

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 28, 2016

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Thomas W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Mayor Hanel gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Brewster, McFadden, Friedel, Sullivan, Clark and Brown. Councilmembers Cimmino and Swanson were excused.

MINUTES: Not ready for approval.

COURTESIES:

- Mayor Hanel stated that the City of Billings employees and the Downtown Billings Alliance (DBA) members had done a great job at the Holiday Parade. He added that it was a very well attended event.

PROCLAMATIONS:

- Mayor Hanel read a proclamation announcing November 18, 2016, as Salvation Army Red Kettle Kick Off Day. He welcomed Major Keith Bottjen, retired Salvation Army officer, who stated that the Salvation Army was short of the help needed to get through the Holiday season and welcomed volunteers.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek stated that there had been several ex-parte emails received in regards to the Authorize Community Transformation (ACT) Initiative. She added that copies had been placed in the ex-parte notebook and on the Councilmembers' desks.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and #5 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, in reference to Item 1A1, urged Council to question why there was such a large difference in the price of the new bid compared to the old bid. In reference to Item 5, he stated that there were several issues with the new ball park contract. Mr. Zurbuchen stated that Council should reject the new contract and remove the clause that would allow fireworks since they are illegal within City limits.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana**, in reference to Item 5, urged Council to look closely at the Dehler Park contract. He stated that the revenue should stay with the City.

There were no further speakers, and the public comment period was closed.

1. CONSENT AGENDA

A. Bid Awards:

1. **South Park Splash Pad Development.** (Opened 10/25/16)
Recommend General Contractors Construction Company, Inc.,
\$1,030,350.
- B. **Professional Services Contract** for W.O. 17-07; Hilltop Road and Aronson Avenue Storm Drain Extension; KLJ; \$338,305.
- C. **Reimbursement Agreement** with the Transportation Security Administration (TSA) to reimburse the Airport for electric utility and janitorial expenses for checkpoint areas in the Terminal Building; \$41,742.96/year of revenue for the Airport for the base year, and an estimated \$208,714.80 for the total five-year period of performance.
- D. **Amendment #1** to the Airport Business Park Building and Ground Lease with the Yellowstone County Museum Foundation, for a net addition of 229.21 square feet for a revised total of 1,431.71 square feet to the leased premises.
- E. **Approval** of the Billings Community Transportation Safety Plan and forward the recommendation to the Policy Coordinating Committee (PCC) through the City's PCC representative.
- F. **Approval** of the Assignment Agreement transferring the Development Agreement between the City and Northridge Assets, LLC to Southgate Hotels, LLC.

- G. **Access Easement** with River Park Retirement Court, LLC, for Lot 14 of Brittain Acres.
- H. **Revolving Loan Fund #1** to Todd Gainan - Galles Building, \$115,000.
- I. **Revolving Loan Fund #2** to Todd Gainan - Galles Business, \$250,000.
- J. **Revolving Loan Fund** to Mike Matthew - Pub Station, \$38,750.
- K. **Acceptance** of donation to the Billings Fire Department from Phillips 66 for fire safety training equipment; \$10,000.
- L. **Acceptance** of donation to the Billings Police Department from Phillips 66 for Rescue Task Force (RTF) equipment; \$44,000.
- M. **Bills and Payroll:**

- 1. October 31, 2016

Mayor Hanel separated Item 1A1 for discussion.

Councilmember Cromley separated Item 1M1 in order to abstain.

Councilmember Clark separated Items 1H and 1I for discussion.

Councilmember Sullivan moved for approval of the Consent Agenda, with the exception of Items 1A1, 1H, 1I and 1M1, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Mayor Hanel, in reference to Item 1A1, asked for clarification on the bid amount, and stated that it was almost double the previous bids received. Dayton Rush, CTA Architects, stated there were three alternates in the bid. He added that the first one was for two 30 x 30 sunshades; the second one was for enhanced landscaping; and the third alternate was a decorative sealant. He stated that the three alternates had been bid separately because they were easy parts for contractors to bid separately that did not affect the whole splash pad. Mayor Hanel asked if the decorative sealant was a necessary part of the splash pad. Mr. Rush stated that it was a completely decorative feature. Mayor Hanel asked why there was a difference of over \$100,000 in alternate #1. Mr. Rush said he could not explain why there was such a large difference for such a standard item. He stated that two of the bids were in line with expectations, but that one was surprisingly high. Councilmember Sullivan asked why the base bid was so much higher than the original budgeted amount. Mr. Rush stated that aquatic projects were difficult

because there were not very many contractors that specialized in these types of projects. He stated that the first bid had only been bid by a contractor that was not qualified for a project such as this one. He stated that a splash pad had all of the components of a swimming pool and needed a contractor with aquatic experience. Mr. Rush added that they had pre-qualified a few contractors but had only received a bid from one contractor that was interested in coming to Billings to do the project. Councilmember Brown asked if it would be beneficial to deny the current bid and re-advertise in hopes of receiving additional bids. Mr. Rush stated that it would significantly change the time frame to re-bid the project and that the results may be the same. He added that the project had been bid twice and there did not seem to be much interest. Tina Volek, City Administrator, added that the original bidder was disqualified on the first bid due to lack of qualifications and the City's isolation made aquatic projects difficult to attract contractors. Councilmember Brown asked about the cost benefits of re-circulating the water used in the splash pad. Mr. Whitaker stated that it would cost about \$2,300 per day to operate approximately 8 hours per day. He said that re-circulating the water was the new standard across the country and would help with efficiency as well. Councilmember Brown asked about the high priority projects that would be postponed by approving the splash pad project. Mr. Whitaker stated that they would be postponed by at least one year. He added that an organization had partnered with Kiwanis to raise funds to build a "miracle field" at Poly Vista and he would recommend postponing the restroom and irrigation projects at that park until more information was obtained. Councilmember Brewster asked if water usage was tracked at Castle Rock Park. Mr. Whitaker stated that water used from the spray park was put in the pond to use for irrigation purposes. He added that he did not have those numbers, but could provide them to Council. Councilmember Sullivan asked how much money would be saved by re-circulating the water at the splash pad. Mr. Whitaker stated that the City did not pay for the water it used, but that the cost savings would be approximately \$230,000 per season. Councilmember Cromley stated that it appeared the cost of the splash pad recirculating system could be paid for within 2-3 years. Mr. Whitaker agreed.

Councilmember Cromley moved for approval of Item 1A1, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 5-4, with Councilmembers McFadden, Friedel, Brown and Mayor Hanel voting in opposition.

Councilmember Sullivan moved for approval of Item 1M1, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 8-0, with Councilmember Cromley abstaining.

Councilmember Clark moved for approval of Item 1H, seconded by Councilmember Cromley. Councilmember Clark asked for clarification on why Item 1H and 1I were separate items. Todd Gainan stated that Item 1H was for the Galles Building and Item 1I was for the Galles Business. He stated that the business and the building had separate owners, therefore, the loans were separated. Councilmember Clark asked if the City had first or second place on the loan. Greg Krueger, Downtown Business Alliance (DBA) Development Director, stated that the

City was in second position on the loan on the business. He stated that the City would be in the first position on the loan on the building. On a voice vote, the motion was approved unanimously.

Councilmember Clark moved for approval of Item 11, seconded by Councilmember Cromley. On a voice vote, the motion was approved unanimously.

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION approving and adopting budget amendments for FY2017. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that staff did not have a presentation, but was available for questions.

The public hearing was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, stated that Item 2 was another example of staff not implementing contracts. He stated that there was a lot of taxpayer money being used to pay for mistakes.

There were no further speakers, and the public hearing was closed.

Councilmember Sullivan moved for approval of Item 2, seconded by Councilmember Brown. On a voice vote, the motion was unanimously approved.

3. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #16-05: property described as Tract 3 and a portion of Tract 4 and Tract 5, Certificate of Survey 1648, located west of Shiloh Road and south of Central Avenue between Central Avenue and Bell Avenue just west of Legends West Subdivision. Janet R. Bergman, owner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Wyeth Friday, Planning Director, gave a brief PowerPoint presentation with an overview of the property and proposed annexation. He stated the property met all of the criteria for annexation and that the City would be able to provide services to the area. Mr. Friday stated that they were working with property owners on easements around the property. Mr. Friday stated that the applicants and agents were in attendance and available for questions. He added that the annexation would be followed by a zone change for the same property.

Councilmember Brown asked how the annexation would be affected if the City was unable to get easements from all of the adjacent property owners. Mr. Friday stated that there was a county road easement in place that would allow the City to proceed. Councilmember Sullivan asked if there were any road improvement agreement issues that would occur near this property. Mr. Friday stated that the property owners would be responsible for improvements near their frontages and would also be signing a waiver stating that they would be responsible for future improvements. Councilmember Sullivan asked if the Legends West Subdivision had non-protest waivers in their SIA. Mr. Friday stated that Legends West was a fairly recent subdivision and thought that it would have a non-protest waiver. Councilmember Yakawich asked if there had been any protests to the annexation. Mr. Friday stated that there was not a neighborhood meeting requirement regarding annexations. Councilmember McFadden asked if the City had plans to annex more of the area. Mr. Friday stated that it may occur, but that the City did not have any specific plans in the near future.

The public hearing was opened.

There were no speakers, and the public hearing was closed.

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #950: a zone change from Agriculture-Open Space (A-1) to Residential 7,000 (R-70) on a 15.107 acre parcel of land described as: Tract 3 of C/S 1648, generally located at 4240 Central Avenue. Janet R. Bergman, owner; Bryan Alexander, Sanderson Stewart, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint presentation with an overview of the property. She stated that there had been a neighborhood zone change meeting and all of the issues had been addressed and were included in a two-page synopsis. She stated that the current owner was in a buy/sell agreement with Marsich, LLC. She added that they were proposing to do a unit ownership development where all of the access roads would look like city streets, but would be private roads.

The public hearing was opened.

- **Bryan Alexander, Sanderson Stewart**, stated that he was available for questions. Councilmember Yakawich asked if the new development would blend well with the existing properties. Mr. Stewart stated that a unit ownership development had a lot of control over the development, architecture, layout, etc. He stated there would be open spaces with common

ownership areas throughout the development. He added there would be some uniformity throughout the development.

There were no further speakers, and the public hearing was closed.

Councilmember Sullivan moved for approval of Item 4, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

5. APPROVAL of Facility Management, Operation and Use Agreement with Mustangs Baseball, LLC, (Dehler Park). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek gave a brief PowerPoint presentation with an overview of the current contract and the proposed contract. She stated that the City Ball Park Permanent Fund would get 15% of the sale from the naming rights to provide major maintenance and update the scoreboard. She added that under the new proposal, the Ball Park rental price would go from \$30,000 to \$60,000 annually to be put into the permanent fund for capital repairs. Ms. Volek added that the new agreement would also include a \$30,000 City-funded maintenance account which combined with a \$5,000 Ball Park account to handle non-capital repairs. She stated that anything costing more than \$5,000, with more than a 1-year life of service, was considered a capital repair and would be handled with money from the permanent fund. Councilmember Brewster asked that a schedule of inspection be made at regular intervals to insure that the appropriate maintenance was being completed. Councilmember Brown asked why there was such a discrepancy in what the City would be paying compared to what the Ball Club would be paying. Ms. Volek stated that the Ball Park is City property. Mayor Hanel stated that the cost increase in the annual fee would help to address the cost issues. Ms. Volek stated that one of the concerns had been that the Ball Club continue to play at Dehler Park for the duration of the contract and that issue was addressed within the new contract.

Councilmember Sullivan asked what would happen if the Ball Club became insolvent. Ms. Volek stated that the Bond Council looked at the Ball Club's finances regularly. She added that the City could pursue legal action against the Ball Club for the remainder of the bonds if that ever occurred. Ms. Volek added that she had looked at other Ball Club agreements within our league such as Missoula. She stated that their contract called for rent in the amount of \$120,000 annually but that the ball park was available to the City only four times per year and that the team had the rights to all parking, liquor, concession, scoreboard and advertising income. She added that Missoula had the naming rights for the field, but that the team maintained the ball park and the playing field. She added that they had an organization, called Friends of the Civic Stadium, that furnished \$25,000 per year up to \$250,000 for non-routine maintenance and repairs. She stated that she also looked at a contract for the Orem Owls, between Utah Valley University (UVU) and the baseball club owner, and the University had limited use throughout the season. She stated that from 2012-2017 the team paid the University \$48,400 and from 2018-2022, they

paid \$55,560. Ms. Volek stated that the team received the money for the parking, concession, ticket and souvenir sales. She stated that the team sold all advertising and they split the scoreboard sales. She stated that UVU was responsible for all maintenance and cleaning. She added that the team paid \$15,000 per year for maintenance of the grounds and playing field.

Councilmember Clark asked if the City had the right to refuse proposed naming rights. Ms. Volek stated that the City had right of refusal to naming rights included in the agreement. Councilmember Yakawich asked who was the local Ball Club liaison. Ms. Volek stated that Gary Roller, General Manager of the Billings Mustangs, was a local resident and was the City's Ball Club liaison. Mayor Hanel added that Mr. Roller had been involved in the Ball Club for many years and was a very positive part of the team. Councilmember Clark asked if the naming rights included the Ball Park and the field. Ms. Volek stated that the Dehler Park name was in effect until 2032 and the money received from those rights had been used to pay off bonds. She stated that there were two sets of bonds, the GO bonds and the bonds that were a result from the donations and gifts given to the City. Ms. Volek stated that during the initial contract, the Bond Council had set the amount at \$30,000 as to not void the tax exemption status of the bond. She added that since those bonds had been partially paid off, it had allowed the number to increase to \$60,000. Councilmember Clark asked about Dehler Park and Athletic Field having separate names. Mrs. Volek stated that staff had not found any documents showing a differential between Dehler Park and Athletic Field. She stated that it was referred to only as Dehler Park. Councilmember Brown asked if the \$30,000 would come from the Park Fund or the General Fund. Ms. Volek stated that she would recommend it come from the General Fund. Councilmember Cromley asked if his emailed comments had been addressed. Ms. Volek stated that they had reviewed his email and did not see an issue with incorporating his concerns into the new agreement. Brent Brooks, City Attorney, stated that liability insurance could be incorporated into the agreement. Councilmember Cromley stated that he was concerned about the amount the City would get when selling naming rights. He stated he would like to see some examples of what other ball clubs received when naming rights were sold. Councilmember Clark stated he did not think 15% of naming rights for both the Ball Park and the field was a high enough percentage.

Councilmember Brewster moved for approval of Item 5, seconded by Councilmember Sullivan. Councilmember Sullivan stated that there was a multi-million-dollar naming opportunity for the Park that was outside of the contract. He stated that he would like to see the City be able to take the naming rights back or change the percentage. Mayor Hanel stated that Main Street Baseball had recently been recognized as the nations' top minor league baseball organization for 2016 and they had done an outstanding job of managing the ball fields they currently owned. He stated he was excited to see the changes that Main Street Baseball would bring to the City. He added that he did not think requesting a higher percentage for naming rights was worth the risk of losing what the Ball Club.

Councilmember Brewster moved to amend his original motion to have the Mayor and City Council appoint two additional members to the Facility Review Committee, seconded by Councilmember Clark. On a voice vote, the amendment was approved unanimously.

Councilmember Cromley stated that he would not support the motion unless he knew for certain that 15% for naming rights was the industry standard. Councilmember Brown agreed that the percentage seemed too low. Mayor Hanel asked for the contract deadline date. Ms. Volek stated that the contract would end December 2017. Ms. Volek stated that Dave Heller, Chief Executive Officer of Main Street Baseball, had stated that he would continue to pay \$30,000 and would not be comfortable making any additional improvements to the Ball Park until the new contract was completed. Councilmember Friedel asked what was the length of the naming contract. Ms. Volek stated that the current naming contract was 20 years, but some past contracts had been 10-year contracts with the option for renewal.

Councilmember Sullivan moved to amend the contract to allow one-half of the net proceeds from any marketing fees that the team may pay. Ms. Volek asked, "for example if they hire someone to bring a sponsor in, the team pays that fee, then anything left over becomes the net and we split that 50/50, correct?" Councilmember Sullivan stated that was correct. Councilmember Friedel seconded the amendment. Councilmember Cromley stated that he did not want to insult the Ball Club with a 50/50 offer. He stated that he would like to see more information before picking a number. Councilmember Friedel asked how they had arrived at 15%. Ms. Volek stated that she had chosen 15% by using the normal fee set by agents. She stated she had been unable to find a standard that was similar to the City's situation. On a roll call vote, Councilmember Sullivan's amendment was approved 5-4, with Councilmembers Cromley, Yakawich, Brown and Mayor Hanel voting in opposition.

Councilmember Brewster made a substitute motion to delay Item 5 for two weeks to allow staff additional time to research and provide to Council more information on the industry standard for naming right fees, seconded by Councilmember Friedel. On a voice vote, the motion was approved 8-1, with Councilmember Sullivan voting in opposition.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.*)

The public comment period was opened.

- **Bill Cole, 3733 Tommy Armour Circle, Billings, Montana**, urged Council to support the Local Option Authority. He distributed a letter requesting endorsement and asked for reconsideration of the previous decision to delay action.

- **Bob Wilmouth, 40 Heatherwood Lane, Billings, Montana**, spoke in favor of the Local Option Authority.
- **Jeff Walters, 1706 St. Andrews Street, Billings, Montana**, urged Council to give the citizens an opportunity to decide for themselves by putting the item back on the table. He stated that every community would get to decide how they would like to proceed.
- **Leif Welhaven, 4637 Neibauer Road, Billings, Montana**, urged Council to put the ACT Initiative back on the table.
- **Steve Warlock, 2511 1st Avenue North, Billings, Montana**, stated that the Tourism Business Improvement District (TBID) had originally been met with skepticism, but had become very successful. He stated that the ACT Committee would be controlled locally and spoke in favor of it.
- **Patrick Alp, 1416 Avenue D, Billings, Montana**, urged Council to reconsider and allow the ACT Initiative to come back for debate.
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, stated that the ACT Initiative would tax everyday items and would not support it.
- **Kevin Odenthal, 139 Avenue B, Billings, Montana**, stated that the ACT Initiative would not tax items such as food and pharmacy items and stated that each community would decide how to use the money.
- **J.J. Carmody, 4100 Grooms Lane, Billings, Montana**, stated that the ACT Initiative would provide a competitive environment for hiring healthcare workers and would allow the City to be the best it could be.
- **Karen Sanford-Gall, 3110 East MacDonald Lane, Billings, Montana**, provided a list of improvements that Casper, Wyoming were able to make with the money earned from a local option tax.
- **Jeff Ewalt, Zoo Montana Director**, urged Council to reconsider the ACT Initiative. He stated that the City had a huge future and needed to be a leader in the state.
- **Terry Bouck, 3441 Masterson Circle, Billings, Montana**, stated that when he lived in Tacoma, Washington they had a local option tax and it had worked very well.
- **John Brewer, 815 South 27th Street, Billings, Montana**, urged Council to endorse the ACT concept and allow voters to make the final decisions later. He stated that the ACT bill was transparent and would allow citizens to vote for what they wanted.
- **Kristy Drake, 2416 Avalon Road, Billings, Montana**, stated that the people involved in the endorsement committee were a very special part of the City. She stated that they all wanted to see the community thrive.
- **Jennifer Mercer, 2701 Glenwood Drive, Billings, Montana**, stated that the endorsement committee included all different types of people from the community. She stated that it included leaders and business owners from the community with a common goal to help the City through the ACT Initiative.
- **Jeremy Scherer, 1701 Vuecrest Drive, Billings, Montana**, stated that he had lived in Casper, Wyoming for 19 years and the local option authority had worked very well. He spoke in favor of the ACT Initiative for Billings.

- **Daniel Brooks, 325 Lincoln Lane #2, Billings, Montana**, spoke about the different categories and which items would be included in the statute. He stated that 86% of Chamber of Commerce members were in favor of the local option tax.
- **Kris Carpenter, 4642 Arapaho Lookout, Billings, Montana**, stated that as a business owner, it was a privilege to provide services to the community. She stated that handling the money from the tax option would not be difficult.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana**, stated that City Council was very predictable in the way they voted and suggested that they start a random roll call voting system.

There were no further speakers, and the public comment period was closed.

COUNCIL INITIATIVES:

- Councilmember Yakawich moved to reconsider the decision to table the endorsement of the Authorize Community Transformation (ACT) Initiative, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 7-2, with Councilmembers McFadden and Friedel voting in opposition.

There was no further business, and the meeting adjourned at 9:30 pm.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk