

CITY OF COLUMBIA FALLS
CITY COUNCIL REGULAR MEETING MINUTES
HELD NOVEMBER 01, 2021
REGULAR MEETING – 7:00 P.M.

Mayor Barnhart called the meeting to order at 7:00 P.M.

ROLL CALL: Councilor Fisher, Councilor Karper via Zoom, Councilor Lovering, Councilor Piper, Councilor Robinson and Mayor Barnhart. Absent: Councilor Shepard.

Also Present: City Manager Nicosia, City Clerk Staaland, City Attorney Breck, City Planner Mulcahy and Police Chief Peters.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA:

Councilor Lovering motioned to approve the Agenda, seconded by Councilor Fisher and the motion carried.

CONSENT AGENDA:

Councilor Piper made motion to approve the Consent Agenda noting all claims appeared to be in order, seconded by Councilor Robinson and the motion carried.

Approval of Claims - November 1, 2021 - \$117,628.72

Approval of Regular Payroll Claims - October 29, 2021 - \$130,948.99

Approval of October 18, 2021 Regular City Council Meeting Minutes

Approval of Interagency Agreement, Effective October 1, 2021 - October 1, 2023 - Flathead County Children's Advocacy Center & Multidisciplinary Child Information Team

VISITORS/PUBLIC COMMENT (Items not on agenda):

Kelly Hamilton, 1316 4th Ave W. said the Lions Club is having a hard time getting the holiday lights operational on the street lights. Ms. Hamilton said the Lions are planning the Night of Lights Parade this year and have received a lot of entries. Mayor Barnhart thanked Ms. Hamilton and her organization for putting so much work into the Night of Lights Parade and decorations.

NEW BUSINESS:

Proclamation - Small Business Saturday - November 27, 2021

Mayor Barnhart proclaimed Saturday 27th, 2021 Small Business Saturday.

ORDINANCES / RESOLUTIONS:

Second and Final Reading - Ordinance # 811 - An Ordinance of the City Council of the City of Columbia Falls, Montana Repealing 12.40.020 Closing Hours - Hoerner Park

City Manager Nicosia said previously the hours at Hoerner Park were not the same as other city parks; it was closed during school hours. This Ordinance will make all city park hours the same. Nicosia said there have been no comments received or changes from the First Reading. Staff recommends approval. Mayor Barnhart asked Council and visitors if there were any questions or comments. Hearing no comment, Mayor Barnhart asked for a motion to approve.

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Councilor Piper motioned to approve Ordinance # 811, seconded by Councilor Robinson with Council voting as follows. Ayes: Robinson, Fisher, Karper, Lovering, Piper and Barnhart.

Second and Final Reading - Ordinance # 812 - An Ordinance of the City Council of the City of Columbia Falls, Montana Amending Title 18 Zoning Test for Provisions Related to Adult Use Marijuana Business

City Manager Nicosia said the City has not received any public comments since the First Reading. Nicosia noted that this Ordinance amends Title 18 Zoning for provisions related to Adult Use Marijuana Business. Mayor Barnhart asked Council and visitors if there were any questions or comments. Hearing no comment, Mayor Barnhart asked for a motion to approve.

Councilor Fisher motioned to approve Ordinance # 812, seconded by Councilor Lovering with Council voting as follows. Ayes: Fisher, Karper, Lovering, Piper, Robinson and Barnhart.

Second and Final Reading - Ordinance # 813 - An Ordinance of the City Council of the City of Columbia Falls, Montana Amending Chapter 10.57 Stopping, Standing and Parking

City Manager Nicosia said this Ordinance updates the Municipal Code to address concerns from the Police Department due to confusing or conflicting language after the code update two years ago that replaced decades old language. Nicosia said the City has not received any comments since the First Reading on Oct. 18, 2021 and Staff recommends approval. Mayor Barnhart asked Council and visitors if there were any questions or comments. Hearing no comment, Mayor Barnhart asked for a motion to approve.

Councilor Lovering made motion to approve Ordinance # 813, seconded by Councilor Piper with Council voting as follows. Ayes: Lovering, Piper, Robinson, Fisher, Karper and Barnhart.

First Reading - Ordinance # 814 - An Ordinance of the City Council of the City of Columbia Falls, Montana, Amending the Columbia Falls Zoning Map to Add the Marijuana Business Overlay Zone

City Manager Nicosia displayed the map exhibit showing the proposed overlay zone. Nicosia noted that this area was selected as it is commercial and it is away from residential areas as well as churches and schools. Staff recommends adoption of the First Reading of Ordinance # 814. Mayor Barnhart asked Council and visitors if there were any questions or comments. Hearing no comment, Mayor Barnhart asked for a motion to approve.

Councilor Piper motioned to approve the First Reading of Ordinance #814, seconded by Councilor Robinson and the motion carried.

Resolution # 1866 - A Resolution of the City Council of the City of Columbia Falls, Montana, Approving the Final Plat of The Benches Subdivision, Phases 1 and 2, Described as Tract 3A of COS #21378 in the SW 1/4 NE 1/4 and W 1/2 SE 1/4 Section 16, Township 30 North, Range 20 West, P.M.M., Flathead County Montana.

City Planner Mulcahy said the Planning Office received the Final Plat application for the Benches Subdivision with documentation of compliance with the Preliminary Plat 29 conditions. Staff has reviewed all conditions, permits and information provided by the applicants as documented in Staff Report CFP-21-01. Mulcahy said

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the City received a letter from a neighborhood group, Upper Flathead Neighborhood Association, Water for Flathead's Future and Citizens for a Better Flathead, requesting the City not approve the Final Plat as they have filed a legal complaint challenging the MT Department of Environmental Quality's approval of the Benches Subdivision report. The Montana Platting Act and the Columbia Falls Subdivision Regulations clearly spell out the process for Final Plat said Mulcahy. The group suggested denial of Final Plat based on Condition 11 due to inadequate information. Mulcahy said Condition 11 required the water and sewer facilities shall be reviewed and approved by the Flathead City County Health Department and MT Department of Environmental Quality (MDEQ). Mulcahy noted that MDEQ provided their approval letters in January 2021. Mulcahy said all 29 conditions are supported with documents in the Final Plat documents. Mayor Barnhart asked Council and visitors if there were any questions or comments on the final plat report.

Mayre Flowers with Citizens for a Better Flathead handed out an information packet to Council and staff. Ms. Flowers said they came this evening with the understanding that it was a Public Hearing but now understands it is a time to ask questions. Guy Alsentzen said he is the Attorney of record for Citizens for a Better Flathead, Upper Flathead Neighborhood Association and Flathead for a Better Future. Mr. Alsentzen asked Council if they had the facts in front of them to make a lawful and informed decision on the Benches subdivision. Mr. Alsentzen said the record indicates there is significant scientific dispute about the accuracy of DEQ approval of sewage and septic for the subdivision. Mr. Alsentzen asked Council do you have necessary evidence in front of you and can you make an informed decision that DEQ has in fact issued a lawful approval and does that not mean the citizens and public interest of Columbia Falls would be better served by continuing this process pending a lawsuit against DEQ.

City Attorney Breck said he has consulted with the City Planner, MMIA and MLCT and they all agree that a Preliminary Plat is a contract between the developer and the City. Breck said the Preliminary Plat was made available a couple years ago upon approval. The developer has met the 29 conditions and the Statute clearly states the governing body shall approve the plat if it conforms to conditions of approval set forth in the Preliminary Plat. Breck said our City Municipal Code restates if the conditions of approval have been met by the developer the City will grant them final approval. The condition the neighbors are talking about is the approval by DEQ and whether or not it is based on proper evidence. Breck said he does not believe it is within the City's purview to question the science upon which DEQ's approval was based. The lawsuit is against DEQ and the court has not instructed the developer to stop. Breck said unless the City was otherwise instructed by the court, the City must determine whether or not the developer has met the conditions set forth in the Preliminary Plat and according to the City Planner they have been met. The lawsuit is not against the City or the developer it is against a state agency who made their decision months ago Breck said. Breck noted that nine months after DEQ issued its approval the group filed a lawsuit. A temporary Restraining Order can be obtained right away if they can prove an emergency exists and the parties did not request one. The City's obligation is to review the application and documentation to see if the developer complied with their contractual obligations.

Ms. Flowers told Council that they are not on a deadline to make a final decision this evening; you have 30 days from the receipt of Final Plat application. Ms. Flowers said she is asking Council to consider waiting for approval and if not why. The group's position is to ask that you stay the decision in the best interest for the developer, the public and the City. Ms. Flowers said in the Staff Report the date is wrong, it was 2019 and not 2020. The group would like the owner of the property to withdraw his application and reduce the number of lots or increase the size of lots. Flowers said they are concerned if Council moves forward with the Final Plat it will be bad for the potential buyer, the City and the developer.

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Ms. Flowers said she wanted to bring attention to the following: the ownership in final plat and covenants has two different names, the project legal description should not be redacted, there is no signed survey which is required, Wellhead control zones are also required but they have not been provided, Phase 2 there is a letter from DEQ with the prior cabins that were denied, one of the conditions of geotechnical report should come to the City before Final Plat, the number of bedrooms has been changed on lot 1. Ms. Flowers said the group submitted comments to DEQ prior to their final decision.

City Planner Mulcahy reiterated we have gone through the conditions and supporting documents. Mulcahy said he called the geotech and he said he was out inspecting and giving guidance to the contractors. Regarding ownership on the CCR's it gets submitted during recording. The City is not party to CCR's and we do not enforce them. We can't just discount the application. The developer has already installed the water system per DEQ approval. If the developer were to reduce lots they would have to go back to DEQ. To stay the decision would cost the developer significantly. If we deny the application the City would be liable and the developer could come back on us.

City Attorney Breck stated DEQ approvals were final in January 2021 and the plaintiff's didn't submit their comments until June, as noted on their expert's report date. Breck stated it is no surprise that DEQ was not accepting comments at that time. The City Code requires if the Final Plat is disapproved the reasons for disapproval shall be stated in the minutes of the City Council and a copy forwarded to the developer. Breck said his question to Council is what would be your reason for disapproval.

Shirley Faulkwine asked why inconsistencies between Preliminary and Final Plat are being allowed. Mulcahy said there are two minor inconsistencies, lot 1 of the Benches Subdivision was the parcel that was going to have the 30 cabins which was denied and we have stated clearly that lot 1 has been approved for a Single Family Residence. Mulcahy said the other item that was different was the fire suppression system; the developer is now installing in a fire hydrant system. The Badrock Fire District and DEQ both prefer the hydrant system.

Ms. Faulkwine asked why is there a discrepancy on lot 1 with a 10 bedroom Bed & Breakfast. Mulcahy said we did not approve a Bed and Breakfast and it is not on the Final Plat.

Ms. Faulkwine asked Council if they were aware of the sensitive nature of the high ground water on lot 1. Mayor Barnhart said yes, the City is aware of Lot 1. City Attorney Breck said you have filed your lawsuit with DEQ and we look at them to make their decision. Ms. Faulkwine asked if they prevail in the lawsuit; what the impact on the new home owners in the subdivision would be. Attorney Breck said you are asking for a declaration of law, we cannot base our decision on something so unpredictable.

Seeing no further questions or comments, Mayor Barnhart asked for a motion. Councilor Fisher motioned to approve Resolution # 1866, seconded by Councilor Piper with Council voting as follows. Ayes: Piper, Robinson, Fisher, Karper, Lovering and Barnhart.

Mayor Barnhart requested a 5 minute recess at 8:02 p.m.

Resolution # 1867 - A Resolution by the City Council of the City of Columbia Falls, Montana Adopting the November 2021 Comprehensive Urban Area Transportation Plan

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Nicosia reported that this is the final action to adopt the first Columbia Falls Comprehensive Urban Area Transportation Plan. Nicosia reviewed the changes that were made based on the public comment received. Staff recommends approval of the final plan.

Councilor Piper motioned to approve Resolution # 1867, seconded by Councilor Robinson with Council voting as follows. Ayes: Robinson, Fisher, Karper, Lovering, Piper and Barnhart.

CITY MANAGER REPORT

City Manager Nicosia said the tennis courts at Columbus Park are being removed and the City can move forward with soil testing. Nicosia noted that years ago there was a school on the property that was tore down in 1946 and the tennis courts were installed in 1976. Mayor Barnhart said it looks like the tennis courts may have been installed in phases due to the layers of asphalt and different gravel base.

Nicosia reported that the developer of the new construction on Nucleus Ave. inquired about closing off the north portion of 5th Street at Nucleus Ave. to create a park lot/walking corridor. The developer has offered pay for modifications; it was decided that the Parks committee can meet for further discussion.

The City is about 75% complete on our water leak detection testing. We would like to put in a Grant Application to help repair leaking lines. Our city pays 50% of the cost from the main to the curb stop. Do we want the grant to pay the total cost or the city share? The Public Works Committee will meet and review when the information is available.

Staff is in the process of finalizing the City's updated Parade/Street Use Permit.

CITY ATTORNEY REPORT

Mayor Barnhart thanked City Attorney Breck for stepping up with legal advice on the Benches Final Plat. City Attorney Breck said he hopes he didn't come off as disrespectful to Council. Breck said he wants to protect the formalities of these proceedings.

Police Chief Peters said the City is in the process of hiring a detective. If the City hires within, we will advertise for a Patrolman position. He also noted that the newest Durango will roll out as soon as we finalize the necessary equipment.

MISCELLANEOUS

Correspondence

ADJOURN

Councilor Lovering motioned to adjourn, seconded by Councilor Fisher and the meeting adjourned at 8:33 p.m.

Mayor

City Clerk