

# Memorandum

**REPORT TO:** City Commission

**FROM:** Chris Saunders, Community Development Manager  
Jeff Mihelich, City Manager

**SUBJECT:** Appeal IFA-2021-1 from BARTIMCO PROPERTIES/SAWMILL GULCH PROPERTIES of an Administrative Decision of the City Manager Regarding a Request for Listing of Certain Improvements on the Capital Improvements Program (CIP) in Association with Development of Nelson Meadows Subdivision and a Request for Impact Fee Credits (Quasi-Judicial)

**MEETING DATE:** February 2, 2021

**AGENDA ITEM TYPE:** Community Development - Quasi-Judicial

**RECOMMENDATION:**

1. Having heard and considered the administrative record, appeal materials, and presentations by staff and the appellant, I find no error with the staff's determination and uphold the decision that dedication of a right of way, instead of an easement, on the northerly boundary of Nelson Meadows Subdivision does not qualify for inclusion in the CIP.
2. Having heard and considered the administrative record, appeal materials, and presentations by staff and the appellant, I find no error with staff's determination and uphold the decision that the dedication of land to construct Nelson Road to a collector street standard does not qualify for inclusion in the CIP.
3. Having heard and considered the administrative record, appeal materials, and presentations by staff and the appellant, I find no error with staff's determination and uphold the decision that the dedication of land to construct Prince Lane to a local street standard does not qualify for inclusion in the CIP.
4. Having heard and considered the administrative record, appeal materials, and presentations by staff and the appellant, I find no error with staff's determination recommending that construction costs of expanding Nelson Road to collector street standard not be prioritized for inclusion in the CIP.
5. Having heard and considered the administrative record, appeal materials, and presentations by staff and the appellant, I find no error with staff's determination and uphold the decision that construction costs of Prince Lane do not qualify for inclusion in the CIP.

**STRATEGIC PLAN:** 7.5. Funding and Delivery of City Services: Use equitable and sustainable sources of funding for appropriate City services, and deliver them in a lean and efficient manner.

**BACKGROUND:** On January 5, 2021, the appellant, BARTIMCO PROPERTIES/SAWMILL GULCH

PROPERTIES (Bartimco), submitted an appeal of a decision of the City Manager regarding listing of possible improvements on the impact fee capital improvement program. Administrative decisions regarding impact fees are subject to appeal to the City Commission. The appellant's material lists specific items for which the decision is appealed.

The appellant, Bartimco, previously submitted an annexation request, file 18-056, on January 31, 2018. The application was approved and Resolution of Annexation 4905 incorporating the approved terms of annexation was approved on June 4, 2018. The appellant submitted a preliminary plat for the Nelson Meadows subdivision on October 5, 2018. The findings of fact for the subdivision were approved by the City Commission on March 11, 2019. The application for final plat was submitted on December 24, 2019. The final plat was recorded with the Gallatin County Clerk and Recorder on October 19, 2020.

During the annexation and subdivision process, the City required various improvements to meet City policy and code requirements. If an applicant does not agree with Terms of Annexation they may choose to not sign the annexation agreement. During subdivision preliminary plat review, the subdivider may appeal the decision of the City Commission within 30 days of the adoption of the findings of fact. In this case, neither of these two actions occurred.

The appellant's representative requested by letter on September 16, 2019, that the City include seven items including right of way purchase, construction of streets, and construction of water infrastructure on the capital improvement program. The Staff determined that some requested items met the requirements for impact fee reimbursement and some did not. For a listing of the impact fee funding requirements see pages 1-3 of the memo from Chris Saunders to Jeff Mihelich attached to this agenda item.

The appellant requested via letter on July 16, 2020 that the City reconsider those items which Staff had determined did not meet the criteria. Staff, including the City Manager, reviewed the updated request and met with the appellant on December 10, 2020. The written findings from Staff were provided to the applicant prior to the meeting. The City Manager sent a written decision to the appellant on December 18, 2020 declining the request to list the items on the CIP. The City Manager's written decision is attached to this agenda item. The City Manager's decision relied upon the written findings in the memo from Chris Saunders, the written materials provided by the applicant, and the discussion at the December 10th meeting. The impact fee program is subject to specific state law and local code requirements. Application of the code must conform to those requirements. There are standards and procedures for improvements to qualify for expenditure of impact fee funds.

Commission action: This appeal is based on the record of the decision. The

record materials are attached to this agenda item. The City Commission must consider the applicable criteria for impact fee funding, consider the decision made by the City Manager, and determine whether the City Manager correctly applied the criteria. Due to the five discrete elements of the appeal and the findings made by staff for each item a separate motion is recommended for each item. The Commission may act to uphold or overturn the City Manager's decision on each item.

If the City Commission determines the City Manager applied the criteria correctly no further action is needed. If the City Commission determines the criteria were not correctly applied the Staff will review the projects for potential inclusion on the CIP and make a future recommendation to the City Commission for a CIP amendment. The City Commission will then need to consider the potential amendment and what impacts it may have on other project priorities.

**UNRESOLVED ISSUES:** None.

**ALTERNATIVES:** For any of the items considered on appeal, the City Commission could find that staff's determinations were in error and make alternative findings that all criteria in 2.06.1690 are met. The City Commission could then direct staff to amend the CIP and place the amended CIP on a future City Commission agenda for consideration.

**FISCAL EFFECTS:** Should the City Commission find that any of staff's determinations were in error and ultimately approve an amended CIP that includes the projects that are the subject of this appeal, the impact fee funds would be affected. This may change the City's ability to construct projects now prioritized for construction in the currently adopted CIP. Exact figures are not available as there are multiple components of the appeal and the Commission could allow some or all.

Attachments:

[Decision Letter from City of Bozeman CM 12-17-2020.pdf](#)

[Appeal package - Received 1-05-2021.pdf](#)

[Saunders Memo to City Manager for review final.pdf](#)

[Single Packet of 7-16-2020 applicant materials.pdf](#)

[12.04.20 Letter to Saunders - Supplemental Application - Impact Fee Credits. v2 pdf.pdf](#)

Report compiled on: January 25, 2021