

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 8, 2018

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 Cole called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Mayor Cole gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Ewalt, Joy, Friedel, Sullivan, Ronning, Clark and Brown.

**MINUTES:** December 18, 2017 – Councilmember Brewster moved for approval, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

### COURTESIES:

- Andy Patton, Chair of Downtown Billings Partnership, introduced the following: Sam Merrick, Chair of Downtown Billings Association; Randy Hafer, Chair of Downtown Business Improvement District; Katy Easton, incoming Executive Director of all three groups. Mayor Cole thanked the groups for their dedication and hard work.
- Rich St. John, Police Chief, recognized *Billings Gazette* Carrier, Kathy Doney, for her heroic efforts in helping an older gentleman that had fallen outside of his home and had been unable to get up for several hours. He had developed hypothermia and Ms. Doney called an ambulance and attended to the gentleman until they arrived. Chief St. John stated that her efforts were commendable and presented a certificate to the *Billings Gazette* to give to her.

**PROCLAMATIONS: NONE**

### ADMINISTRATOR REPORTS - BRUCE MCCANDLESS

- Mr. McCandless informed Council that Item 1A1, W.O 14-11, Water Reclamation Facility, Air Flotation Thickener Equipment Procurement, needed to be delayed until February 12, 2018 for award of a bid.
- Bruce McCandless, Interim City Administrator, informed Council that the staff report for Consent Agenda Item 1H, Resolution of Intent to construct W.O. 18-10, Poets Streets, incorrectly stated that publication had taken place in the *Billings Times* and it should have stated *Yellowstone County News*.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 5 ONLY.**

**Speaker sign-in required.** (Comments offered are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign the roster located on the cart at the back of Council chambers or at the podium. Comments 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. W.O. 14-11, Water Reclamation Facility, Air Flotation Thickener Equipment Procurement.** (Opened 12/19/17) Recommend delay of award until January 22, 2018.
- B. Approval of Adult Resource Alliance of Yellowstone County Funding Agreement Renewal for FY18; \$40,000.**
- C. Approval of the City-County Special Investigations Unit (CCSIU) agreement with Yellowstone County for calendar year 2018.**
- D. Approval of the proposed Exchange City Golf Course Corporation (ECGC) 2018 annual budget and fee structure for Par 3 Golf Course.**
- E. Approval of sale of retired police car and related equipment to the Alpha House; \$1,300.**
- F. Confirmation of Probationary Police Officers - Nicholas Crowe, Travis Fjetland, John Pearson and Dakota Singh.**
- G. Acceptance of donation to the Parks, Recreation and Public Lands Department from the Billings Parks, Recreation and Preservation Foundation (BPRPF); \$19,369.28.**
- H. Resolution of Intent 18-10682 to construct W.O. 18-10, Poets Streets, and setting a public hearing date of 02/12/2018.**
- I. Preliminary Subsequent Minor Plat of Amended Lot 2, Block 4, Claimstake Subdivision, generally located at 2449 Overland Avenue; Timothy and Tracey Eastwood, owners; EEC, Inc., agent.**

**J. Bills and Payroll:**

1. December 4, 2017
2. December 11, 2017
3. December 13 and 18, 2017

Councilmember Cromley separated Item 1B to abstain and Items 1A1 and 1H for discussion.

Councilmember Brown separated from Item 1J1 to abstain.

Councilmember Sullivan moved for approval of the Consent Agenda, with the exception of Items 1A1, 1B, 1H, and 1J1, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved to delay Item 1A1 until February 12, 2018, per staff recommendation, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich moved for approval of Item 1B, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 10-0, Councilmember Cromley abstained.

Councilmember Cromley, in reference to item 1H, asked if the publication mistake could be corrected. Mr. McCandless stated the publication name would be corrected from *Billings Times* to *Yellowstone County News* in the resolution document. Councilmember Cromley moved for approval of Item 1H, with correction noted, seconded by Councilmember Ronning. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of item 1J1, seconded by Councilmember Brewster. On a voice vote, the motion was approved 10-0, Councilmember Brown abstained.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND SPECIAL REVIEW 960: a special review to allow the location of a 60-foot wireless communications facility with microwave dishes and a future 16-foot Omni antennae in a Public (P) zone on a 5.74 acre parcel of land, generally located at Wicks Lane near the cross street of High Sierra Blvd. North Western Energy, owner; John J. Enright, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Karen Husman, Planner, gave a brief presentation describing the location of the proposed device and the special review criteria. She stated that special reviews did not require ordinance approval and were not zone changes to the property. She continued that special reviews were tied to specific uses allowed in a given zoning district, but were subject to review by the City prior to the use being allowed.

The public hearing was opened.

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

Councilmember Cromley moved for approval of Item 2, as recommended by the Zoning Commission, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 961: a zone change from Residential Professional (RP) to Community Commercial (CC) on a 1.42-acre parcel of land, generally located north of Rimrock Road and west of 62nd Street West. Magnus Land Development, LLC, owner; Performance Engineering, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Monica Plecker, Planning Division Manager, began a brief PowerPoint presentation of the property and 10 criteria. She reminded Council that zone changes allowed property to be changed from one type of use to another type of use and could not be conditioned. She stated that it would allow the land to be used for any purpose within the new zoning district.

Councilmember Sullivan asked if residents in the area were aware that the parcel could potentially be developed into a bar or casino. Ms. Plecker stated the area to the south had been zoned Community Commercial since 2005. She added that the public notification process had included all property owners within 300 feet of the entire 38-acre parcel. She added that staff had not received any public testimony at the Zoning Commission meeting.

The public hearing was opened.

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

Councilmember Cromley moved for approval of Item 3, as recommended by the Zoning Commission, seconded by Councilmember Brewster. On a voice vote, the motion was approved 9-2, Councilmembers Sullivan and Ronning voted in opposition.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 962: a zone change from Residential Professional (RP) to Community Commercial (CC) on a 1.54-acre parcel of land, generally located at 4046 Avenue C. Randy Swenson, owner; EEC, Inc., agent. Zoning Commission recommends denial based on the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Monica Plecker, Planning Division Manager, began a brief PowerPoint presentation of the property and 10 criteria. She gave an overview of the location and the surrounding area. She added that the Zoning Commission had recommended denial based on 3 of the 10 criteria. She stated #1 dealt with the Growth Policy; #8 dealt with the character of the existing area; and #10 dealt with the appropriate uses. She stated the applicant had provided supplemental information, which had been included in the staff report, concerning the Zoning Commission recommendation.

Ms. Plecker stated they had received a valid protest, which meant 25% or more of the property owners within 150 feet of the zone change, had protested. She stated, that due to the valid protest, there would need to be a 2/3 majority vote of the Council, in order for the zone change to be approved.

Councilmember Joy asked if having churches in close proximity would affect the possibility of the parcel being used for a bar or casino development. Ms. Plecker stated there were separation requirements, and a bar or casino would have to request a waiver from City Council.

Councilmember Friedel asked if there was a reason why the proposed business could not be developed on a Residential Professional zoned area. Ms. Plecker stated the current code specifically listed dance studios, schools, halls, and martial arts instruction facilities as allowable uses. She added that City Code was heavily intertwined with the manual for the standard industrial classification of 1987, and in the manual, gymnastics schools were not allowed in Residential Professional zones.

Mayor Cole asked for status on existing code issues. Ms. Plecker added that planning staff, the steering committee and several working members were starting the process of evaluating the existing code.

The public hearing was opened.

The following individuals spoke in opposition of Zone Change 962:

- **Scott Chartier, 4126 Juluara Lane, Billings, Montana:** stated the streets were not designed for heavy amounts of traffic which he anticipated due to the gymnastics school patrons.
- **Phil Bratten, 4131 Julaura Lane, Billings, Montana:** stated the area had a very heavy flow of traffic and would not support adding additional traffic.

- **Beth Connaghan, 4114 Julaura Lane, Billings, Montana:** stated, as a volunteer for the Police Department, she saw a lot of vandalism and theft and did not support a gymnastics school near the residential area proposed.
- **Phil Cox, 4127 Julaura Lane, Billings, Montana:** stated changing the property to Community Commercial would negatively affect the home values in the area.
- **Grace Blair, 4137 Julaura Lane, Billings, Montana:** stated there was property just a few blocks away that was already zoned Community Commercial and proposed that the gymnastics school choose that property instead.
- **Joanne Dodd, 4117 Julaura Lane, Billings, Montana:** stated homeowners in the area had made it known that they did not support the zone change and hoped Council would listen to their wishes.
- **Clayton Jordan, 4116 Avenue D, Billings, Montana:** stated he did not support the zone change.
- **Ernest Jennings, 1629 41<sup>st</sup> Street West, Billings, Montana:** stated traffic was very difficult in the area and he would not support the zone change.
- **Clinton Young, 4215 Avenue D, Billings, Montana:** stated a gymnastics school would create a large increase in traffic and the area was not designed for that kind of traffic.
- **Matthew Owen, 4115 Julaura Lane, Billings, Montana:** stated he did not support the traffic increase the zone change would create and did not feel the look of the proposed building would fit the neighborhood.
- **Velma Albrecht, 4129 Julaura Lane, Billings, Montana:** stated she would support a gymnastics school, but did not think the proposed location would be a good choice.
- **Ellen Young, 4215 Avenue D, Billings, Montana:** stated traffic was a huge concern in the area and she did not support the zone change.
- **Rene Freitag, 5936 Ironwood Drive, Billings, Montana:** stated her mother lived near the proposed zone change and was concerned how the traffic increase would affect the neighborhood and home values.
- **Becky Vincent, 5220 Bell Avenue, Billings, Montana:** stated the high traffic in the area would get worse if the zone change were approved.
- **Susan Kuchera, 4220 Avenue D, Billings, Montana:** stated she was concerned with the traffic increase in the area and hoped Council would listen to the Zoning Commission's recommendation.
- **Paula Kitzenberg, 4143 Avenue D, Billings, Montana:** stated she was concerned about the risks involved in an increase of traffic in the area.
- **Jill Owen, 4115 Julaura Lane, Billings, Montana:** stated allowing the zone change would open the property to different uses that would not be favorable to the neighborhood.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana:** stated he had concerns about the traffic in the area and encouraged Council to deny the zone change.

The following individuals spoke in favor of Zone Change 962:

- **Olivia Umphrey, 4310 Long Beach Way, Billings, Montana:** stated that an additional gymnastics school would be great for the City.
- **Michael Power, 4417 Pine Cove, Billings, Montana:** stated his office was adjacent to the proposed gymnastics facility and supported the zone change.
- **Lauren Richardson, 6148 Autumnwood Drive, Billings, Montana:** stated the City needed more facilities on the west end for children.
- **Jennifer Wegner, 6068 Ironwood, Billings, Montana:** stated close proximity to sporting activities would be a benefit to many families.
- **Michael Buhman, 6033 Hazelwood, Billings, Montana:** stated there were already many other businesses located in the area and supported the proposed zone change.
- **Jen Sanchez, 6093 Ironwood Drive, Billings, Montana:** stated an additional gymnastics school would be a benefit to the City.
- **Stephanie Mecham, 4136 Woodcreek Drive, Billings, Montana:** stated it was difficult to understand why a dance studio would be allowed but a gymnastics school could not be allowed. She stated she would like to see more locations available for children's activities.
- **Erin Walker, 6287 Canyonwoods Drive, Billings, Montana:** stated, as a physician recruiter, family services were a large draw for professional families and supported adding more services to the City.
- **Doug Wild, 6140 Timbercove Drive, Billings, Montana:** stated the City needed more locations for children to do physical activity.
- **Leif Welhaven, EEC, Inc.:** thanked all of the people who had spoken and hoped the City would support the zone change.
- **Kevin Lundin, EEC, Inc.:** stated the proposed building would have residential materials facing the neighborhoods in order to be esthetically pleasing. He added that potential drop off and pick up issues had been addressed in the design.
- **Chuck Henrichs, EEC, Inc.:** stated they had hired a company to perform a traffic assessment and did not think a gymnastics school would cause a larger traffic increase than another type of business.
- **Jeff Muri, 2492 Aspen Way, Billings, Montana:** stated there would be ample parking and not all of the children would be at the school at the same time.
- **Steve Repac, 1533 Clark Avenue, Billings, Montana:** stated, as part owner of the property, the location and zoning requirements limited how the land could be used and did not think the impact should cause concern.
- **Randy Swenson, 4510 Hi-Line Drive, Billings, Montana:** stated, as part owner of the land, that the property could be used as a dance studio with the same amount of traffic and go through zoning without any problems. He did not think a gymnastics school would make a large negative impact on traffic.
- **Curtis Frewin, 3530 Timberline Drive, Billings, Montana:** stated a gymnastics school would help the children in the community and would benefit them for the rest of their lives.
- **Darcy Frewin, 3530 Timberline Drive, Billings, Montana:** stated the west end needed a gymnastics school and it would benefit the children and the community.

She added that by keeping the cost of land lower, it would allow them to keep class costs lower in order to serve all children.

- **Diane Carter, 4900 Buffalo Trail, Molt, Montana:** stated the City needed more physical activities for children.
- **Candace Frewin, 3295 Banff Avenue, Billings, Montana:** stated a gymnastics school would benefit the community and thought the traffic would be manageable.

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

Councilmember Sullivan moved for denial of Item 4, based on the Zoning Commission recommendation, seconded by Councilmember Brewster.

Councilmember Ewalt questioned creating an amendment to allow a change to the code regarding a gymnastics school. Wyeth Friday, Planning Director, stated text amendments would take an expansive amount of time for staff to research. He added that zoning code text amendments were a very complicated process and cautioned Council on the complex issues it would create.

Councilmember Joy stated that despite the traffic issues, a gymnastics school in the area would be vital for the community. She added that Council needed to provide opportunities for children in the community.

Councilmember Sullivan called the question. The motion failed due to lack of a second.

Councilmember Clark asked for legal counsel on the percentage of votes needed from Council. Brent Brooks, City Attorney, stated that a 2/3 vote would be needed, therefore, 8 of the 11 members would need to vote to approve the zone change.

Mayor Cole stated there was a need for multi-generational facilities, but thought that allowing the property to be zoned Community Commercial came with too many "what ifs".

On a voice vote, the motion of denial was approved 10-1, Councilmember Joy voted in opposition.

Mayor Cole called for a recess at 9:51 pm.

Mayor Cole called the meeting back to order at 9:54 pm.



**5. NOMINATION AND ELECTION of Deputy Mayor Pro Tempore. Staff recommends City Council nominate and elect a Deputy Mayor Pro Tempore. (Action: approval or disapproval of staff recommendation.)**

Councilmember Brewster moved to nominate Councilmember Yakawich, seconded by Councilmember Sullivan.

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 are limited to 3 minutes. Please sign the roster located on the cart at the back of Council chambers or at the podium.)*

The public comment period was opened.

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

**COUNCIL INITIATIVES:**

Councilmember Friedel asked the Planning Department how long they expected the Code review process to take for completion. Mr. Friday stated it would take up to two years.

Councilmember Friedel asked if it would be difficult to focus on specific portions of the code, as directed by Council. Mr. Friday stated it would be possible, but cautioned Council that staff was aware of the need for amendments and changes overall and specific issues would be addressed during the review process. Mr. Friday stated a large steering committee had been developed, that would begin breaking into smaller subgroups, in order to focus on separate portions of the review. He stated within the next month the group focusing on urban issues would begin looking at the areas they thought needed the most review.

Mayor Cole asked if staff could notify Council of the review meetings, in order for them to be able to attend. Mr. Friday responded affirmatively.

Councilmember Cromley asked if martial arts, dance studios and gymnastics schools should be allowed in the same district. Mr. Friday stated staff had reviewed the code, and did think that those items were similar and would probably fall into the same category.

Councilmember Ewalt directed staff to research the particular issues with the code that separated gymnastics schools from dance studios and martial arts facilities.

Councilmember Brewster suggested that Council discuss the issue with staff during the Work Plan meeting on January 20, 2018. Councilmember Ewalt withdrew his motion.

Mayor Cole asked for an update on the Board of Crime Control grant application. Mr. McCandless stated the application would be submitted and brought to Council for approval. Councilmember Clark asked if Council would get to decide where the money went. Mr. McCandless stated there would need to be an MOU submitted with the application. He added that he was uncertain of the ability to change or expand the service provider.

There was no further business, and the meeting adjourned at 10:15 pm.



CITY OF BILLINGS

BY: *William A. Cole*  
William A. Cole, Mayor

ATTEST:

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