

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 22, 2021

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 Joy gave the invocation.

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

~~COVID-19 Update by Joint Information Center (JIC)~~

Item removed from the agenda due to the unavailability of a presenter.

MINUTES:

March 8, 2021 – Councilmember Choriki moved for approval of the minutes as written, seconded by Councilmember Shaw. By a show of hands vote, the motion was approved unanimously.

COURTESIES:

Councilmember Joy thanked Fire Captain Chelsea Thompson, Lindsey Gardner, PTA member, Tracy Whitaker, teacher and PTA member, and Laurie Booke, Principal and PTA member, of Burlington School who provided first aid materials to the school.

Councilmember Ewalt recognized Chuck Barthuly and the Better Billings Foundation for building the basketball court at Sahara Sands Park. He acknowledged the law offices of Heenan and Cook, PLLC, for their monetary donation; Knife River, Pacific Steel, Custom Concrete, Frontier Fence and Fisher Sand and Gravel for their donations of materials and services to the project and thanked them.

Councilmember Neese reminded Heights residents that the Heights Task Force would be holding a candidates' forum via Zoom for the Heights Business Association on March 23, 2021. He stated there were 3 positions to fill.

PROCLAMATIONS:

Mayor Cole proclaimed April 6, 2021 as National Service Day and asked Carly Collins to introduce each of the 18 AmeriCorps VISTA members currently serving the City of Billings at a variety of host sites.

Mayor Cole lost connection at 5:43 pm and Deputy Mayor Yakawich led the meeting at that point. The Mayor returned to the meeting at 5:49 pm and resumed presiding over the meeting.

COUNCIL REPORTS:

There were no Council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski stated that the budget overview would be scheduled after the regular business meeting on April 26th, however, if the agenda is too large, then the budget overview would be given on Tuesday, April 27th. He asked that Council hold that date open. He stated that the rest of the budget presentations would be given on May 17th, 18th and 19th, if there was Council consensus.

Mr. Kukulski acknowledged that one ex-parte communication from Jim Theresa Helus was received after 3:00 pm, concerning Regular Agenda Items 4 and 5, Annexation 20-05A and Zone Change 987, opposing both items.

Mr. Kukulski reminded Council that the next Monday, March 29th, was a bye week and there would be no meeting, but Council's pictures were scheduled for that evening.

Mr. Kukulski gave a legislative update and provided hearing dates and times and stated the City's lobbyists would provide an update during the April 5th Work Session.

Mr. Kukulski concluded by giving an overview of his 5 goals for the City of Billings.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2a, 7 and 10 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.

- **Jerry Dernbach, 344 Wyatt Circle, Billings, Montana**, in reference to Item 7, stated there was a small group of opponents to this item and he wanted Council to know he was not a part of them. He continued that the majority of the residents living on the rims were in support of the development.
- **R.W. and Donna McKamy, 104 Sky Ranch Drive, Billings Montana**, in reference to Item 7, stated their support of the development.

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

1. **CONSENT AGENDA**

A. **Mayor Cole recommends that Council confirm the following appointments:**

1. Mayor Cole recommends that the City Council confirm the appointment to the following board.

	Name	Board/Commission	Term	
			Begins	Ends
1	Laura Drager	Parks, Recreation & Cemetery Board*	03/08/21	12/31/21

*1 Unexpired term of Larry Brewster

B. **Bid Awards:**

1. **Airport Commercial Ramp Construction Project, Schedule 3.**
(Opened 3/9/2021) Recommend KnifeRiver Construction;
\$1,071,588.50.

- C. **Contract** with JBT AeroTech to purchase and install eight (8) new passenger boarding bridges at the airport; \$5,442,545.

- D. **2021 High Intensity Drug Traffic Area (HIDTA)** award from the Executive Office of the President, Office of National Drug Control Policy; \$228,697.

- E. **Preliminary Subsequent Major Plat** of Annafeld North Subdivision, 1st Filing located on the north side of Elysian Road and west of the Hogan Slough; McCall Development, Inc., owner; Sanderson Stewart, agent.

- F. **Preliminary Subsequent Major Plat** of Annafeld North Subdivision, 2nd Filing located north of Elysian Road and east of East Lane; McCall Development, Inc., owner; Sanderson Stewart, agent.

- G. **Preliminary Subsequent Minor Plat** of Shiloh Crossing Subdivision, Amended located between Shiloh Road and Shiloh Crossing Boulevard; OpportunityBank, owner; Stahly Engineering, agent.

- H. **Preliminary Subsequent Major Plat** of Parkland West Subdivision, 7th Filing located on the east side of South 36th Street West between Crater Lake and Rachelle Circle; Rod Lorenz, owner; WWC Engineering, agent.
- I. **Resolution 21-10934** authorizing the issuance and public sale for refunding of the General Obligation (GO) Library Bonds.
- J. **Resolution 21-10935** ordering improvements identified in W.O. 20-12: South 32nd Street West.
- K. **Second and Final Reading Ordinance 21-5751** granting a non-exclusive franchise to Montana Dakota Utilities for the operation of a gas distribution system.
- L. **Bills for the Weeks of:**
 - 1. February 16, 2021
 - 2. February 22, 2021

No items were separated on the Consent Agenda. Councilmember Neese moved for approval of the entire Consent Agenda, seconded by Councilmember Shaw.

Councilmember Neese asked about the privatization of parks versus neighborhood parks as referenced in Consent Agenda Items E and F. Mr. Kukulski, City Administrator, offered an explanation about newer subdivisions developing public parks in higher density areas. He continued this was consistent with the design plan. Councilmember Neese stated it was a policy issue and he asked Mr. Kukulski to have staff bring something to Council concerning privatized parks meeting the City's park standards. Mayor Cole stated that in Title 76, Park Dedication, the statute for subdivisions does not require public ownership and that is why the City has allowed dedication of land that is privately owned by an HOA. He continued that the statute does allow for the benefit of the whole area and not just for a select few residents in the subdivision.

Councilmember Ronning, in reference to Consent Agenda Item 1D, asked Chief St. John how Billings could lose the designation of being a High-Intensity Drug Traffic Area, a designation that Billings has had for 19 years. Chief St. John stated the HIDTA designation was a double-edged sword in that it qualified Billings for certain Federal monies. He stated he could not predict that Billings would lose the distinction any time in the future based on the trends he has witnessed. He stated that initiative Substance Abuse Connect was working toward reducing demand for drugs through treatment and intervention efforts.

Councilmember Purinton asked how the funds were distributed. Chief St. John stated the Police Department managed the funds for all of the organizations involved in the grant.

Councilmember Neese acknowledged and thanked Laura Drager for being willing to serve the remainder of Larry Brewster's term on the Parks Board.

By a show of hands vote, the motion to approve the entire Consent Agenda was approved unanimously.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 21-10936 creating SID 1416, Gleneagles Boulevard. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Debi Meling, Public Works Director, provided a PowerPoint presentation. She explained that there had been many SIDs in the area of Gleneagles Boulevard because over the years lots had been sold before infrastructure was in place. She continued that the process had changed in which the developer was now required to have infrastructure in place before developing lots. The SID will include water, sewer, storm, curb and gutter and street improvements on all 17 parcels. Sidewalks would be installed with building permits. She explained the City's contribution, Ron Hill's contribution and the other 3 property owners' contribution. If the creation was approved, construction would begin in late May 2021 and be completed in late summer of 2021, with assessments following in the fall of 2021.

Councilmember Brown asked if there were any protests to the SID. Ms. Meling responded there were no protests received.

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

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

a. PROFESSIONAL SERVICES CONTRACT for SID 1416, Gleneagles Boulevard; Stahly Engineering and Associates; \$104,548. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Debi Meling, Public Works Director, stated she had nothing further to add to the previously given presentation, but this was the contractor that staff recommended for the project.

Councilmember Neese moved for approval of Item 2a, seconded by Councilmember Boyett.

Councilmember Yakawich asked why the cost was so high for something that seemed so ordinary and repetitious. Ms. Meling stated that for each project surveys are taken, soil composition is determined, and construction

administration was a big part of the cost; adding that even though it may look like the same as all other projects, each project was unique.

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 989: a zone change from EBURD-Central Works to EBURD-Industrial Sanctuary located at 5 North 16th Street. J & S Properties, Inc., owner; Simonsen Architect, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Mayor Cole experienced connectivity difficulties and left the meeting at 6:36 pm. Deputy Mayor Yakawich led the meeting at that point. Mayor Cole rejoined the meeting at 6:37 pm and presided over the meeting.

Nicole Cromwell, Zoning Coordinator, provided a PowerPoint presentation explaining the need for a zone change from EBURD-CW to EBURD-IS and she reviewed the 10 criteria. She stated the Zoning Commission held their public hearing and forwarded a recommendation of approval based on the findings of the 10 review criteria. She continued that the applicant, Yellowstone Ice and Water, wished to move their business to a larger site.

Councilmember Ewalt asked why the zone change was before the Council. It was his understanding that Council would see fewer zone changes when Project ReCode was adopted. Ms. Cromwell explained that Project ReCode would not necessarily reduce the amount of zone changes before the Council.

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

Councilmember Ronning moved for approval of Item 3 as recommended by the Zoning Commission and adoption of the 10 criteria, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

4. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION 20-05B: a property located West of AJ Way and North of Highway 3. Aviation Properties, Lupine Holdings, LLC, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, explained that Aviation Properties had authority to file a petition on behalf of Lupine Holdings, LCC, and it was the opinion of the Planning staff and City Legal staff that this item could move forward for approval. She continued with her PowerPoint presentation in which she explained the interconnectedness of Annexations 20-05A (parcels east of AJ Way) and 20-05B (parcels west of AJ Way). She explained that once the Annexation 20-05B was approved, a public hearing and Zone Change would

follow. She stated there was no zone change associated with Annexation 20-05A. Ms. Plecker explained the process to follow, stating that approval of a development agreement and the ward boundary expansion would come before Council at a later date. She stated this annexation consisted of 2 parcels of land for a total of 21.852 gross acres and 20.01 net acres. She reviewed the Limits of Annexation Map, adopted October 2020. Ms. Plecker reminded Council that not annexing the property in no way ensured that development would not occur, it would just occur in the County. She stated a zone change would be necessary after annexation because the zone was currently agricultural and there was no agricultural zoning within the City limits. Ms. Plecker reviewed the 5 criteria of the Annexation Policy. She stated there were some challenges with the property, however, those did not outweigh the benefits to the public. She assured Council that throughout the development of the area, there would be checks to ensure everything was in compliance with zoning and site development regulations. She stated staff recommended approval, subject to the execution of the development agreement and explained the perpetual air rights to protect the air space around the airport. She explained the City's departments were all involved in determining the recommendation of approval. Ms. Plecker stated that the resolution was different than other resolutions approving annexation in that 1) it would not be immediately effective and would not impact the Council's ability to consider a zone change; 2) it reasonably provided the landowner with critical information influencing future decisions; 3) it provided a deadline for the Development Agreement; and 4) it specified conditions to be met prior to April 26, 2021 or the resolution became null and void.

Erin Heringer, applicant, represented Aviation Properties and Lupine Holdings, and introduced Jeff Kanning, Collaborative Architects, Agent, who stated they had met with many of the staff and neighbors of the area. He continued that they had reviewed many studies surrounding the area, the Growth Plan and the airport's master plan.

Councilmember Purinton inquired about the water and wastewater infrastructure to the property. Ms. Plecker stated that Public Works was consulted and responded that there may be a need to increase the sizing capacity for water and wastewater piping. Councilmember Purinton asked how the property was currently served. Jeff Kanning stated there were cisterns and septic systems.

Councilmember Choriki asked about roads from the property leading north. Erin Heringer responded that they were working with the Engineering Department to create a 45' wide road, instead of a 39' wide road, off of AJ Way.

Councilmember Neese asked for clarification on the process of annexing prior to a zone change and whether there were any alternatives. Ms. Plecker stated the property had to be annexed before anything further could be considered with the property. She continued that zone changes took awhile to become effective because a public hearing and first reading was required, followed by a second reading and a 30-day waiting period before the ordinance would be effective. She continued that Bozeman, Missoula, Great Falls were all

consulted about how to proceed in this unique manner. It was determined that the resolution could contain conditions as mentioned to provide the owners/developers the opportunity to decide whether the outcome of the zone change met favorably with their overall plans or to let the resolution approving annexation expire and not fulfill the conditions of the resolution.

Councilmember Neese asked about infrastructure improvements from 12" to 18" lines being paid by the City. Debi Meling, Public Works Director, stated that the City's rules and regulations specifically indicated that 12" lines were installed at the cost of the developer, but lines 18" or larger were the City's burden. Discussions continued about who paid for the initial 12" lines, changes to the rules and regulations, and the 20-year development pay back. Ms. Meling stated that the 12" line was currently adequate to serve the properties.

Councilmember Ronning requested clarification of the ownership of the property. Ms. Plecker stated originally the petition was under Aviation Properties, but during the process, the property had changed ownership to Lupine Holdings, LLC, a subsidiary, but both companies were owned by the Blaines.

Councilmember Boyett asked if it was possible to annex agricultural zoned property into the City without a zone change application. Ms. Plecker stated it was not possible. All agricultural zoned properties that are annexed into the City must be re-zoned via a zone change because the City does not have an agricultural zone.

Debi Meling, Public Works Director, corrected her earlier statement about the installation and payment of the 12" line. She stated the line was actually installed by SID and the City and property owners paid for the installation.

Ms. Plecker clarified that should the conditions in the resolution not be met by April 26th, the applicant would have to start the process over.

Councilmember Choriki asked the development team what the demand for development was in Billings. Erin Heringer stated there was a huge demand in commercial properties and the inventory was low. She continued that this location was centrally located and would allow businesses to easily access services.

Chris Kukulski, City Administrator, thanked the Blaine Family for their interest in annexing the property into the City limits. He continued that this was located near the airport and the City wanted to see job growth. He reminded Council that when a developer wanted to develop their property, they would do so either in the County or in the City and when they came into the City, the development must meet City standards and helped the tax base. He stressed the quality of the design was very important and encouraged Council to approve the annexation. He outlined the negatives of the development occurring in the County only to be later annexed into the City with challenges.

Mayor Cole called for recess at 7:30 pm.

Mayor Cole reconvened the meeting at 7:37 pm.

The public hearing was opened.

Citizens that voiced their support for the annexation were:

- **Donna McKamy, 104 Sky Ranch Drive, Billings, Montana**, stated her support and gave examples of the many philanthropic things the Blaine Family has done for the City and its citizens.

Citizens that voiced their opposition for the annexation were:

- **Judy Evans, 3481 Masterson Circle, Billings, Montana**, expressed concerns about lighting, signage and exits onto the Highway.
- **Alice Lahren, 108 Sky Ranch Drive, Billings, Montana**, voiced her concern about the Highway 3 design and aesthetics and wanted to review the zoning closely to not allow a truck stop or truck wash in the area.
- **Paul Scarpari, 3440 Masterson Circle, Billings, Montana**, stated he was supportive of residential zoning only. He stated multiple accesses would impact the residents in the area.
- **Tim Blattie, 2745 Highway 3, Billings, Montana**, stated opposition because it did not fit with the City's Growth Plan. He said Aviation Properties did not own the properties according to the County's cadastral information, it was owned by Lupine Holdings, LLC, and the wrong entity was making the petition. He continued he did not purchase his property to live next to a truck stop, Fed Ex distribution center or any heavy commercial companies and it would decrease property values in the area. He stated entry onto and off of Highway 3 was already dangerous and adding more heavy traffic would make it worse.
- **Dayton Rush, Cushing Terrell, 13 North 23rd Street, Billings, Montana**, stated he was representing the Rimrock Neighborhood Task Force and stated they wanted to make sure the right thing was done to keep the rims area beautiful. He continued that allowing heavy commercial zoning in that area was not in keeping with the Growth Plan and asked for limits to what would be placed on the properties and include buffering between the property and Highway 3. He cautioned the Council that this could set a precedent for a borage of unattractive signage.
- **Howard Evans, 3481 Masterson Circle, Billings, Montana**, objected to the comments being directed toward the Blaine Family. He stated that the annexation and zone change had nothing to do with the integrity and character of the Blaine Family.

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

Monica Plecker, Planning Division Manager, reminded Council that staff reviewed all policies approved by Council and gave thoughtful consideration of those to make their recommendations in every situation.

Erin Heringer stated the best way to calm neighbors' fears was to support annexation because the City had stricter standards than the County as far as aesthetics were concerned.

Councilmember Ewalt moved to conditionally approve a Resolution approving Annexation 20-05B, as recommended by staff, seconded by Councilmember Yakawich.

Councilmember Neese asked if the applicant was interested in annexing all the land they owned on the rims. Erin Heringer stated they had an additional 120 acres north of this project and they planned to master plan it and then annex it eventually. She concluded that there were no plans to annex the property north of Annexation 20-05A.

Councilmember Joy voiced support for the motion and stated this was a good place for development.

Councilmember Brown gave his support of the motion and stated that the County Commissioners had worked with the owners and it would be best to annex the property into the City, rather than have development happen in the County.

Mayor Cole stated the development agreement conditions were some of the most important elements, but not an exclusive list. He continued that it was up to the City Administrator to determine its sufficiency. He continued that upon annexation of land, the City could impose certain conditions that it could not do after the fact. He encouraged the City Administrator to be mindful of the neighbors' concerns about improvements when considering the development agreement. He voiced his concerns with the current annexation policy.

Monica Plecker, Planning Division Manager, clarified that the City Council would actually vote on and evaluate the way the development agreement was written as stated in the resolution. The City Administrator would sign the development agreement once the conditions were met prior to filing the Resolution approving annexation. She stated the Council will review and vote on the development agreement at a future meeting.

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

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 987: a zone change from Agricultural (A) to Highway Commercial/ Heavy Commercial (HC/CX) on Tracts 1A and 1B of COS 1889, located east of Billings Flying Service at 3655 AJ Way. Aviation Properties, Lupine Holdings, LLC, owner; Collaborative Design Architects, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Councilmember Ewalt stated that Highway Commercial was now replaced with Heavy Commercial since Project ReCode was adopted and should be stricken from the record.

Nicole Cromwell, Zoning Coordinator, explained that when the staff memo was created the zoning code was in transition and Heavy Commercial (CX) was a corollary to Highway Commercial (HC) which was not retired. Ms. Cromwell began her PowerPoint Presentation. She clarified that Aviation Properties, LLC / Lupine Holdings, LLC were the owners of the property. She stated the Zoning Commission held their public hearing on January 2, 2021 and recommended approval of the zone change from Agricultural to Heavy Commercial based on the 10 review criteria and she reviewed those criteria. She reviewed the current surrounding zoning in the area. She described the Airport Influence Zone as being different from the Airport Noise Area and stated buildings in the Airport Influence Zone had height restrictions, etc. She stated the City received 6 protests within the 150' protest area. She explained that in order to have a valid protest, there must be 25% or more of the property within the 150' protest area protest the zone change, per 76-2-305(2), MCA. Four protests were needed to meet the 25% and the City received 6. The valid protest required a super majority vote of the Council to approve the zone change, therefore 8 members of the Council would need to vote in favor of the zone change for it to pass. Ms. Cromwell reviewed the many Heavy Commercial zone district uses. She addressed the landscaping codes for street frontage properties stating trees were required to be planted, but evergreen trees were discouraged because of their maintenance. She spoke about site lighting and stated there were some restrictions to that because of the airport. She stated that all commercially zoned properties are allowed to have signage. She continued that Heavy Commercial zones allowed for free standing, lighted signs up to 25' tall. Ms. Cromwell explained there was a robust landscaping requirement for around the bottom of signs.

Mayor Cole asked about street frontage buffers and cut-off lighting. Ms. Cromwell stated a street front never had buffers but did require street frontage landscaping. She explained that property adjacent to or within 50 feet of another different zone would be required to install a buffer yard. She stated Highway 3 was 100 feet wide and not within 50 feet of a residential zone and buffering was not proposed. She continued that cut-off lighting would only be required if you had an adjacent zone within 50 feet.

Councilmember Purinton asked about the speed limit on Highway 3 and whether a center turn lane would be added to divert traffic into the annexed area. Ms. Cromwell responded that any speed limit above 45 miles per hour was not considered a City speed limit. She continued that all access points along Highway 3 are controlled by the State which does consult with the City's Engineering Department. Sometimes a general traffic study was done and then refined as development of an area was completed.

Councilmember Brown inquired about street frontages. Ms. Cromwell responded that it was possible there could be 3 street frontages, Highway 3 and on both sides of AJ Way and they would all require landscaping. She confirmed that any property along any side streets, etc. in zoned area would require landscaping, too.

Councilmember Neese asked the applicant why CMU1 or CMU2 were not chosen for this zone change. Erin Heringer responded that both of those zones required some residential and were very protective of what kind of development was located closely to an airport. She continued that Federal funding was affected if the type of growth around an airport was not protected. She stated that CX zoning allowed contractor services, which had been identified as a big need in Billings, and distribution, which was not allowed in CMU2 zoning. She stated that over the next 15 years traffic on Highway 3 was expected to increase significantly and having these services along Highway 3 would be ideal. She stated that Heavy Industrial would also not be a good choice because the allowable uses included businesses that created a lot of smoke and emissions that would interfere with air traffic.

Jeff Kanning added that on September 10, 2020 the funding for the Inner Belt Loop and Skyline Trail were approved and he saw this development, along with the development of those, would be an asset to Billings. He encouraged Council to trust the process that had worked for many years for annexations and zone changes; trust City staff who have expertise in their fields; and trust the studies that had contributed to the development of the City over the years.

Mayor Cole addressed incorrect language that was written in the third paragraph of the ordinance and wished it to be changed as "the official zoning map is hereby amended and the zoning for Tract 1A and 1B, Certificate of Survey 1889, is hereby changed from Agricultural A to ~~Highway Commercial (HC) a zone that will update. Heavy Commercial (CX) on February 25, 2024~~ Nicole Cromwell stated that the ordinance would be updated with the changes for second reading.

The public hearing was opened.

Citizens that voiced their support for the zone change were:

- **Donna McKamy, 104 Sky Ranch Drive, Billings, Montana**, stated she appreciated Mr. Kanning's comments about trusting the processes, staff and studies that led to the decisions of the zone change. She added Council should also trust the developers.
- **Russ Fagg, 3053 Thousand Oaks Street, Billings, Montana**, stated thriving communities have thriving commercial development around their airports and stated Bozeman does this well. He supported the zone change to encourage commercial development near the airport. He also stated the City should support private developers who are willing to take risks with their own monies to build the City with high-quality development.
- **Al Koelzer, 2828 Westwood Dr., Billings, Montana**, stated the commercial development in Billings was strong and there was a real need for commercial lots with City services. He stated all the development was going between Billings and Laurel, not because businesses wanted to, but because they had to. He continued that because of the location near the airport, it was likely the only property that could be developed for commercial businesses which would enhance services; create new jobs and add to the tax base.

- **Jerry Dernbach, 344 Wyatt Circle, Billings, Montana**, voiced his support of the zone change.

Citizens that voiced their opposition for the zone change were:

- **Lisa Payne, 3441 Masterson Circle, Billings, Montana**, stated she lived within the 150' protest area and had forwarded emails in opposition and a protest of the zone change. She stated decreased property values, increased truck traffic, transparency, etc., as their grounds for protest. She said it should be compatible with all existing zones in the area, not just 1 or 2. She admitted it was unrealistic to think the land would remain agricultural forever, but it was equally unrealistic to think it would be heavy commercial zoning that allowed truck stops and adult entertainment near residential areas across Highway 3. She asked for a compromise as she supported development but not heavy commercial zoning.
- **Dave Kinnard, 106 Sky Ranch Drive, Billings, Montana**, stated the zone change set a precedent for how things should not be handled. He stated the proposed change would not enhance the entryway into Billings. He continued that the developers were not providing enough information about what they intended to place in the development. He objected to the lack of buffering and stated that Highway 3 was not enough of a buffer between the new commercial development and residences. He feared the development would look unsightly like the development along I-90 to the east and west entries to Billings. He suggested the Council delay action on the zone change as well as on Regular Agenda Items 6, 7 and 8.
- **Paul Scarpari, 3440 Masterson Circle, Billings, Montana**, voiced his opposition to the zone change as proposed.
- **Howard Evans, 3481 Masterson Circle, Billings, Montana**, asked Council to imagine the drive along Highway 3 once developed with truck stops, adult entertainment, etc. with numerous lite signs. He said he did not object to the CMU zone codes but could not imagine that Council wanted CX development along that section of Highway 3, which would likely continue further down. He stated it was always his understanding that further development in the area was to be compatible with the residential areas that existed. He stated heavy commercial was not compatible with adjacent residential zones.
- **Brenda Dossett, 3420 Masterson Circle, Billings, Montana**, stated she and her husband reside within the 150' protest area and are opposed to the zone change. She stated the zone change would affect the aesthetics of the area and devalue family homes.
- **Jim Scott, 2244 Stony Ridge, Billings, Montana**, stated he has resided on the rims for 20 years and opposed the CX zoning because he believed it was inconsistent with the map shown from the Growth Policy and incompatible with the existing development. He supported evergreen trees for landscaping as they grow very well in the area and create a year round buffer zone.

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

Mayor Cole asked for clarification from the 2016 Growth Policy that addressed the area. Nicole Cromwell, Zoning Coordinator, responded that the property north of the airport was designed with the Inner Belt Loop in mind and she referred to the North Public Preferred Scenario map. She continued that commercial – heavy density, residential – heavy density, mixed use and residential – medium density were identified in the public preferred scenario map. She stated it did not identify zoning, but what the preferred usage of the land would be. She continued that a growth policy was not regulatory but when adopting zoning for a particular piece of property, the first criteria was whether the zoning conformed to the City's Growth Policy and guidelines, including the sub-policies that are part of the Growth Policy. She stated the findings for the parcels were focused on economic development and prosperity along the transportation corridor and adjacent to the airport. She explained that Highway 3 provided a significant barrier between the north and south sides to allow the zone change. Ms. Cromwell stated the Growth Policy contained plannings but not specific zoning for parcels.

Councilmember Neese referred to the public comment made by Howard Evans concerning CMU2 zoning identified initially for the property, but during re-code was changed to CX. Nicole Cromwell stated this was not one of the properties that was changed; it was the property east of AJ Way that was changed.

Councilmember Boyett moved for approval of Zone Change 987 and adoption of the 10 criteria as recommended by the Zoning Commission, seconded by Councilmember Ewalt.

Councilmember Neese voiced his support as he saw a need for this kind of development near the airport. He stated he was concerned about some of the allowable usages under CX and proposed that in future amendments of the zoning code a CX1 or CX2 designation be made to sort the categories a bit more.

Councilmember Joy stated she supported the motion and stated that Council did not drive private investment dollars. She said Council relied on private industry to bring forward development.

Councilmember Purinton asked if the development agreement would address any of the concerns the neighbors had, i.e. adult entertainment. Nicole Cromwell stated that a development agreement deals with the development, i.e. infrastructure, roads and stormwater management. It does not deal with the land uses because that was governed by zoning. She said that re-code reduced the number of areas that could have adult entertainment businesses from 4 to 3; that there was not a big demand for the businesses; and the rules were quite stringent for those businesses. She stated she was not aware that the property owners had any intention of having such businesses in the development.

Councilmember Ronning stated had she been on the Council when construction was allowed on the south side of Highway 3, she would have voted

against it because the construction along the rims limited citizens' experiences of some of the beautiful views from the rims to a select few. She stated she understood how those property owners living there must feel to see more development. She understood that the land north of Highway 3 was not the best agricultural land and it had been posed for this type of development. She stated she hoped the development would target businesses that brought higher-paying jobs to the area. She acknowledged the vote was difficult but she would support the motion.

Councilmember Brown voiced his support and stated that whether the zone change was approved or not, the development would occur.

Mayor Cole acknowledged that the airport was landlocked and the only development that could be expected would be to the west of it and commercial development was needed around it. He stated his support of the motion.

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

Mayor Cole then referenced that public speaker, David Kinnard, mentioned that the resolution in Regular Agenda Item 4 had the incorrect owner's name (Aviation Properties) in it and should have said (Lupine Holdings, LLC) and that the original motion did not address that correction. City Attorney, Gina Dahl, stated it might be best to have a motion that addressed the change, but during the discussion it was made clear that there was an error. She recommended that a motion to reconsider the earlier motion be made noting the change to the resolution. Mayor Cole explained the parliamentary rules of a motion to reconsider.

Mayor Cole moved for reconsideration of the motion to conditionally approval a Resolution approving Annexation 20-05B, as recommended by staff, to add the correction of the owner's name from Aviation Properties to Lupine Holdings, LLC, seconded by Councilmember Boyett.

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

6. PUBLIC HEARING AND RESOLUTION 21-10938 FOR ANNEXATION 20-05A: a property located East of AJ Way. Aviation Properties, LLC, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Mayor Cole called for a recess at 9:47 pm.

Mayor Cole reconvened the meeting at 9:55 pm.

Monica Plecker, Planning Division Manager, gave a brief PowerPoint presentation and explained the procedures proposed for the item. She outlined the parcel east of AJ Way and showed the Limits of Annexation Map. She stated staff recommended approval of the resolution annexing the property subject to conditions, i.e. entry into a development agreement and the perpetual air rights. She reviewed the 5 criteria of the Annexation Policy.

Councilmember Brown asked whether City infrastructure would handle the addition of these properties. Debi Meling, Public Works Director, stated the

review of the water and sewer lines was conducted for both properties in Annexation 20-05A and 20-05B and they were satisfactory.

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

Councilmember Neese moved to conditionally approve a Resolution approving Annexation 20-05A, as recommended by staff, seconded by Councilmember Purinton.

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

7. DEVELOPMENT AGREEMENT with Aviation Properties, LLC, for infrastructure improvements on COS 2037, Tract 14A, north of Highway 3 and west of the airport. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Debi Meling, Public Works Director, gave a brief PowerPoint presentation and explained the details of the development agreement. She stated the agreement outlined improvements if the property were not subdivided, i.e. extensions to water, sewer and storm drain. She explained the waiver of rights to protest concerning the improvements and stated the sidewalk on north side of Highway 3 was included in the waiver. She continued that the property owner had submitted a proposed subdivision and if subdivided, a Subdivision Improvements Agreement (SIA) would be executed outlining all required improvements.

Councilmember Neese asked if the road improvements would be included in the development agreement. Ms. Meling stated the storm sewer, curbs, gutters and sidewalks were all included. He then asked whether there was a rule about wholesaling water. Ms. Meling stated she would need to check the rules and regulations.

Mayor Cole inquired about the legal description in the agreement. Monica Plecker, Planning Division Manager, stated that the description contained meets and bounds and she had worked with the City's surveyor and GIS staff on the boundary descriptions.

Taylor Kasperick explained that an exempt plat was provided to relocate the lot line between Tracts 13 and 14 of COS 2037 to move that to an east-west line at the bounds of annexation. This was done in an effort to clarify the boundary location so there would not be a remainder of 2 parcels annexed and 2 unannexed. He stated it was in process at the County and a final plat would be submitted shortly and everything would be tied together at that point.

Mayor Cole confirmed that accesses to the properties would be approved by MDOT and the City. Ms. Meling stated a traffic study would be conducted to help with that determination and permits would be approved through MDOT.

Mayor Cole asked Erin Heringer if they could agree that there may be only one access to the property. Ms. Heringer responded that AJ Way was the intended access point to the property, but there was also a county road toward the eastern boundary of their property. She emphasized that it was their intent to limit the number of accesses into the property and create other roads within the property that would lead to AJ Way; that was one reason to increase the width of AJ Way to 45'. She also stated that a traffic study was started with MDOT a month ago.

Councilmember Purinton moved to approve the development agreement with Aviation Properties, LLC, as recommended by staff, seconded by Councilmember Boyett.

Mayor Cole stated he wished the language in Paragraph 7 of the Development Agreement to be clarified further stating the traffic impact study and intersection improvements were the responsibility of the developer. Erin Heringer stated she was in agreement with that clarification and reiterated they had already paid for the traffic impact study and were responsible for the intersection improvements according to the MDOT and the results of the study.

Mayor Cole moved to amend the motion to include language in Paragraph 7 as "at the developer's expense a traffic impact study will be done and make contributions as specified by the MDOT to intersection improvements as a condition of approval or subdivision approval", seconded by Councilmember Neese.

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

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

8. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property in Annexation 20-05A: a parcel located north of Highway 3 and East of AJ Way; legally described as portions of tracts 13 and 14, of Certificate of Survey No. 2037 totaling approximately 27.488 gross and 25.956 net acres. Aviation Properties, LLC, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, stated she was available for questions.

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

Councilmember Shaw moved for approval of Item 8, as recommended by staff, seconded by Councilmember Joy.

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

9. PUBLIC HEARING AND RESOLUTION 21-10939 FOR ANNEXATION 21-02: a property located south of South Frontage Road, east of East Lane and north of Elysian Road and west of Hogan's Slough. Crown Enterprises, Inc., petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, gave a brief PowerPoint presentation and stated the last 3 items of the agenda involved this property. She said that this property was always deemed to be annexed and that if the property owners ever wished to develop it, it was a requirement that it be annexed into the City. She reviewed the zoning map and stated it was zoned Highway Commercial long ago and would now be Heavy Commercial (CX). She reviewed the Annexation Policy criteria and stated the recommendation by staff was to approve the resolution to annex subject to entering into a development agreement.

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

Councilmember Ronning moved to conditionally approve a Resolution approving Annexation 20-05A, as recommended by staff, seconded by Councilmember Boyett.

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

10. DEVELOPMENT AGREEMENT with Crown Enterprises for property located south of the Frontage Road and east of East Lane. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Debi Meling, Public Works Director, gave a brief PowerPoint presentation and explained the details of the development agreement. She stated that the language Council approved in the prior development agreement would be included in this development agreement, i.e., "at the developer's expense a traffic impact study will be done and make contributions as specified by the MDOT to intersection improvements as a condition of approval or subdivision approval".

Mayor Cole voiced his concern about language in Paragraph 2 regarding maintenance of the sidewalks to also include "and replacement". Ms. Meling stated that multi-use paths and trails are new to Billings, but she had no objection to the addition of the language.

Councilmember Ewalt asked about the construction materials of the trail. Ms. Meling responded all trails and sidewalks must meet City standards, which

would be asphalt or concrete, their choice. Councilmember Ewalt asked about snow removal requirements. Ms. Meling stated it was the same as for sidewalks and was required.

Councilmember Neese stated that the words, constructed “to City standards” needed to be added in the development agreements from here forward. Ms. Meling stated construction was not allowed unless it was to City standards, it cannot be constructed any other way due to permitting.

Councilmember Purinton moved for approval of the development agreement with Crown Enterprises including language in Paragraph 8 as “at the developer’s expense a traffic impact study will be done and make contributions as specified by the MDOT to intersection improvements as a condition of approval or subdivision approval” and the addition in Paragraph 2 of the words “and replacement” concerning the multi-use trails, as recommended by staff, seconded by Joy.

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

11. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently annexed property in Annexation 21-02: a parcel located south of South Frontage Road, east of East Lane and north of Elysian Road and west of Hogan's Slough; legally described as Lot 5A, of Amended Plat of Lots 2, 3, 4, and 5 of, QFC Subdivision, First Filing, totaling approximately 19.240 gross and 16.000 net acres. Crown Enterprises, Inc., petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, explained that the newly annexed property required the expansion of the Ward III boundaries.

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

Councilmember Joy moved to approve Item 11, as recommended by staff, seconded by Councilmember Boyett.

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

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

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, asked when in-person Council meetings would begin. He then stated that some of the \$3 billion that the State was receiving from the American Rescue Plan should be used toward the proposed aquatic and recreation center. He continued that the City should be prepared to apply for a portion of those monies, if it became available.

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

Chris Kukulski, City Administrator, stated the first hybrid meeting (in-person and via Zoom) was schedule for the April 5th Work Session, at the Billings Public Library Community Room. He explained the configuration of the Council, staff and public attending. He continued that staff was identifying projects on the Capital Improvement Plan that would qualify for ARP funds and were not creating projects. It was yet known how much the State would receive or the rules for distribution, but he believed water, wastewater and broadband projects were likely to receive funding.

COUNCIL INITIATIVES:

There were no Council initiatives.

There was no further business, and the meeting adjourned at 10:53 pm.



CITY OF BILLINGS

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

ATTEST:

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