



City of Sidney, MT
City Council Regular Meeting 11-20-23
November 20, 2023 6:30 PM
115 2nd Street SE | Sidney, MT 59270

The City Council meetings are open to the public attending in person, with masks encouraged when social distancing cannot be accomplished. If the public does not wish to participate in person, they are also invited to participate via a Zoom meeting. You can participate via phone:

Meeting ID: 713 808 5898 Passcode: 4332809

Call: 1-346-248-7799

1. Call to Order

Mayor Norby called the regular meeting of the Sidney City Council to order at 6:30pm.

2. Pledge of Allegiance

The Pledge of Allegiance was stated by all present.

3. Aldermen Present

Christensen, Godfrey, Stevenson, Rasmussen and DiFonzo. Absent: Koffler

4. Correction or Approval of Minutes

a. November 6th, 2023 City Council Meeting Minutes

Clerk/Treasurer Chamberlin stated she amended to minutes to reflect Alderwoman Christensen being absent.

Motion was made to approve.

Motion made by Alderman DiFonzo, Seconded by Alderwoman Rasmussen.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

b. November 16th, 2023 Water/Sewer Committee Meeting Minutes

Motion was made to approve.

Motion made by Alderwoman Rasmussen, Seconded by Alderwoman Godfrey.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman

Godfrey, Alderwoman Christensen

5. Visitors

a. Other Visitors:

Shane and Kim Usselman, Jessica and John Hoon, Janelle and Troy Jensen, Everett Jensen, Don & Val Franz, Carla Delp, Bruce & Nancy Beiswanger, Ron Barone, Sandy and Bill Fink, Carla Berg, Jaymie & Sara Romo, Jon Skinner, Brett Allen, Ray Johnson, Anthony Thiessen, Joe Kauffman (Big Sky Surveying), Jordan Mayer (Interstate Engineering), Kevin Clausen, Brennan Gorder, Dick Sult, Greg Hitchcock (Sidney Herald)

6. Public Hearing

a. Subdivision Regulations Update

Mayor Norby called the public hearing for the Subdivision Regulation Update to order at 6:31 pm.

Planner Sanderson stated these updates are required due to legislative changes during the 2023 legislative session. He stated the biggest changes where to the phased subdivision approvals, to the lot count from 1973 to 2003 mostly for minor subdivisions, a new exemption was added for family transfer within platted subdivisions, the expedited review portion, and variances can now be considered at the same time for subdivision. He stated the Planning Board reviewed and held a public hearing and have recommended approval. He stated the recommendation for the family transfer from staff and the Planning Board was for 2-years but the governing body can waive that requirement at any point for cause. He stated there was public testimony for this at the public hearing in front of the Planning Board, asking for no hold for family transfer, but the board still recommended 2-years.

Mayor Norby called for any opponents, three times, with none coming forward.

Mayor Norby called for any proponents, three times, with no coming forward.

Mayor Norby closed the public hearing for the Subdivision Regulation Update at 6:36 pm.

b. Hilltop Shop Zoning Change Request from B-2 to B-1

Mayor Norby called the public hearing for the Hilltop Shop Zone Change to B-1 to order at 6:37 pm.

Planner Sanderson stated the Zoning Commission recommendation, with it being a 2 to 2 vote and one abstain, was a denial per subdivision regulations. He stated the request is for Hilltop Shop, with historic industrial use, is to convert to B-1 and there was lengthily discourse and public comment at the Zoning Commission meeting including 22nd Avenue not being sufficient, impacts on neighborhood, and lack of knowledge on subsequent sales for the property. He stated this property is non-conforming for its current zoning by being storage and it's use is protected but any

change of use must come closer to compliance with the zoning. He stated the property was annexed with the non-conforming use.

Mayor Norby called for any opponents, with the following coming forward:

1. Jessica Hoon stated her property is next door and they have dealt with the excessive traffic with a previous business and the risk of a business not wanted in the middle of the neighborhood going in.
2. Anthony Theisen stated he as attend the last 2 meetings on this and with the 12-point standards he does not feel this change will be advantageous to the neighborhood. He stated item number 2 of the staff report, zoning designed to lesson congestion of streets, states this change might have a detrimental effect on 22nd Avenue. He stated that road is used by pedestrians frequently and the amount of traffic does not need to be increased. He stated the B-2 zoning shall accommodate large businesses along major corridors, most of which currently being on Central and West Holly and he does not feel 22nd Avenue is suitable for what is being proposed. He stated continuing with the 12-points, number 11 in the staff report, value of buildings, with changes in business zones the internet estimates up to 10-20% decrease and number 12, impacts of certain land uses stretch beyond land boundaries, he feels this change would create a major impact in that area especially with the businesses allowed in B-1 zoning.
3. Carla Delp stated she owns property in the area and agrees for the same reasons given previously.
4. Bruce Beiswanger stated he is opposed because of children who ride bikes and pedestrians on 22nd Avenue. He stated there is to much truck traffic on that road currently, especially coming down Red River. he stated they are scared with what could change with future sale of the property. He stated it has been established that 22nd Avenue is a woefully inadequate .
5. Carla Berg stated she is opposed.
6. Sarah Romo stated she is opposed.
7. Don Franz stated he is opposed.
8. Don Barone stated he is opposed.
9. Kim Usselman stated she is opposed.
10. Dick Sult stated he is opposed.
11. Brett Alan stated he is opposed.
12. Nancy Beiswanger stated she is opposed.
13. Bill Fink stated he is opposed.
14. Sandra Fink stated she is opposed.

15. John Hoon stated he is opposed.

16. Val Franz stated she is opposed.

Mayor Norby called for any further opponents, three times, with no more coming forward.

Mayor Norby called for any proponents, three times, with the following coming forward:

1. Mr. Troy Jensen provided the City Council with maps of the area and stated the property in question is approximately 4-acres directly on 22nd Avenue that has a shop and a trailer house. He stated the trailer house has been there for a very long time and they purchased the property in December of 2011 when it was still in the county. He stated in 2012 they received a building permit to build the shop by the City of Sidney and Richland County and it is used for a land survey business and had a renter that provided oil field services previously. He stated in 2015 when the annexation process started they wanted the zoning to be CLM and the City Planner at the time stated that zone makes sense and at following meetings the Planning Board changed the zone from CLM even though the use never changed. He stated he is not sure why they chose B-2, which is the only properties in the area with that zoning and the use does not match the zoning code, which allows a grocery store, restaurant, medical offices, funeral homes, barbershop, and daycare but not a shop/warehouse. He stated he recognizes the concerns with 22nd Avenue as he lives in that area also. He stated this request is to change the zone to fit the current use, B-1, which allows retail, sales and service. He stated the property is currently listed and has 3 proposed buyers. He stated depending on which company purchases, they have 2-5 employees and they drive pick-up trucks. He stated 2 of them provide services to the oil field, which is not a bad connotation, with no semi's only pick-up trucks. He stated the 3rd business provides a service to homeowners and also drive pick-up trucks with even less employees, they just need the shop. He stated all of these require B-1 zoning. He stated the B-2 zone should not have been an island and it should have been zoned the same as the properties to the north, which is B-1.

2. Janelle Jensen stated she is a member of Hilltop Shop and she is a proponent. She stated the land was purchased in 2011 and built the shop with permission by building permit number 2012-70. In 2015 the annexation process began with the ending zone of B-2 even though they had hoped for CLM. She stated during the annexation public hearing it was stated existing buildings and their use could remain as is and be grandfathered in and nothing has changed for this property. She stated Planner Sanderson recommended approval of B-1. She stated they do not have plans to build on this property nor do any purchasers and if they do they would have to go through the building permit process. She stated she agrees there are many allowed uses in B-1 she has no desire to be on that property now or in the future such as: liquor store, sales off premise alcohol, medical, bar, restaurant, convenience store, automobile washing, theaters, hotels and motels, exercise clubs, veterinary clinic, and laundry facilities. She stated the only allowed use that fits is retail sales and service and warehouse services. She stated they do have 3 lots adjacent and touching their property that is zoned B-1 with several more just south.

Alderman Godfrey asked if the lots are aggregated and Clerk/Treasurer Chamberlin stated there is two separate lots. Alderman Rasmussen asked if the properties to the north of the property in question are zoned B-1 and if they touch the property in question and Mr. Jensen pointed out on the map the location of the current B-1 properties.

Mayor Norby called for any further proponents, three times, with no more coming forward.

Clerk/Treasurer read into the record 2 emails from Kathy Johnson and Camille Clausen in opposition that were emailed late the night before the zoning board and not discovered to read into the record for that meeting. She also read into the record a letter of support of the zoning change from Corey Wieland.

Mayor Norby closed the public hearing for the Hilltop Shop Zone Change to B-1 at 7:02 pm.

7. Mayor Norby

a. 2023 Shop Small Proclamation

Mayor Norby read the 2023 Shop Small Proclamation out loud.

Motion was made to approve.

Motion made by Alderman Godfrey, Seconded by Alderman Rasmussen.

Voting Yea: Alderman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderman Godfrey, Alderman Christensen

8. Committee Meeting Work

a. Water/Sewer Committee Meeting-200,000 Gallon Water Tank Lining Project

Alderman Rasmussen stated the Water and Sewer Committee met and reviewed the 200,000 Gallon Water Tank Project and the request for approval of substantial completion and pay application 2. She stated because the project went over the contract time by 30 days, they discussed assessing liquidated damages that would be withheld from pay application 2 and off set the increase in engineering costs, which were originally contracted for \$8,500 but will not be closer to \$53,000. She stated it was the recommendation of the Water and Sewer Committee to approve pay application 2, withholding \$45,500 in liquidated damages and releasing the retainer.

b. Water/Sewer Committee Meeting-BDS Proposal

Alderman Rasmussen stated the Water and Sewer Committee reviewed the request of City Staff to expand the use of the Billing Document Services to include the credit card portal and a call-in payment system. She stated with this change, the credit card fee rate would not change, but the City would have to pay the cost for the online payment processing fee, which would be dropped from 3.5% to the 1.45% that the other credit card processing fees are. She stated it was their recommendation to approve this change. Clerk/Treasurer Chamberlin stated after the Water

and Sewer Committee meeting, she and Deputy Clerk/Treasurer Schmierer looked more into the costs for the call-in payment system and since the cost would be the credit card processing fee of 1.45% and a \$1.50 charge per call, they do not want to pursue that system.

Motion was made to approve the switching of the credit card processing to Billing Document Services and the City pay for the processing fee of 1.45%.

In discussion Mr. Barone stated they have been in their property since 2009 and has never been approached to get on City Sewer and PWD Hintz stated there is no sewer available on Red River Lane and the neighborhood could bring the utility to them through an SID. Alderwoman Rasmussen asked what that process would be and he stated it would be an SID and they could contact him for more information. Mr. Barone stated it would be nice to have it connected should they ever sell the property.

Motion made by Alderwoman Rasmussen, Seconded by Alderman DiFonzo.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

c. Park and Recreation Committee: South Meadow Park Equipment

Alderman DiFonzo stated the Park and Recreation Committee met prior to the Council meeting to discuss the South Meadow Park Equipment installation. He stated there was conditions agreed to at previous meeting that were reviewed with adult softball who purchased the equipment. They are wanting to be careful on the location of the equipment so it is not a hazard and it was decided the previous agreement will be followed but with the location, especially with the water line location, PWD Hintz will draw up a schematic for the location with the installation this fall but complete by the 2024 season.

Mrs. Berg asked about lighting for the park and Alderman DiFonzo stated the equipment will be installed to accommodate the parents for the ball games and it probably wont be used at night. Alderwoman Rasmussen stated she feels it would be used more and lighting should be looked into. Alderman DiFonzo stated they will look into the lighting.

d. Call for Committee: HB 355 funding and projects

Clerk/Treasurer Chamberlin stated HB355 allocated funding to Cities/Towns for maintenance and improvements. She stated the City of Sidney has \$463,223 allocated that they must apply for similar to a grant, but there is a 25% match on the total project. She stated part of the grant process is the City must solicit for projects which they will be doing by having a committee meeting. A list of projects will be made by city staff to present to the committee. Once a list of projects is created, the City Council will have a public hearing and prioritize the projects, then the application can be submitted. She stated she recommends this going before the Budget and Finance Committee since the projects will be from all public works departments.

A Budget and Finance Committee Meeting was scheduled for Tuesday November 28th at noon.12:30 pm.

9. Alderman Requests and Committee Reports

Parks and Recreation – Chairman Difonzo – Godfrey, Christensen | **Water and Sewer** – Chairman Koffler – Godfrey, Rasmussen

Street and Alley – Chairman Christensen– Difonzo, Stevenson | **Sanitation** – Chairman Rasmussen – Koffler, Stevenson

City Buildings & Street Lighting – Chairman Stevenson– Koffler, Rasmussen | **Police and Fire** – Chairman Godfrey, Godfrey, Difonzo, Christensen

Budget and Finance – Chairman Christensen – Rasmussen, Godfrey

Alderman DiFonzo stated he feels city staff should look into cost for a couple of lights for that the South Meadow Park Equipment. PWD Hintz stated he has a plan and will include it for the Park and Rec Committee to review with the layout.

10. Unfinished Business

Nothing.

11. New Business

a. Add \$15,000 in expenditures to Oil and Gas Fund for Nuisance Property's Clean-Up

Clerk/Treasurer Chamberlin stated there are several nuisance properties that have now gone through the court process that the City can go in and clean up, but because of the costs the City will incur upfront, even though they will be paid back on the property taxes, the City has not moved forward. She stated they are requesting the City council to approve an additional allocation out of the Oil and Gas fund of \$15,000 for these nuisance properties for FY23-24, which could cause the need for a budget amendment at the end of the fiscal year. She stated next fiscal year they plan to create a nuisance fund that will have money budgeted each fiscal year for the costs incurred, where the property tax allocations will go.

Motion was made to approve.

In discussion Mrs. Berg asked for a definition of Nuisance and PWD Hintz stated it is outlined in City code.

Motion made by Alderman DiFonzo, Seconded by Alderwoman Godfrey.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

b. City Hall Remodel-Plan Review recommendation for smoke vent for basement

Clerk/Treasurer Chamberlin stated during the plan review process there was 2 items that were recommended that the City Council needs to decide if they would like to include in the remodel plans. She stated the first is the installation of a smoke vent for the basement. FM/BI Rasmussen

stated because there is only one entrance/exit for the basement, the installation of a smoke vent in the hallway closet could give the firemen a way to clear out smoke should there be a fire in the basement. He stated the concrete floor would have to be cut and a hatch would have to be installed and he does not feel it would be a large increase in cost.

Motion was made to approve.

Motion made by Alderwoman Christensen, Seconded by Alderwoman Rasmussen.
Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

c. City Hall Remodel-Plan Review recommendation for exit signs

Clerk/Treasurer Chamberlin stated the second recommendation from the plan review was for the exit signs. FM/BI Rasmussen stated egress lighting must be lit and have battery backup should the power go out, but City Hall has a generator that covers the entire office. He stated they are recommending having these in case the generator fails, and they are approximately \$30 online.

Motion was made to approve.

Motion made by Alderwoman Godfrey, Seconded by Alderman Stevenson.
Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

12. City Planner

a. Subdivision Regulations Update

Motion was made to approve.

Motion made by Alderwoman Godfrey, Seconded by Alderman DiFonzo.
Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

b. Hilltop Shop Zoning Change Request from B-2 to B-1

City Planner Sanderson stated the Zoning/Board of Adjustments 2 to 2 denial recommendation since the motion to approve failed in a tie vote.

Motion was made to approve.

In discussion Alderwoman Godfrey asked if the local ordinances would address concerns such as noise ordinance or building permits. FM/BI stated noise would fall under police and anything allowed in the zoning he has to approve for a building permit but if not he can't approve without a variance.

Alderman DiFonzo stated he has concerns with allowed uses in B-1 and understands they do not have plans for them in the future and Mrs. Jensen asked if the Council can strike out those uses and Alderman DiFonzo asked if the city could limit under that zone what is actually allowed in that area. Attorney Kalil stated the current use is non-conforming meaning the current use would otherwise violate the zoning code. He stated non-conforming use is outlined in statute and the use can't change without a zoning change. He stated if no zone change is approved the only allowed use is the current or allowed uses under B-2 zoning. Alderman DiFonzo asked if the zoning change is approved is the city allowed to not permit the business if it is an allowed use. Planner Sanderson stated if the use is contemplated in the B-1 zoning or anything that is a permitted use could occur on the property without any additional review. A conditional use would go through the process and it could be decided it is not compatible. He stated the property cannot be conditionally zoned.

Alderman DiFonzo asked if they are only looking to change the front 4-acres and Mr. Jensen stated yes. Alderwoman Rasmussen asked why they waited to change the zoning until they were trying to sell the property and Mr. Jensen stated he thought it was a permitted use and didn't understand it was non-conforming. She asked if there are B-1 zoned properties right next door, why was this property not zoned that and Planner Sanderson stated he is not sure, the minutes just account for the change from CLM to B-2.

Alderwoman Godfrey asked where 22nd Avenue is on the priority list and PWD Hintz stated a bike path has been discussed and the City applied a Transportation Alternative Grant but it was denied. He stated it can be applied for again. Mr. Fink asked if there is an estimate for 22nd Avenue's improvements and PWD Hintz stated for the pedestrian path to the park has a cost estimate because of applying for the grant, but not the improvements to the street itself. Alderwoman Godfrey stated to address the safety concerns it would need to be widened, with side walks and lighting added. Rasmussen stated with ROI there is a lot of use of that street by pedestrians.

City Attorney Kalil stated from a legal perspective the 12-factors need to be taken into account and they have been addressed in Planner Sanderson's staff report. He stated the decision can be appealed to civil court but the city cannot be held monetarily liable but the decision could be overturned. He stated he recommends stating why it is turned down and he is uncomfortable with the discussion that it should have been a different zone when annexed as the record does not account for this. He stated there was the opportunity to correct it and it was not changed. He stated the B-1 zoning is for a commercial corridor.

Clerk/Treasurer Chamberlin asked if retail, sales and warehouse uses could be added to the B-1 Zoning Code as Conditional Uses and Planner Sanderson stated yes the could be amended to allow the conditional use following the proper procedures for amending the zoning code. Alderman DiFonzo stated his concern is for the 6 acres in the back with a change in ownership and Mr. Jensen stated that was not included in the request and DiFonzo stated if this front 4-acres was allowed the back 6-acres would have the expectation of approval. Mr. Jensen stated the back acres could not be developed without millions of dollars put into the infrastructure for a water tank on the hill. He stated it is his understanding there is not water available and PWD Hintz stated that is correct future substantial development would require more storage. Mr. Jensen

stated he was just asking for the front lot directly on 22nd Avenue. Mr. Franz stated city told him there was not enough water for his shop when he requested it and so he was denied.

Motion made by Alderman DiFonzo, Seconded by Alderwoman Christensen.

Voting Yea: Alderwoman Godfrey

Voting Nay: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Christensen

13. City Attorney

Nothing.

14. Chief of Police

a. October 2023 Police Department Report

Chief Kraft provided the October 2023 Police Department Report. Mrs. Berg stated the truck traffic from Red River Lane can be controlled and Chief Kraft stated they have fielded calls on that and they do have to prioritize the calls with only a single officer on duty but they are all aware of the concern and they try to enforce it when they can.

15. Public Works Director

a. Update

PWD Hintz state they are working on playground equipment installation and working in Quilling's Park for installing the new skating rink.

b. Anderson Drainage ARPA Grant AC-22-0158 Amendment 1

PWD Hintz provided the Anderson Drainage ARPA Grant Amendment 1. He stated this is to change the scope of work, as the project originally had a retention pond but they are now increasing the drainage by a secondary of pipe so it is not needed.

Motion made by Alderwoman Godfrey, Seconded by Alderman Stevenson.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

c. 200,000 Gallon Water Tank Lining Project-Substantial Completion

PWD Hintz presented the 200,000 Gallon Water Tank Lining Project Substantial Completion.

Motion was made to approve.

Motion made by Alderwoman Rasmussen, Seconded by Alderwoman Godfrey.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman

Godfrey, Alderwoman Christensen

d. 200,000 Gallon Water Tank Lining Project-Change Order 1-balancing

PWD Hintz presented the 200,000 Gallon Water Tank Lining Project Change Order 1 for balancing at the end of the project. Mr. Mayer stated \$5,000 was not used that was set aside for miscellaneous. He is recommending approval after signed by contractor.

Motion was made to approve and sign once signed by contractor.

Motion made by Alderwoman Rasmussen, Seconded by Alderman Stevenson.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

e. 200,000 Gallon Water Tank Lining Project-Pay Application 2 for \$89,217.60

PWD Hintz presented the 200,000 Gallon Water Tank Lining Project Pay Order 2 for \$89,217.60, which has the \$45,500 liquidated damages withheld. Clerk/Treasurer Chamberlin added to the record a response from Advanced Lining on the liquidated damages. Alderwoman Godfrey stated she does not recommend changes to the Water and Sewer Committee recommendation. Mr. Mayer stated he recommends approval after signed by contractor and withhold the 5% retainage until warranty work was done.

Motion made by Alderwoman Rasmussen, Seconded by Alderwoman Godfrey.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

16. Fire Marshal/Building Inspector

FM/BI Rasmussen stated he will have the October Fire Run report at the next meeting. He stated they are active with fire calls, 130 for the year so far, and building permits with the nice weather.

17. City Clerk/Treasurer

a. September 2023 Water/Sewer Bank Transfer \$189,024.23

Clerk/Treasurer Chamberlin presented the September 2023 Water/Sewer Bank Transfer \$189,024.23.

Motion was made to approve.

Motion made by Alderwoman Christensen, Seconded by Alderwoman Godfrey.

Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

b. October 2023 Water/Sewer Bank Transfer \$287,056.89

Clerk/Treasurer Chamberlin presented the October 2023 Water/Sewer Bank Transfer \$287,056.89.

Motion was made to approve.

Motion made by Alderwoman Christensen, Seconded by Alderman Stevenson.
Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

c. Update

Clerk/Treasurer Chamberlin stated the City Hall Remodel walk-through and monthly site meeting will be tomorrow at 10:30am.

18. Consent Agenda

Motion was made to approve the claims and building permits.

Motion made by Alderwoman Godfrey, Seconded by Alderman Stevenson.
Voting Yea: Alderwoman Rasmussen, Alderman DiFonzo, Alderman Stevenson, Alderwoman Godfrey, Alderwoman Christensen

a. Claims to be approved: \$184,137.18

b. Building Permits to be approved: 2024-35, 2024-38, 2024-43 to 45 and 2024-48

19. Adjournment

7:52 pm.