

**CITY OF COLUMBIA FALLS
MINUTES OF THE REGULAR MEETING
HELD APRIL 06, 2015**

Regular Meeting - Transact Routine Business

Mayor Barnhart called the meeting to order at 7:00 p.m. with roll call as follows:

PRESENT: Mayor Barnhart

COUNCIL: Karper, Petersen, Shepard, Plevel, Fisher, and Lovering

ABSENT: None

ROLL CALL

Also present were City Manager Nicosia, City Clerk Staaland, City Attorney Breck and Police Chief Perry.

Pledge of Allegiance

PLEDGE

APPROVAL OF AGENDA:

Mayor Barnhart requested a motion to approve the agenda. Councilman Plevel moved to approve the agenda, second by Councilman Petersen, and the motion carried unanimously.

**AGENDA
APPROVAL**

VISITORS/PUBLIC COMMENTS (items not on the agenda)

None

**VISITOR/PUBLIC
COMMENT**

CONSENT AGENDA:

Councilman Petersen made motion to approve the consent agenda noting all claims appeared to be in order, second by Councilman Lovering. Motion carried with Council voting as follows: YES: Fisher, Lovering, Petersen, Karper, Shepard, Plevel and Barnhart NOES: None. ABSENT: None.

**CONSENT
AGENDA
APPROVAL**

A. Approval of Claims \$ 71,520.70 - April 6, 2015

B. Approval of Payroll Claims - \$ 57,073.57 - March 27, 2015

C. Quarterly Report - \$17,452.55 - March 28, 2015

D. Approval of Regular Meeting Minutes - March 16, 2015

E. Approve Urban Forestry Grant Contract with DNRC and authorize City Manager to sign.

PRESENTATIONS:

Fish, Wildlife & Parks - Conservation Easements/Trumble Creek & Haskill Basin

Alan Wood with Montana Fish, Wildlife and Parks gave a brief update on the Trumble Creek and Haskill Creek conservation easements. Mr. Wood said Stoltze Land and Lumber Company would continue to own and manage these lands; the conservation easements would allow continued forest management and public recreational uses but limit future subdivision and development. Councilman Shepard said the Region One committee has discussed the project as well.

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PUBLIC HEARINGS/NOTICES:

A. Public Hearing:

Subdivision Preliminary Plat Condition Amendment: A request by Thirty Three Properties, LLC to amend Condition #13 of the preliminary plat approval received on October 21, 2013. The Plat was previously named Tamarack Heights and is now known as Mountain Watch. The property is located on Tamarack Lane and ties into the Meadow Lake area via Turnberry Terrace. The condition in question requires incorporation into the Master Meadow Lake Homeowners Association for road maintenance. The Master HOA declined incorporation so the applicant is asking for the condition to be deleted. The property is further described as Tract 6 of Section 6, Township 30 North, Range 20 West, P.M.M., Flathead County.

**PUBLIC
HEARINGS**

**Preliminary Plat
Condition
Amendment-
Mountain Watch**

City Manager Nicosia presented staff report CPP-13-01, amended, and Planning Staff recommended approval of amending the conditions and deleting Condition #13. Nicosia reported that the Planning Board unanimously approved deleting condition 13 as road maintenance was addressed in other conditions.

Mayor Barnhart opened the public hearing at 7:09 p.m.

Pete Glee, 100 St. Andrews Drive: Said the developers stated the Association declined them entrance into the HOA and that was not true. Mr. Glee would like Council to deny deletion of Condition 13.

Barb Riley, 494 St. Andrews Drive: Ms. Riley also requested Council deny the deletion of Condition 13. Ms. Riley agreed with Mr. Glee that Mountain Watch was not denied incorporation into the Meadow Lake HOA. She noted that the HOA involves more than just road maintenance. Ms. Riley said this will be the only phase that will not be in the HOA and if this is going to be a standalone subdivision, there are other questions that need to be discussed. Will they need an easement to come through the private subdivision? Did they meet the parkland requirement without Meadow Lake amenities taken into account?

Gabriel Hagg, Thirty Three Properties, LLC: Said he believes the same questions were addressed at the Planning Board meeting. Mr. Hagg said Turnberry Terrace is open to the public and the road is owned by the Mountain Watch subdivision. Mr. Hagg said he has every dime invested in this property and would like to see Condition #13 deleted as it is covered in other conditions.

With no further comments from the public, Mayor Barnhart closed the public hearing at 7:23 p.m.

Councilman Petersen said he did not hear a compelling reason to drop

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Condition 13, and does not understand why it would be a train wreck if it was to stay in place. Mr. Hagg said it would not be a train wreck but remains difficult when you are meeting with builders, investors and residents trying to arrange meetings with HOA Architectural Review Board (ARB) members that live out of town. Mr. Hagg stated the condition was placed there strictly for road maintenance. Petersen asked if part of the argument was to have more freedom of architect designs. Mr. Hagg replied no, but we need to get builders and investors to meet standards and arrange meetings with the ARB, which can be timely with some not living in the area. Mayor Barnhart said from what he understood the City Attorney has reviewed this and they do not have to join the HOA. City Manager Nicosia said that is correct. Nicosia added Mountain Watch is in compliance with the parkland requirements with 1.56 acres of open space. City Attorney Breck said Turnberry Terrace is their (Mountain Watch) road and Condition 13 comes down to road maintenance. Mountain Watch can adopt their own set of CC&R's. Mayor Barnhart asked if Mountain Watch elects not to be in the Meadow Lake HOA, will they be part of Meadow Lake? Mr. Hagg said membership fees and golfing privileges would be different from residents in the Meadow Lake HOA. Mr. Hagg said there are sub HOA's at Meadow Lake such as Meadow Lake Drive who has its own HOA. Ms. Riley said there are sub layers of neighborhoods and it is not uncommon to have sub HOA's. Meadow Lake Drive chose not to be a party to the Master Meadow Lake HOA.

Ms. Riley said the golf privileges and the license agreement do not go forward. The 25% discount on green fees does not apply to non-Meadow Lake residents. Mr. Hagg replied the residents can still join the golf course. City Attorney Breck said the land is owned by Thirty Three Properties, LLC not Meadow Lake, and there is nothing that requires them be a part of the Meadow Lake HOA. Breck noted that it sounds like the developer and residents are aware that they would not have Meadow Lake privileges. Breck said unless there is something else he has not looked at, he does not see how the City can require them to join the Meadow Lake HOA. Mayor Barnhart asked why Condition 13 was included in the first place. Breck said it was based on road maintenance. Mountain Watch can maintain their own road and use Meadow Lake road as an emergency exit as it is a public road. Councilman Petersen asked City Attorney Breck what his position was on Condition 13. Attorney Breck said it is not required as the road maintenance is taken care of through other conditions. Mayor Barnhart concurred with City Attorney Breck. Councilman Shepard asked Attorney Breck if the City can force the developer to join the Meadow Lake HOA. Attorney Breck said the developer can choose not to be in the Meadow Lake HOA. Councilman Karper asked Attorney Breck if it was legal not to have Condition 13. Attorney Breck replied correct unless Council considers it necessary to ensure road maintenance is completed.

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Councilman Fisher motioned to approve staff report CPP-13-01, as amended, as findings of fact, motion seconded by Councilman Shepard and the motion carried with all members voting in favor of the motion.

Councilman Shepard made motion to approve the Preliminary Plat Condition Amendment for Mountain Watch, second by Councilman Fisher with voting as follows. YES: Lovering, Petersen, Plevel, Shepard, Fisher, Karper and Barnhart. NOES: None. ABSENT: None.

UNFINISHED BUSINESS

None.

**UNFINISHED
BUSINESS**

NEW BUSINESS

A. Approve Subdivision Improvements Agreement and Security and authorize City Manager to sign.

**NEW BUSINESS
SIA and Security**

City Manager Nicosia said the document was reviewed by the City Attorney and Planner and staff recommends approval.

Councilman Shepard motioned to approve Subdivision Improvements Agreement and Security and authorize the City Manager to sign, second by Councilman Lovering, with voting as follows. YES: Lovering, Petersen, Plevel, Shepard, Fisher, Karper and Barnhart. NOES: None. ABSENT: None.

B. Approve Final Plat Mountain Watch – Staff Report CFP-15-01

Councilman Plevel made motion to approve Staff Report CFP-15-01, second by Councilman Petersen with Council voting as follows. YES: Petersen, Plevel, Shepard, Fisher, Karper, Lovering and Barnhart. NOES: None. ABSENT: None.

**Final Plat of
Mountain Watch-
Staff Report CFP-
15-01**

C. Authorize submittal Public Comment Letter-CFAC

City Manager Nicosia said the EPA opened the 60-day public comment period on the proposed National Priority Listing status of the CFAC site.

Councilman Shepard said he understands Senator Zinke's opposition to the listing because of timing and money but also understands the need to assure the public that the site will get cleaned up. Shepard asked if we have we heard from Senator Daines. Nicosia replied that while the City has not received any formal comments from Senator Daines, he did send an aide to the area to gauge public sentiment. Mayor Barnhart asked the listing prevents Glencore from stepping up and beginning a cleanup. Nicosia said that the DEQ and EPA officials reviewed the process in December and noted that the process can proceed quickly with company participation and willingness or it can be drawn out for years. Councilman Fisher asked if there have been similar areas that required this type of clean up. Councilman Shepard replied yes there have been a few. Rick

**CFAC Public
Comment Letter**

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Hanners with the Hungry Horse News added he knew of approximately 4 or 5 that have been cleaned up.

Councilman Shepard motioned to authorize submittal of the Public Comment Letter-CFAC, second by Councilman Lovering and the motion carried with all members voting in favor of the motion.

RESOLUTIONS/ORDINANCES:

A. Resolution #1695 - A Resolution of the City Council of Columbia Falls, Montana Approving the Final Plat of Mountain Watch Subdivision, Known as Tract 6 of Section 6, Township 30 North, Range 20 West, P.M.M., Flathead County, Montana.

**RESOLUTION
#1695 Final Plat of
Mountain Watch**

Councilman Shepard made motion to approve Resolution #1695, second by Councilman Fisher with Council voting as follows. YES: Fisher, Karper, Lovering, Petersen, Plevel, Shepard and Barnhart. NOES: None. ABSENT: None.

REPORTS/BUSINESS FROM MAYOR & COUNCIL:

a. Land Use Committee Report

Councilman Fisher reported they had a positive meeting with Mr. Cahill last week. Fisher explained there is a piece of the trail that is closed off by the Cahill's. Fisher said the conclusion is Mr. Cahill has asked the trail be maintained more like a park, closed at night, and that the trail be moved to below the high water mark. Mr. Cahill would like to see better signage and waste bags for dogs. Fisher said Mr. Cahill wants the trail open but does not want his property disrespected. Councilman Plevel added the Cahill's just want to have peace and quiet and that the trail be moved to below the high water mark. Nicosia added that she has talked with the surveyors and they recommend meeting on the trail with the Cahill's as the high water mark can be subjective. Mayor Barnhart asked the Land Use Committee if they have recommendations for Council. Councilman Karper said he would like to move forward and try to negotiate with the Cahill's to keep the trail open. Attorney Breck stated Lot 17 does not go to the river however, the new lot 5 does. Plevel said Mr. Cahill is willing to give the city an easement while protecting their property. Fisher said the stream access laws may also come into effect when the water is at high water mark. Attorney Breck said abutments and roads are the proper point to access. They can access between high water mark and low water mark.

**REPORTS FROM
MAYOR AND
COUNCIL**

Councilman Lovering asked was it really intended to be used just for a trail. Councilman Karper replied yes. Councilman Petersen asked if there was a point in the trail where a person can access the river. Attorney Breck replied yes on a public road or stream access. Petersen asked if a property owner could extend an easement to walk to the river access. Attorney Breck said

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there is nothing preventing the public from walking between the high and low water mark; they can walk along the river. Breck then added nobody can just walk along the property without an easement as the trail is on private property and requires owner permission.

Eric Lovering, 128 6th street West: Said there are already laws in place. At the low water mark you can access the river. Mr. Lovering said at the low water mark he can go down to Lot 5 and camp and build a fire but cannot above the high water mark. Lovering said Montana has some of the best stream access laws in place. There is no reason for the Cahill's to restrict public access to the river. Mr. Lovering suggested getting the Fish, Wildlife & Parks involved. Lovering reported that the water level was currently at 7 feet and flood stage is 13 feet, setting the high water mark. City Attorney Breck noted that the ordinary high water mark is not the same as flood stage. Councilman Plevel said she disagrees as she owned river front property and the ordinary high-water mark and flood stage are not the same.

Shane Hutchison, 66 Cedar Pointe Loop: Said he agrees with Eric Lovering and Attorney Breck is right about the high water mark. Currently there are no signs posted. Mr. Hutchison said he and his family use the trail daily. Mr. Hutchison believes the stream access law allows him to walk on the trail.

Jerimiah Martin, 120 Cedar Pointe: Mr. Martin said they access the trail from the Cedar Pointe side. Mr. Martin said the ordinary high-water mark and the signs are under water at this time. The portion of the closed trail is flagged off right down to the river.

Hillary Hutchison, 66 Cedar Pointe Loop. Read in the newspaper that the City will be enforcing the high water mark. Will the police be called if our kids are there walking on the trail. Ms. Hutchison has noticed cameras being used, which she thought was a good idea. Ms. Hutchison said they access through Cedar Pointe and Red Bridge. Ms. Hutchison asked how the home owners know where we access the trail. On the closed portion of the trail there are logs pulled down from the property to the river, which she believes is illegal.

Councilman Fisher said we can have Police and the City Attorney work with Fish, Wildlife and Parks. Nicosia said there is an easement in place that specifies the public's use of the property. She reported that the Attorney advised them at the Land Use Committee meeting, that any changes to the easement would go through a public hearing process.

Councilman Petersen said there are two issues at hand here, he does not like to hear our citizens are being harassed when they are below the high water mark. Mayor Barnhart concurs with Fisher and believes the Fish, Wildlife and Parks may be able to address our concerns.

Attorney Breck said Mr. Cahill can put up no trespassing signs but the no fishing or hunting signs may not be enforceable. The Cahill's own the property down to the low water mark. The Stream Access law is an overlay

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that provides rights for recreation but simply walking or hiking require owner's approval.

COUNCIL REPORTS:

Councilman Fisher thanked the Police Department for pulling over traffic violators.

Councilman Shepard reported that he attended the Town Hall meeting held by Senator Zinke. The CFAC cleanup was a topic of discussion.

Councilman Lovering requested to have a list of businesses in Columbia Falls because she doesn't know all of the businesses in the City. Lovering said there was an article in the Beacon about affordable rental spaces and asked what we can do as a city. Councilman Shepard suggested talking to them. Mayor Barnhart said the City Manager does an excellent job talking to potential business owners to come to Columbia Falls. Council also began discussing the empty or unused buildings in the downtown area. Nicosia said we can get art work or displays to make vacant buildings look open and more attractive. Councilman Lovering asked if businesses are violating the code and just storing items in the business area what can the City do? Nicosia said it is a very grey area as the City cannot make someone open a business or rent their space.

Councilman Karper said he was asked about the people painting the curbs and misrepresenting the City. Chief Perry said they are legal and do have a City business license but he does not like their business practices and has taken several complaints. Chief Perry made it clear to anyone asking that the City does not require having house numbers painted on the curbs.

Mayor Barnhart said he drove by the Wellness Center to have a look at Anne Scott-Markle's parking concerns. Her question was can she use angle parking on both sides of the street and still have enough room for traffic. Mayor Barnhart believes the City should talk to the owner about the sidewalk and have Ms. Markle pay for a portion of the sidewalk or street paving.

CITY ATTORNEY:

City Attorney Breck wanted to make sure he addressed the stream access laws thoroughly for Council and the public.

**CITY ATTORNEY
REPORT**

CITY MANAGER:

Nicosia updated the Council on the current status of legislative items. Nicosia also reported that MMIA sent a letter to MT DOT advising them that the City is not responsible for the sink hole repairs or water main relocation. Nicosia also updated council on the public works projects. She reported that the 911 Center had sent out their proposed 2016 FY budget with a 6.02% increase in the City's contribution. The board meets on Wednesday to discuss.

**CITY MANAGER
REPORT**

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A. INFORMATIONAL CORRESPONDENCE - List available for Review

**MISC
CORRESPON-
DENCE**

ADJOURN: Upon motion duly made by Councilman Fisher and seconded by Councilman Plevel the meeting adjourned at 9:30 p.m.

ADJOURN

Mayor

ATTEST:

City Clerk

APPROVED BY COUNCIL ACTION: April 20, 2015