

**REGULAR COUNCIL MEETING April 09, 2019
6:00 p.m.**

CALL TO ORDER

The Regular Council meeting was held Tuesday, April 9, 2019, in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana. Mayor John Hollowell called the meeting to order. Council Members present were Brant Kassner, Dwayne Andrews, Ken Gardner, John Uden, Rick Huber, Jeff Erlenbusch, Kathy Wilcox and Susanne Galbraith.

Also present were City Attorney Dan Rice, Public Works Director Scott Gray, Police Chief Doug Colombik, Flood Plain Administrator Sam Malenovsky, Public Utilities Director Tom Speelmon, City Clerk Lorrie Pearce, and Deputy City Clerk/Minute Recorder Mary Roberts.

PLEDGE OF ALLEGIANCE

Mayor Hollowell led the Council in the Pledge of Allegiance.

APPROVAL OF COUNCIL & COMMITTEE MINUTES

City Council Minutes: 3/26/2019

** *Councilperson Uden moved to approve the minutes of the Regular Council Meeting of March 26, 2019, and seconded by Councilperson Erlenbusch. The motion passed by unanimous consent, 8-0.*

SCHEDULE MEETINGS

The following meetings will be held in the City Hall Conference Room:

- *Human Resources Committee April 16, 2019 at 6:00 pm*
- *Finance Committee April 18, 2019 at 6:00 pm*

REQUEST OF CITIZENS & PUBLIC COMMENT

Bill Eckart, 1415 North 6th Street, owner of Eckart Trucking stated that he needed authorization to build a 40 by 70 foot building attached to a pre-existing building on his property. Mayor Hollowell advised him to meet with the Flood Plain Administrator Malenovsky regarding his request. Councilperson Huber suggested a Special Council meeting to speed the process in support of economic development. Mayor Hollowell agreed that a Special Council meeting could be arranged.

Rob Shipley, 603 South 4th Street, stated that he would be incarcerated on the 9th of May for one hundred and eighty days and be fined \$500, and believes it to be illegal. He accused Jeff Noble, Deputy City Attorney of “stealing” a jury trial from him eleven times. He believes that Deputy City Attorney Jeff Noble has lied to the Judge, Police Chief, City Attorney, and all public about his right to have a jury trial. He declared to City Council and all public that he will appear on May 9th at 2:00 p.m. in City Court with 12-18 of his peers to demand a jury trial. Mr. Shipley then promised all people that his property will be cleaned by the 20th of April and no further actions would be necessary. City Attorney Dan Rice and Mayor Hollowell agreed with him that no further action would be necessary after April 20th, if he followed through and cleaned it up.

APPOINTMENTS

None

PROCLAMATIONS

None

STAFF REPORTS

- A. Director Gray wanted to let everyone know that they have a short crew and they are getting to the potholes and frost heaves as soon as they can. He asked that everyone please have patience as this year's frost was really bad causing frozen sewer and water lines. He added that there will be Aquaphalt™ used this year to repair smaller potholes that will flex with the temperature and moisture changes.
- John Goff, 249 Sunset Drive, wanted to thank Director Speelmon and Director Gray for all their work fixing the streets. Then he asked if they were planning to repair school areas first, to which Director Gray replied yes.
 - Councilperson Uden asked when the swimming pool was expected to begin filling. Director Gray replied that it was expected to start filling on Monday, April 15th.
- B. Administrator Malenovsky wanted to remind everyone that on Tuesday, April 16th at the Town & Country Club from 9-12 pm DES and Dispatch Supervisor Lyne Anderson will put on a tabletop exercise regarding public communication. Following at 2:30 pm until finished will be a Flood Awareness Day discussion which is open to the public.

CITY COUNCIL COMMENTS

- A. Councilperson Andrews commended the efforts of the Public Works Department for their quick response to the frost heaves and road repairs.
- B. Councilperson Gardner mentioned that he had a town contractor call him inquiring about whether or not a business license is required to work here in town even if they are not a contractor. He wanted to verify the procedure to obtain a business license with council. Mayor Hollowell answered yes, and one is available through City Treasurer Moorehead.
- C. Councilperson Galbraith gave a shout out to the VA long-term care facility. They went through a surprise inspection and were one out of seven without any infractions.

MAYOR COMMENTS
COMMITTEE RECOMMENDATIONS

BID OPENINGS
BID AWARDS-
PUBLIC HEARINGS

- A. **Appeal of Floodplain Permit Denial on Ellis Rentals, located at 900 Albert Ave. lots 37 & 47**

Mayor Hollowell opened the hearing and called for comments from proponents.

- Mary Jo Kramer, 900 Albert Drive #22, said she had lived in the court for almost 23 years and noted that Mr. Ellis wants to bring in some new homes. She thinks that it would be a nice improvement, but instead it seems that he is being penalized. She asked the council to work with him instead of trying to put him out of business, which is what could eventually happen.

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- Jacie Smith, 511 Garland Street, says she used to live in the trailer court. It is one of the nicer courts in town. She gave her opinion that the trailers would look bad raised up and present more risk factors with heights and children. She stated that her child was affected by drugs when she lived in the area. Bringing in newer, nicer homes would attract better renters; better people. Although, bringing in new trailers would pass the expense onto the renter. Some of the renters are on fixed incomes and would not be able to afford it.
- John Goff, stated that as owner of Milestone Property Management he wants to see nicer, newer trailers brought in. He knows there is limited income for the residents of the trailer court. The increase in elevation of the trailers would pose extra problems for the residents, especially the elderly and those in wheelchairs because of the space and grade of ramp needed to meet handicap accessibility standards. Rent increases could be imposed which would offset costs and bring in people with higher levels of income. It would increase the longevity of the property.
- Bill Kuester, 900 Albert Drive #55, expressed concern about the elevation of other trailers affecting the livelihood of his property as he lives on the creek edge (city storm water ponds). Water would shed onto his property as he would be downhill from the other trailers forcing him to raise his, but he cannot afford to do so. He thought it would also be an eyesore for everybody.

Mayor Hollowell again called three times for proponents, then opponents three times and hearing none, the hearing was closed.

B. **Floodplain Variance Application re: Variance Exception on Ellis Rentals, located at 900 Albert Ave. lots 37 & 47**

Mayor Hollowell called three times for proponents, then opponents three times and hearing none, the hearing was closed.

UNFINISHED BUSINESS

A. **Appeal of Floodplain Permit Denial on Ellis Rentals, located at 900 Albert Ave. lots 37 & 47**

** *Councilperson Galbraith moved to approve the Appeal of Floodplain Permit Denial on Ellis Rentals, located at 900 Albert Ave. lots 37 & 47 and seconded by councilperson Gardner.*

Flood Plain Administrator Malenovsky explained that the permit was denied because applicant wanted to elevate the trailers to an elevation that was below the flood code requirement without a variance. The City elevation requirement is base flood elevation plus two feet above grade.

City Attorney Rice explained that the council is being asked to either concur with the Flood Plain Administrator's decision to deny the permit, or to overrule her decision, and grant the permit without a variance.

Attorney Chris Gray, Gray Law Office, PO Box 1065, Bozeman, MT 59771, Attorney on behalf of Mr. Ellis, explained that he and Mr. Ellis had given the City Council a lot of information. Ellis Rentals is asking that

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the council use the flood plain regulations as intended to grant a permit for the entire Westwood Mobile Park as it stands today. They are asking Council to grant the permit in accordance with Montana law after the Flood Plain Administrator had denied their application. The trailer park contains specifically 70 mobile home lots today, and they are charted out along with the park's roads, water/sewer, and drainage facilities. They are using Miles City's regulations to request a floodplain permit for the entire park, including all of the elements within the park. The permit is for non-conforming uses or artificial obstructions, in other words a permit for grandfathered rights of the entire park. The staff report for the appeal from the Flood Plain Administrator did not accurately portray the original application. Their original application was for the park in its entirety; however the February and April staff reports only show two lots on the application. He wanted to make it clear that the application is for the park in its entirety, including all of the grandfathered trailers and lots with site and size locations, and all other elements within the park. They disclosed that included in that right is the ability to repair or replace the mobile homes in their current condition, at their current size, in their current scope as is. They made it very clear so that there were no surprises, no enforcement action, utility conflict, or anything of the sort later. Attorney Gray quoted that the Flood Plain Administrator agreed that the manufactured mobile home park or subdivision is preexisting and allowable under the above listed facts as nonconforming. Since Mr. Gray and Mr. Ellis agreed with that decision, they concluded that the Flood Plain Administrator had stated that the entire mobile home park is permissible. Once this agreement was reached, the Flood Plain Administrator went on to state that if the mobile homes were replaced, altered, or substantially improved that another floodplain permit would be required. Attorney Gray proceeded stating that law is law in Montana. There is a land use regulation that states it cannot be enforced against mobile homes, or mobile home sites. They believe that Flood Plain Administrator Malenovsky incorrectly concluded that the application for the permit was denied based on the replacement of the mobile homes. They believe it was an unlawful misapplication process because it directly conflicts with Montana Supreme Court law. Montana law states that mobile homes are a vested property if they were there before the flood plain regulations were in place. The repair and replace is protected by Montana law and cannot be denied on these grounds alone.

Councilperson Gardner questioned whether Montana Supreme Court law, Miles City regulations, or Federal regulations were supposed to be followed. He believed that Federal regulations or Federal Emergency Management Agency's laws trumped everything else.

City Attorney Rice clarified that Federal regulations only require 36 inch elevation for a mobile home even if in floodway. Westwood Mobile Home Park is compliant with Federal law. Montana State regulations require an elevation of 2 feet above base flood elevation, which is 8 foot elevation in Miles City.

Flood Plain Administrator Malenovsky stated that floodplain Federal code requires permits for all new constructions including manufactured homes. Every time a structure is replaced within the flood plain, a flood plain permit is required. That is how it is stated by Federal code, State code, and the City code of ordinances.

Attorney Gray stated that Montana Supreme Court had already ruled on grandfather law and that Montana State regulation did not carefully tailor to mobile homes regarding that Montana Supreme Court ruling. Montana State regulation is in violation of the Federal law

pertaining to vested rights and mobile homes.

After a long discussion about which regulations need to be applied for this particular case and what the correct elevation should be based on standards of use along with regulation, majority decided that Ellis Rentals did meet Federal regulations, but if they granted a permit without a variance and allowed the 36 inch elevation, it could affect the Community Rating System for Miles City. The Council agreed that they need to look out for the best interest of all residents of Miles City.

** *Councilperson Uden called for question and seconded by Councilperson Wilcox. The motion passed unanimously.*

** *On a roll call vote, the original motion failed, 5-3. With councilpersons Gailbraith, Uden, Kassner, Wilcox, and Erlenbusch voting nay.*

B. Floodplain Variance Application re: Variance Exception on Ellis Rentals, located at 900 Albert Ave. lots 37& 47

** *Councilperson Andrews moved to approve the Floodplain Variance Application re: Variance Exception on Ellis Rentals, located at 900 Albert Ave. lots 37& 47 and seconded by Councilperson Galbraith.*

Attorney Gray opened the discussion by asking the Council to abide by Federal regulations as to strapping requirements and tie down of the structures. Administer the regulations to the **entire** mobile home park. He went on record that the staff report from February was different than the original application and did not show the entire mobile home park, but only two lots within the mobile home park. He stated that they were reserving all of their rights, not waiving any rights that day. He said that there are approximately sixty-five people that would be affected by this variance decision.

He asked that Council to not use the variance criteria, but to use the exception to the variance criteria in the regulation in Section 12-59 part two. He asked Council to recognize the 70 or so lots at Albert's Mobile Home. He stated that each lot is a half-acre or less, on continuous land around each other, and all are below base flood elevation. These exceptions are directly in the Federal regulations.

Regarding lot size, Attorney Gray passed out paperwork from the Montana Department of Health and Human Services and Montana Department of Environmental Quality showing trailer court regulations and how trailer parks are licensed and how they operate from a public health standpoint. The Montana Subdivision and Platting Act states that any trailer court constructed after July, 1973 must meet the subdivision requirements. Subdivision is defined as an area, regardless of size, that provides multiple spaces for rent. He pointed out that this trailer park was created and licensed in 1976 by a government agency stating that there are approved lots there. One of the letters dated 1998 states that lot sizes as indicated on the plans filed with the county clerk will not be further altered without approval. He said that the lot sizes were approved in 1998 when four additional lots were created in Westwood Estates Trailer Park. The mobile home lots in the park have been recognized as a subdivision of land, and are considered lots within a mobile home park in accordance with Montana law.

Attorney Gray recognized that the mobile home park is in the floodplain and the level of elevation is an issue. He stated that after the Council recognizes that the trailer park meets the variance criteria for the

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exception, then the exception should be applied and relief could be granted for the two feet above flood elevation State requirement for the entire park. Federal Emergency Management Agency regulations state that the foundation must be at 36 inches above existing ground elevation. At the federally regulated elevation it would maintain affordability and maintains access for the residents of the trailer park. Ellis Rentals is trying to get to a point where there is not a variance application every time an owner wanted to replace their mobile home for ten years. Attorney Gray also pointed out that Ellis Rentals agreed to accept potential storm water runoff in the park and had continued to pay maintenance of the lift stations and pay at least \$4,000 in street maintenance fees.

Flood Plain Administrator Malenovsky stated that according to the Montana Cadastral map the trailer park consists of only two lots. It was brought to Sam's attention by another Flood Plain Administrator that there is no actual subdivision plat on file. City Attorney Rice discussed that in his opinion there is no set definition of a "lot" anywhere in federal regulation, but the land is divided into two or more parcels for rent. City Attorney Rice stated that because it is divided within itself into individual spaces offered for rent it is considered a subdivision/mobile home park. Based on the information provided it was debated whether or not to grant the variance exception for the park in its entirety or each lot individually, what the elevation should be, and if they meet the 10 criteria for the variance exception.

After a lengthy conversation, it was decided that a variance exception could be granted to the entire park for a span of ten years as Attorney Gray had requested, with certain conditions attached. These conditions would be that the replacement of any of the seventy trailers would meet the thirty-six inch requirement plus a one foot freeboard, or forty-eight inch elevation, on both trailer and utilities, permits would still be required for each individual trailer, the replacement trailers would be the same size and structure as the one being replaced, and the City of Miles City reserves the right to make changes to the blanket variance if laws or other regulations change. Attorney Gray and Mr. Ellis both agreed with most of the terms, except the elevation level.

It was then brought up that if a variance was granted with elevation at thirty-six inches instead of the staff recommended forty-eight inches, it could cause the Community Rating System in our community to go from a class 9 to a class 8, which would raise flood insurance rates by 5% for the entire city. No member of the Council was comfortable with the possibility of flood insurance rates increasing. While this discussion was taking place Attorney Gray requested a continuation and offered to take the burden off of the City of Miles City and figure out whether or not the Community Rating System could be affected by granting the variance in this particular case, with full documentation of the results given to the Flood Plain Administrator.

**** Councilperson Uden moved to postpone Floodplain Variance Application re: Variance Exception on Ellis Rentals, located at 900 Albert Ave. lots 37& 47 until July 9th, 2019 and seconded by Councilperson Wilcox. On a Roll Call Vote the motion passed 8-0.**

C. Approval of designating a one-way street on Dickinson Street from South Montana to South Lake Street

**** Councilperson Andrews moved to approve the designation of a one-way street on Dickinson Street from South Montana to South Lake Street and seconded by Councilperson Huber.**

Councilperson Wilcox stated that the letters from the residents stated that they did not want the street turned into a one-way and that they

see no point in it.

Director Gray declared that a majority of the residents did not want it, but they did suggest speed limit and/or yield signs might work. He informed the Council that he had already put up temporary fifteen mile an hour speed limit signs and yield signs and suggested that they be left up for a period of time to see how it works.

**** The motion failed 6-2, with Councilpersons Uden, Kassner, Wilcox, Galbraith, Gardner, and Huber voting no.**

NEW BUSINESS

A. RESOLUTION NO. 4243- A Resolution Approving Terms for a Commercial Loan Agreement With the Montana Community Development Corporation, For Purchase of a Fire Training Building

**** Councilperson Galbraith moved to approve the resolution number by title only, seconded by Councilperson Erlenbusch.**

Councilperson Gardner requested to know if the amount would change, to which City Clerk Pearce replied no, it would be a 3% monthly payment that would stay approximately the same as the current payment.

**** On a Roll Call vote Resolution number 4243 passed 6-2, with Councilpersons Uden and Kassner voting nay.**

B. ORDINANCE NO. 1331- (First Reading) An Ordinance Amending Section 23-27 of the Code of Ordinances of Miles City, Montana, With Regards to the Fluoridation of Municipal Water

**** Councilperson Huber moved to approve Ordinance no. 1331, by title only, and seconded by Councilperson Kassner. On a Roll Call vote Ordinance number 1331 passed unanimously, 8-0.**

C. APPROVAL OF MARCH CLAIMS

**** Councilperson Andrews moved to approve the March claims, seconded by Councilperson Galbraith and passed unanimously, 8-0.**

ADJOURNMENT

**** Councilperson Uden moved to adjourn the meeting, seconded by Councilperson Galbraith and passed unanimously.**

The meeting was adjourned at 9:28 p.m.



John Hollowell, Mayor



Mary Roberts, Deputy Clerk