



Livingston City Commission Agenda

February 06, 2024

5:30 PM

City – County Complex, Community Room

<https://us02web.zoom.us/j/81569284132?pwd=Q0Vya2F2Q0hnOVdRVctPVkt3eXFRQT09>

Meeting ID: 815 6928 4132

Passcode: 179977

1. Call to Order

Chair Kahle called the meeting to order at 5:32p

2. Roll Call

City Commission in attendance at start of meeting: Chair Kahle, Vice-Chair Nootz, Commissioner Schwarz, Commissioner Lyons, and Commissioner Willich

Staff in attendance: City Manager Grant Gager, City Attorney Jon Hesse, Policy Analyst Greg Anthony, City Clerk Emily Hutchinson, Planning Director Jennifer Severson

3. Public Comment

Individuals are reminded that public comments should be limited to item over which the City Commission has supervision, control jurisdiction, or advisory power (MCA 2-3-202)

Public Comment was offered by:

- Lindie Gibson addressed an issue of her neighbor's dog barking and would like the dog ordinance reviewed. She also expressed concerns about the Civic Center when/if the new Wellness Center is built and would like it to be taken care of and maintained, and would like the City to keep the old swimming pool location.
- Patricia Grabow expressed concerns about the City Commissioners meeting with the City Manager.

The City Manager addressed some of the comments made during public comment, and stated he received one of them in written form yesterday, and have been reviewed by the City Attorney. He stated he also reached out to the Local Government Center and peers across the State, and reassured the community that they are not breaking any state laws in the conduct of business. All decisions and deliberations occur in the public. The City Manager clarified he does meet with City Commissioners outside of open session, but never meets with more than a quorum of the City Commissioners outside of public session, they strictly speak informationally on City matters including operational matters, and upcoming scheduling items on the agenda. He stated Commissioners do have a right to have a conversation with the City Manager regarding operational business of the City including prospective plans for capital projects, such as an overpass or wellness center. He confirmed the Local Government Center confirmed his right to meet with City Commissioners outside of open session as long as it is not a quorum, and not deliberating or

making any decisions outside of the public. A written response will be provided to the commenter, and made public and available to all members of the community.

Vice-Chair Kahle reminded that Commissioners add things to the agenda in the way they are supposed to, and recalled when Vice-Chair Nootz asked for something to be brought back to the agenda and received a second during a public City Commission meeting.

- Rick Van Aken expressed concerns about the Northside of town and would like to see the Northside improved including access to it.

4. Consent Items

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| A. APPROVAL OF MINUTES FROM JANUARY 16, 2024, REGULAR MEETING | PG.4 |
| B. APPROVAL OF CLAIMS PAID 1/11/24 - 1/31/24 | PG.14 |
| C. JUDGES MONTHLY REPORT 12/2023 | PG.39 |
| D. CLG GRANT APPLICATION | PG.41 |

Motion to approve all consent agenda items was made by Commissioner Schwarz and seconded by Commissioner Lyons. The motion passed unanimously by the five members present.

5. Proclamations

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| A. A PROCLAMATION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA RECOGNIZING FEBRUARY 6, 2024 AS NATIONAL CHOPSTICK DAY IN LIVINGSTON MONTANA. | PG.52 |
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Chair Kahle read the proclamation.

The City Manager stated it is always fun and a pleasure to recognize the unique culinary options that exist in the City of Livingston amongst all of the small businesses in Livingston.

6. Scheduled Public Comment

7. Action Items

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| A. RESOLUTION 5125: A RESOLUTION BY THE CITY OF LIVINGSTON CITY COMMISSION AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO DOT - REBUILDING AMERICAN INFRASTRUCTURE WITH SUSTAINABILITY AND EQUITY (RAISE), COMMITMENT OF NEEDED FUNDS AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO ENTER INTO REQUIRED CONTRACTS FOR GRAND FUNDS TO ENGAGE IN A CORRIDOR STUDY AND EVALUATION OF VIABLE AND SUSTAINABLE OPTIONS FOR A GRADE SEPARATED CROSSING. | PG.54 |
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Chair Kahle called on the City Manager to introduce the item.

The City Manager stated this item is related to an upcoming grant application that staff will submit. He reminded this time last year they pursued the same US DOT grand funding program for a planning grant to evaluate a grade separated crossing, and while they were unsuccessful last year he did have a great opportunity to speak with staff at US DOT, and was able to learn where our

application lacking. Some revisions have been made and the application has been improved, and he does expect to be competitive this year.

Commissioner Lyons asked about the packet stating there will be co-sponsors and supporters, and wondered who that is referring to.

The City Manager stated they are working with a number of community partners, and co-sponsors would primarily be the railroad as well as the County. The numbers of supporters will be much more than that stating a City staff member is making direct contact with residents, business owners, and community groups that may benefit from the crossing.

Commissioner Willich moved to approve the resolution and Commissioner Lyons seconded the motion.

Public Comment was offered by:

- Steve Koontz stated that he and George Denton did a lot of work on this a few years back, and they learned an overpass is the way to go. The railroad supports an overpass per documentation on grade separated crossing.
- Rick Van Aken stated he hopes this City Commission can finally get this done. He understand the process of needing a study and public input, but expressed this really needs to get done.
- Patricia Grabow stated she appreciates the City Managers process for this project.
- Lindie Gibson expressed that doesn't want to see another study done for this, but does feel an overpass would be best.

Chair Kahle asked the City Manager for clarification on a public comment question stating there was another grant that had to be paid back if we didn't move forward and wondered if this was similar.

The City Manager stated no, that situation unique and distinctively different from this situation.

Commissioner Lyons stated that taking advantage of an existing funding source for a planning study will help their chances in going for other funding sources, if and when they get to an alternative that is deemed suitable to the Commission and Community. He clarified the difference between planning work and a traffic study, and stated there is more to just the impacts of traffic that a crossing might have that is critical to the overall impacts of what increasing accessibility to the Northside might have.

Commissioner Willich realizes this is the fourth or fifth time this project has taken the first step, expressed he is excited to see this through.

Commissioner Schwarz stated he felt this is very necessary, and is interested in what the study comes up with.

Vice-Chair Nootz expressed she feels they need to keep working for the Northside. She brought up concerns that all other Northside conversations stop when they are working on a crossing like this, and really hopes the many other issues on the Northside keep being worked on.

Chair Kahle thanked the City Manager for giving this a try again. She feels optimistic they will be successful this time.

The item was approved unanimously by the five Commissioners present.

B. ORDINANCE 3046: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 30, ZONING, OF THE LIVINGSTON MUNICIPAL CODE, BY ALTERING SECTION 30.40, AS IT RELATES TO RESIDENTIAL USES IN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT. PG.59

Chair Kahle called on the City Manager to introduce the item.

The City Manager stated that he and City staff originally crafted this ordinance in response to State mandated changes to zoning, and reminded two out the three bills that they were responding to were subject of an injunction that halted their implementation. Based on the Commissions direction in the last meeting changes have been removed that were related to two of the bills SB 323 and SB 528, and are only proceeding with the changes required to implement the provisions of SB 245 with the modifications deliberated upon by the Commission. He stated with the substitute nature of the changes this ordinance is coming back as a first reading.

Commissioner Lyons asked about a limit to number of units, and what is used to constrain that number.

The City Manager stated because of the reduced scope of this ordinance they are not touching any other sections, so the last version of the ordinance did include density tables for each district because they were not adjusting those, they fell off ordinance that is presented. He did clarify the primary mechanism or limiting factor that would reduce mass or bulk in the Neighborhood Commercial Zone is the 27 foot height restriction.

Commissioner Lyons asked where to find that height restriction.

The City Manager stated it is in Livingston Municipal Code under 30.42.

Commissioner Willich wondered if there are square footage minimums in terms of density as opposed to height.

The City Manager stated there are some requirements in the building code that would impact the minimum size of a unit.

Commissioner Lyons moved to approve the ordinance and Commissioner Schwarz seconded the motion.

Commissioner Schwarz thanked staff for putting this item together and with input from Commissioner Lyons he feels this ordinance looks good.

Commissioner Lyons stated he appreciates the limiting factor being height, and feels anytime there is ability to incorporate residential with commercial development that is a positive for the community.

Commissioner Willich agrees with the input given by Commissioner Lyons originally and appreciates the work staff has done on this.

Vice-Chair Nootz stated that Neighborhood Commercial is currently only on the Northside and this isn't adding commercial it is adding residential, so it's not changing the impact of commercial on the Northside. She feels when the State mandated they change this zone it's making the Neighborhood Commercial very similar to the Mixed Use Zone, and feels there is not a great distinction between those two zones now.

Chair Kahle thanked Vice-Chair Nootz for her input and thoughts. She expressed that she likes how quickly they are moving forward on housing issues.

The item was approved unanimously by the five commissioners present.

C. ORDINANCE 3049: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 30.13 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED OFFICIAL ZONING MAP OF THE CITY OF LIVINGSTON BY ZONING PROPERTY LOCATED AT 5284 US HWY 89 S, RECENTLY ANNEXED AND GENERALLY KNOWN AS RY TIMBER, AS LIGHT INDUSTRIAL (LI). PG.74

Chair Kahle called on the City Manager to introduce the item.

The City Manager stated this item is a secondary action to an action that the Commission took in November 2023 to annex in the RY Timber property. Under State code they have the responsibility to zone the newly annexed land. Staff recommendation is zone this as Light Industrial, and includes several reasons why recommended Light Industrial. He invited Planning Director Severson to discuss more about her recommendation.

Planning Director Severson presented slides. **(Starts at Video Mark 1:08:28)**

Vice-Chair Nootz expressed concerns about neighbors to RY Timber and the impact of debris.

The City Manager stated in the State of Montana air quality is regulated by the Department of Environmental Quality, and the City does have certain air quality monitors in place, the nearest one being about 7 blocks from the facility.

Vice-Chair Nootz asked who the community should reach out to if they are impacted by this facility being up and running again.

The City Manager stated he is the best contact for those concerns.

Chair Kahle asked about river setbacks.

Planning Director Severson stated in the packet on attachment five is a map of the flood plain, so any development within that flood plain would have to comply with requirements for flood proofing. It is currently mapped as regulatory flood plain not flood way.

Commissioner Schwarz moved to approve the ordinance and Commissioner Willich seconded the motion.

Public Comment was offered by:

- Rick Van Aken agreed with Chair Kahle's thoughts about river setbacks.
- Johnathan Hettinger expressed concerns about this the future for this location if or when the facility goes out of business.

Commissioner Schwarz asked if they were only doing Light Industrial for the life of the business, but once it is no longer used for a lumber mill will it go to Neighborhood Commercial.

The City Manager stated no this property will be zone as Light Industrial until it is rezoned by the City Commission.

Commissioner Lyons expressed concerns about the land after it is no longer being used as a lumber mill, and concerns about development near the river, and what kind of development it could possibly be.

Commissioner Willich stated he looks at this Light Industrial location as potential for jobs in the City of Livingston.

Vice-Chair Nootz asked if Planning Director Severson could review the flood plain map again.

Planning Director Severson reviewed the map in detail **(Starts at Video Mark 1:34:18)**

Vice-Chair Nootz thanked Planning Director Severson for the review. She talked through the lowest risk for flooding such as residential vs. businesses and zoning this area Light Industrial vs. Neighborhood Commercial.

Chair Kahle questioned if they do something different than what the future land use map is saying will they need to update the future land use map.

The City Manager stated there some cities in the State of Montana that don't do anything without updating their Growth Policy, but he stated they are in a unique situation with this property because it was annexation by petition, and under that provision of Montana Code Annotated the City has 90 days to establish what the zoning of the parcel is.

Chair Kahle expressed thoughts about flooding and doesn't want to see residential people flood, and ran through thoughts on Light Industrial vs. Neighborhood Commercial.

Commissioner Lyons appreciates the risks Vice-Chair Nootz discussed, and also brought up risks for the environment in Light Industrial as concerns he has.

Commissioner Willich addressed this thoughts on risk and stated in the event of a flood, he felt having a building out there with no people and only full of tools and material is far less risky than trying to figure out how to get families out of that flooded area.

Vice-Chair brought up concerns for the public and thinking about what they could put there to meet the needs of the citizens in a high-risk scenario.

The item was approved unanimously by the five commissioners present.

7:30pm Commissioner Schwarz motioned for a 10 minute break and seconded by Commissioner Lyons. Unanimously approved.

(Starts at Video Mark 1:59:21)

- D. ORDINANCE 3050: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 30.13 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED OFFICIAL ZONING MAP OF THE CITY OF LIVINGSTON BY ZONING THE PROPERTY ADDRESSED AT 1 VIEW VISTA DRIVE AND LEGALLY DESCRIBED AS PARCEL 1 IN SECTION 13, TOWNSHIP TWO SOUTH (T02S), RANGE NINE EAST (R09E), CERTIFICATE**

OF SURVEY 984, RECENTLY ANNEXED AND GENERALLY KNOWN AS THE VIEW VISTA COMMUNITY, AS MIXED USE (MU). **PG.99**

Chair Kahle called on the City Manager to introduce the item.

The City Manager stated this is the zoning of a recently annexed property, and this property was annexed by petition of the owners. He invited Planning Director Severson to discuss the parcel.

Planning Director Severson presented slides. **(Starts at Video Mark 2:00:56)**

Commissioner Schwarz asked if there was 90 days from annexation to approve zoning.

The City Manager stated yes.

Vice-Chair Nootz asked if they have examined the potential impact on existing infrastructure if this was a maximum build out.

The City Manager stated one of the motivations for this annexation was to help the community be able to fund water and sewer improvements within the community. City staff is working with the community to completely re-do their water and sewer, and through that process making sure the community and engineers contemplate what the future of this property may look like to make sure there is adequate size of mains and adequate space in the mains that would allow possible future changes.

Vice-Chair Nootz asked there was anything to include about the river for this zoning.

Planning Director Severson stated that was brought up at the Zoning Commission meeting and a flood map is in the packet. She said this is a 500 year which is a non-regulatory flood plain for the Yellowstone, and stated Fleshman Creek is not currently a mapped flood plain, it is being included in the ongoing flood study. Being in a 500 year flood plain doesn't impact how you are required to build.

Commissioner Lyons asked if there is a sense of the number of developable units in reference to the difference between RII and Mixed Use.

The City Manager stated the parcel is about eleven acres, and the underlying density allowable on RII is approximately 13 units per acre, not including ADU's, just thirteen primary units. The base zoning in mixed use is approximately 42 primary units per acre.

Commissioner Lyons asked if that would expand the use, or diminish the uses.

The City Manager stated it would expand by approximately 29 units in Mixed Use and expanding that over the eleven acres brings it to about 319 units additional.

Commissioner Lyons asked if ADU's could be added to either scenario or just the RII.

The City Manager stated as discussed in January they had intended Ordinance 3046 to clarify that ADU's are for single family dwellings only and not for multi-family.

Chair Kahle clarified that one the reasons they are looking at Mixed Use is because of the apartment buildings on the property, and they wouldn't be allowed in RII. She stated many of those apartments are not inhabitable and would take a lot of work to make them livable, and stated if this was RII and those apartments went away they would not come back.

The City Manager stated yes, the City has been working through a Community Development Block Grant with NeighborWorks to assess the condition of the apartment buildings, and they do have a preliminary architectural report on the building that does show significant improvements that would be required to make all the units habitable.

Commissioner Schwarz moved to approve the ordinance and Vice-Chair Nootz seconded the motion.

Public Comment was offered by:

- Rebecca Heemstra works with NeighborWorks Montana, she represents the board members and residents of the View Vista Community. She stated this community has been resident owned since 2020 and they are very appreciative of the annexation. The board is in favor of the Mixed Use zoning because they feel that offers the greatest potential for future growth. She asked for clarification around manufactured homes for this community based on findings in the LMC.

The City Manager stated he realizes there is inconsistency in the Livingston Municipal Zoning Code, and this question that Rebecca pointed out is something they are aware of and intend to fix in the zoning update coming up. He stated at a staff level that they do agree that manufactured homes are allowed anywhere that a normal home is allowed.

Chair Kahle asked if they needed to move an existing home to make room for others could they do that.

The City Manager stated they will work within their administrative authority to accommodate any changes, and included there may be chance of a variance request if there is a change that needs to happen in the next several months before the zoning code is updated.

Vice-Chair Nootz asked what the process is for a variance request.

The City Manager stated an application is submitted to the zoning administrator then that application is presented to the City Commission.

Vice-Chair Nootz stated that it makes sense to lean toward Mixed Use vs. RII. She stated she appreciates previous comments about needing the ability to diversity the economy and Mixed Use allows for that. She likes that the infrastructure can handle it, and appreciates the partnership between the resident owned community and the City of Livingston.

Commissioner Willich asked that the difference is between Mixed Use and Neighborhood Commercial in this application other than a 60 ft. height vs. a 27 ft. height.

The City Manager stated prior this evening there were fairly substantial differences in the amount of residential that was allowed, and one of those differences is that in Neighborhood Commercial residential uses are only allowed in a building that also includes a commercial use, where as that is not a requirement of Mixed Use.

Commissioner Lyons stated his only hesitation with this is the potential for environmental injustice happening. He stated he does like Mixed Use development and thinks it's a great way to do land use planning.

Chair Kahle realizes the potential flood risk in this area and stated when the maps come out they will get to look at that. She stated seeing this resident owned community grow and develop is huge and likes the idea of Mixed Use.

Commissioner Willich stated he has an issue with the zone itself and stated Mixed Use zoning has a greater height allowance than RII, 60 ft. vs. 27 ft. and smaller minimum lot size than RII which is 3500 sq. ft. vs. 875 sq. ft., so he feels 60 ft. tall 875 sq. ft. buildings on eleven acres does not fit in with the City of Livingston.

Vice-Chair Nootz stated it may be helpful to compare RIII to RII because Mixed Use is a lot different, and comparing Central Business District.

The City Manager stated Mixed Use is predominantly on the Northside of the tracks. He then ran through the comparisons of these zones with a shared screen. **(Starts at Video Mark 2:41:32)**

Vice-Chair Nootz expressed it is helpful to have that comparison done and seeing it side by side. She feels it important to hear and understand what the community needs, and appreciates Commissioner Lyons bringing it up.

Commissioner Lyons asked about setbacks and noticed there are no setbacks required in Mixed Use, and is wondering if there is something in the Building Code that would prevent a building being built on an 875 sq. ft. lot that is 60 ft. tall, but wonders if that would be allowed.

The City Manager stated that parking is the main factor in development and the City of Livingston does require one parking spot for every unit of multi-family housing.

The item was approved unanimously by the five commissioners present.

8:32p Vice-Chair Nootz moved to extend the meeting and Commissioner Lyons seconded the motion. Unanimously approved by the five commissioners present.

7:30pm Vice-Chair Nootz motioned for a 5 minute break and seconded by Commissioner Schwarz. Unanimously approved.

(Starts at Video Mark 2:50:10)

E. ORDINANCE 3051: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 10, CURFEW, DISTURBING THE PEACE, AND NOISE, OF THE LIVINGSTON MUNICIPAL CODE, BY AMENDING SECTIONS 10-5 AND 10-6.

PG.116

Chair Kahle called on the City Manager to introduce the item.

The City Manager stated this item something the City Commission discussed over the summer and asked that it be brought back. He stated they have in the current budget year increased Code Enforcement assets, and they have encountered some vagueness in the code that have made enforcement of the noise ordinance difficult. They have tried to add greater specificity for noise limits to provide clarity for uses and for Enforcement staff. The City Manager introduced Policy Analyst Greg Anthony to discuss the ordinance.

Policy Analyst Anthony presented slides **(Starts at Video Mark 2:52:12)**

Vice-Chair Nootz stated this noise ordinance is very comprehensive. She appreciates the administrative process included in this ordinance. She stated she looked at the Billing noise ordinance and she found a minimum and maximum permissible noise and wanted further clarification on that.

Policy Analyst Anthony stated he looked at multiple cities to see how they listed their decibel limits, and some do have a minimum and maximum, but his intent was to make it as standard as possible without creating variations and so it could be enforceable.

Vice-Chair Nootz moved to approve the ordinance and Commissioner Schwarz seconded the motion.

Public Comment was offered by:

- Erika Adams is the Executive Director for the Shane Center and stated if this were to pass they would need to guidance on how to comply. She pointed out specific questions of the ordinance where she had questions.

The City Manager stated this ordinance, if approved, will be enforced by the Code Enforcement Division, and would be occasionally supplemented by the Police Department. He stated the decibels that have been presented will be as measured at the property line, and if a complaint is received Code Enforcement would take a reading at the property line. They do have ANSI certified machines for readings.

Chair Kahle asked about the Shane Center having a Special Exception Permit and when the noise ordinance would come into place.

The City Manager stated that is when section A8 takes effect.

Commissioner Lyons asked about the waiver request and how it is granted.

The City Manager stated they are an administrative waiver.

Commissioner Willich asked about the change from 10pm to 8pm.

The City Manager stated it was included in the table Policy Analyst Anthony presented and they did discover that 8p is frequently when nighttime started, and they tried to match what was granted in Special Exceptions.

Vice-Chair Nootz reminded that the Special Exception permits would be for the types of events that would be going later into the evening. She stated she would caution against being overly specific. She feels this is a nice balance.

Chair Kahle stated she agrees with Vice-Chair Nootz and feels this ordinance is much better than the old one.

The item was approved unanimously by the five commissioners present.

8. City Manager Comment

The City Manager thanked the Commissioners for their time tonight.

9. City Commission Comments

Commissioner Willich expressed good steps forward tonight.

Vice-Chair Nootz reminded that there was training they just attended and brought up something she learned about that other municipalities have local conflict of interest policies, which seems useful for the City Commission. She would like to see this on an agenda in the future.

Vice-Chair Nootz motioned to bring a conflict of interest policy to later meeting seconded by Commissioner Schwarz.

Commissioner Willich stated he thought since we not a charter we would just follow what the State does.

The City Manager stated the State does have a Code of Ethics and Code of Conduct, but he will work with the City Attorney to find out if they can adopt an additional conflict of interest policy.

Chair Kahle thanked the Commissioner for the meeting tonight.

10. Adjournment

9:21 pm Commissioner Schwarz motioned to adjourn the meeting seconded by Commissioner Lyons. Unanimously approved.

Calendar of Events

Supplemental Material

Notice

- **Public Comment:** The public can speak about an item on the agenda during discussion of that item by coming up to the table or podium, signing-in, and then waiting to be recognized by the Chairman. Individuals are reminded that public comments should be limited to items over which the City Commission has supervision, control, jurisdiction, or advisory power (MCA 2-3-202).
- **Meeting Recording:** An audio and/or video recording of the meeting, or any portion thereof, may be purchased by contacting the City Administration. The City does not warrant the audio and/or video recording as to content, quality, or clarity.
- **Special Accommodation:** If you need special accommodations to attend or participate in our meeting, please contact the Fire Department at least 24 hours in advance of the specific meeting you are planning on attending.