

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

December 19, 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. Councilmember Friedel gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Cimmino, Friedel, Swanson, Clark and Brown. Councilmember Sullivan was excused. Councilmember McFadden arrived at 6:37 pm.

MINUTES: December 12, 2016 - *NOT Fully-Prepared for Approval.*

COURTESIES:

- Mayor Hanel recognized the parks and recreation, public works, and streets department for all their efforts and hard work with snow removal from the streets.

PROCLAMATIONS: NONE

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek did not have any items for her report, but asked David Mumford, Public Works Director, to provide a status report regarding snow removal. Mr. Mumford described the processes and challenges involved with snow removal. He thanked all the departments involved with snow removal, which included Streets, Parks and Recreation, and Solid Waste. He also thanked Knife River for allowing the City to utilize their pit for snow disposal. He stated the crews would return to regular business hours on Friday, December 23rd. Councilmember Cimmino requested Wyeth Friday, Planning Director, provide an explanation of the "Snow Buddies" program, available through Code Enforcement, that served those who needed sidewalk snow shoveling assistance, as it was an additional resource to the community.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1, 3 and 4 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 Items 1C and 4, stated there was no tax payment in the lease with Alpine Aviation, Inc. and suggested the City start taxing areas that could be taxed and not raise his taxes and that of his neighbors. He commented on 5 areas of concern with the Dehler Park Agreement. He stated the facility was an excellent facility and had been acknowledged as the best rookie league stadium in recent years. He stated the community's investment in the ball park needed to be protected.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Two 58,000 GVW 12 yard dump trucks with plows and sanders.** (Opened 12/13/2016) Recommend delay of award until January 9, 2017.
2. **Four-Wheel Mechanical Broom High Dump Sweeper.** (Opened 12/13/16) Recommend delay of award until January 9, 2017.

B. **Utility Relocation Agreement** with Northwestern Energy; \$80,535.44.

C. **Amendment #2**, to Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc., from 523.79 square foot space in the basement of the Terminal and replacing it with a new 1,029.42 square foot space.

D. **Approval** of Tax Increment Financing Assistance from East Billings Urban Renewal District Tax Increment Funds to White Heating and Air Conditioning for new sidewalk and drive approaches, landscaping, architect, engineering and permit fees, storm water management, and improvements to utilities at 1125 4th Avenue North; \$21,660.

E. **Resolution** amending Res. #16-10529 to extend recommendation deadline of Babcock Theater Ad-Hoc Council Advisory Committee.

F. **Second/Final Reading Ordinance for Zone Change #950:** a zone change from Agriculture-Open Space (A-1), a County zoning district, to Residential 7,000 (R-70) on a total area of 15.107 acres of land, generally located at 4240 Central Avenue on Tract 3 of C/S 1648. Janet Bergman, owner; Marsich Investments, LLC, contract purchaser; Sanderson Stewart, agent. Approval of the zone change and adoption of the findings of the 10 criteria.

G. Bills and Payroll:

1. November 28, 2016
2. December 5, 2016

Councilmember Cromley separated Item 1E for discussion.

Councilmember Yakawich separated Item 1B for discussion.

Councilmember Brown separated Item 1G1 in order to abstain.

Councilmember Cimmino separated Items 1G1 and 1G2 in order to abstain.

Councilmember Friedel separated Item 1D for discussion.

Councilmember Clark moved for approval of the Consent Agenda, with the exception of Items 1B, 1D, 1E, 1G1 and 1G2, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item 1G1, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 8-0, with Councilmembers Brown and Cimmino abstaining.

Councilmember Clark moved for approval of Item 1G2, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9-0, with Councilmember Cimmino abstaining.

Councilmember Cromley separated Item 1E and asked for a brief update from the Councilmembers involved in the Babcock Theater Ad-Hoc Committee. Councilmember Brewster responded it had gone well, but would take more time because there was more than one organization involved. He stated there would be a meeting with the cultural members to gain insight from that community regarding needs for the theater. He continued that the focus had been narrowed and strategic development would be brought to the Council in the near future. Councilmember Cromley asked if there would need to be an extension for transfer of ownership. Councilmember Brewster responded an extension would not be needed for ownership transfer, only to report to the Council. Councilmember Cromley moved for approval of Item 1E, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated 1B and asked David Mumford, Public Works Director, for specifics about utility relocation with Northwestern Energy. Mr. Mumford responded that the relocation of power poles had been required to widen Grand Avenue. He continued that Northwestern Energy would pay approximately 70% of the relocation because it was in their right-of-way. Mr. Mumford stated there were approximately 2 blocks located in front of the school that were in an easement owned

by Northwestern Energy and the City had asked that those power poles be moved. Mr. Mumford stated that the City would pay to have those power poles moved since they were located in Northwestern Energy's right-of-way. He reiterated that was not for street lights and was not attached to any street light districts. He stated the relocation was for high-power transmission lines and relocation out of the roadway was costly. Mr. Mumford stated Northwestern Energy would pay approximately 70 percent of the relocation costs and Northwestern Energy would perform the relocation work because of their expertise. He stated the City would contribute \$80,000 or 30 percent of the costs for relocation of the power lines. Councilmember Cimmino asked whether School District 2 contributed to the costs since the relocation was in front of the Ben Steele Middle School. Mr. Mumford stated School District 2 had a SIA that had contributed to the other improvements to the property. Councilmember Yakawich moved for approval of Item 1B, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Friedel separated Item 1D and asked what would be reimbursed from the TIF District monies to White Heating and Cooling. Tim Goodridge, EBRUD TIF District, responded that reimbursements were for improvements to the property such as ramps, sidewalks, and boulder pits for rainwater. Councilmember Friedel asked if the improvements were for public use. Mr. Goodridge stated the improvements were predominately for the benefit of the public. He stated that visual improvements were welcomed in the district and gave a sense of improvement in the TIF District that the public appreciated. Councilmember Cimmino asked why there was a difference between the reimbursement amount and the actual amount of the improvements. Mr. Goodridge responded the review committee determined which improvements had the most value toward the growth of the district and those were not reimbursed 100 percent. Councilmember Cimmino complimented White Heating and Cooling for the care they gave to their property. Councilmember Yakawich commented that the EBRUD was very conscientious about where the tax monies were spent. Councilmember Friedel moved for approval of Item 1D, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND APPROVAL of Pretreatment Service Agreement with ExxonMobil Corporation without annexation. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated staff did not have a presentation, however, were available for questions.

Councilmember Clark asked whether ExxonMobil had an agreement with Lockwood. Dave Mumford, Public Works Director, stated he had been told there had been a positive meeting between the two parties, but a final agreement had not been entered into.

Councilmember Brown asked what the options were for ExxonMobil if an agreement with Lockwood was not reached. Mr. Mumford responded that ExxonMobil could put in their own service line and were prepared to move forward either way. He continued that the agreement with the City of Billings was from ExxonMobil's property line to the City's treatment plant.

The public hearing was opened.

- **Chris Jessup, Manager of ExxonMobil, 5819 Autumnwood Drive, Billings, Montana**, stated opportunity to have an agreement between ExxonMobil and the City created synergy between industry and the City. He commented that discussions with Lockwood had been positive and ExxonMobil was prepared to move forward with the pretreatment of its water.

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

Councilmember Clark moved for approval of Item 2, seconded by Councilmember Friedel. Mayor Hanel spoke in favor of the motion. On a voice vote, the motion was unanimously approved.

3. APPROVAL to purchase property located at Lot 4, Block 9, Sunnyside Subdivision 2nd Filing, and addressed as 2305 9th Avenue North, Billings, Montana. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Bruce McCandless, Assistant City Administrator, gave a brief presentation. Mr. McCandless stated the property was zoned as Residential 7000; contained a house, garage and shop on it; and there were no present plans to demolish any of the buildings, but to secure them from unauthorized entry. He stated the shop was currently occupied by A-1 Sewer. He continued that the zoning was controlled by the City, so zoning was not a concern for the property. He stated there was an adjacent piece of property that was tested by Terracon Consultants, Inc. for underwater contaminants. He stated the DEQ presented a "no further action" letter and it was believed the same would be received for this piece of property. Mr. McCandless stated the property had been appraised by 2 separate appraisers and there was a sizable difference between the 2 appraisals. He stated a contingent offer of \$175,000 was negotiated and was closer to the low-end appraisal. He continued that the City was interested in the property purchase because of its location to the property of the new 9-1-1 Center and headquarters Fire Station No. 1. He stated the property could be used for staging during the construction of the new 9-1-1 Center. Mr. McCandless stated it was unclear whether the City would wish to keep it in the future, but it could be utilized for parking, etc. He stated that it was a good piece of property for future residential redevelopment.

Councilmember Cimmino questioned how the contingent offer of \$175,000 was arrived. Mr. McCandless explained that the higher appraisal price was given because the appraiser considered the highest and best use of the property as commercial or

public use, rather than residential use. He continued that through verbal negotiations between realtors, \$175,000 was the lowest price the sellers would accept.

Councilmember Yakawich questioned whether the property had ground pollutants. Mr. McCandless responded that a Phase 1 Environment Assessment had been conducted on the property by Terracon Consultants, Inc. and the assessment indicated no evidence of contamination on the property. He stated it was a uniform assessment for commercial properties that confirmed whether any contaminants existed. He stated that based upon the residential uses of the property since approximately 1951, there had been very limited commercial use of the property since 1958, it was unlikely contaminants would be found. Councilmember Yakawich asked if there was asbestos and lead paint on the property that would need to be removed. Mr. McCandless responded that most anything built in the 1950s would have had materials in them that contained asbestos, such as the backing of linoleum. He continued that should the City choose to remodel or demolish the buildings, an environmental remediation company would have to be involved in the asbestos and lead paint removal. Councilmember Yakawich asked how much it would cost for asbestos and lead paint removal. Mr. McCandless was not able to provide an estimate, but stated the Fire Department had to do the same thing for the 9-1-1 Center property and that information could be obtained and provided to Council later. He reminded Council, however, that the recommendation to Council was to not touch the buildings at this time, but to secure them. Councilmember Yakawich stated he was concerned that purchasing the property for \$175,000 may appear "a good deal", but if environmental remediation was needed later for an additional \$100,000, then the property would be proven too expensive and not a good deal. Mr. McCandless stated he did not think the Fire Department spent more than \$25,000 to \$30,000 for the remediation on the 9-1-1 Center property and it had been a larger piece of property with more environmental concerns.

Councilmember Brown clarified that the purchase of the property was to provide a staging area for the construction of the new 9-1-1 Center. Mr. McCandless stated that was a possible use for the property, but it could be utilized for parking spaces or possible expansion of the 9-1-1 Center in the future. He continued that its immediate use could be for staging. Councilmember Brown asked whether the funding to purchase the property came from the Operations Center budget. Mr. McCandless stated the purchase would be made from the General Fund because it was not certain at this time which department would utilize the property. He stated that would be determined later.

Councilmember Cimmino asked for the names of the appraisers. Mr. McCandless stated Randy Robertson and Leonard Lervick. Councilmember Cimmino stated she supported the purchase of the property, but objected to using General Fund monies for the purchase. She stated the purchase was specifically geared toward the construction of the 9-1-1 Center. She questioned why the purchase would not be from the 9-1-1 Center's operations fund. Mr. McCandless stated the 9-1-1 Center Operations funds were to be used as preparation of the next generation of 9-1-1 needs. He gave an explanation of the Governor's budget and how it may affect "stranded funds" which

could place 9-1-1 funding at risk. He continued that should the property be used for the 9-1-1 Center, a budget amendment could be made at that time and the Finance Director would be placed on notice.

Councilmember Clark stated parking was always an issue at the 9-1-1 Center and employees parked off campus. He eluded that the property could be utilized to address parking needs.

Councilmember Swanson moved for approval of Item 3, seconded by Councilmember Clark. Councilmember Friedel moved to amend the motion to include language that should the property would be used for the 9-1-1 Center, that the General Fund be reimbursed by the 9-1-1 Center Operations fund, seconded by Councilmember McFadden. Councilmember Brewster stated he was fine with the original motion to purchase the property using General Fund monies, because it was uncertain whether the property would be used as a supplement to the new 9-1-1 Center or perhaps the Fire Station. He stated he would rather not speculate how the property would be utilized. He continued that should the property be sold in the future, the monies could be deposited back into the General Fund at that time. He stated the purchase was a prudent use of the General Fund monies.

Councilmember Brown asked Tina Volek whether an amendment was necessary. Ms. Volek stated her concern was whether this would occur "automatically". She stated that perhaps a future Council made up of members not serving the Council today, would want to vote on the moving of monies. She suggested the fund be footnoted and should a department utilize the property, then the issue would be brought to the Council's attention.

Councilmember Cimmino noted that the 9-1-1 Center was technically a Public Safety Fund division, which was a part of the General Fund. Ms. Volek stated the 9-1-1 Center fund was actually a separate fund from the General Fund. Councilmember Cimmino asked if the reimbursement would be in the form of an intrafund transfer. Ms. Volek stated intrafund transfers were regularly performed, but for amounts much less than \$100,000.

Councilmember Friedel withdrew his amended motion, seconded by Councilmember McFadden. Councilmember Friedel moved to amend the original motion to include language that should the property be used for the 9-1-1 Center, or any other department, the General Fund would be reimbursed from that department's funds, seconded by Councilmember McFadden. On a voice vote, the amended motion was unanimously approved. On a voice vote, the original motion as amended, was unanimously approved.

4. APPROVAL of Facility Management, Operation and Use Agreement with Mustangs Baseball, LLC, (Dehler Park). Staff recommends postponement of action until February 13, 2017 Council Meeting. (Action: approval or disapproval of staff recommendation.)

Ms. Volek stated there had been significant discussions concerning the agreement. She stated that the changes made to the agreement reflected the directions from the City Council during the December 12th meeting. She explained that Mr. Heller was not agreeable to signing the agreement in its current form. She stated Mr. Heller had proposed two alternatives; to withdraw any reference to the field naming rights; or to ask the Council to have 50 percent of the naming rights to agree to add an additional \$25,000 to the routine maintenance fund or to the capital fund. She stated Mr. Heller believed that would balance the additional payment requested from the Ball Club. She stated Mr. Heller was willing to come to Billings to speak to the Council, if desired. Ms. Volek recommended postponement of action on the item until the February 13, 2017 Council meeting to allow time for Mr. Heller to meet with the Council.

Councilmember Brown asked for clarification on the options proposed by Mr. Heller. Ms. Volek stated the options had been proposed to offset the increase in rental fees for which the Council requested.

Councilmember Clark commented on the citizen's letter which outlined 5 concerns about the agreement. He stated he wished to remove the naming rights altogether from the agreement. Ms. Volek responded to the citizen comments and provided explanations.

Councilmember Brewster asked about the maintenance fund. Ms. Volek provided clarification about the process.

Councilmember Cromley asked whether Main Street Baseball was willing to remove any reference to the ball park naming rights. Ms. Volek stated they were, but would want some access to them. She stated she was not comfortable speaking on behalf of Mr. Heller and recommended postponement of the item to allow Mr. Heller to make his presentation before the Council. Councilmember Cromley moved to approve the 12/16/2016 agreement, with the exception of removing the ball park naming rights and replacing the name of Mustangs Baseball with Main Street Baseball. Ms. Volek interjected that Mustangs Baseball, LLC, was a sub-unit of Main Street Baseball, and it was correctly stated. Councilmember Cromley corrected the motion to approve the 12/16/2016 agreement, with the exception of removing the ball park naming rights, seconded by Councilmember Yakawich.

Councilmember Clark asked whether the motion included the removal of all naming rights. Councilmember Cromley asked for clarification of what other naming rights there were. Councilmember Clark stated the scoreboard, the field, and the ball park, etc. Councilmember Cromley stated he did not wish to remove all naming rights entirely, just that of Dehler ball park. Councilmember Clark stated he could not support the motion. Councilmember Clark moved to amend the motion to exclude all naming rights from the agreement, except for the advertising signage on the fence, seconded by Councilmember Cromley.

Councilmember Brewster stated it was reasonable to postpone a decision on the agreement and appoint a subcommittee to meet with Mr. Heller to negotiate the details. Mayor Hanel spoke against the amended motion and cautioned Council about its demands. He stated the Mustangs' program was very important to the community and urged the Council to approve the original edited agreement. He reminded Council that the naming rights to the ball park did not expire for another 10 years and too much time had been spent on naming rights.

Councilmember Clark stated he would not want to see the City give away all naming rights. He stated he was more comfortable with Councilmember Brewster's proposal to meet with Mr. Heller for continued negotiations.

Councilmember Swanson stated he supported meeting with Mr. Heller and continued negotiations.

Mayor Hanel asked City Attorney, Brent Brooks, to advise whether rights to advertising vs. naming rights fell under the amended motion. Mr. Brooks referred to sections of the agreement that addressed advertisement rights and asked for clarification on whether the Council wished to address advertising and naming rights. Councilmember Clark responded that the intent of his motion was for the Ball Club to retain the rights to sell advertising on the fence, but all naming rights would be excluded from the agreement. Ms. Volek interjected that she did not believe that was Mr. Heller's intent, but she was not comfortable speaking on his behalf. She cautioned the Council about narrowing advertising rights to only the fence area. Councilmember Clark stated that was the only advertising rights the Ball Club had currently. Mayor Hanel spoke in opposition of the motion and stated the agreement was too important to the community to risk it.

Councilmember Cimmino asked Ms. Volek whether the Dehler family was aware that Mr. Heller wanted the naming rights. Ms. Volek stated she had not spoken with the Dehler family, but assumed they had seen the media coverage. She could not recall whether there was a first right of refusal clause in the Dehler's contract to naming rights, but would research that information if the Council wished.

Councilmember Clark asked who had been the beneficiary of the fence advertising monies. Ms. Volek stated the advertisement monies collected had gone to the facility to purchase the scoreboard.

Councilmember Brown moved for approval of a substitute motion to create a subcommittee of Councilmembers, appointed by the Mayor, to meet with Mr. Heller by the end of January 2017 to negotiate terms of an agreement and postpone action on Item 4 until the February 13, 2017 Regular Council Meeting, seconded by Councilmember Clark. Councilmember Friedel asked for the City Attorney's advice on Council negotiations with Mr. Heller. Mr. Brooks responded there was an ordinance that allowed for appointment of Council ad-hoc subcommittees by the Mayor. Councilmember Friedel expressed interest in participating in the ad-hoc subcommittee.

On a voice vote, the motion was approved 8-2, with Mayor Hanel and Councilmember Cromley opposing.

Mayor Hanel selected Councilmembers Friedel, Clark, Brown and Brewster and City Administrator, Tina Volek, to serve on the subcommittee. City Attorney, Brent Brooks, reminded Council of the open meetings laws for the subcommittee. Councilmember Brewster moved to approve the subcommittee selection and schedule a meeting with Mr. Heller no later than the February 13, 2017, Regular Council Meeting, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

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.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, in reference to the Firefighters contract and revisions, spoke about whether further revisions were considered after the Council had already approved the contract. He spoke about winter preparedness and snow storms in Montana. He stated the Council had set a clear policy of "NO" to plowing residential streets for this budget year. He recommended that policy be reconsidered for the next fiscal year.
- **Jon Phillips, Chief Finance Officer of YWCA, 322 Lynn Avenue, Billings, Montana**, spoke about snow removal on the streets. He explained there were unique circumstances to the area on 9th Street West on Wyoming Avenue to 10th Street West and requested moving YWCA up on the plowing schedule and expressed his gratitude to the City.

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

COUNCIL INITIATIVES:

There were no Council initiatives.

There was no further business, and the meeting adjourned at 8:20 pm.

CITY OF BILLINGS



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

ATTEST:

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