

City of Brighton

*500 S. 4th Avenue
Brighton, CO 80601*



Meeting Minutes

Tuesday, July 7, 2020

6:00 PM

Council Chambers / Virtual Meeting

City Council

MAYOR - GREGORY MILLS

MAYOR PRO TEM - MATT JOHNSTON

COUNCIL MEMBERS:

CLINT BLACKHURST, ADAM CUSHING,

MARK HUMBERT, KRIS JORDINELLI, MARY ELLEN POLLACK,

ANN TADDEO, TIM WATTS

1. CALL TO ORDER

Mayor Mills called the meeting to order at 6:00 p.m.

A. Pledge of Allegiance to the American Flag

Councilmember Humbert led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call

Councilmember Blackhurst arrived at 6:04 p.m.

Present: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

2. APPROVAL OF REGULAR AGENDA

Mayor Pro Tem Johnston asked that Item 14 be moved to become Item 11.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Watts, to approve the Regular Agenda as amended. Motion passed by the following vote:

Aye: 8 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

Absent: 1 - Councilmember Blackhurst

3. CONSENT AGENDA

A. Approval of the May 19, 2020 City Council Minutes

B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE PROPOSED CHANGE ORDER OF REDLINE PIPELINE LLC ON THE CONTRACT FOR BASELINE WATERLINE AND NORTH TANK DRAINAGE CONSTRUCTION PROJECT, PROJECT #19-037, FOR THE CHANGE ORDER AMOUNT OF ONE HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED AND EIGHTY DOLLARS (\$159,780.00), AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO SIGN THE CONTRACT ON BEHALF OF THE CITY AND THE CITY CLERK TO ATTEST THERETO

Resolution No: 2020-62

C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPOINTING WARD 2 COUNCILMEMBER ANN TADDEO AS AN OFFICIAL REPRESENTATIVE AND ALTERNATE OF THE CITY COUNCIL TO CERTAIN BOARDS AND COMMISSIONS

Resolution No: 2020-63

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Humbert, to approve the Consent Agenda as presented. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

4. CEREMONIES

A. Swear in Council Member to Various Boards and Commissions

City Clerk Natalie Hoel swore in Councilmember Taddeo on various Boards and Commissions.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

6. CONSOLIDATED ITEMS FOR SEQUENTIAL REVIEW

A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE FIRST AMENDMENT TO SERVICE PLAN FOR BRIGHTON CROSSING METROPOLITAN DISTRICT NOS. 5-8 (PUBLIC HEARING)

Mayor Mills read the title of the Resolution into the record.

Mayor Mills opened the public hearing at 6:10 p.m. and City Clerk Natalie Hoel verified the required postings and publications (June 17, 2020 in the Brighton Standard Blade) for this public hearing were completed.

Acting City Manager Marv Falconburg introduced Senior Planner Mike Tylka.

Senior Planner Mike Tylka explained that there have been many parties involved over the past few weeks including Brighton Crossing Metropolitan District Nos. 5-8, their Legal Counsel White Bear Ankele Tanaka & Waldron, Their Financial Advisor D.A. Davidson and Co., the Development Team from Brookfield Residential, their Legal Team from Foster Graham Milstein & Calisher, LLP, the City's Financial Advisor Ehlers Inc., the City's Metro District and Bond Counsel Butler Snow LLP and City staff from Community Development, Finance, the City Attorney's Office and the Acting City Manager. These items are being presented due to the collaborative nature of all parties in a desire to bring Council documents that City staff, the District and the Developers team can support. Pursuant to Article 1, Title 32, Colorado Revised Statutes, the City of Brighton has the authority to approve service plans and amendments to service plans for special districts within the City's boundaries. On March 6, 2018, City Council approved a Service Plan for the Brighton Crossing Metropolitan District Nos. 5-8 establishing those districts.

A Roadway Agreement was approved at the same time between the City and Brookfield Residential to outline the expected timing of the design and construction of the remaining unbuilt portions of 45th Avenue and Longs Peak Street adjacent to the District. Legal counsel from the District recently submitted a proposed amendment to the Service Plan. This amendment requests changes that would help facilitate the issue with District debt, which will be used to finance, or refinance public improvements for the District including the roadway improvements. One of the proposed amendments would allow the Districts to issue debt with compound interest, but only permitted pursuant to an Intergovernmental Agreement (IGA) between the City and the Districts. The City and Districts have negotiated an IGA to allow interest to compound on District debt, but only to the extent that the City and developer enter into an amendment to the Roadway Agreement. That agreement will facilitate and expedite the construction of the roadway improvements. The City and the developer have negotiated the amendment to the Roadway Agreement that would require that the developer substantially complete construction of the roadway improvements no later than August 19, 2021.

City Council has the following items for consideration:

- 1. The first amendment to the approved Service Plan for the Brighton Crossing Metropolitan District Nos. 5-8.*
- 2. An Intergovernmental Agreement between the City and Districts.*
- 3. An Amended and Restated Agreement regarding Roadway Improvements between the City and Brookfield Residential.*

The roadway improvements to Longs Peak Street total 2,100 linear feet and Improvements to North 45th Avenue total approximately 2,100 linear feet between Bridge Street and Longs Peak Street of curb, gutter and any unbuilt portions of median and roadway.

Regarding the Service Plan Amendment, City Council must hold a public hearing and then Council will decide if it will approve or move forward in some capacity on the proposed amendment. If the Service Plan Amendment is approved, the following findings will be made:

- a. There continues to be sufficient existing and projected need for the organized service in the area to be serviced by each of the respective Districts.*
- b. The existing service in the area to be served by each of the respective Districts continues to be inadequate for present and projected needs.*
- c. Each of the respective Districts is capable of providing economical and sufficient service to the area within its proposed boundaries.*
- d. The area to be included in each of the respective Districts has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.*

When reviewing the IGA and Amended Roadway Agreement City Council should consider what the Districts and developer are bringing to the City as well as what the City is doing for the Districts and developer. The City should work with them in developing the remaining undeveloped areas in Brighton. With the priority placed on completing the remaining, unconnected and unfinished infrastructure. Staff has reviewed the items along with Butler Snow and Ehlers. Butler Snow offers specialization in Metro District formation and Ehlers offers experience in Metro District financial review. The following findings are those of City staff based on the internal review of staff and those mentioned City supporting parties.

The Service Plan Amendment proposes to amend certain provisions in the Service Plan to facilitate the issuance of District debt, which will be issued to finance and refinance public infrastructure in the District including the roadway improvements on 45th Avenue and Longs Peak Street. The Districts bond counsel and financial underwriter have recommended changes to the Service Plan to allow the District to issue debt in accordance with current market conditions and the expectation of potential investors. The proposed amendment would allow interest to compound on District debt, but only if the conditions set forth in the IGA are met. The IGA requires that the interest may compound only if the developer and City enter into an Amended Roadway Agreement to facilitate and expedite the construction of the roadway improvements. The proposed Service Plan Amendment would also allow the Districts to issue debt and impose a debt service mill levy before certain City approvals for the project have been received. However, under the proposed amendment, the Districts are not allowed to utilize the proceeds of any debt to finance or refinance the construction of public improvements prior to receipt of City approvals relating to: a) the phase of development in a project area where the public improvements are located; or b) those specific public improvements to be financed or refinanced by such debt. Regarding the Service Plan Amendment, staff finds that:

- a. There continues to be sufficient existing and projected need for organized service in the area to be serviced by each of the respective Districts.*
- b. The existing service in the area to be served by each of the respective Districts continues to be inadequate for present and projected needs.*
- c. Each of the respective Districts is capable of providing economical and sufficient service to the area within its proposed boundaries.*
- d. The area to be included in each of the respective Districts has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.*

The IGA is to be between the City and the Districts and provides that interest on District debt will be allowed to compound upon the execution and delivery of the Amended Roadway Agreement between the City and the Developer. Furthermore, it provides that the City shall have the right to negotiate the terms and provisions of such agreement in accordance with the best interests of the City and that nothing in the IGA shall be construed to require the City to enter into the Amended Roadway Agreement with the Developer.

Regarding the Amended and Restated Roadway Agreement, if approved, will replace the existing Roadway Agreement in its entirety. It maintains the current financial surety received by the City and allows it to be increased according to financial cost estimates for the roadway improvements. The Agreement requires the Developer to substantially complete the roadway improvements no later than

August 19, 2021. This is a change from the original Roadway Agreement in which the roadway improvements had to be completed within eighteen months from Plat approval for the adjacent plan, and offer only an expected date of completion. Staff knows the desire of City Council, acting on behalf of residents, to have a firm completion date put into an enforceable contract that is separate from any moving items like City approvals. The Acting City Manager has led the effort through a collaborative discussion based approach among all necessary parties. City staff and its partners have worked to pursue every avenue to ensure the enforceability of this document, if approved, for the solidity and firmness of the August 19, 2021 completion date. Current City staff has made every effort to meet City Council's expectations as was not accomplished in the original agreement negotiated and coordinated by former staff leadership. This proposed amendment provides that if the roadway improvements are not substantially completed by August 19, 2021, the City may stop issuing residential building permits for the adjacent development until the 45th Avenue and Longs Peak Street improvements have been substantially completed. This provides the City with authority and the Developer an incentive. If the Developer has not received final City approvals for the final plat, development agreement and PUD for the adjacent development by October 7, 2020, the City will issue the Developer, upon request, an interest free loan for the roadway improvements to ensure they are started regardless of the issuance of City approvals. If the loan is issued, the Developer would repay the City within ninety days of receiving the final City approvals. This allows the Developer to agree to that firm completion date of August 19, 2021. The City's Development Review Committee issued approval today of the civil construction documents for the roadway improvements at 45th Avenue and Longs Peak Street and now Brookfield can submit for permits to begin construction and set up a pre-construction meeting with the City's inspection team.

Notice of the public hearing for the amendment to the Service Plan was published in the Brighton Standard Blade on June 17, 2020. City staff has not received any formal comment.

Staff recommends approval of the Service Plan Amendment, the Intergovernmental Agreement and the Amended and Restated Roadway Agreement. Staff recognizes that it is imperative that the Roadway Agreement be substantially completed as soon as possible for the benefit of the residents and that the approval of the three items are intended to facilitate and expedite the construction of the unbuilt portions of 45th Avenue and Longs Peak Street. The proposed changes to the Service Plan Amendment will facilitate the issuance of District debt that may be used to finance or refinance the roadway improvements, but the change that will allow compound interest on District debt is contingent on the Developer agreeing to substantially complete the roadway improvements no later than August 19, 2021.

Mayor Mills asked if the applicant would like to add anything to the presentation, they did not.

Mayor Mills asked if anyone in the audience had questions for the applicant.

T'Neil Page, Brighton. Ms. Page asked if 45th Avenue and Longs Peak Street would be included in the roadway improvements. Planner Tylka explained that the Roadway Agreement is specifically for 45th Avenue and Longs Peak Street.

Mayor Mills asked if anyone in the audience wished to speak on behalf of or against the request, there was none.

Mayor Mills asked if there were questions from City Council.

Councilmember Jordinelli asked why the City has such a high ceiling and why there is not a push to get the interest rate lower. It is great that staff was able to get this done after it seemed impossible a few weeks ago. Special Counsel with Butler Snow Sally Tasker explained that the interest rate of 15% is the highest rate on District debt. This is what the City approved in the Model Service Plan. The applicant is not asking for a change for the interest rate. The District is going to be issuing debt at the lowest possible rate so the market will take care of what the actual interest rate would be. If the District goes to the public market, the interest rate would be considerably less than 15%. If it is privately placed, then there is a requirement that an independent financial advisor would have to give an opinion that the rate is reasonable. There is no expectation that the District would issue bonds at the high rate of 15%.

Councilmember Blackhurst asked for an approximate cost of the roadway improvements at 45th Avenue and Longs Peak Street. Shannon Robbins with Brookfield Residential reported that the total is 1.8 million dollars. Councilmember Blackhurst asked if the roadway alignment has been figured out where 45th Avenue comes to a dead end. Planner Tylka explained that the Preliminary Plat would dedicate land for another parking lot for the park at the end of Longs Peak Street. The alignment would extend from the west, cross over 45th Avenue to a traffic circle in the new development and go north to the current location of 45th Avenue. Councilmember Blackhurst thanked Planner Tylka, Acting City Manager Falconburg and everyone that worked on this project for listening to the concerns of City Council and getting this completed.

Mayor Pro Tem Johnston asked that Council be kept informed of issues like this in the future so they can help to get issues resolved. It was great that everyone involved came together to make this happen. Mayor Pro Tem Johnston asked if the compounding interest would hurt the residents. Planner Tylka explained that there is now a safety mechanism in place so the debt service mill levy will not be exceeded. Special Counsel Tasker explained that the main thing that protects the residents is the mill levy limit and a limitation on the debt that can be issued. There will be the maximum amount regardless of the interest that is accruing; the residents cannot be taxed more than the limited mill levy. This is not being changed by the Service Plan amendment. Mayor Pro Tem Johnston thanked City Attorney Bajorek for the language that was written in the current agreement. City Attorney Bajorek thanked Sally Tasker and her staff for being such a big part of this process.

Councilmember Jordinelli asked if the compounding interest begins when the contract is signed or when the roadway improvements are completed. Special Counsel Tasker explained that the compound interest would begin accruing on debt when that debt is issued by the District to finance or refinance the project. There is a certain amount of interest the District will borrow to pay for the development and if there were not enough revenue to pay for the interest, then it would begin compounding. Councilmember Jordinelli asked if the debt depends on the agreement that gets signed for the roads. Special Counsel Tasker explained that the Service Plan states that the interest cannot compound unless the provisions in the IGA between the District and the City are met. The IGA states that the interest can compound as soon as the agreement between the City and the Developer on the roadways are executed and delivered. Councilmember Jordinelli asked if the Developer has to finish the road first. Special Counsel Tasker explained that the agreement has to be signed and the District would then be allowed to issue debt with compound interest. Nothing would be accruing until the District goes out to issue the debt.

Mayor Pro Tem Johnston explained that the surety bond is at 115% and the extra 15% would take care of any issues that could come up.

Mayor Mills closed the public hearing at 6:46 p.m.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Watts, to approve Resolution 2020-64. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND BRIGHTON CROSSING METROPOLITAN DISTRICT NOS. 5-8

Mayor Mills read the title of the Resolution into the record.

Motion by Councilmember Blackhurst, seconded by Councilmember Humbert, to approve Resolution 2020-65. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING AN AMENDED AND RESTATED AGREEMENT REGARDING ROADWAY IMPROVEMENTS, AND PROVIDING OTHER MATTERS RELATED THERETO

Mayor Mills read the title of the Resolution into the record.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Watts, to approve Resolution 2020-66. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

7. ORDINANCES FOR INITIAL CONSIDERATION

8. ORDINANCES FOR FINAL CONSIDERATION

9. RESOLUTIONS

10. UTILITIES BUSINESS ITEMS

Resolutions

A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE BID OF HUDICK EXCAVATING INC. dba HEI CIVIL AND AWARDING THE CONTRACT FOR SOUTH PLATTE WELLS TRANSMISSION LINE CONSTRUCTION PROJECT #20-006328, TO HUDICK EXCAVATING INC. dba HEI CIVIL FOR THE CONTRACT AMOUNT OF THREE MILLION NINE HUNDRED NINETY THOUSAND SIX HUNDRED EIGHTY EIGHT DOLLARS AND FIFTY CENTS (\$3,990,688.50), AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO SIGN THE CONTRACT ON BEHALF OF THE CITY AND THE CITY CLERK TO ATTEST THERETO

Mayor Mills read the title of the Resolution into the record.

Acting City Manager Falconburg introduced Utilities Engineering Manager Roy Gallea.

Utilities Engineering Manager Roy Gallea presented the South Platte Wells Transmission Line Construction Project. The City currently has a 24" raw water transmission line that brings water from the South Platte wells to the Reverse Osmosis (RO) Water Treatment Plant. All of the wells are west of 5th Avenue and there is a single transmission line to take the water to the RO Plant. The existing transmission line was an old distribution pipeline. It is nearing its useful life and there is no redundancy with this line. If there were a break on this line, the RO Plant would shut down until the break is fixed. Farnsworth Group was hired to design a new transmission line. A 24" raw water line will be installed from 5th Avenue to Telluride Street on Bromley Lane to provide redundancy for this line. Some potable lines in the area need to be fixed as well. Staff received fourteen bids for this project and an evaluation matrix was completed to determine the most responsive and responsible bidder. Staff believes accepting the bid of Hudick Excavating for \$3,990,688.50 will accomplish the following:

- Provide long-term and reliable infrastructure to move the well water to the Water Treatment Plant.*
- Provide redundancy in case there is a main break.*
- Provide some looping of a small section of potable lines that are not currently looped.*

Engineering Manager Gallea answered questions from Council regarding:

- An estimated start and completion date.
- Any anticipated interruption in service during construction.
- Any street closures during construction.
- The existing 24" line being abandoned.
- The larger capacity providing the ability to move water from one side of the City to the other.
- Not having to move water in the future with other treatment options.
- This project helping with future plans.
- The water being pumped with one pump.
- Backup power being available during a power outage.
- Pressure needed to get water up the pipe.
- The ability to pressure the wells to send more water.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Jordinelli, to approve Resolution 2020-67. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

11. EXECUTIVE SESSION

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Cushing, to go into Executive Session at 7:06 p.m. for discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees regarding the City Attorney Evaluation and the Selection of City Manager Candidates for Interviews. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

Mayor Mills reconvened the meeting at 9:32 p.m.

12. GENERAL BUSINESS

A. Consider a Resolution to Reappoint Jack Bajorek as City Attorney

City Attorney Jack Bajorek explained that paragraph three should be removed from the Resolution and the language 3% raise be changed to "at his current rate".

Motion by Councilmember Watts, seconded by Councilmember Jordinelli, to approve Resolution 2020-68 as amended. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

B. Selection of City Manager Candidates for Interviews

Mayor Mills recommended that this item be continued to a Special City Council meeting on July 14, 2020 at 6:00 p.m. prior to the Study Session.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Watts, to schedule a Special City Council meeting on July 14, 2020 at 6:00 p.m. to continue the Selection of City Manager Candidates for Interviews. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

C. Discussion and Direction on Founders Plaza

Parks and Recreation Director Travis Haines presented the original concept for Founders Plaza. City Council discussed the proposed options and costs for Phase II of the Founders Plaza project. City Council decided to put the project on hold to receive further input from the community.

13. REPORTS

A. By the Mayor

Mayor Mills thanked the Police Department and Fire Department for their help with the fireworks display, presented information to local Boy Scouts, and attended the tour of Founders Plaza and the Depot. The City Manager interviews are next week.

B. By Department Heads

C. By the City Attorney

D. By the City Manager

14. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Councilmember Humbert announced that the Full Moon Bike Ride and the Parks and Recreation Master Plan meeting are tomorrow.

Councilmember Watts commented on the 4th of July fireworks display.

Mayor Pro Tem Johnston gave an E-470 update.

15. ADJOURNMENT

Motion by Councilmember Humbert, seconded by Councilmember Watts, to adjourn at 10:46 p.m. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

CITY OF BRIGHTON, COLORADO

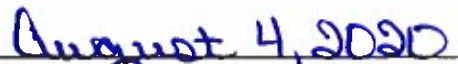


Gregory Mills, Mayor

ATTEST:



Natalie Hoel, City Clerk



Approval Date