

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 25, 2019

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. Councilmember Friedel gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Neese, Ewalt, Joy, Friedel, Gibbs, Ronning, Clark and Brown.

MINUTES: March 11, 2019 – Councilmember Clark moved for approval, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Cole thanked Councilmembers Clark and Ronning for attending and testifying at the legislative session regarding Senate Bill 340 in Helena.
- Councilmember Joy stated she had been a judge at the MSU-B Science Fair and congratulated all of the kids that had participated.

PROCLAMATIONS:

- Mayor Cole proclaimed April 2, 2019 as National Service Recognition Day and welcomed the AmeriCorps VISTA members in attendance. The members introduced themselves and gave a brief description of the projects in which they were involved and took a picture with Council.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski informed Council that the agenda was revised to move Consent Agenda Items J and K (Lake Hills and Canal Vista Subdivision Preliminary Plats) to Regular Agenda Items 3 and 4.
- Mr. Kukulski informed Council Regular Agenda Item 5 (Lake Heights Drive Vacation) had an incorrect description in the resolution attached to the staff memo. Staff provided the corrected resolution to Mayor and Council.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 3 and 4 ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium. 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.

The following constituents spoke in opposition to Regular Agenda Items 3 and 4:

- **Shane Winden, 2427 Lake Heights Drive, Billings, Montana:** read a letter of opposition from the homeowners in the area. He added that the proposed number of lots would require major subdivision laws that were not being followed. He encouraged Council to vote against the vacation.
- **John Cutler, 2417 Ditton Drive, Billings, Montana:** stated the proposed development violated the existing covenants and would damage existing property values.
- **Tana Dahinden, 2545 Lake Heights Drive, Billings, Montana:** stated she was concerned with traffic, potential flooding and the ability to evacuate so many people during a fire.
- **Brian Bushman, 2502 Lake Heights Drive, Billings, Montana:** stated the neighborhood had been informed by an attorney that the developers were violating the subdivision rules.

The following constituents spoke in favor of Regular Agenda Items 3 and 4:

- **Tom Llewellyn, Consultant, 1925 Grand Avenue, Billings, Montana:** stated the owners had complied with every process and guideline required by the City during the development plans.
- **Greg Reid, WWC Engineering:** stated the flood issues had been addressed and ponds would be implemented to help with drainage. He added that traffic would be on the lower end of the numbers allowed. He stated the developer had set back the units and had made several changes due to homeowner concerns. He added the subdivision restrictions were not being violated.

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

1. **CONSENT AGENDA** -- Separations:

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

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	No Applications	Animal Control Board*	03/25/19	12/31/21
2	No Applications	Board of Appeals - Electrical Contractor	03/25/19	12/31/21
3	No Applications	Board of Appeals	03/25/19	12/31/22
4	No Applications	Community Development - Lod Mod*	03/25/19	12/31/19

6	No Applications	Community Development - Lod Mod	03/25/19	12/31/22
7	No Applications	Housing Authority	03/25/19	12/31/23
8	Katherine Cerda	Human Relations Commission*	03/25/19	12/31/19
9	No Applications	Traffic Control Board	03/25/19	12/31/22

- * 1 Unexpired term of Jeannette Vieg
- * 4 Unexpired term of Rebecca Bey
- * 8 Unexpired term of Tajin Perez

B. Bid Awards:

1. **W.O. 17-14, Grand Avenue Water and Sanitary Sewer Extension Project.** (Opened 3/12/19) Recommend COP Construction; \$489,811.
2. **W.O. 18-25, Cardiff Road Culvert Replacement.** (Opened 3/12/19) Recommend Western Municipal Construction, Inc.; \$146,835.
3. **W.O. 19-04, 2019 ADA Ramp Replacement Project.** (Opened 3/12/19) Recommend J & J Concrete, Inc.; \$173,848.

C. Invoice Cloud Services: On-Line Utility Account and Payment Services, Harris Computer Systems; approximately \$157,258.

D. MET Transit's Updated Title VI Program.

E. Consulting Agreement with Tele-Consultants, Inc. for Greater Billings Non-Motorized Map and Mobile Application.

F. Professional Services Contract for W.O. 19-12, West End Reservoir Project; HDR Engineering; \$1,564,000.

G. Donation to Parks, Recreation and Preservation Foundation from McCall Development for parkland at Norm's Island.

H. Application Request to submit Passenger Facility Charge (PFC) Application to Federal Aviation Administration (FAA) for Billings Logan International Airport.

I. Acceptance of the 2018 State Homeland Security Grant and Purchase Hazmat FTIR Analyzer Unit - FarrWest Environmental Supply; \$300,000.

J. Final Plat of Sunnyside Subdivision, 1st filing.

K. Bills:

1. February 19, 2019

2. February 25, 2019
3. March 4, 2019

Councilmember Brown separated Consent Agenda Item 1K2 in order to abstain.

Councilmember Neese separated Consent Agenda Items 1K1 and 1K3 in order to abstain.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Items 1K1, 1K2, and 1K3, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Friedel asked for clarification on Consent Agenda Item 1E, Consulting Agreement for Greater Billings Non-Motorized Map and Mobile Application.

Wyeth Friday, Planning Director, stated the Transportation Planning Program, through the Billings Metropolitan Planning Organization, had a trail map that had been in place for many years and was updated every 3-4 years. He added there would still be a paper map, but they were adding a map available through Smart devices.

Mayor Cole suggested staff include a way for users to identify trail connections they would like added.

Councilmember Neese asked if this would be a one-time cost. Mr. Friday responded the current costs would include map development and printing. He added developer support was built into the contract for training and updating.

Councilmember Cromley asked for clarification on fees incurred for Consent Agenda Item 1C, Invoice Cloud Services, On-Line Utility Account and Payment Services.

Jennifer Duray, Assistant Public Works Director, stated the City had been accepting credit cards for a long time and did not charge users a fee for using a credit card. She added there were charges incurred by Public Works, but stated electronic payments were more efficient for staff, which decreased staff costs.

Mayor Cole made a recommendation of adding surface trails along the Bench Billings Water Association (BBWA) canal on Consent Agenda Item 1F, W.O. 19-12, West End Reservoir Project. Dave Mumford, Public Works Director, stated they were in preliminary discussions with BBWA.

Councilmember Neese, in reference to Consent Agenda Item 1G, Donation of Parkland at Norm's Island, asked for clarification of ownership. Mike Whitaker, Parks, Recreation and Public Lands Director, stated Norm's Island was owned by the State of Montana, City of Billings, and McCall Development. He added that the donation from McCall Development was the western portion of approximately 1/3 of Norm's Island. Councilmember Neese asked who would pay the back taxes on the property. Mr. Whitaker responded the City would. Mayor Cole thanked the McCall family for the donation.

On a voice vote, the motion to approve the Consent Agenda, with the exception of Items 1K1, 1K2, and 1K3, was unanimously approved.

Councilmember Joy moved for approval of Item 1K1, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-1, Councilmember Neese abstained.

Councilmember Joy moved for approval of Item 1K2, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-1, Councilmember Brown abstained.

Councilmember Joy moved for approval of Item 1K3, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-1, Councilmember Neese abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND SPECIAL REVIEW 974: a special review to allow expansion and reconfiguration of an existing senior living facility on a 9.078 acre parcel of land generally located at 3940 Rimrock Road; Lutheran Retirement Home, Inc., owner; A & E Architects, 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, gave an overview of the location of the special review and proposed renovations. She reviewed the required conditions and criteria.

Councilmember Ewalt asked how many units currently existed. Ms. Husman stated there were 37 existing units and there would be 56 units with the expansion.

Councilmember Neese asked for clarification on the types of residents and qualifications for residency. Ms. Husman stated the property was specifically a senior low-income housing facility.

David Trost, St. John's Lutheran Ministries President, stated the expansion would

be named Chapel Court 2.0. He added that residents would primarily be existing residents. He added the Montana Housing Authority tax credits had helped the project.

The public hearing was opened.

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

Councilmember Ronning moved for approval of Item 2, as recommended by the Zoning Commission, seconded by Councilmember Gibbs. On a voice vote, the motion was unanimously approved.

3. PRELIMINARY MINOR PLAT of Lake Hills Subdivision 25th Filing, Amended, generally located north of the intersection of Ditton Drive and Greenbriar Road; Canal Vista, LLC, owner; Greg Reid of WWC Engineering, agent. Staff recommends conditional approval and adoption of the findings of fact. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, gave a PowerPoint presentation reviewing the plat and answering a number of questions that had been directed to Planning staff. She reviewed the Minor/Amended Subdivision process and the differences between preliminary and final plat approval. She gave an overview of the legal allowances of the governing body and their allowable motions.

Mayor Cole stated he had emailed staff regarding staff reports referencing the local regulations using the alphabetical letter "H", but the website used numerical numbers. He added that a portion of the Findings of Fact used the term "Health, Safety and Welfare", but the statute referenced "Health and Safety" and did not use the term "Welfare".

Councilmember Brown asked for clarification on the Council's ability to consider the Growth Policy as criteria. City Attorney, Brent Brooks, stated Council could consider it, but could not use it exclusively as a reason for denial. Discussions continued regarding approving, disapproving, and neighborhood protests, etc. of the preliminary plats and the criteria Council must consider.

Council discussed the option of continuing the preliminary plat approval. Mr. Friday stated the 35-day working deadline expired on March 26th, but the developers had requested an extension until April 8th.

Councilmember Yakawich moved for approval of Item 3, as recommended by staff, seconded by Councilmember Joy.

Councilmember Ewalt requested a reversal in roll call order for the vote.

Councilmember Clark asked if the developers could change the number of lots allowed if Council approved Items 3 and 4. Ms. Plecker stated, given the parameters

based on the current lay out, developers thought they could propose a maximum of 55 units. She reminded Council that the action was based on a two-lot division and vacation, not what zoning allowed based on square footage or lot coverage.

Council discussed local City subdivision regulations and the definition of lots, taxes, and allowable uses. Councilmember Joy called the question, seconded by Councilmember Cromley. On a roll call vote, the motion to call the question failed 5-6, Councilmembers Neese, Ewalt, Gibbs, Brown, and Mayor Cole voted against, therefore the motion did not have the required 2/3 Council approval.

Councilmember Ewalt made a substitute motion to delay Item 3 until the April 8th Council meeting, seconded by Councilmember Neese.

Councilmember Joy stated staff had put a tremendous amount of time and effort into Items 3, 4, and 5 and did not want to disrespect everyone's time by delaying the items.

Councilmember Brown asked for the reasoning behind a delay. Mayor Cole asked the consultant if any changes would occur to the development if Council delayed the plat approval. Mr. Llewellyn stated the only changes that may be made would be a reduction in the number of lots to 48; removal of \$25,000 for the park; and put the entire burden on the City for plowing. He added that senior housing was needed and the developers preferred that the plat approval move forward.

On a voice vote, the motion to delay failed 9-2. Councilmembers Cromley, Yakawich, Joy, Friedel, Gibbs, Ronning, Clark, Brown and Mayor Cole voted in opposition.

On a voice vote, Councilmember Yakawich's motion for approval of Item 3 was approved 8-3. Councilmembers Cromley, Neese and Ewalt opposed.

4. PRELIMINARY MINOR PLAT of Canal Vista Subdivision, generally located north of the intersection of Ditton Drive and Greenbriar Road; Canal Vista, LLC, owner; Greg Reid of WWC Engineering, agent. Staff recommends conditional approval and adoption of the findings of fact. (Action: approval or disapproval of staff recommendation.)

Councilmember Cromley moved for approval of Item 4, as recommended by staff, seconded by Councilmember Joy.

Councilmember Neese asked for clarification on the existing buffer. Wyeth Friday, Planning Director, stated there was a 100-foot buffer located to the west, near the High Sierra Subdivision. He stated the property to the west was proposed for a zone change to R7000, which had a minimum lot size of 7,000 square feet. He added that neighbors in the Canal Vista Subdivision had expressed concern about the zone

change and the Zoning Commission had recommended the 100-foot buffer. He added there were no zone changes in the proposed plat approval.

Councilmember Yakawich asked if Council could add conditions to the plat approval. Mr. Friday reminded Council that any conditions would need to be tied to situations that were not being addressed or mitigated. Councilmember Yakawich asked if conditions could be added concerning neighborhood safety. David Mumford, Public Works Director, stated the proposed development would be meet all street/traffic requirements.

Councilmember Neese asked for clarification on the neighbors "hardship" complaints. Mr. Mumford stated he understood the variance for sidewalk onto private street because the right of way width easement was too narrow to separate. He added the hardship would be dealing with the pad size of the development.

Councilmember Neese made a substitute motion to approve Item 4, without the conditions of the variance, seconded by Councilmember Ewalt. Mr. Friday stated the variance was not a condition. Mayor Cole stated the variance would be included in the original motion as part of staff's recommendation.

Ms. Plecker reminded Council of the tools of the criteria (Attachment A) evaluating the variance. She added the five items included in defining a hardship by allowing the curb walk would be: 1) detrimental to public health, safety or general welfare; 2) particular physical surrounding or shape; 3) increase in taxpayer burden; 4) nonconformance with zoning regulations or Growth Policy; and/or 5) equally effective alternative design.

Councilmember Joy asked for the reasoning behind Councilmember Neese's substitute motion removing the variance. Councilmember Neese stated he did not believe private streets were as safe as public streets due to lack of plowing. Councilmember Joy stated the variance was for curbside sidewalks and would not affect the streets.

Mayor Cole asked for clarification on the curb walk. Mr. Mumford stated the regulations dealt with snow removal and mailboxes. He added that the proposed curb walk was similar to the adjacent neighborhood and the variance would allow the developers to allow a separation from the boulevard.

On a voice vote, the substitute motion failed 8-3, Councilmembers Cromley, Yakawich, Joy, Friedel, Ronning, Clark, Brown and Mayor Cole voted in opposition.

On a voice vote, Councilmember Cromley's motion for approval of Item 4 was approved 10-1, Councilmember Neese voted in opposition.

5. PUBLIC HEARING AND RESOLUTION 19-10786 vacating portions of Lake Heights Drive and Ditton Drive. Susan B. Lovely, Inc., Laurie Taylor, Inc., Julia Lawrence, Ken E. Roll and Jesse Arstein, petitioners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

The public hearing was opened.

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

Councilmember Cromley moved for approval of Item 5, seconded by Councilmember Joy.

Councilmember Neese asked for clarification on the process of reinstating a street if the development was not completed after the vacation. City Administrator, Chris Kukulski, stated that according to the recommendation in the staff report, by approving the preliminary plats, the vacation would take place automatically. He added if Council wished to tie the vacation to the final plat approval they would have to make an amendment to the motion.

Mayor Cole asked for clarification on what would happen if the developers wanted to revise the plat since it had already been approved. Ms. Plecker stated there were subdivision regulations that stated if material and substantive changes were made, it would have to go through the preliminary plat process again.

Councilmember Neese asked for clarification on what would happen to the lots if the final plat did not get completed. Ms. Plecker stated it was highly unlikely the developers would file a vacation without knowing that they could meet the conditions of the two lot minor subdivisions.

On a voice vote, the motion was approved 10-1, Councilmember Neese voted in opposition.

PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Sign-in required.
(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)

The public comment period was opened.

There were no speakers, and the public comment period was closed.

COUNCIL INITIATIVES:

There were no Council Initiatives.

There was no further business, and the meeting adjourned at 9:33 p.m.



CITY OF BILLINGS

BY: William A Cole
William A. Cole, Mayor

ATTEST:

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