

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 23, 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. Councilmember Yakawich gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Yakawich, Neese, Ewalt, Joy, Choriki, Purinton, Ronning, Boyett and Brown. Councilmember Shaw was excused. Councilmember Neese experienced technical difficulties and joined the meeting at 6:27 pm.

MINUTES:

October 26, 2020 – Councilmember Yakawich moved for approval of the minutes as written, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

November 9, 2020 - Councilmember Boyett moved for approval of the minutes as written, seconded by Councilmember Brown. By a show of hands vote, the motion was approved unanimously.

COURTESIES:

Mayor Cole reminded the Council and Public that Yellowstone County had 113 citizens perish from COVID-19 this year and they would not be enjoying a Thanksgiving or Christmas with loved ones. He encouraged everyone to be vigilant with wearing masks, washing hands and social distancing.

Mayor Cole announced that Closed Captioning would be coming in the near future to public meetings viewed on Community 7 TV. He stated it was very important and long overdue that the hearing-impaired citizens be able to participate and receive valuable information provided at public meetings, such as COVID-19 updates. He thanked Tim Harrington, General Manager, for locating a software company that could provide this service, which would cost \$50,000 for initial start-up and \$5,000 annual fees. He acknowledged that the Billings Community Foundation had donated \$5,000 toward the start-up costs and Community 7 TV, Yellowstone County Commissioners, the City, and School District 2, had agreed to split the remaining \$45,000 for this service. He stated the City sought and received approval to use COVID-19 funding for its portion of the expense. He continued that it was possible the software could benefit the City Clerk's office with transcription of the minutes of the meetings.

Mayor Cole advised that the Public Hearing for Regular Agenda Item 5, Project Recode, had been continued from the November 9th Regular Business Meeting and he

anticipated that a motion would be forthcoming to continue it further. He stated citizens would be given time to make their comments during the Public Hearing, but he anticipated a final decision would not be made on the proposed Ordinance.

Councilmember Ronning recognized long-serving Justice of the Peace, Pedro Hernandez, had passed away and she offered her condolences to his family.

PROCLAMATIONS:

Mayor Cole proclaimed the 16 days between International Day to Eliminate Violence Against Women on November 25th and International Human Rights Day on December 10th as the 16 Days of Activism Against Gender Violence.

COUNCIL REPORTS:

Mayor Cole stated he was the Council's liaison serving on the Policy Coordinating Committee. On behalf of the committee, he reminded Council and the Public that on December 1st, there would be 2 opportunities to provide input on the 27th Street railroad crossing plan, being developed by the Montana Department of Transportation. He provided the times for public comment as 11:30 am to 1:30 pm and 4:30 pm to 6:30 pm. He shared that the MDOT had 2 preferred options - one option was to build an overpass on 27th Street that would go over the railroad tracks, or the second was to dig a tunnel under the railroad tracks. He explained the pros and cons of each option and stated construction costs for a tunnel would cost double.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski reminded Council that there was no meeting on Monday, November 30th, as it was a bye week.

Mr. Kukulski stated there were 2 exparte' communications received via Council emails after 3:00 pm concerning Project Recode - Jason Bough of Golden Route Operations, MT and Todd Brown of Brown Builders, both opposing the passage and approval at First Reading.

Mr. Kukulski stated he clarified with staff to only invite 1 representative of a board, commission, committee or acting as an agent, to speak to Council, not 2 or more to reduce the amount of Zoom participants on the meetings.

Mr. Kukulski invited Council and the Public to participate in the Police Services Survey located on the Magic City Spotlight on the City's Website. He stated the survey would be available through the first week in December.

Mr. Kukulski announced that a new Public Works Director had been selected from 6 finalists. He introduced and congratulated Debi Meling as the City's next Public

Works Director, stating she had 15 years' experience with the Engineering Department as the City Engineer.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 4 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.

Mayor Cole experienced technical difficulties and was absent from the meeting beginning at 5:57 PM. Deputy Mayor Yakawich assumed to preside over the meeting and asked for Council separations on Consent Agenda items.

1. CONSENT AGENDA

A. Bid Awards: None

B. Software Agreement for Online Permit Submittal and Electronic Plan Review Software with Carahsoft; \$87,872.55.

C. Professional Services Agreement for replacement of Airport's Access Control and CCTV systems with Montana-Wyoming Systems; \$876,941.

D. Council Holiday Schedule.

E. Final Minor Plat and SIA of Amended Plat of Lot 1, Block 1, Midland Subdivision.

F. Final Minor Plat - Lake Hills Subdivision, 37th Filings.

G. Bills for the Weeks of:

1. October 19, 2020
2. October 26, 2020

Councilmember Purinton separated Consent Agenda Item 1B, for discussion.

Councilmember Brown separated Consent Agenda Items 1G2, in order to abstain, because his employer was in receipt of payment for claims.

Councilmember Boyett moved for approval of the entire Consent Agenda, with the exception of Items 1B and 1G2, seconded by Councilmember Joy.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Items 1B and 1G2, was approved 7-1, Councilmember Ewalt opposed.

Councilmember Purinton, in reference to Consent Agenda Item 1B, stated she contacted Jessica Iverson, Building Division Manager, concerning the software purchase and for clarification of its usage and CARES Act monies. She stated she was seeking more information about the State's purchasing contracts, etc. and was concerned about spending that amount of money. She stated she was concerned about adding more fees to builders and contractors to recoup the expense of the software during this time. Mr. Kukulski stated the software would help the Building Division build efficiencies internally, as well as externally. He stated the City had wanted to move in the direction of electronic submittals and reviews for a number of years and the pandemic really pushed this effort forward and the CARES Act helped the City to acquire the necessary tools. Jessica Iverson, Building Division Manager, explained the current plan review process and how the software would eliminate paper waste and expedite approvals for new construction, thus improving customer service. She stated that Billings was behind in the technology and all other major jurisdictions in Montana had the technology. She stated this product was approved by the State for CARES Act funding and could be implemented for use before the end of the year. She stated in the long term the software would save money in staff time and storage costs of approximately \$15,000/yr. She continued that it also saved plan submitters money because they did not have print five copies of large plans that cost them hundreds of dollars and if changes were made to the plans, they were reprinted. Ms. Iverson stated there was an annual cost of \$11,000 and additional user costs for all those that would review the plans, including county users. Wyeth Friday, Planning Director, stated the software would benefit the Planning Department as well with online permits and plan review.

Councilmember Ronning moved for approval of Consent Agenda Item 1B, seconded by Councilmember Choriki. By a show of hands vote, the motion was approved unanimously.

Councilmember Boyett moved for approval of Consent Agenda Item 1G2, seconded by Councilmember Joy. By a show of hands vote, the motion was approved 7-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 20-10916 for Annexation 20-03: a parcel located south of the South Frontage Road and north of the Grey Eagle Ditch; legally described as Certificate of Survey 1121, Tract 2-A-1, totaling approximately 4.350 gross acres. Chuck Hogan and Rick Dorn, on behalf of

Hogan Properties, LLC, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, gave a brief PowerPoint presentation indicating the area proposed for annexation and its surrounding zoning. She reviewed the criteria for conditional approval.

Mayor Cole rejoined the meeting at 6:14 pm and began presiding the meeting.

Councilmember Ewalt asked whether Riverfront Park was in the City limits. Wyeth Friday, Planning Director, stated it currently was not within the City limits but would likely be annexed shortly.

Councilmember Ewalt asked whether the development for Commercial Industrial (CI) zoning would be changed upon the adoption of Project ReCode, when it would be zoned I1. Ms. Plecker explained that if it were approved for annexation now, CI zoning would be in effect for the development, however if it were denied annexation until after the adoption of Project ReCode, then I1 would affect the development. Nicole Cromwell, Zoning Coordinator, corrected that information and stated per Project ReCode the area would actually be zone CX – Heavy Commercial, because of the current uses of the property.

Councilmember Yakawich asked if the development would be required to be on City sewer service and have no septic tanks. Ms. Plecker responded affirmatively. Councilmember Yakawich expressed concern about the land's proximity to the river and the septic tank presently on the land possibly breaching due to erosion. Ms. Plecker stated the septic tank was properly permitted and approved by the County Sanitarian many years ago and was deemed safe at the time, but admitted it would be ideal for it to be on the City's water and sewer systems.

Councilmember Neese joined the meeting at 6:27 pm.

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

Councilmember Boyett moved for conditional approval of Annexation 20-03 as recommended by staff, seconded by Councilmember Joy. By a show of hands vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently annexed property in Annexation 20-03: a parcel located south of the South Frontage Road and north of the Grey Eagle Ditch; legally described as Certificate of Survey 1121, Tract 2-A-1, totaling approximately 4.350 gross acres. Chuck Hogan and Rick Dorn, on behalf of Hogan Properties, LLC, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, did not have an additional presentation, but was available for questions. She reminded Council there would be a second reading at the next business meeting.

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

Councilmember Joy moved for approval of First Reading Ordinance for expansion of Ward III, as recommended by staff, seconded by Councilmember Brown. By a show of hands vote, the motion was unanimously approved.

4. CONDITIONAL APPROVAL of preliminary minor plat for Big Iron Subdivision, generally located at 3716 South Frontage Road, Hogan Properties, LLC, owner; Sanderson Stewart, agent. Staff recommends conditional approval and adoption of the Findings of Fact. (Action: approval or disapproval of staff's recommendation.)

Monica Plecker, Planning Division Manager, did not have an additional presentation, but was available for questions.

Councilmember Joy asked what circumstance would require the attachment to City water and sewer. Ms. Plecker responded that any new development or the failure of the existing utility would prompt the change.

Councilmember Choriki moved for conditional approval and adoption of the Findings of Fact of preliminary minor plat for Big Iron Subdivision, as recommended by staff, seconded by Councilmember Joy. By a show of hands vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE approving Project Recode (Continued from 11/09/2020 Regular Business Meeting) - Zoning Code amendment and Zoning Map update. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Councilmember Brown moved to hear the staff's presentation, engage in questions and discussion, reopen the public hearing that was previously continued and continue the public hearing to the December 14th Regular Business meeting, seconded by Councilmember Purinton.

Councilmember Choriki stated he originally wished to approve the ordinance at the first meeting and then work on items of concern after the fact. He stated he did not want changes to policy to be discussed and wanted more public participation. He stated that by delaying two weeks and then delaying it another two weeks, changes to policy were beginning to appear. He stated he was happy with the process that got the City to arrive at this version of the code.

Councilmember Brown stated he was prepared to approve the item tonight and move it forward, however due to the amount of emails to Council about certain areas of the code and discussions, he now supported a continuance.

Councilmember Joy stated it appeared there was a supra-public involved at this point. She continued that the neighborhood task forces were very much involved in determining how they wanted their neighborhoods to look and numerous public meetings were held to arrive at this point. She stated that when the businesses are now interjecting their wishes after the neighborhoods had helped formulate the code, where did that leave the neighborhoods' wishes, because the task forces were not being heard now. She continued that the process had morphed and leaving out a lot of the public that was initially involved in the process.

Councilmember Ronning stated she appreciated the emails and comments that were received that stated specific areas of concern. She extended her gratitude to all the volunteers that had worked diligently over the past 3 and a half years to bring this forward in its present version. She continued that she would support this continuance, but she would not support another continuance beyond this.

Councilmember Purinton supported a continuance and stated that some of the contractors she had spoken with wished for more time to review the changes to the code. She asked that staff meet with the Home Builders' and Taverns Associations to refine the code a bit more.

Councilmember Ewalt agreed to the continuance and stated several of the groups of businesses had issues that needed to be addressed.

Councilmember Brown stated it was unrealistic to expect Ms. Cromwell to meet with everyone that had emailed, but perhaps meeting with organized groups could be possible. He continued that during the public hearing there would likely be comments and recommendations heard from members of specific groups.

Councilmember Neese stated he supported the motion to continue and hoped that some traction could be made toward addressing the groups' issues with the code.

Councilmember Choriki stated he hoped that Council would give the same consideration to individuals concerned about signage and casinos in their neighborhoods as they were the specific organized groups.

By a show of hands vote, Councilmember Brown's motion was approved 8-2. Councilmembers Joy and Choriki voted in opposition.

Wyeth Friday, Planning Director, stated he and his staff supported the continuance of the public hearing and first reading as they recognized that some changes were necessary and they needed additional time to address those. He

encouraged Council to stay focused on what the steering committees developed and the few items that would be brought forward in the upcoming presentation. He gave information about how, when and where the Public could view information about the changes to the code on the City's website.

Nicole Cromwell, Zoning Coordinator, stated that an Exhibit C would be forwarded to the Council indicating the substantive changes to the code, along with the zoning map. Ms. Cromwell continued with her presentation indicating that the Zoning Code update followed the Billings Growth Policy implemented in 2016. She acknowledged all those that participated from the community in developing the updates. She explained the Planned Neighborhood Development (PND) section, and N2 that allowed flexibility for existing and new neighborhoods.

Elizabeth Garvin, consultant, expounded on the N2 targeted revisions and described how the code would distinguish a "new development" from an "existing neighborhood". She continued that existing neighborhoods would be all those that developed before the 1972 code and new would be those developed after that. She said that N2 would address in-fill issues in existing neighborhoods to keep development consistent within those neighborhoods. She stated that for new development, the code would allow more site layout flexibility for two-unit structures. Ms. Garvin clarified access and curb cuts for neighborhoods with existing or planned alleys and those without.

Ms. Garvin then addressed the PND revisions: 1. Increased the minimum initial lot size to 10 acres; 2. Reduce required zone district mix from 3 districts to 2; 3. Require 20% of secondary development district (net acres, not gross); and 4. P1 Open Space still required at 2% net acreage.

Nicole Cromwell added more detail about the N2 district concerning garage opening allowances, roof pitch, curb cut options and second floor sizes. She stated driveways could now be constructed up to the side property line under the revised code.

Nicole Cromwell continued that it was the Council's direction, November 9th, to amend the part of the code that addressed Electronic Message Display (EMD) signs to allow a 3-second hold time for each static message and that change was made to Section 27-1400.

Mayor Cole asked for clarification on the distinction of the 1972 code. Ms. Cromwell stated that when the City adopted the 1972 code, the City was beginning to allow new subdivisions to develop without alleys and that prior to that it was a requirement that alleys be included. She continued that with the adoption of the 1972 code, it was very much lot-based, with lower density overall and the City stopped requiring alleys. She stated it made sense to include a stop point date, in that everything before this date was the old style and everything since that date was the new style. She clarified that the flexibility plan applied to 2-unit structures. Ms. Cromwell explained that the 1972 distinction would apply to vacant lot development in amended subdivisions and Certificates of Survey or master site plans, approved on or after May 3, 1972.

Councilmember Purinton asked if this only applied to N2 and not N3. Ms. Cromwell responded affirmatively. She continued that the N3 zoning would replace most of the Residential 9600 zone district, all of R-7-R and R-6-R (restricted single family) zone districts and N3 would be for single family dwellings only. Councilmember Purinton asked which district(s) allowed living spaces built above attached and detached garages. Ms. Cromwell explained that the dwelling would need to have as much square footage as it did storage space, 50/50, and could be in any of the N zone districts if it met the criteria.

Councilmember Boyett clarified annexation rules for 10 acres versus 10+ acres and the required number of N zone districts with Ms. Cromwell.

Councilmember Ewalt clarified with Ms. Cromwell the development requirements concerning duplex construction and the options available under the flexible PND.

Councilmembers Neese and Brown clarified with Ms. Cromwell the street frontage requirement differences between N1, N2 and N3 zone districts and the flex option for developers wishing to build single family homes. Ms. Cromwell stated duplexes could be built amongst single family homes. She said the lot area minimums were removed for N1, N2 and N3, but allowed the developer to vary the lot width, based on the construction needs. She continued that this alleviated special reviews later.

Mayor Cole called for a recess at 7:46 PM.

Mayor Cole reconvened the meeting at 8:56 PM.

Councilmember Ewalt stated the entire Heights area was in the County until some time in the 1980s. He asked whether that meant the entire Heights area would fall under "new development" in terms of the 1972 code adoption date. Ms. Cromwell reiterated her earlier statement that the 1972 distinction would apply to vacant lot development in amended subdivisions and Certificates of Survey or master site plans, approved on or after May 3, 1972. She gave an example of the Lake Hills Subdivision, stating that had been originally platted in the 1950s, but there had been many amendments to the original over time and therefore would be considered "new development".

The Mayor confirmed with Ms. Cromwell that the County adopted identical zoning codes to the City's in 1973 and therefore it did not matter whether it was platted in the City or the County, just the date of when mattered.

Councilmember Ewalt clarified garage door openings with Ms. Cromwell as 16 foot, no matter how large the garage width.

Mayor Cole asked for clarification on the garage entrances in the N zone districts. Ms. Cromwell responded that in N1 and N2 zone districts, flex options were

proposed. She continued that each of those districts allowed for access if there was an alley, access to the garage entry should be from the alley; if there was a side street, access should be from the side street; if there was only access from the front street, one was allowed a driveway from the front street to access the garage. She continued to provide details about garage door openings in the various scenarios given for the different N zone districts and stated most of the established neighborhoods in N1 had access from the alley to garage entries. Ms. Cromwell mentioned that in developments where there was alley access, a developer could build twice as many dwellings on the same stretch of street compared to those neighborhoods without alleyways.

Councilmember Ewalt asked whether snow plowing in alleys would begin if more alleys were created. Ms. Cromwell stated she was not aware. Councilmember Ewalt voiced concern about bars/casinos that have churches locate next to them within the boundaries (making the bar/casino non-conforming). He continued that should the bar/casino be destroyed by fire, etc., they would not be able to rebuild on the same property without having to conform to the new restrictions. He continued that it would not be fair since a church located too closely to an established bar/casino. Ms. Cromwell explained non-waiverable separations and gave examples of instances when reconstruction would require a special review. Mayor Cole stated that in essence the new code would make a conforming use bar/casino that suffers catastrophic destruction into a non-conforming use should it wish to be rebuilt in the same location that was now in the vicinity of a church, park with playground or school.

Councilmember Brown asked if there was a solution to this situation. Elizabeth Garvin, consultant, responded something could be drafted that would allow an applicant bar/casino owner that would prove to the City that they pre-dated the uses. She stated it would not be a "grandfathering" but would provide an applicant an opportunity for remedy. Councilmember Brown alluded to directing staff to implement this suggestion but made no formal motion.

Councilmember Purinton asked staff to meet with the Taverns Association to address their concerns. Wyeth Friday, Planning Director, responded he was concerned that Council was reversing what they had originally directed staff to do. Councilmember Brown asked if the Mayor would take a straw poll to determine whether additional discussion was merited on this point. Mayor Cole asked for Councilmembers to indicate if they wanted additional changes made to the proposed code concerning separations and bars/casinos in particular situations that cause a conforming bar/casino to transition to non-conformance. Councilmembers Boyett, Yakawich, Ewalt, Purinton, Brown and Mayor Cole raised their hands in interest. Councilmembers Joy, Choriki and Ronning raised their hands that they were content with the proposed language presented. Councilmember Neese chose not to participate in the straw poll and stated the neighborhoods had indicated they wanted the changes. He continued that he understood the businesses' concerns, but that this would be a slow process of change to keep bars/casinos out of residential neighborhoods. He mentioned that if the separations are set for the bars/casinos to locate near a church, park with playground or school, then the opposite should be true as well. That a church or school could not

locate within that same separation zone to an established bar/casino. He stated there needs to be predictability for businesses. Mayor Cole stated perhaps a waiver situation could be implemented wherein a church could locate near bar/casino, but by doing so would waive all rights to refuse the reconstruction of such in the event of the bar/casino's loss.

Councilmember Ronning stated that during her service on the Council that some of the most contested subjects have been concerning bars/casinos. She stated Council should consider all the public comments given over the years that spoke against the location of a bar/casino in a neighborhood. She continued that a business owner should not have a greater right than a resident who lives in that neighborhood. She stated she agreed with Councilmember Neese's statement that the rules and policies should apply to both bars/casinos and churches and schools, and that the Mayor's suggestion about a waiver made sense.

Wyeth Friday, Planning Director, asked for clarification because what he just heard was not workable. Mayor Cole stated it was basically whoever gets to the location first, wins. Councilmember Choriki stated that if a waiver condition was implemented, it should only apply to the location of the bar/casino or church, not to all others that might move into the area. He voiced his concerns about the extended process of adopting the new code, especially when it was addressing bars/casinos, to the point of prohibiting them. Chris Kukulski, City Administrator, reminded Council that some cities choose to separate and others choose to segregate certain businesses to certain locations in their cities. He echoed Mr. Friday's concerns about additional changes.

Councilmember Brown stated he was not referring to whether people wanted a bar/casino in their neighborhood. He stated he was seeking language that would protect a bar/casino in the event their establishment was destroyed and circumstances caused their business to go from conforming to nonconforming through no fault of their own. He supported the solution offered by the consultant, Elizabeth Garvin. Ms. Garvin stated she would work with the Legal Department to create a special review process that would be very specific.

Councilmember Purinton stated she supported free enterprise and did not support overregulating certain businesses; she wanted to be cautious in implementing rules with unforeseen consequences.

The public hearing was opened.

- **Josh Benson, 3112 Falcon Ridgeway, Billings, Montana**, stated he appreciated the delay of approval and was largely a proponent of the revised code as proposed. He stated he currently had 6 gaming licenses and all were conforming presently, however, under the new language concerning bars/casinos, many of the properties would be non-conforming and illegal. He mentioned he had a restaurant lessee in one of his establishments and should the restaurant cause a fire, he could potentially

be unable to rebuild and be out of business under the new language. He stated that casinos would be forced into Industrial zones or saturated areas. He warned about creating casino depressed zones that would not do well for the City.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, stated his garbage was not being collected in the alley, but street side and the method was ridiculous. He stated that in the Heights area there were a lot of duplexes situated on lots that were only 80 feet wide. He continued to address the proposed code's 80-foot duplex configuration, the required side setbacks and the challenges to insure the building.
- **Doug Wild, 4712 Audubon Way, Billings, Montana**, stated he is a home building / developer and wished to address the N1 and N2 qualifications. He stated removing the style guidelines from the N1 and N2 areas would make sense. He continued he understood keeping the style restrictions in the historic areas and mid-century areas of town for uniformity. But disagreed in trying to make new neighborhoods look like the old neighborhoods. He stated dictating how wide a garage can be should not be controlled by zoning. He agreed that approaches should be controlled for public safety, but the market and homebuyer should drive the style of a home.
- **Dennis Benson, 143 Lewis Avenue, Billings, Montana**, stated casinos and gaming was being singled out through increasing regulations that few other businesses are confronted with. He stated that any regulation without rationale is wrong and he opposed the current proposed language concerning casino relocation, separations and setbacks. He stated it could infringe on the 14th amendment rights. He asked Council to treat bars/casinos fairly and equitably.
- **Lanissa Fortner, 4910 Verde Lane, Billings, Montana**, owner of Four Seasons Real Estate, stated she is opposed to the landscaping architecture of the proposed code. It will cause a financial burden to new homeowners because of the requirements. She supported having an entire neighborhood as N3.
- **Darell Tunnicliff, Billings, Montana**, spoke about the multiple businesses, agencies and individuals who served on the steering committee for Project Recode. He stated all involved wanted to do what was right for the City. He stated because of the large number of topics in the code, there were a number of subcommittees formed to focus on topics separately and each subcommittee had been chaired by a citizen, staff was available to offer education, support and information. He stated that the process was driven by the individuals that served on the committees. He complimented City staff and Ms. Garvin for their expertise. He shared his frustration that over the past 2 ½ years they had struggled to get the public to comment and now it was coming forth for passage and approval and was now meeting opposition.
- **Laura Drager, 2233 Constellation Trail, Billings, Montana**, stated she was a realtor with ReMax and stated she had concerns about the style

guidelines affecting affordability and desirability of future homes. She stated there were not many requests for homes with single car garages and those would be difficult to sell. She continued that she was concerned about the EBURD restrictions being different than that of other areas in town and that the restrictions could curb future development.

- **Cody Delaware, 4910 Verde Lane, Billings, Montana**, stated he was opposed to the landscaping restrictions as proposed. He stated that housing costs were very high and the landscaping requirements made the costs significantly higher. He stated he supported having an entire neighborhood as N3 zone district.
- **Steve Wells, 4772 Audubon Way, Billings, Montana**, stated he opposed the landscaping restrictions as single families may not be able to afford the required landscaping and supported an entire neighborhood as N3 zone district.

There were no further callers. The public hearing was *not* closed and the Mayor announced that the public hearing would continue to the December 14th Regular Business meeting.

Mayor Cole asked Nicole Cromwell to address concerns raised during public comment. Ms. Cromwell responded that the landscaping requirements for single family homes and 2-family homes on any undeveloped lots consisted of showing on the site plan placement of the newly required street trees in the street frontage landscaping area. She continued that that was the only thing that was required, and no landscape architect or design expert was required. She stated the language was intended for really large multi-family or commercial development that are already required to prepare a landscape plan to submit with their development permits. Ms. Cromwell explained that in the future new residential subdivisions that are adjacent to a commercial zone or some other use that is not necessarily compatible, the proposed landscaping code stated that developer should make a provision to provide on their side of the property line, a buffer area so the new residential homes can be buffered from the non-residential use.

Councilmember Neese asked if that language was clear in the proposed changes to the code. Ms. Cromwell stated additional language could be added to clarify the landscaping requirements for residences in Section 27-1200 and also in the section for landscaping plan review procedures.

Ms. Cromwell addressed the concern about rebuilding the Poly Food Basket in the event of a fire. She stated that the current zoning would not allow for reconstruction, however, the proposed zoning map update would allow that business to be rebuilt in the event of a catastrophe. She continued that the regulations in the EBURD were adopted by the City Council in 2012 and were based on a specific master plan for this urban renewal area. She stated these regulations are not changing; they are being incorporated into the new code.

Councilmember Boyett asked for clarification on N1 and N2 construction of new homes. Ms. Cromwell stated the flexibility plan would help make sure that any in-fill building fits the fabric of the established neighborhoods in N1 and N2 zone districts. She provided examples of developers who successfully built units within the zone district and that developers were given more flexibility.

Councilmember Purinton asked for clarification on the street tree requirements and xeriscaping. She stated that while she loved trees on the boulevards, their roots often created problems with sidewalks and water systems. Ms. Cromwell stated the requirement was for new developments and was one tree for every 40 feet of street frontage. She continued the tree(s) could be planted in the boulevard if one was installed or within the first 10 feet behind the sidewalk and still be considered a street tree. She stated the landscaping working group developed a preferred tree list that is not a part of the code nor a requirement that only trees from the list be planted, but it was based on the concerns of sidewalk heaving or compromising water systems. Ms. Cromwell stated that there are trees in xeriscaping that once established do not need to be watered as they are able to survive on water provided from the environment through snowfall and rainfall.

Council discussions continued about housing design in the S. 27th Street Corridor District and that that area would not become N1 under the new code.

Mayor Cole asked about reducing the casino density along commercial zones and arterials. Ms. Cromwell explained that the drafted language concerning bars/casinos did not apply to bars that were within a restaurant setting. She continued that casinos were not required to have separation distances within the Central Business District, EBURD or in Light Industrial zones. She stated a bar on the other hand, is not required to have separation in Downtown Central Business District, EBURD, Downtown Support Districts, or Light Industrial. She continued that zones that required separations were Corridor Mixed Use 1 and 2, and Heavy Commercial. She stated the current code measures property line to property line and the proposed language would measure from the exterior of the building to the property line of the protected use. Ms. Cromwell gave several scenarios where a map likely would not be beneficial to identifying appropriate distances. Mayor Cole followed with questions about any legal concerns with the proposed zoning. City Attorney, Brent Brooks, asked for more time to review the information, research and analyze it and prepare a formal memorandum.

Discussions continued about the number of bars/casinos along Grand Avenue and how the new zoning would make most of those non-conforming for separation distances.

Councilmember Neese asked whether an entire development could be N3 zoned or whether the developer could have covenants that required single-family dwellings. Ms. Cromwell stated that zoning could not override covenants and those covenants could read that 2-unit buildings are not allowed in the subdivision.

Council provided direction to staff on a number of items discussed during the meeting and asked that clarification on those items be provided before the December 14, 2020 Regular Business meeting.

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 10:14 pm.



CITY OF BILLINGS

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

ATTEST:

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