councilmember Shaw. Councilmembers Purinton and Neese stated they would not support the substitute motion because approval of agreements and contracts with mistakes was not good practice. Councilmember Ronning stated it was an honest mistake and that corrections to Minutes happened all the time and those were official documents of record and she did not see the difference.

By a show of hands vote, the substitute motion failed 5-6, Councilmembers Yakawich, Neese, Ewalt, Purinton, Boyett and Brown voted in opposition.

By a show of hands vote, Councilmember Ewalt's motion to remove Consent Agenda Item 1C from the agenda to allow for corrections to the MOU and then be placed on a future agenda for approval, was approved 7-4, Councilmembers Shaw, Joy, Choriki and Ronning voted in opposition.

Councilmember Boyett, in reference to Consent Agenda Item 1E, stated he had concerns about approving mobile home subdivisions because often they were poorly maintained by management. He asked if there was any way to control that and he gave an example of a mobile home fire in the heights in which the nearest fire hydrant was dry. Wyeth Friday, Planning Director, stated there were no controls after the development occurred, other than code enforcement issues.

Councilmember Choriki stated Council could adequately fund code enforcement to be proactive with issues created by poorly managed properties. He also suggested that the landlord / tenant relationships needed to be changed, because currently the power rested more with landlords and tenants had little recourse toward getting landlords to improve and maintain their properties.

Councilmember Neese stated he agreed with the other Councilmembers' concerns and then asked about stormwater run-off into the Shiloh Conservation area. Bill Morgan, Sanderson Stewart, explained the developers would pay the City to use the Shiloh Conservation area in lieu of storing the stormwater on the premises. He continued that the City Engineer's office preferred this because the money could be used to further improve and enhance the Shiloh Conservation District. Mr. Morgan stated the developer would follow all restrictions for cleaning the water before it was discharged into the slough. He stated it was a water quantity issue, not a quality issue and they would not develop it this way if it was harmful to the area and studies had been provided to City staff for review.

Councilmember Choriki moved to approve Consent Agenda Item 1E and adoption of the 4 conditions and findings of fact, seconded by Councilmember Joy.

Councilmember Neese asked whether there was a private sewer line within the development. Mr. Friday stated there was and it would connect to the public sewer main line. Councilmember Boyett inquired of private versus public streets within the mobile home development. Mr. Friday stated development of private streets was customary within such developments. Council discussion continued regarding location of easements, public and private utilities, and dry fire hydrants.

Chris Kukulski, City Administrator, stated that if there were any concerns about the development by the Engineering staff, it would have been mentioned in the materials provided to Council, but certainly if Council was not comfortable with approving the item now, they could move it to a future meeting until all their questions were answered. Mr. Friday stated this was the preliminary major plat and not the final, but that this was the time to make changes to the conditions, if necessary. Mayor Cole asked that per condition 3, staff make the minor change to the form of the SIA to bring it into the standard form, and that Section XIII(c) read that the provisions of the agreement will run with the land and be binding on transferees.

Councilmember Brown stated the Shiloh Conservation Area was developed for this use.

By a show of hands vote, the motion was approved 7-4, Councilmembers Purinton, Ewalt, Neese and Boyett voted in opposition.

Councilmember Boyett moved to approve Consent Agenda Items 1F1 and 1F2, seconded by Councilmember Neese. By a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW 986: a special review to allow a beer and wine license with gaming for a 2,500 square foot tenant space within a 7,913 multi-tenant building, in a Community Commercial (CC) zone, on a 39,907 square foot parcel of land described as Lot 2, Block 17, Lampman Subdivision, and generally located at 3189 King Avenue West. DAJ Enterprises, LLC, owner; Josh Benson, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Karen Husman, Planner, provided a brief PowerPoint presentation and explained the configuration of the property's building and stated there would be 20 gaming machines. She reviewed the Zoning Commission's recommendations for conditional approval concerning outside lighting, seating, music and announcement systems, etc. She continued that 2 letters of opposition and 3 letters of support were received and forwarded for Council's consideration.

Josh Benson, agent, spoke to Council about the special review and stated the owner had other casinos in Billings that had successful partnerships with neighboring restaurants.

Council and staff continued discussions about allowing outdoor seating more often in light of the COVID-era. Discussions also included the current zoning code and the anticipated zoning code changes per Project ReCode and how that may affect the property as legally non-conforming.

Mr. Benson provided a visual depiction of the signage for the casino.

The public hearing was opened.

- **Doug Jenkins, 11535 East Caribbean Lane, Scottsdale, Arizona**, stated he was the owner of the property and stated the fuel tanks that were previously on the property were removed per State law. He stated there was no contamination from the fueling equipment and the signage was purposely minimized.
- **Nancy Bennett, 801 Avenue E, Billings, Montana**, stated she did not understand why there were so many special reviews for casinos; there were plenty of casinos throughout Billings and they did not need to move into the newly developed areas.
- **John Atkinson, 4415 Audubon Way, Billings, Montana**, stated he was the architect on the project and stated his support for it.

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

Councilmember Boyett moved for conditional approval and adoption of the findings of the 3 criteria, as recommended by the Zoning Commission, for Special Review 986, seconded by Councilmember Ewalt. By a show of hands vote, the motion was approved 10-1, Councilmember Ronning voted in opposition.

3. PUBLIC HEARING AND SPECIAL REVIEW 987: a special review to allow an existing all-beverage liquor license to relocate from 1911 King Avenue West, Unit 10, to 2499 Gabel Road, a 3,128 square foot building, on a 68,520 square foot parcel of land, described as Lot 3, Block 4, Cenex Park Subdivision. King McCall, LLC, owner; Jason Palaygi, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Karen Husman, Planner, provided a brief PowerPoint presentation and explained that this was a relocation of an existing all-beverage liquor license with gaming and the area was zoned Controlled Industrial. She continued there was a maximum of 20 gambling machines. She reviewed the Zoning Commission's recommendations for conditional approval concerning outside lighting, seating, music and announcement systems, etc. She added should Project ReCode, as it is drafted presently, be adopted, this property would be conforming.

Councilmember Boyett asked if the casino would be located too closely to a nearby church. Nicole Cromwell, Zoning Coordinator, stated the church vacated the space and now this business would be moving into the space the church previously held.

Councilmember Purinton noted that a daycare was located close to the casino and asked whether the distance requirements between casinos and schools applied to daycares, too. Ms. Cromwell responded they did not.

The public hearing was opened.

- **Nancy Bennett, 801 Avenue E, Billings, Montana**, stated it was frustrating to watch all of the special reviews about spot zoning.

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

Mayor Cole asked why the special reviews. Ms. Cromwell stated the current code allowed for property owners to propose in a district where an alcohol license may be allowed, to make application to the City, by special review. She said it did not qualify as spot zoning. Special reviews are for allowed uses, but conditions may be applied to them to mitigate any potential impacts from the proposed uses. She continued that under Project ReCode Special Reviews would be looked at differently in that they will no longer be allowed uses, but rather they will be special exceptions to the uses allowed in that zoning.

Jason Palaygi, agent, addressed the Council and reminded everyone that this was not just another casino, it was an existing one that was relocating.

Councilmember Boyett moved for conditional approval and adoption of the findings of the 3 criteria, as recommended by the Zoning Commission, for Special Review 987, seconded by Councilmember Purinton. By a show of hands vote, the motion was approved unanimously.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 984: a zone change from Residential 7,000 (R70) to Residential Multi-Family Restricted (RMF-R) on a 10,056 sq. ft. parcel of land, legally described as Lot 6, Block 2, Sunset Subdivision, generally located at 1219 12th St. West. Christian Helland, owner. 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 owner wished to repurpose the building from 2 dwelling units with 2 office spaces, to 3 family dwelling units. She continued that it was presently a non-conformed usage. She stated the proposed changes would improve the property and that of the

surrounding area. She stated the Zoning Commission recommended approval, based on the 10 review criteria.

Councilmember Ewalt asked if the zone change was approved, could the owner of the property demolish the building and rebuild adding more dwelling units. Ms. Cromwell responded the owner could, but under the current zoning could only add 1 additional dwelling unit for a total of 4 units. She clarified that under Project Recode the units could not be expanded to more than 4 units. Councilmember Ewalt followed by asking whether there had been any objections to this zone change. Ms. Cromwell responded there had not been any objections received by the Planning Department.

Christian Helland, owner, addressed the Council and stated there was no intention to tear down the building, only to repurpose the office spaces into living units.

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

Councilmember Purinton moved for approval 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.

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 985: a zone change from Residential 6,000 (R60) to Residential Multi-Family Restricted (RMF-R), each parcel of land is 20,250 sq. ft. for a total of 40,500 sq. ft., legally described as Lots 13 and 14, Wolf Subdivision, generally located at 3121 and 3125 Boulder Avenue. Edith Nelson, owner; Rob Pasquarello, 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 2 lots were each one-half an acre and contained single family homes. She stated a valid protest was received - 15 of the 38 properties within 150 feet of the properties, signed a protest petition. Therefore a 2/3 majority vote or 8 votes of the Council was required to approve. She continued that Boulder Avenue did not have complete infrastructure, i.e. curbs, gutters, sidewalks and streetlights, and therefore did not meet the City's definition of a complete street. Ms. Cromwell gave the particular site composites the owner could build, i.e., 5 2-unit buildings or by special review 2 10-unit buildings. Ms. Cromwell stated the Zoning Commission recommended approval, based on the findings of the 10 review criteria.

Councilmember Ronning disclosed that she received a phone call from Mr. Pasquarello and she had advised him that she could not speak with him and reported the communication to Wyeth Friday, Planning Director.

Councilmember Purinton also stated she had been contacted by Mr. Pasquarello. She expressed her concerns about the lack of sidewalks along Boulder Avenue which

led directly to a school. She asked for clarification on the configuration of units allowed and voiced her concerns for adding that many additional housing units which would increase traffic and likely house families with children that walk to the nearby school.

Councilmember Brown asked whether sidewalks would be required. Ms. Cromwell explained the procedures by which sidewalks could be installed, i.e. SID or private party installation.*

Councilmember Neese echoed the concerns of Councilmembers Brown and Purinton for lack of sidewalks. He continued that the neighborhood had a lot of multi-family housing and he supported a better mix of housing options.

Councilmember Joy called point of order.

Councilmember Ronning asked what the pros and cons were to the applicant applying for a special review versus a zone change. Ms. Cromwell explained Mr. Pasquarello was a prospective buyer and not yet the owner of the property. She said that a special review required a significant investment in developing a site plan and perform a process in which one would limit their options. She continued that under a zone change the RFM-R zone allowed for more options.

Councilmember Purinton stated that Mr. Pasquarello, if successful with the zone change, could build a large apartment complex on the subject property. Ms. Cromwell stated he could, but that was not what he was proposing. She continued that he could also purchase the property and sell it to someone else who could build more units on the property.

Rob Pasquarello, agent, stated he would gladly include sidewalks to improve the safety for children walking to school. He said it would make it easier on water retention requirements, too. He added that the 2 houses on the properties had been rental properties since the 1950s and were in poor condition; were a problem and were not adding value to the neighborhood. He stated he would improve the property with his proposed new construction and it was a good in-fill project.

The public hearing was opened.

- **Travis McDowell, 2029 Forest Park Drive, Billings, Montana**, stated he worked with Mr. Pasquarello to develop a plan that would work with the neighborhood and he supported the zone change.
- **Brem Feldman, Metro Realtor, Billings, Montana**, stated Mr. Pasquarello had spent plenty of time on the project and the current owner supported the zone change. He continued that the properties were an eye sore and the proposed development would improve the area.

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

Councilmember Joy moved to approve the zone change and the findings of the 10 criteria, as recommended by the Zoning Commission, seconded by Councilmember Choriki. Councilmember Joy spoke in favor of the zone change and stated that many communities incentivized this type of in-fill development.

Councilmember Ewalt stated he toured the area and was surprised at how many multi-family units were in the area already. He stated that without continuous sidewalks and the narrow street, was not a safe route to schools and he would not support the motion to approve the zone change until those issues were addressed.

Councilmember Shaw stated that safe routes to schools was incredibly important, however development of sidewalks and streets was not typically done on the forefront of development. It was accomplished through new development and increased property values, which the proposed private development would do. She stated that was how improvements were paid and she would support the zone change.

Councilmember Neese stated he would not support the motion to approve the zone change. He stated that even if the prospective owner installed sidewalks on this property, the rest of the sidewalks would be missing from the neighborhood.

Councilmember Purinton stated her opposition to the motion because of the density it would create in a neighborhood that already had many multi-plexes in it.

Councilmember Ronning stated she supported multi-family units in Ward IV, however, she preferred that this item would have come to Council in the form of a Special Review with a specific plan.

Councilmember Boyett stated he would not want to see more children walking along Boulder Avenue and described it as an "old country lane" that needed improvements. He continued he would not support adding more people to the area and therefore would not support the motion.

Councilmember Choriki stated the only way to get sidewalks installed was by special improvement districts or private property owners. He added that should the City continue to push development to the fringes it would become more and more difficult to have developers complete in-fill areas. He continued that if the Council did not approve the zone change, it sent the wrong message to developers that Council was not serious about in-fill and he understood why the potential buyer chose not to make the investment in a Special Review. He gave his support for the motion to approve the zone change.

Mayor Cole stated that if the request had been to replace the 2 units currently on the property with another 2 units, he would have been supportive, however it was to develop 11 units. He continued the developer could, without approval of the Council, build 10 units on the properties. He added that the developer wanted to build 11 units and that is what necessitated the zone change. He stated he was inclined to vote in

opposition, along with the neighbors wishes, because it was a lot of development for the area and his concern of its potential impact. He reminded Council that it could attempt to pass a SID for sidewalk improvements and that might be the way to address this area.

By a show of hands vote, the motion for approval failed 3-8, Councilmembers Boyett, Purinton, Yakawich, Ronning, Ewalt, Neese, Brown, and Mayor Cole voted in opposition.

Mayor Cole called for a recess at 7:52 pm.

Mayor Cole reconvened the meeting at 8:01 pm.

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 986: a zone change to amend the existing Planned Development (PD) zone for Cardwell Ranch on Zimmerman Trail and Grand Avenue to expand the existing Planning Area 2 to include Lot 15A, Block 2 and to remove the additional special review uses from the list of allowed uses within Planning Area 1 and Area 2, legally described as Lots 4A and 15A, Block 2, Cardwell Ranch Subdivision, 1st Filing, generally located at 3340 Sagegrass Drive and 1310 - 30th Street West, respectively. Yegen Grand Avenue Farm, Inc., owner; Charles G. Yegen, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Mayor Cole disclosed he had represented the Yegen family on this property many, many years ago concerning the original Planned Development Agreement, but no longer was involved with the owners/agent and did not see a conflict that would require him to recuse himself.

Nicole Cromwell, Zoning Coordinator, provided a PowerPoint presentation and explained that the original Planned Development Agreement was drafted in 2008 and she reviewed the zone map indicating Planning Areas 1 and 2. She continued that the Zoning Commission held its public hearing and was forwarding a recommendation for approval of the zone change request based on the findings of the 10 review criteria. Ms. Cromwell explained that the amendment to the Planned Development would remove a self-imposed special review criteria; add Lot 15A to Planning Area 2 zoned as commercial or multi-family; and prohibited multi-family uses in Planning Area 1. She explained the composition of the neighborhood, its traffic patterns, and a proposed traffic signal at Grand Avenue and Golden Valley Circle. She explained in detail the traffic implications onto and around Grand Avenue and discussed the remedies identified with the Traffic Engineer, Erin Claunch. She added that a letter of comment or concern was received and had been signed by several neighbors to the east, but only 2 of the signatures were within the 150 foot protest area and therefore, it did not meet the requirements of a valid protest. Ms. Cromwell explained the protest process.

Councilmember Shaw asked the developer to explain the plan that required the zone change. Charlie Yegen, owner, responded that at the time the plan was developed, an extension of Zimmerman Trail was occurring. He continued that the change was sought now for better marketability of the property. He stated that because of the development of Zimmerman Trail, it had made agricultural use of the land prohibitive. Mr. Yegen provided the family history of the ownership of the land, which began in the Spring of 1889.

Councilmember Purinton inquired about multi-family structure height restrictions. Ms. Cromwell stated that the existing Planned Development Agreement stated 45-foot height from the ground level to the top of the enclosed structure, but that would not include things like chimneys or rooftop equipment.

Councilmember Ronning expressed concern about middle-school student pedestrian traffic, crossing Grand Avenue at non-controlled intersections. Ms. Cromwell explained the technology behind traffic signals that controlled speed, etc. that would create platoons of traffic to allow for safe movement of pedestrians.

Councilmember Neese asked what the neighbors' objections had been to the zone change. Ms. Cromwell explained that what was once commercial might be developed into a multi-level multi-family development and the increase in traffic to the neighborhood side streets, as many of the lots did not have access to Grand Avenue directly. She continued that any changes were going to affect traffic at that site, but the developer would be placing a traffic signal at 32nd and Grand to reduce the impact.

Ms. Cromwell reviewed a long list of Special Review businesses that would be removed by the amendment. She clarified that some of the businesses would have to be under Special Review by the Yegen Group.

The public hearing was opened.

- **Cynthia Del Priore, 2942 Belvedere Drive, Billings, Montana**, stated the neighborhood's concerns were about the potential of a 4 story multi-family building being erected, the increased density, and increased traffic. She stated that traffic associated with Will James Middle School already created major lines of vehicles and that was before the additional proposed development. She stated the traffic plan did not appear to be adequate.

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

Councilmember Neese asked whether Council could amend the amendment by choosing a different zone to reduce the amount of density. Ms. Cromwell responded she was uncertain of a simple way to accomplish that. Mayor Cole stated since it was a Planned Development Agreement, the Council may not be able to unilaterally change it.

Councilmember Boyett moved to approve the zone change and the findings of the 10 criteria as recommended by the Zoning Commission, seconded by Councilmember Choriki. By a show of hands vote, the motion was approved unanimously.

7. PUBLIC HEARING and amendment to agreement with Lockwood Water and Sewer District. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Chris Kukulski, City Administrator, started the presentation and provided background and history of the agreement that began in 2008. He explained that Lockwood handles the collection of wastewater, which is then distributed directly into the City's wastewater plant. Lockwood does not have a treatment facility. He continued that in 2016, the Lockwood Targeted Economic Development District (TEDD) was created by Yellowstone County to develop planned industrial space and expanded to include more properties in 2018. Mr. Kukulski stated that in 2020 Council directed staff to bring back a proposal waiving the annexation requirements. He gave a status on follow-up items from the July 20, 2020 Work Session. He stated a legal review was completed concerning the 18% surcharge (6% to all Lockwood customers, plus 12% for the TEDD area). He stated it was best to invest funds within the wastewater services, not place them in the General Fund. He stated the surcharge was designed to help the City offset costs/risks to the wastewater system. He reminded Council that \$70 million was recently invested in the wastewater system to meet DEQ discharge standards. He clarified there was no written or implied access to City water in the Amendment. He provided clarification of the properties being served; wastewater options and DEQ requirements to serve the TEDD; and estimated fees to the City for wastewater treatment services that included 18% surcharge; and a drafted MOU with the County and City. Mr. Kukulski reviewed treatment and disposal alternatives that are permitted by the DEQ, but stated the method of using the City's wastewater facility was the best and cleanest option for the environment and made the most sense for industrial businesses that would need to deal with the DEQ regulations, etc. on their own. He explained that the 18% surcharge in the TEDD area, upon full build out, equated to approximately \$24,000 annually to the City. He continued that the financial guarantee bond was reduced from \$1 million to \$.5 million as Lockwood's history of usage was reliable and that saved Lockwood some monies. Mr. Kukulski outlined a number of initial City/County cooperative considerations, i.e., following recommendations of City/County adopted Inner Belt Loop (IBL) Corridor Study; utilizing Planned Neighborhood Development (PND) zoning; expand on PND zoning connection to the City Limits of Annexation Map; follow City/County Long Range Transportation Plan/Functional Classification Map; and prioritize coordinated landowner contact and engagement. He stated the recommendation to Council was that the waiver to BMCC, Sections 26-203 and 26-204 be granted, including the changes present to recital #6, Sections 2A and 2C, that specifically addresses municipal water services and that the City of Billings has no intention to provide water services now or into the future and clarifying that the City has no intention to consent to an expansion of the boundaries

beyond the service area. He stated this language was included to give clarity for future translation.

Mr. Kukulski introduced Steve Arveschoug of Big Sky Economic Development, to provide additional information. Mr. Arveschoug stated the amended agreement had far-spreading economic opportunities for the community. He explained that the County Commissioners were very interested in entering into an interlocal agreement with the City concerning the Inner Belt Loop and the amended agreement was a good place to begin that cooperation and partnership for the entire community's benefit.

Steve Arveschoug introduced Mike Artizia, a representative of the Lockwood Water and Sewer. Mr. Artizia stated this was landowner driven and their vote whether they wished to become a party to the Lockwood Water and Sewer boundary. He stated the Board had not reviewed the changes as outlined by Mr. Kukulski to the amended agreement, but it was a starting point.

Councilmember Shaw asked Mr. Kukulski whether it was his personal feeling that the amended agreement was beneficial to the City. Mr. Kukulski responded that if other interlocal agreements came to fruition as expected because of this, then it definitely was beneficial and this was the City's good faith effort to build the relationship with the County for future economic development for the broader community. He continued that this was not going to be easy policy work about how to work with landowners on the boundaries of the City.

Councilmember Neese asked for clarification on the expansion of the service area boundaries and limitations Lockwood had for emissions. Mr. Kukulski elaborated on the map the Lockwood TEDD boundaries and the Lockwood Water and Sewer service area. Jennifer Duray, Deputy Public Works Director, stated there was a pretreatment agreement and in that agreement there were restrictions on capacity and the strength of the wastewater. She continued that nothing was changed with that agreement. Steve Arveschoug explained the definition of the TEDD boundaries and the TIF that was affected by that definition. Councilmember Neese stated that there were several properties within the identified TEDD boundaries district, but were not a party to it. He asked if language could be added to the agreement that stated the expansion would only include those that were members of the TEDD. Mr. Arveschoug stated he was hesitant to not execute an agreement that recognized that there is a boundary with properties that may want to become a party to the TEDD proper. He continued that Lockwood Water and Sewer would extend lines by those non-inclusive properties to provide services to those that were included and it would be left to the Lockwood Water and Sewer to get those landowners to participate in costs and development. He added there were parcels that probably should be in the TEDD and likely would be one day, but there were others that should not be for a variety of reasons. He continued that having flexibility with non-included properties maximized the opportunity of developing the area. He clarified that there had to be hard boundaries for the TEDD area in which to work within.

Mayor Cole clarified that there was a possibility of properties within the TEDD area receiving services, but not actually being members of the TEDD. Mr. Arveschoug agreed and stated it would be left to the Lockwood Water and Sewer to determine how to handle services for properties not members of the TEDD.

Councilmembers expressed their desire to view maps that provided better overlays of the TEDD area and the existing Lockwood Water and Sewer service area.

Councilmember Purinton asked Mr. Aritzia if he was confident the Board would agree with the amendments since they had not reviewed it prior to Council reviewing it. Mr. Aritzia stated he could not speak to how the Board would respond to the language about water within the wastewater agreement. Councilmember Purinton stated she did not understand why water was being addressed in the wastewater agreement. Mr. Kukulski explained that this was added to bring clarity and reduce assumptions that just because the City was agreeing to wastewater, it did not mean that now or at any time in the future, the City was agreeing to provide water, without a specific decision to extend utilities and follow the rules.

Councilmember Neese inquired whether Lockwood was pretreating their waste before it arrived at the City's treatment plant. Mr. Aritzia stated the amount of waste discharge from the TEDD was relatively low and it added to the Lockwood wastewater which caused the TEDD's waste to dilute, but said it was pretreated. Ms. Duray added that the 18% was to help with the anticipated increased regulations that are expected to be imposed in the future from the DEQ. She continued that the citizens of Billings held the risk, not the outside users.

Mayor Cole asked whether the industrial users within the City of Billings had lesser discharge than that of Lockwood businesses and would that trigger increased regulations. Ms. Duray responded she was not aware of any triggers, but knew higher standards would be coming. She continued that there were a lot of unknowns as to what kinds of businesses may move into the TEDD area, i.e., warehouse users, food processing plants. She said there were always risks and the unknowns from the developing TEDD increased those risks.

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

Councilmember Shaw moved to approve the amendment to the agreement with Lockwood Water and Sewer, as recommended by staff, seconded by Councilmember Boyett.

Councilmember Choriki stated he would support the motion, but he was concerned that the City would be doing all the spending and not receiving adequate compensation. He added it was time to move forward on this issue and he hoped for some economic development to begin in the County.

Councilmember Purinton asked what would happen if Lockwood Water and Sewer Board did not agree to the amendments, where would it leave Billings. She stated she agreed with Councilmember Choriki that Billings was doing the heavy lifting, but she, too, would support the motion to move it forward and establish a better relationship with the County Commissioners. Mr. Aritzia responded the Board would approach landowners to be included and then make a recommendation to City Council. Mr. Kukulski added that should Lockwood Water and Sewer identify any substantive changes, it would be brought back to the Council for a decision.

Councilmember Joy expressed her support of the motion.

Councilmember Neese stated he would not support the motion because he believed the agreement opened the City to potential lawsuits. He continued that the agreement did not protect the City enough from potential risks.

Councilmember Ewalt stated his opposition to the motion. He stated there were 3 parties involved in this arrangement, i.e., City, County and Lockwood Water and Sewer. He said there was only one party that sold out and it was the City. He did not agree with removing the waiver or reducing the financial guarantee bond and it was the citizens of Billings that held all of the risks. He added that the citizens would have to pay more should the treatment plant need additional expansion and the annual \$24,000 would not contribute enough toward that expansion. He said all that the County offered were promises and a letter and that they were not serious enough about the Inner Belt Loop development.

Councilmember Yakawich stated sometimes one needed to trust. He said he trusted that the County Commissioners would follow through on their promises. He thanked Councilmember Brown for his involvement on the BSEDA Board and educating him about the economic development of the County. He stated he would support the motion.

Chris Kukulski mentioned that Councilmembers Ronning and Brown met several times with all the parties involved and thanked them for their contributions and time in working on the details.

Councilmember Brown stated it was not a perfect solution, but it would eliminate some of the assumptions that there were. He continued it was important to keep the Lockwood area from having more septic tanks and from building more treatment facilities, etc. He stated he had full faith in the County Commissioners; had several conversations with them; and that there would be an interlocal agreement entered into with them. He gave his support for the motion and added he hoped the rest of the Council would support it as well.

By a show of hands vote, the motion was approved 9-2, Councilmembers Neese and Ewalt voted in opposition.

8. TAX INCREMENT FINANCE ASSISTANCE from East Billings Urban Renewal District (EBURD) to Belle Chemical located at 501 North 22nd Street; \$44,532. Billings Industrial Revitalization District (BIRD) Board recommends approval. (Action: approval or disapproval of BIRD Board recommendation.)

Zack Terakedis, EBURD Coordinator, gave a brief presentation and stated Belle Chemical was a local business expanding into the EBURD area. He stated they expected to hire 12-20 new employees and had purchased the Billings Gazette cold storage facility at 501 N. 22nd Street, which had had very limited use in the past 2-3 years. He continued that they would utilize the rail that ran along the property for chemical deliveries, etc. He recognized this as being a coordinated effort between a private entity, BSED and EBURD. He spoke about the EBURD Master Plan, CPTED best practices, elimination and prevention of blight in the area and improvements generating tax increment. He reviewed the TIF eligible expenses that the applicant applied for reimbursement, i.e. fencing and gates, roof repair, interior steel door, overhead doors and insulation, HVAC, Plumbing, entry door and architectural/engineering and permits. Mr. Terakedis stated the BIRD Board of Directors forwarded a recommendation for approval of the application supporting 60% of the identified eligible project costs, not to exceed \$44,532 to Belle Chemical upon completion of the project and submission of receipts. He acknowledged that it was not at the typical 5:1 ratio, it was more like 3:1 ratio, but because it was a low amount, the Board was asking for an exception in this case.

David Terry, owner/applicant, addressed the Council and stated he and his wife owned the property, and looked forward to improving the area and its security.

Councilmember Yakawich moved to approve Item 8, as recommended by the BIRD Board, seconded by Councilmember Brown. By a show of hands vote, the motion was approved unanimously.

*Chris Kukulski, City Administrator, noted that discussions early during Regular Agenda Item 5, mentioned passing SIDs to install sidewalks. He clarified that installation of sidewalks could be ordered at any time under the City's ordinance and State law, without a SID.

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 10:23 pm.



CITY OF BILLINGS

By: William A Cole
William A. Cole, Mayor

ATTEST:

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