

**CITY OF COLUMBIA FALLS
CITY COUNCIL REGULAR MEETING MINUTES
HELD JANUARY 17, 2023**

CALL TO ORDER: Mayor Barnhart called the meeting to order at 7:00 p.m.

ROLL CALL:

Councilor Fisher, Councilor Hamilton, Councilor Lovering, Councilor Piper, Councilor Robinson, Councilor Shepard-via Zoom and Mayor Barnhart.

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 Robinson made motion to approve the Agenda, seconded by Councilor Lovering and the motion carried.

CONSENT AGENDA:

Councilor Fisher motioned to approve the Consent Agenda after correcting some typographical errors in the January 3, 2023 minutes, seconded by Councilor Hamilton with council voting as follows. Ayes: Shepard, Fisher, Hamilton, Lovering, Piper, Robinson and Barnhart.

Approval of Claims - January 17, 2023 - \$148,555.54

Approval of Payroll Claims - Quarter Ending Dec 31 2022 - \$19,047.82

Approval of Payroll Claims - January 6, 2023 - \$108,608.51

Approval of January 3, 2023 Regular City Council Meeting Minutes

Adoption of Revised Job Descriptions - Public Works/Teamsters (Wastewater Operator Grade 10, 11, 12 and 13)

Approve Change Order # 1, Sandry Construction - 12th Ave West EDA Project - \$27,868 and Authorize City Manager to Execute

VISITORS/PUBLIC COMMENT (Items not on agenda)

Matt Padgett, resides at 220 Larch Ridge, spoke on the City's 2019 Growth Policy. Mr. Padgett said Growth is inevitable and we cannot stop it, but we can prepare for it. Mr. Padgett questions if roads, schools, medical facilities, grocery stores and city services can support a 42% growth increase. Mr. Padgett referenced articles from the Growth Policy on weaknesses, strengths, opportunities and threats found on pages 4-7. Mr. Padgett said he is not against growth but would like to see a realistic approach on what has been approved for development thus far.

Ann Halter, resides at 315 Meadow Lake Dr., said she concurs with Mr. Padgett's comments.

Jessie Pappenfus, resides at 256 Turnberry Terrace, said she was in attendance to speak about the Growth Policy concerning road use and traffic.

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Carol Peterson, resides at 196 Turnberry Terrace, said she agrees with the prior comments made. Ms. Peterson asked after public comments have been closed and other information is provided, why the public is not allowed to comment again. Mayor Barnhart said we follow State Statute. If council has questions after the City Planner presents his Staff Report we can ask staff to get additional information that was not included in the Staff Report.

NOTICE OF PUBLIC HEARINGS/PUBLIC HEARINGS:

Mayor Barnhart read the following Notice of Public Hearings:

Notice of Public Hearing - January 30, 2023 - Special City Council:

The Columbia Falls City-County Planning Board held a public hearing for the following items at their regular meeting on Tuesday, January 10, 2023 at 6:30 p.m. at the Cafetorium in the Columbia Falls Junior High School, 1805 Talbot Road, Columbia Falls, Montana.

The Columbia Falls City Council will hold a subsequent hearing at a special meeting on January 30, 2023 starting at 7:00 p.m. in the same location.

Request for a Planned Unit Development (PUD) for the River Highlands Development:

James Barnett, on behalf of River Highlands LLC, is requesting a Planned Unit Development in the Columbia Falls Zoning Jurisdiction called River Highlands. The property is located at 264, 316, 378, & 494 River Road in Columbia Falls and is described as Lots 1, 2, & 3 of Loeffler Ridge Subdivision and Assessor's Tracts 7 B and 7BB (Tracts 1 and 3 of COS 14045) in Section 16, Township 20 North, Range 20 West, P.M.M., Flathead County. The project consists of 83 detached single family homes; 98 attached single family townhomes, 162 apartment units. The total unit count is 343 units on 49.1 acres gross for a density of 6.9 units per acre. The applicant is proposing 19.55 acres (40%) of the site as park and open space. With the project, the applicant is proposing to move River Road further east on Highway 2 and, if supported by MDOT, the applicant would install a traffic signal at Highway 2 and River Road. The applicant is not requesting any deviations other than the clustering of density and the density bonus provided by the PUD regulations.

Request for Preliminary Plat approval of the River Highlands Subdivision in the Columbia Falls Zoning Jurisdiction:

James Barnett, on behalf of River Highlands LLC, is requesting preliminary plat approval for property located at 264, 316, 378, & 494 River Road in Columbia Falls further described as Lots 1, 2, & 3 of Loeffler Ridge Subdivision and Assessor's Tracts 7 B and 7BB (Tracts 1 and 3 of COS 14045) in Section 16, Township 20 North, Range 20 West, P.M.M., Flathead County. The applicant will subdivide the property to create 21 lots (17 residential and 4 open space lots). The subdivision will extend Municipal water and sewer services along with reconstructing River Road and incorporating a detached pedestrian path. The new roads within the project will be public and privately maintained but all open to the public. The proposed subdivision is part of a PUD application for River Highlands.

UNFINISHED BUSINESS:

Council Action Continued from January 3, 2023 - Request for Subdivision - Tamarack Meadows

City Planner Mulcahy stated at the January 3, 2023 council meeting Council directed staff to research questions that arose during the public hearing for the Tamarack Meadows Subdivision.

CC&R's Applicable to Tamarack Meadows

City staff has addressed the questions regarding CC&R's applicable to the Tamarack Meadows project. Schellinger Construction's Attorney Paul Sandry prepared an opinion letter based on his research of the Title Report and associated title history of the subject property. His findings were Tamarack Meadows subdivision is subject to the Meadow Lake Country Club Estates CC&R's from 1985, as well as an amendment to such CC&R's from 1995, and as is subject to the Architectural requirements, setbacks and road maintenance provisions contained therein.

Future Expansion

To address concerns from the public regarding additional phases or expansion, Schellinger Construction has now provided a new draft of the Tamarack Meadows CC&R's, striking out any reference to expansion of the development as none is proposed. This should address any concerns about future expansion of the development.

Meeting the Architectural Elements of the Meadow Lake CC&R's

To address the question as to whether or not the proposed lots reflected in the Tamarack Meadows proposed subdivision can meet the building setback and architectural standards of the Meadow Lake CC&R's, Carver Engineering drafted the building envelopes for some of the smallest lots, thereby demonstrating how they could meet the Meadow Lake Standards for setbacks. In all cases the building envelopes for the lots within the Tamarack Meadows project meet the minimum square footage requirements, meaning future lot owners should be able to develop a home on the property while meeting the standards of the Meadow Lake CC&R's.

Ability to Restrict Construction Traffic to Certain Routes

The Tamarack Meadows Subdivision is within the Extra-Territorial Planning Jurisdiction of Columbia Falls. This interlocal agreement between the City and Flathead County gives all planning, zoning and subdivision authority over the extra-territorial area, which includes Meadow Lake and its various subdivision to the City of Columbia Falls as provided in State Statute. Distance and speed can be a factor in mitigating traffic or haul routes for development. It is within the City Council's authority to choose and require a designated route for such activity and to enforce adherence to such designation by the developer during the construction of the subdivision.

A follow up to the construction traffic discussion concerning construction traffic during future home construction. This is different from subdivision construction as the traffic is dispersed over many years as opposed to months. This issue is most appropriately addressed in the subdivision's CC&R's which means that enforcement would fall to the subdivision's Homeowners Association for individual home construction.

Councilor Shepard asked if the CC&R's account for the lot size and type of buildings. City Planner Mulcahy said they are not an elaborate set of CC&R's. They call out the setbacks and have an Architectural Review Committee.

Councilor Fisher stated he has read the all the letters that were sent after the last meeting. Fisher said he is not comfortable pushing all construction traffic onto Turnberry Terrace when Meadow Lake Dr. is a county road. It is his understanding the infrastructure build out is within Councils' jurisdiction for direction. Fisher said sidewalks were another concern, due to pitch and grade. Mr. Singer president of HOA indicated residents would like to see a sidewalk on the west side of the road for public safety access.

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Fisher is in favor of Schellinger Construction resurfacing Meadow Lake Dr. and Turnberry Terrace if they were both damaged. The developer suggested an equitable road management plan agreement that they bumped up from 10% to 25%, which seems reasonable to him.

Councilor Lovering concurred with Fisher on the use of Turnberry Terrace as it is narrow, curvy and has speed bumps, but on the other hand Meadow Lake Dr. is not a consistent road up to the subdivision. Lovering said if Meadow Lake Dr. is the road of choice, sidewalks are necessary. Lovering asked if the development has adequate fire safety. Mayor Barnhart said the proposed project has fire hydrants throughout the subdivision. Mulcahy said there are three accesses and they meet fire requirements and having fire hydrants improves safety in the development and is substantially more than what you would see in a rural subdivision.

Councilor Robinson asked if it was possible to do intermittent sidewalks on Meadow Lake Dr. Kevin Malloy, with Carver Engineering, said it is possible but they're concerned with meeting ADA requirements due to the amount of driveways.

Councilor Hamilton said there is a letter from Kelson Colbo offering to give Schellinger Construction access through their property regarding emergency egress/ingress and or temporary access. Hamilton asked if the developer and the property owner have had a conversation. Mr. Colbo said he has access to the subdivision from his property and offered to have a conversation with the developer about using the access. Bob Warren works for Schellinger Construction, said this came to light last week and they are reviewing what Mr. Colbo would require and if it would work for us. They are definitely interested and considering the offer stated Mr. Warren.

Councilor Hamilton said she is concerned if a large fire broke out in the area, is there enough egress/ingress for a subdivision of that size. Councilor Piper said two means of egress/ingress are sufficient especially with a fire hydrant system on site. Mayor Barnhart echoed Councilor Pipers statement adding there is excellent egress for the subdivision with three points of egress.

Councilor Shepard said he would like clarification on architectural requirements, noting some folks testified they didn't want two story homes. City Attorney Breck said the determination of what is acceptable and what isn't is up to the Architectural Review Committee. If they want to build a specific house they will have to go through the committee and the committee has a large leeway in discretion as to what they will approve and what is aesthetically compatible with the rest of the neighborhood. The review is not up to the city, it is up to the Architectural Review Committee.

Councilor Hamilton asked if they are allowed to have satellite dishes now as she was reading the CCR's. City Attorney Breck said they did an addendum in 1995 and it did change.

Councilor Piper said he was not at the last meeting but would like to look at construction access.

Mayor Barnhart said concerning his comment on using Turnberry Terrace as a construction route was because in his opinion it would be the safer route. Mayor Barnhart said he is very interested in the neighbor access and would like to see the road for infrastructure construction. Mayor Barnhart said sidewalks would be wonderful if they can go on Meadow Lake Dr. and be ADA accessible.

Councilor Fisher motioned to adopt Staff Report CPP-22-03 as Findings of Fact, seconded by Councilor Lovering.

Councilor Fisher made motion to add condition 26. The applicant must install a sidewalk where possible on one side of Meadow Lake Drive, unless the applicant can affirmatively demonstrate to the City that: the governing HOA does not approve of such sidewalk; that any such sidewalk portion or portions cannot be

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constructed in compliance with the Americans with Disabilities Act; or, that Flathead County does not approve of any one or more such sidewalk portions.

Seconded by Councilor Shepard. Robinson questioned if they need county approval since it is a county road. City Attorney Breck said as possible, implies county approval. The motion carried.

Councilor Lovering motioned to add condition 27. The applicant shall pursue with all reasonable diligence the use of an alternate construction traffic route through property currently owned by Kelson and Suzanne Colbo, unless securing and constructing such alternate route proves to be economically unfeasible.

Seconded by Councilor Robinson and the motion carried.

Councilor Hamilton motioned to amend condition 25. Tamarack Meadows shall be responsible for and contribute no less than twenty-five percent (25%) of the cost of road maintenance and repair for Turnberry Terrace for as long as the Tamarack Meadows Homeowners Association, or its successor(s) in interest, continues to remain an active and viable governing body of the subdivision. Such contribution shall be, unless otherwise designated by the Mountain Watch HOA, made directly to such HOA.

Turnberry Terrace HOA President Jeremy Pappenfus said once he read it and discussed with others in the HOA, once it moves past the infrastructure phase it does move to conversation between Meadow Lake and Turnberry Terrace.

Mr. Warren said Schellinger Construction built Turnberry Terrace and they have no intentions of being bad neighbors and will fix the road should it get damaged during construction. Malloy said it started with 10% and they choose to increase it to 25%. Seconded by Councilor Robinson and the motion carried.

Councilor Shepard inquired about lots 2-15 that is open from the development, do we want to address the fence. City Planner Mulcahy said it is the same owner that offered to give access and he just wanted to have a fence installed on Schellinger property to prevent trespassing onto his property.

Councilor Fisher motioned to add condition 28. The applicant shall erect a permanent six foot split-rail fence, in compliance with the Tamarack Meadows CC&R's adjacent to Lots 2-15 of Tamarack Meadows and property currently owned by Kelson and Suzanne Colbo in order to deter and/or prevent trespass over and across Colbo's property. Seconded by Councilor Lovering and the motion passed.

Councilor Fisher motioned to amend condition 10. Prior to final approval the entire length of Meadow Lake Drive and Turnberry Terrace shall be resurfaced to the existing width, unless an alternate route for subdivision construction traffic can, through compliance with Condition No. 27 hereto, be procured, in which case such resurfacing shall not be required. Prior to this work the applicant shall secure permits and approval from the Flathead County Road Department. The resurfacing shall meet County standards for thickness, crown, and integrity of the existing driveways. Seconded by Councilor Robinson and the motion carried.

Vote on Motion to Approve Findings of Fact as Amended: Ayes: Fisher, Hamilton, Lovering, Piper, Robinson, Shepard and Barnhart.

Councilor Fisher made motion to Approve Preliminary Plat and direct staff to prepare a Resolution for next Regular Council Meeting, seconded by Councilor Robinson with council voting as follows. Ayes: Hamilton, Lovering, Piper, Robinson, Shepard, Fisher and Barnhart.

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Mayor Barnhart suggested a recess at 8:27 p.m. Mayor called the meeting back in session at 8:37 p.m.

NEW BUSINESS:

Call for Bids - Wastewater Project Phase 1 (Lift Station and Sewer Main)

City Manager Nicosia said this is Phase One of the Wastewater Project consisting of the Lift Station and Sewer Main Upgrades. The City will advertise for bids in January and open bids on Feb 14th to bring results to council on Feb 21, 2023.

Councilor Lovering motioned to Call for Bids on the Wastewater Project Phase 1, seconded by Councilor Piper and the motion carried.

Call for Proposals - Residential Backflow Testing

City Manager Nicosia said she is bringing this to Council so we have a conversation before receiving the current proposals. Nicosia noted that the City began requesting the residential test proposals in 2014 so our customers could get a better price from the contractors. Nicosia noted that the last contract was at \$34 per test each year, 2020, 2021 and 2022 which was a 30% reduction from the prior contract. The City is getting ready to put out the request for proposals, fully anticipating a significant increase. Mayor Barnhart asked if the City has considered doing the testing in house. Nicosia said the City does not work on private property nor do we compete with private business. The City requests the proposals for a better price and not to replace the private contractor; Nicosia noted that the customers are billed for the test based on the contract.

ORDINANCES/RESOLUTIONS:

Resolution # 1888 – Adopting Special Fire Department Inspection Fees

Nicosia reported that this resolution was drafted according to the January 3rd Council meeting.

Councilor Lovering motioned to adopt Resolution # 1888, seconded by Councilor Piper with council voting as follows. Ayes: Lovering, Piper, Robinson, Shepard, Fisher, Hamilton and Barnhart.

Resolution # 1889 – Adopting Conditional Use Permit – Littlefoot Properties LLC

Nicosia reported that this resolution is presented according to the January 3rd Council action. Conditions are as adopted by the Council.

Councilor Shepard motioned to adopt Resolution # 1889, seconded by Councilor Robinson with council voting as follows. Ayes: Piper, Robinson, Shepard, Fisher, Hamilton, Lovering and Barnhart.

Resolution # 1890 – Adopting Updated Purchasing Policies and Procedures (Federal, State and Local Compliance)

City Manager Nicosia said the City needed to update the City Purchasing Policies and Procedures to be in compliance with Federal, State and Local requirements. Nicosia noted that the Policy must be submitted to the FHWA for the RAISE grant.

Councilor Robinson motioned to adopt Resolution # 1890, seconded by Councilor Hamilton with council voting as follows. Ayes: Robinson, Shepard, Fisher, Hamilton, Lovering, Piper and Barnhart.

MAYOR AND COUNCIL REPORT:

Councilor Hamilton asked for more information on the proposed cemetery by the Veterans Home. Nicosia said the 150 acres as proposed in the bill is adjacent to the Vet's Home. Hamilton asked where does that leave the dog park. Nicosia replied the Lions' Club is working on other properties for a dog park such as Columbia Rising. Shepard said the vet's group has been working on the cemetery for some time. Councilor Robinson asked if the new cemetery would include spouses. Shepard said he believed it is veterans only unless something has changed.

Councilor Lovering thanked the City Street Crew for working on ice buildup on city streets.

Councilor Fisher said it is important to speak loudly at these large meetings in order for all folks to hear us.

Mayor Barnhart said the street department added the blades for scraping the ice off the streets. Mayor Barnhart said he appreciated seeing the street crew working on the holiday to get city streets cleaned up. Mayor Barnhart thought this meeting on Tamarack Meadows Subdivision went well.

Councilor Lovering asked if it would be helpful to have step by step information of the Public Hearing process on the city website. Nicosia said she added the news article she co-wrote with Shirley Folkwein to the City website that detailed the process. Nicosia said she is posting draft agendas to the City Website as soon as an application is submitted and ready to move forward.

Councilor Shepard stated the audience applauding after each comment at any city meeting should be stopped. City Attorney Breck agreed with Shepard in regards to audience applauding, as it can be intimidating for those that are opposed.

CITY MANAGER REPORT:

City Manager Nicosia said she was honored to be a guest speaker at the Lions' Club last week, their 70th Charter Night. Nicosia presented data on the growth in Columbia Falls since the Club's charter through the current year. Nicosia shared the charts she prepared for her presentation, noting that the City had tremendous growth between the 40's and 50's, 94.19% and 60's, 72.35%, declined in the 80's and steady growth in the 20's. Nicosia noted the City's growth rate between 2010 and 2020 was 13.2%, slower than our projected 2.25%. Nicosia also reviewed the year the City's housing was built based on current census information: 1940-1969 – 25%, 1970-79 – 23%, 1980-89 – 5.2%, 1990-99 – 13.7%, 2000-09 – 12.1% and 2010 and later – 12%. Nicosia said that the City has planned and managed growth over the years. Nicosia noted that she and the staff will prepare and present additional information on the City's planning and growth in the future.

Nicosia reported on the ongoing projects:

Water ARPA Project – Call for Bids next Council Meeting

Wastewater ARPA Project Phase One – Called for Bids tonight and Phase Two is getting ready for final engineering for ARPA and DEQ approval.

The City is still waiting on the Railroad for the EDA Grant, but getting closer to what will be required at the crossing. Mayor Barnhart asked if that is stopping us from moving forward. Nicosia said no, we have issued the contract.

The City is continuing to work toward a contract agreement for the Raise Grant.

The FEMA Grant for the River's Edge Park project will be started in the spring. The City has final approval on disposal of our sediment. FEMA is still doing their evaluation on our gravel road and impact on the bull trout.

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The Urban Renewal District for curb, sidewalks and gutters. We will get more angled parking on the south side of 5th St. W. Mayor Barnhart suggested revisiting angled parking on 1st Ave W.

Nicosia also noted that the City is looking to complete a review and update the Meadow Lake Sewer agreement. There were 14 different amendments but they never amended the entire agreement. Nicosia said she is working to complete the update of the Extension of Services plan as council reviewed the plan in 2019 but no changes were made to the policy or procedures; the update is on the data. Staff is preparing to update the vacant lot map.

Nicosia noted that she will ask for the Resort Tax Committee to meet in the near future to review luxury items; specifically concerning tattoo parlors, nail salons and lashes. The City ordinance exempts hair salons and barbers as a life necessity. The tattoo parlors have been taxed as a luxury item; we did not specifically call it out in the ordinance but there is room for interpretation by the City. A new tattoo parlor owner questioned the application of the tax.

Nicosia said Council needs to appoint a new person to the City's Impact Fee Committee as the developer position was filled by Bill Dakin who no longer lives here. Nicosia reminded Council that the Montana Leagues of Cities and Towns website has a bill tracker link for our use in keeping on top of legislation.

CITY ATTORNEY REPORT

City Attorney Breck noted that he is responding to a question from the Mayor regarding the recovery of attorney's fees on the Cahill case. Breck said every state that he is aware of in the union follows the American Rule. The American Rule simply states unless the contract and dispute has attorney's fees provision that allows for the award of attorney's fees to the prevailing party, there is no award of attorney's fees and no reimbursement of attorney's fees. This case is not covered under our policy with MMIA, so we are incurring the attorney's fees to defend the Board of Adjustment decision. As of now the response has been written and filed, there are no more attorneys' fees in that matter. Breck is convinced that the chances of the Supreme Court overturning the BOA and District Court based on the discretion they have over factual matters is slim to none. Mayor Barnhart asked about the trespassing and Kreck Park case. Breck said that is being handled by MMIA's appointed council, Todd Hammer and Marcel Quinn in concert with the City Attorney's office.

MISCELLANEOUS REPORTS

Police Chief Peters said it appeared the Planning Board needed more information on the River Highlands but didn't ask for it. Chief Peters believes the public is hungry for more information on city services, such as upgrading the treatment plant and lift stations. Chief Peters said he understands everything the city has done to prepare for growth but the general public doesn't. If we could have an initial meeting and answer some of the public questions before the meeting would be beneficial. Mayor Barnhart said perhaps it could be more detailed in the staff report.

MISCELLANEOUS

Fire Department - December Activity
Police Department - December Activity
Correspondence

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ADJOURN:

Councilor Shepard motioned to adjourn, seconded by Councilor Lovering and the meeting adjourned at 10:11 p.m.

Mayor

City Clerk