



Livingston City Commission Minutes

January 16, 2024

5:30 PM

City – County Complex, Community Room

<https://us02web.zoom.us/j/83133202658?pwd=TI14SUNrTOZPaDNFZjBhRzlwHQxZz09>

Meeting ID: 831 3320 2658

Passcode: 256368

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, Policy Analyst Greg Anthony, City Clerk Emily Hutchinson, Public Works Director Shannon Holmes, Chief of Police Wayne Hard.

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:

- Brian Monahagn expressed he felt there is a lack of resources around what people can do and where they can go when they are not in the warming center.

4. Consent Items

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| A. APPROVAL OF MINTUES FROM JANUARY 02, 2024, REGULAR MEETING. | PG. 4 |
| B. ACCEPT CITY COURT FINANCIAL REPORT FROM NOVEMBER 2023 | PG. 14 |
| C. APPROVAL OF CLAIMS PAID 12/28/23 - 1/10/24 | PG. 16 |
| D. PLEDGED SECURITIES | PG. 22 |

Motion to approve B-D consent agenda items was made by Vice-Chair Nootz and seconded by Commissioner Lyons. The motion passed unanimously by the five members present.

Vice-Chair Nootz pulled 1/2/24 Minutes for a clarification and change to page 9, 4th paragraph regarding infrastructure..

Motion to approve consent item A with the amendment was made by Vice-Chair Nootz and seconded by Commissioner Willich. The motion passed unanimously by the five members present.

5. Proclamations

A. PROCLAMATION DECLARING JULY 2, 2024, THE 100TH ANNIVERSARY OF THE HISTORIC LIVINGSTON ROUNDUP PARADE DAY **PG. 26**

Chair Kahle read the proclamation.

The City Manager stated he looks forward to attending the 100th parade, which will be his second parade.

B. ARBOR DAY PROCLAMATION **PG. 28**

Chair Kahle read the proclamation.

The City Manager stated humorously he feels like he could hug a tree right now, but will save it for April.

6. Scheduled Public Comment

7. Action Items

A. PRESENTATION REGARDING MONTANA STREET MDT SURFACE TRANSPORTATION PROGRAM URBAN PROJECT **PG. 30**

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

The City Manager expressed excitement about introducing this project to the Commission and introduced Public Works Director Holmes and Dave Gates from the Montana Department of Transportation to talk about the project.

Public Works Director Holmes introduced himself and Dave Gates.

Dave reviewed the slides attached in the packet.

Commissioner Schwarz would like to clarify that there is about \$3.5 Million available to us for this project.

Public Works Director Holmes stated yes, a little under that.

Vice-Chair Nootz asked for clarification around this project and stretch of road from about a year and half ago.

Public Works Director Holmes stated about a year a half ago is they nominated this project at the Transportation Coordinating Committee Member meetings. The committee voted and it was unanimous approval of the project. Steps moving forward include delivery method with two options, we can turn it all over to MDT and they would do survey, design and construction, or he would prefer to use the local process and follow the guidelines and we self-perform that work with the City Engineer. He feels we could save a lot of money with the second option. He further expressed if/when they replace streets with curb, gutter and sidewalks he would also replace the infrastructure underneath it. He is hopeful they will have a storm water utility in the foreseeable future, and they will go ahead and put in the storm water collection mains. This project will pay for the inlets and laterals to connect to that.

Dave stated the normal process for MDT in this next step is to coordinate with the local agency into a funding agreement, and the funding agreement outlines specifics about MDT handing over all contract administration and how overages on the project would work. Once the agreement is authorized by both parties, then MDT hands over all project development and delivery.

Chair Kahle asked the City Manager what he was looking for from the Commission.

The City Manager stated this item is just a project update, and he felt that before taking the next steps with MDT to formalize documents regarding project delivery and funding, he wanted to update the Commission and wanted to give them the opportunity express thoughts on the project.

Vice-Chair Nootz understands that all of Montana Street needs attention, but realizes 7th St. to 12th St. is a good start. She did express her biggest concern when looking at the map from 7th to 12th St on Montana, and is aware there are not sidewalks everywhere and is worried about it being able to connect to other infrastructure. She really is hoping the City and Commission are thinking about how to connect this new updated infrastructure to other parts of town, and not just have an island of good biking for five blocks. Vice-Chair Nootz realizes the City Manager has special expertise in managing contracts and large infrastructure projects, so when it comes time to make a decision she feels it would be appreciated to hear his input on the options.

Public Works Director Holmes expressed that he feels this five block stretch really sets the template for the streets in the area.

Vice-Chair Nootz asked if Public Works Director Holmes thought it would help all those people down slope because she knows they get hit so hard every spring from the runoff where if floods people's backyards and basements when it all comes down the hill.

Public Works Director Holmes stated this will be a significant improvement to storm water from 9th St. down to 7th St.

Chair Kahle expressed that it sounds like a good start for the infrastructure.

B. CONSOLIDATED LAND USE BOARD BYLAWS

PG. 41

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

The City Manager stated this item goes with the recently created Consolidated Land Use Board that assumes the powers there were previously delegated to the Planning Board and Zoning Commission. With the creation of the new board realize it needed by-laws which are attached for consideration and adoption.

Commissioner Lyons noticed there are alternating 2 year terms and having never been privy to creation of a new board, wondered why appoint folks for 1 year and other folks for 2 years. He asked for clarification around that from the City Manager.

The City Manager stated both the by-laws and enabling ordinance that was passed in late 2023 established the overlapping offsetting terms, and that enabling ordinance provided that three members would be appointed to initial one year terms to achieve that overlapping outcome.

Vice-Chair Nootz recalled that when boards changed in the past it was the same where there were alternating.

Commissioner Schwarz agreed he has seen this in the past. He also stated the by-laws look good and cannot find anything wrong with them.

Commissioner Schwarz moved to approve action item B and Commissioner Willich seconded the motion.

The item was approved unanimously by the five commissioners present.

C. CONSOLIDATED LAND USE BOARD APPOINTMENTS

PG. 46

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

The City Manager stated this item is to appoint members of the Consolidated Land Use Board. He stated the City received 13 different applications for the 7 community seats on the Consolidated Land Use Board, and over the last week he had an opportunity to meet with all 13 candidates and conduct interviews with them. He took into account many factors when making his recommendations and he feels boards like this operate best when they have a cross-section of the community, and he has tried to do that with his selection.

Chair Kahle opened it up for Commission questions, but reminded the Commissioners they are talking about individuals and they should keep comments towards qualifications, experience and potential conflicts, but they should not be talking about people too personally.

Vice-Chair Nootz asked for clarification on if she needs to ask questions or just give feedback.

Chair Kahle advised they should ask questions then have a little discussion.

Vice-Chair Nootz liked and appreciated that the City Manager talked to all the applicants. She expressed she was grateful to everyone who applied, and really likes there is a cross-section of people with fresh perspective and experience.

Commissioner Lyons expressed he appreciates the City Manager identifying the lack of expertise on the development side in the past. He has identified environmental, community advocacy, planning and development, healthcare, real estate, education, business, and development. These all being qualifications of the specific candidates. He feels they've gone a little far on compensating for lack of development, and realizes that is an important skill set to be represented on this board, but stated he feels this is the profession with the highest potential for conflict of interest, and ultimately with 3 out of the 7 selected in that profession, that concerns him.

Commissioner Willich thought individually he doesn't have any concerns, but does appreciate the input Commissioner Lyons has given about this board 's composition with professionals in real estate and development.

Chair Kahle thanked the City Manager for interview all the applicants. She expressed agreement with fellow Commissioners and their thoughts about development and real estate folks.

The City Manager stated he asked a series of 8 questions to each applicant and one of the questions was in relation to conflicts of interest, and he was mindful of this this question and the responses in relations to each profession. He clarified the 2 architects selected do work on the type of projects that we would see but do not work in Livingston.

Vice-Chair Nootz expressed since her time on the Commission she noticed they have always has representation of architects, engineers, and contractors on other boards. She felt that recognizing even the five of them have conflicts at time is important to remember, and that we do live in a small town so it can happen. She likes the balance it brings between different parts of the community and perspective it brings.

Commissioner Schwarz expressed he feels it balances out with the selection that was made by the City Manager.

Commissioner Lyons expressed appreciation and due diligence from the City Manager, but feels he sees an overlap in expertise in this selection mostly around the architects, and would suggest replacing one of the 2 architects with someone with a different background.

Chair Kahle expressed concerns about the realtor in the selection and how that looks as far as conflict of interest.

The City Manager stated the realtor that was in his selection does not do development work within the City of Livingston, and it just managing listing. He explained when subdivisions are approved typically the development team has a real estate partner they use for the sales aspect of the project, so as long as the realtor selected was not the sales partner on a development, it would not pose any conflict of interest. He reminded there is a realtor on the Zoning Commission, and there is value to that market knowledge.

Vice-Chair Nootz recalled there is a realtor on the Planning Board as well.

Commissioner Schwarz expressed agreement with a realtor being on the Planning Board, and realizes it might look bad to some, but you really need that expertise. He expressed this realtor candidate doesn't make him uncomfortable to have on this board.

The City Manager stated this realtor candidate worked for a large developer for residential housing early on in her career. He felt hat experience to be very helpful from someone who has actually been on a project team that helped move residential development applications forward.

Vice-Chair Nootz moved to approve action item C and Commissioner Schwarz seconded the motion.

Commissioner Schwarz stated he is happy to hear what Commissioner Lyons had to say and have that discussion in public, but with the City Managers recommendations and explanations on why they were selected, he overall feels comfortable with the selection.

Commissioner Willich expressed that he trusts that the City Manager put together the best list possible.

Commissioner Lyons stated he is still uncomfortable with the selection, not due to distrust of anyone, but having close to half of the board who indirectly benefit from increasing supply by

facilitating development is an uncomfortable way to make policy. He feels they should at least take out one of the three and replace them with someone who has a different area of expertise.

Chair Kahle asked Commissioner Lyons if he had a recommendation.

Commissioner Lyons recommended that one of the architects be replaced with a person with different expertise. He feels they are losing a lot of institutional knowledge and awareness of what went into the Growth Policy. His replacement recommendation is someone from the former Planning Board.

Vice-Chair Nootz expressed she is leaning in a different direction and stated she really likes the candidates selected. The three candidates with potential conflicts, she recalls, have all engaged with local government, not necessarily around land use law. She pointed out examples of their engagement. She stated she feels they do have institutional knowledge and does not feel like they are losing it with this selection of candidates. She stated that ultimately the City Commission has the final say and if this board gets going and the conflict of interests are there largely, then they have the ability to make changes to this board. She expressed is comfortable with the selection made.

Chair Kahle stated she is trying to remember they are combing Planning and Zoning, so it is important to have broad knowledge around more things in this board than they previously had on the two separate boards. She did express that is does share the same discomfort that Commissioner Lyons has about a couple of candidates, but realizes that the City Commission does have the final say.

Vice-Chair Nootz also pointed out that they now has staff that attend the board meetings, which they didn't always have, and also the City Manager attends many meetings if necessary.

The City Manager stated the MCA and LMC are very clear on how to handle conflicts that may arise. He is confident that he recommended a board that will have very few conflicts.

Chair Kahle asked if there is more than one renter in the group.

The City Manager stated one person rents, and there is another person who is a non-owner occupant of their house.

The item was approved unanimously by the five commissioners present.

Chair Kahle thanked the Commission for the hard discussion, and the City Manager for his hard work on this. She stated it was a hard decision because there were so many good applicants. She encouraged the folks that didn't make the selection to keep applying to engaging.

Commissioner Lyons reminded there will be three openings in a year.

Vice-Chair Nootz asked about a training for the Consolidated Land Use Board that is mandatory.

The City Manager stated yes, on February 5th.

Chair Kahle reminded that the Commission is invited to the training as well.

The City Manager thanked the community members that applied, and stated there is an opening on the Historical Preservation Commission.

7:00PM Commissioner Schwarz motioned for a 10 minute break seconded by Vice-Chair Nootz. Unanimously approved.

(Starts at Video Mark 1:28:19)

**D. COMMISSION DIRECTION REGARDING STATE-MANDATED CHANGES TO ZONING
(ORDINANCE 3046)**

PG. 73

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

The City Manager stated he is seeking direction on how the Commission would like to proceed. He reminded in the last meeting they performed a first reading of Ordinance 3046, which was to enact several State mandated changes that came through State Legislature this year. The day after the last meeting there was an injunction put in place by 18th Judicial District in Gallatin County that stayed the implementation of Senate Bills 323 and 528. He stated because they were in the process of adopting an ordinance that codified the requirements of those bills, they now have the ability to assess if they would like to move forward with the implementation of those bills before the injunction is lifted or settled. The item tonight is gather what direction the Commission would like to proceed with continuing the second reading of Ordinance 3046 at the next meeting, or if they would like to modify 3046 to only include the changes mandated by SB245.

Commissioner Lyons asked for some boundaries on time of how he expects the quickest or longest this injunction could take.

The City Manager stated in experience he would expect the injunction to set for no less than six months, but would expect it to be resolved in 12 months. Having watched this process play out in other states, it is his expectation that the State Legislature's right to mandate certain aspects of Municipal Zoning will be upheld. He doesn't necessarily expect this lawsuit to be successful, and would expect that they may be addressing the requirement of SB 323 and 528 at a future meeting.

Commissioner Lyons expressed he feels they have done the work of assessing how that might affect the community. He stated it may be delaying the inevitable to put it off just too then have to start the conversation over again. He doesn't suggest they wait on the making the changes they started deciding on.

Commissioner Schwarz agreed with Commissioner Lyons. He felt they did a lot of work on this, and sees no reason to delay and start over in 6-12 months.

Vice-Chair Nootz stated they have had good conversation around restricting occupancy, and she would like to see that move forward. She expressed thoughts about 528 and waiving impact fees, and has heard from community members that they would like development to pay its own way, and feels if they get another year of development paying its own way, rather than tax payers footing the bill for future development, then that is good. She expressed feeling comfortable moving forward with the part that Commissioner Lyons brought up.

Commissioner Willich asked if they can split Ordinance 3046 into two parts, so they can handle the one part that can be taken care of, and do 323 and 528 separately after seeing where the court goes with it.

The City Manager stated that was his intention to separate out what they could move forward and save what they didn't need to act on until a later date.

Chair Kahle expressed she is leaning toward what Commissioner Lyons and Commissioner Schwarz said that they did have an exhaustive conversation about all of this. She wondered since 528 is on hold and one of the actions plans was to incentivize ADUs, and she wondered if there is a way they could move forward with what they have, but because they don't exactly have to follow what the State says right now, they could incentivize ADUs by doing deed restriction or long-term rental that you would get the incentive of exemption of impact fees.

Commissioner Lyons expressed that he loves that idea and fully supports the idea.

Commissioner Schwarz asked how much the impact fee is on an ADU.

The City Manager stated it's about \$10,000. He reminded the PUD Ordinance that was enacted several months ago does include a provision for the waving of impact fees for units that are deed restricted at 60% affordable.

Vice-Chair Nootz expressed concerns around the specific topic of ADUs being tied to a deed restriction not being noticed on the agenda to talk about, she expressed not wanting to violate process, and wondered if this is something they need to bring back at a later meeting.

The City Manager clarified that he has just asked for Commission direction and no decisions will be made tonight.

Vice-Chair Nootz expressed concerns about this idea of waiving impact fees for a year, then the lawsuit is no good and have to adopt State Code anyway, now deed restrictions would be invalid, and they would have just waived impact fees for a year.

Chair Kahle thanked for Vice-Chair Nootz for her thoughts, and felt maybe it something they should wait on to see what the court decides.

Commissioner Schwarz expressed his thoughts on if he were to build an ADU he would wait knowing what is on the horizon, so he wouldn't have to pay the impact fees.

Commissioner Willich appreciates the City Managers experience with previous lawsuits. He realizes this lawsuit is coming from multiple groups in multiple cities across the State which gives him pause that they could be doing work that could be turned around.

Commissioner Lyons agrees very strongly with Vice-Chair Nootz that they should make sure development is paying its fair share of its impact on City services, but he is also excited to try and push through Chair Kahle's idea they have been discussing.

Vice-Chair Nootz stated it seems like they are talking about deed restricting ADUs similar to the PUD conversation. She would be interested in the information from staff.

Chair Kahle reminded that the City Manager is looking for direction from the Commission on this ordinance.

Commissioner Schwarz clarified they are wanting to bring back Ordinance 3046 with just SB245.

Chair Kahle clarified they want to bring back SB245 in the way it was previously discussed.

Commissioner Lyons would like to see the impact fee modification added.

Vice-Chair Nootz would like to see the less restrictive habitation requirement than Commissioner Lyons brought up, where it doesn't have to be the business owner.

Chair Kahle agrees with fellow Commissioners that she would like to see SB245 as discussed in the previous meeting.

E. CLOSED SESSION PURSUANT TO MCA 2-3-203(3) AND (4)(B) TO DISCUSS MATTERS OF BOTH PERSONAL PRIVACY AND LITIGATION STRATEGY.

Chair Kahle motioned to enter Closed Session second by Commissioner Schwarz. Unanimously approved.

(Starts at Video Mark 2:04:27)

8. City Manager Comment

The City Manager thanked the Commission for their time and thank all the applicants for the Consolidated Land Use Board. He reminded for folks not selected there is a vacancy on the Historical Preservation Commission.

9. City Commission Comments

Commissioner Willich thanked everyone for a great meeting.

Commissioner Lyons and Commissioner Schwarz also thanked everyone for a great meeting.

Vice-Chair Nootz thanked everyone who applied for the Consolidates Land Use Board.

Chair Kahle thanked Commissioners for having good hard conversations.

10. Adjournment

8:38pm Commissioner Lyons motioned to adjourn the meeting seconded by Commissioner Schwarz. Unanimously approved.

Calendar of Events

Supplemental Material