

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 23, 2017

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 Yakawich gave the invocation.

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

**MINUTES:** January 9, 2017 – Councilmember Cimmino moved for approval, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

### **COURTESIES:**

- There were no courtesies.

### **PROCLAMATIONS:**

- There were no proclamations.

### **ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek reminded Council that Monday, January 30, 2017, was the fifth Monday of the month and therefore a bye week. She stated no Council meetings would be held.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 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. There were no speakers, and the public comment period was closed.

### **1. CONSENT AGENDA**

#### **A. Bid Awards:**

1. **Snow Plowing and Hauling.** (Opened 1/10/17) Recommend Knife River; not to exceed \$75,000 in FY17, and including two (2), one (1) year extensions with mutual consent.

- B. W.O. 14-11, Water Reclamation Facility Nutrient Upgrade, Expansion and Improvements.** (Opened 1/10/17) Recommend Sletten Construction; \$61,681,033.
- C. Replacement Rose Park Pool Operations Building.** (Opened 1/10/17) Recommend delay of award until 2/13/17.
- D. One New Current Model 2017 Trailer with CCTV Inspection Equipment.** (Opened 12/27/16) Recommend rejection of bids and re-advertisement.
- B. Professional Services Contract** for Police Evidence Facility Expansion; Schutz Foss Architects, P.C. of Billings; \$54,000 fee, plus reimbursable expenses not to exceed \$4,000.
- C. Funding Agreement** between Billings MPO and Montana Department of Transportation (MDT) for the completion of the Household Travel Census; \$70,000.
- D. Acceptance of Donation** to the Fire Department from ExxonMobil for purchase and upgrade emergency response equipment; \$2,500.
- E. Grant Application Request** to submit FY2017-2018, Montana State Historic Preservation Office Certified Local Government (CLG) Grant application; \$5,500.
- F. Grant Application Request** to submit the MDT Transit Planning Division applications for Sections 5310, 5339 or any other available capital grants, and to accept and execute any subsequently awarded Grant Agreement(s) for replacement of three vans and other capital needs.
- G. Second/Final Reading Ordinance #17-5682 for Zone Change #951:** a zone change from Residential 7,000 (R-70) to Neighborhood Commercial (NC) on the East 1/2 of Lot 2 and Lot 3, Block 5 of Amended Block 2, Valley View Acres Subdivision, a 14,400 square foot located at 533 South 25th Street West. Steve Keuhn, owner. Approval of the zone change and adoption of the findings of the 10 criteria.
- H. Preliminary Subsequent Minor Plat** of Bishop Fox Subdivision, Amended Lot 1, Block 1, an approximately 8.195 acre parcel of land, generally located at the northeast corner of the intersection of Grand Avenue and 54<sup>th</sup> Street West; Bishop Fox Company, owner; CTA Architect Engineers, agent; conditional approval and adoption of the findings of fact.
- I. Preliminary Minor Plat** of Tule Ridge Subdivision, described as Amending Lot 8 of Sunny Cove Fruit Farms into 5 lots, generally located on the southeast corner of the intersection of Rimrock Road and Molt Road; Tule Ridge Development, LLC, owner; Performance Engineering & Consulting, agent; conditional approval and adoption of the findings of fact.

**J. Preliminary Minor Plat** of Shiloh Commons Subdivision, described as Certificate of Survey 2277 Amended, on a 9.38 acre parcel of land, generally located at the northeast corner of the intersection of Central Avenue and Shiloh Road; Stock Development, owner; Sanderson Stewart, agent; conditional approval and adoption of the findings of fact.

**K. Bills and Payroll:**

1. December 23, 2016
2. January 3, 2017

Councilmember Sullivan separated Item 1A2 for discussion.

Councilmember Brown separated Items 1K1 and 1K2 in order to abstain.

Councilmember Cimmino separated Items 1A1, 1B, 1C for discussion.

Councilmember Cimmino separated Items 1A2, 1K1 and 1K2 in order to abstain.

Councilmember Brewster moved for approval of the Consent Agenda, with the exception of Items 1A1, 1A2, 1B, 1C, 1K1 and 1K2, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Items 1K1 and 1K2, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9-0, with Councilmembers Cimmino and Brown abstaining.

Councilmember Sullivan in reference to Item 1A2, mentioned it was not often that the City was involved in a \$61 million project and thought it was important to discuss it. Dave Mumford, Public Works Director, explained the \$3 million contingency on the project, which was 5 percent of the construction costs for unforeseen items. Councilmember Sullivan asked when the project would begin. Mr. Mumford stated the bonds would be sold in late January or early February and the contractors would start in March. Councilmember Sullivan moved for approval of Item 1A2, seconded by Councilmember Swanson. City Attorney Brent Brooks asked Councilmember Sullivan if the motion included the \$3 million signing authority of the City Administrator for the contingencies. Councilmember Sullivan replied that the motion did include the City Administrator's signing authority on this project. Mayor Hanel stated the project had been a few years in the making and thanked the various City departments involved for all the time and hard work spent bringing this project to fruition. Ms. Volek stated the bond rating was a "AA3" rating from Moody's and "AA+" rating from Fitch. She continued that when she first started working for the City, bond ratings were a "B" and the bond ratings had improved significantly, which saved the taxpayers money. On a voice vote, the motion was approved 10-1, with Councilmember Cimmino abstaining.

Councilmember Cimmino in reference to Item 1A1, asked Dave Mumford, Public Works Director, about the full amount of the snow plowing and hauling contract. She stated that even though the amount for FY17 was not to exceed \$75,000, the contract may have included two 1-year extensions, at a total cost of \$225,000. Councilmember Cimmino asked should the item be approved, would it be brought before the Council each of the next two years for approval. Mr. Mumford responded that should the parties mutually agree to extend the contract, it would only require the City Administrator's signature each subsequent year and would not come before the Council again. Ms. Volek stated that if the contract were approved, the extensions would be approved with it. Councilmember Cimmino clarified that the snow plowing and hauling was solely for the arterial and collector streets, not the residential streets. Mr. Mumford agreed and stated that some projects would be placed on hold to absorb the extra costs that snow plowing, hauling and removal had cost the department. Councilmember Friedel asked about contract details. Mr. Mumford responded that the contractor would provide extra-large dump trucks and graders to enable the City crews to work faster during snow removal from the streets. He continued that the longest down time for crews was waiting for dump trucks to return. Councilmember Clark asked if the contractor would receive \$75,000 whether there was additional snowfall or not. Mr. Mumford stated the contractor would be paid on an hourly basis only for work provided up to \$75,000. He stated the contractor, Knife River, would not be paid \$75,000 up front when the contract was approved, but hourly up to \$75,000. Councilmember Cimmino moved to approve Item 1A1, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino in reference to Item 1B, asked Police Chief St. John about the professional services contract for an expansion of the police evidence facility. She asked about the \$25,000 that was in the police budget and noted that the contract was well over that amount. She asked the Chief if he would submit a supplemental budget request. Chief St. John stated that the \$25,000 had been budgeted from salary savings and a supplemental budget request would be prepared for the additional monies. Councilmember Cimmino clarified that this project was for a warehouse to store evidence and a parking lot for impounded vehicle storage. Chief St. John stated the existing evidence building would be renovated. Councilmember Cimmino moved to approve Item 1A1, seconded by Councilmember Yakawich. Mayor Hanel supported the motion, stating the current facility was "busting at the seams" and the renovation was much needed. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino in reference to Item 1C, asked Lora Mattox, Transportation Planner, about the funding agreement between Billings MPO and Montana Department of Transportation (MDT). Councilmember Cimmino clarified that the City and County comprised the Billings MPO. She asked why the \$70,000 had not been submitted to the County and why an interlocal agreement had not been entered into or a memorandum of understanding with the County. Lora Mattox responded that there was not an actual awarding of a contract in this item. She continued that this was a letter of understanding for the funding between the Billings MPO and MDT. She stated that when the consultant was selected, the MDT expressed interest in contributing funds

to the household travel survey. She stated that during the discussions with MDT the survey would include a small portion of county properties, but that the majority of the properties would be within the Billings MPO organized area. Councilmember Cimmino noted that the contract referenced Lewis and Clark County and asked whether, in the event of litigation, jurisdiction may be better placed in Yellowstone County. Ms. Mattox responded that she and the City Attorney, Brent Brooks, had discussed this and had decided litigation was unlikely. Mr. Brooks agreed and stated the MDT was often inflexible on this provision. Councilmember Cimmino asked about the provision that referenced the Department of Civil Rights and whether Mr. Brooks would be representing the City on this matter. Mr. Brooks responded he had noted that information in the agreement and that it would be revised in handwriting. Councilmember Yakawich asked for clarification on the purpose of a household travel census and whether that could affect the MET transit system. Ms. Mattox responded that MET Transit and bicycle/pedestrian traffic would be reviewed. Councilmember Yakawich asked when the census would be completed. Ms. Mattox stated that once the contracts were in place, the actual gathering of information would take approximately 10 months and then the information would be given to a consultant to provide a model. She continued that the process was quite labor intensive. Councilmember Cimmino moved to approve Item 1C, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION #17-10598 adopting the Optimist Park Master Plan. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Tina Volek, City Administrator, stated that staff did not have an additional presentation, but was available for questions. Councilmember Clark asked Mark Jarvis, Park Planner, how many public meetings had been held. Mr. Jarvis stated there had been 2 public meetings. He stated the Parks Department had met with the South Billings Urban Renewal Association (SBURA) twice and had two meetings with the Parks Board and had met individually with stakeholders. Councilmember Yakawich asked whether the residents were comfortable with the plan. Mr. Jarvis stated he believed all concerns had been addressed with the residents in the area. He continued that the SBURA had unanimously approved the recommended adoption by Council, as did the Parks Board. Councilmember Cimmino asked that the plan be revised on Page 6, Origins, to reflect that the City Council had provided \$25,000 of Council contingency funds to support the endeavor, not the Parks Department. She also stated recognition should have been given to the former Councilmember responsible for the Council initiative for the Optimist Park Master Plan.

The public hearing was opened.

- **Floyd Martin, 4645 Phillip, Billings, Montana**, stated he was the Vice-Chair of the South Billings Urban Renewal Association (SBURA) and thanked the Council for its

contribution to the Master Plan. He continued by thanking the Parks Department and design contractor. Councilmember Clark noted that the SBURA was also contributing financially to the Master Plan.

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

Councilmember Friedel moved for approval of Item 2, including the amendments to the plan as requested by Councilmember Cimmino, seconded by Councilmember McFadden. Councilmember Yakawich thanked the members of the SBURA and Parks Department for working toward solutions for the Master Plan. Councilmember Friedel stated he attended a couple of the meetings and witnessed the challenges. He also commended all parties for working on solutions. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SPECIAL REVIEW #952: a special review to locate a drive through service for a pharmacy adjacent to a residential zone in a proposed 57,000 square foot building in a Community Commercial (CC) zone on a 8.197 acre parcel of land, generally located north of Grand Avenue, on the east side of 54th St. West. Bishop Fox Company, Ted Lovec, owner; CTA Architects & Engineers, Ron Isackson, agent. Zoning Commission recommends conditional approval. (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 a grocery store with a drive through pharmacy was proposed for the property. She reminded Council that special reviews were not zone changes; did not require an ordinance; were tied to specific uses of the land; and referred to the 3 criteria. Ms. Cromwell addressed lighting, landscaping, and pedestrian walkways. She stated that the intersection at Grand Avenue and 54<sup>th</sup> Street West was slated for significant improvements and the area had shown significant growth and development. Ms. Cromwell stated that Fire Station 7 and the subject property had a shared access. She stated the Zoning Commission conducted their public hearing on January 3, 2017, and had forwarded its recommendation for conditional approval. She stated the pharmacy would not be a 24-hour service and the hours of operation would be submitted with the building permit.

Mayor Hanel asked about street lighting along the walking path for safety concerns and a traffic signal at 54<sup>th</sup> Street West and Grand Avenue. He asked Ms. Cromwell how many special reviews, similar to this one, had occurred in the past 3 to 5 years. Ms. Cromwell estimated 12 to 15 special reviews had occurred for various uses. Councilmember Swanson voiced his concerns for pedestrian traffic near the parking lot and driveway accesses. Councilmember Sullivan questioned the size of the landscaping trees and stated they needed to be large enough to create a barrier. Ms. Cromwell stated that the evergreen trees would be 6 foot minimum at the time of planting and 2" caliber on the canopy trees. Councilmember Friedel expressed his concerns about lighting disturbing nearby residents. Councilmember Cimmino noted there were three

areas of concern brought by area residents. She asked whether those concerns had been addressed at the Zoning Commission meeting. Ms. Cromwell stated they had been addressed. Councilmember Friedel asked whether there would be ample room for the fire trucks to maneuver given there was a shared access. Ms. Cromwell responded the large vehicle access was separate and should not pose a problem. Councilmember Clark asked if much of the approved improvements to the area were due to the construction of the Ben Steele Middle School, prior to the proposed subject property. Ms. Cromwell agreed.

The public hearing was opened.

- **Piper Stanaway, 1546 Silver Run Trail, Billings, Montana**, stated she was a homeowner in the area east of the proposed site. She stated that the pharmacy drive through would be located across from her back yard. She was concerned about the lighting from the parking lot, light from the signage and drainage toward her property. She asked why the pharmacy drive through location was proposed on the residential side of the building and not on the fire station side. She stated she was concerned about noise from the trucks working at the docks and asked about noise buffering options, placement of garbage receptacles, and cardboard crushers. She asked how many trucks would make deliveries every night. She stated the soil was bad in the area and trees did not grow well there.
- **Whitney Kross, 1544 Silver Run Trail, Billings, Montana**, stated she was a homeowner in the area of the proposed site. She expressed her concerns about storm water run-off and stated the drainage system in the neighborhood acted more like a pond water retention system than a drainage system. She stated that her master bedroom was located on the 2<sup>nd</sup> floor of her home and the lighting from the fire station illuminated into her bedroom. She stated those were the same style of lights proposed for the new parking lot. She agreed with the previous statements made about poor soil in the area for growing trees. Councilmember Yakawich asked about a community or neighborhood meeting. Ms. Cromwell reminded Council that special reviews did not require pre-application neighborhood meetings and one had not been held for this special review.
- **Oscar Heinrich, 5148 Granite Peak Lane, Billings, Montana**, spoke on behalf of Piper Stanaway who inquired how far apart the trees would be spaced. He stated the grocery store and pharmacy were a good addition to the neighborhood. He stated he was concerned about the sound obscuring fence and whether it would be effective and asked if a sprinkler system would be installed.

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

Councilmember Swanson moved for approval of Item 3, seconded by Councilmember Sullivan.

Councilmember Cimmino asked whether there had been any response to Whitney Kross's email she sent to the Planning Department. Ms. Cromwell stated she had responded and provided explanations. Councilmember Clark noted that the building could have been built without the pharmacy drive through or a special review, initially. Ms. Cromwell responded affirmatively. She stated the building could have been built and the pharmacy drive through added later and a special review would not have been required. Councilmember Brown asked whether the Council could require less lighting. Ms. Cromwell stated the maximum height for the lights could be reduced to 15 feet from 20 feet. She stated that a no-light trespass condition could also be crafted. Councilmember Brown stated he was certain how to proceed with making those conditions. Councilmember Sullivan spoke in favor of the motion. Councilmember Yakawich stated the landscapers would do a good job and spoke in favor of the motion.

On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #952: a zone change from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 23,800 square foot parcel of land, generally located on the southeast corner of the intersection at Avenue D and 13th Street West. Shahan Enterprises, owner; Kolton Knatterud, Territorial Landwork, 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. Ms. Cromwell stated that there had been a pre-application meeting. She explained that the property consisted of 4 dwellings and that multi-family housing that existed in the R-70 zone since the 1970s was actually not allowed in that zone. She stated the new owners in order to sell the properties or make improvements to them would require a zone change for conformity purposes. She continued that there would be no demolition and rebuilding at this time. She stated there would be remodeling to put into unit ownership. The Mayor thanked the applicant for bringing the zoning conflict to the attention of the City and for helping to correct the zoning code in the area.

The public hearing was opened.

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

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

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #953: a zone change from Residential 7,000 (R-70) to Community Commercial (CC) on a 2.12 acre parcel of land, generally located adjacent to the Kiwanis Bike Path and off Yellowstone River Road. River Park Retirement Court, LLC, DBA River Park Storage (Gerald Klein), owner; Eric Nord, Crist, Krogh and Nord, PLLC,**



**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. Ms. Cromwell explained that the property had a mobile home park on it and storage units, however, the property had been transferred as separate pieces upon the death of the owner. She continued that the storage units had been included as part of the mobile home park for use by its residents. Under the current ownership the mobile home park had been separated from the storage units and the storage units were now a separate commercial business. Ms. Cromwell explained the unique access to the property and existing zoning around it. She stated the Planning staff had recommended denial of the zone change, but the Zoning Commission, based on the testimony at the public hearing and its findings, found that other uses for the property was highly unlikely. She continued that the storage unit business was a necessary business filling a need in the community. Councilmember Brewster asked whether Community Commercial was the only appropriate zoning for the property. Ms. Cromwell stated it was the least intense zoning for storage facilities. Councilmember Brown asked if the storage unit business was currently operating out of the confines of the current zoning and Ms. Cromwell stated that was correct.

The public hearing was opened.

- **Eric Nord, 2708 First Avenue North, Billings, Montana**, represented the River Park Retirement Court and requested the Council approve the Zoning Commission's recommendation. He stated the zone change simply recognized the practical reality of the facility and that it already existed. He stated the zone change recognized the current reality and brought the property into compliance. He stated the current owner of the mobile home park had not wanted to acquire the storage facility. Mr. Nord continued that there had been no objections to the rezoning of the property during the community meeting or at the Zoning Commission public hearing.

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

Councilmember Cromley moved for approval of Item 5, seconded by Councilmember Brewster. Councilmember Sullivan stated he did not agree with the method for which zone changes occurred and voiced that he would not support the motion for approval. Councilmember Brewster agreed that zone changes such as this were not ideal, but he stated the existing use was in place and he would rather have the business zoned correctly and would support the motion. Councilmember Brown stated he would support the zone change because the City should help with the function of the property. Councilmember McFadden stated he supported the motion in the spirit of serving the public. Mayor Hanel spoke in favor of the motion. On a voice vote, the motion was approved, 10-1, 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. There were no speakers, and the public comment period was closed.

**COUNCIL INITIATIVES:**

- Councilmember Brewster moved to form a selection subcommittee for the city administrator position at the next Council Regular Business Meeting, seconded by Councilmember Sullivan. Councilmember Brewster suggested that the subcommittee be comprised of 4 or 5 Councilmembers and perhaps 2 former Councilmembers who were experienced with the previous city administrator selection process. Councilmember Clark concurred with the motion. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 8:10 pm.

CITY OF BILLINGS



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

ATTEST:

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