

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 25, 2010

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

**ROLL CALL** - Councilmembers present were Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, Ulledalen, Astle, Clark. Councilmember McCall was excused.

**MINUTES:** Councilmember Ronquillo moved for approval of the minutes of January 11, 2010, as distributed, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**COURTESIES:** Mayor Hanel recognized and thanked all of the emergency crews who worked together to contain the oil-based storage tank fire at the Conoco Refinery on December 24, 2009. George Jurovich from Conoco, Kelly Drain from Exxon, Brad Kimball from Cenex, and Fire Chief Paul Dextras, Battalion Chief Tim McLeod and Assistant Fire Chief Frank Odermann from the Billings Fire Department were present at the meeting and attributed the success to all of their crewmembers who worked together as a team.

**PROCLAMATIONS** - None

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

- Ms. Volek asked that Item 5, the settlement agreement with police officers, be tabled indefinitely. She said, based on conversations with the local MPEA Branch, the agreement was workable; however, there were concerns at the state level. She said they would continue to meet with the Police Union.

### **PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 5 ONLY.**

**Speaker sign-in required.** Please sign up on the clipboard located 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. *(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

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

### **1. CONSENT AGENDA**

#### **A. BID AWARDS:**

**1. Two (2) MET Paratransit Vans.** Recommend delay of bid award until 2/8/2010.

**B. Approval** of one-year Limited Commercial Aviation Building and Ground Lease with Alpine Aviation, Inc. dba Big Sky Ground Support Industries (3/1/10 - 2/28/11), with option to extend the term for one additional year contingent on the development status of the facility and the adjoining rental car wash facility; annual revenue - \$12,226.08.

**C. Amendment #1,** West End Hangar Ground Lease with Moore, Scott, and Tostenrud, L.L.C., changing the Lessee's name to Moore, Palmersheim, and Tostenrud, L.L.C.

**D. Amendment** to Development Agreement with Babcock LLC extending completion of Phase I Developer's improvements from 2/1/10 to 2/1/11 and acknowledging the Developer's written intention to complete Phases II and III as required by the Development Agreement.

**E. Amendment #3, W.O. 03-07: Alkali Creek Multi-Use Path,** Professional Services Contract, Dowl HKM, \$36,865.

**F. Memorandum of Understanding** with Beartooth RC&D Economic Development District, \$9,136 annual expense.

**G. Acceptance** of Recreational Trails Project Agreement for continuation of the Swords Park Trail through the east end of the park and connection to the existing bike/pedestrian Airport Road underpass, \$28,000; required City match - \$5,600.

**H. Approval** of application for an AmeriCorps VISTA Project, approximately \$230,000 - \$320,000 annually; and **authorization** for staff to negotiate and finalize the project if awarded.

**I. Approval** of application submittal for Misdemeanor Probation Domestic Violence Grant; required City of Billings match approximately \$18,000 (hard match-\$1,600; soft match-\$16,400)

**J. Contract** with GeoComm for development of a Radio System Implementation Plan; \$37,840.

**K. Approval** of Federal Legislative Agenda.

**L. Confirmation of Probationary Police Officer Shane Weinreis.**

**M. Bills and Payroll:**

**1. December 24, 2009**

There were no separations from the Consent Agenda. Councilmember Astle moved for approval of the Consent Agenda, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #860: A ZONE CHANGE FROM RESIDENTIAL 6,000 TO CONTROLLED INDUSTRIAL ON THE NORTH TWO ACRES OF LOT 5 IN SECTION 9, T1 SOUTH, R26 EAST (UNPLATTED), LOCATED AT 439 SOUTH BILLINGS BOULEVARD; HANSER PROPERTIES, LP, APPLICANT; RALPH HANSER, REPRESENTATIVE.**

**Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval of disapproval of Zoning Commission recommendation.)** Lora Mattox, Planner II, began her PowerPoint presentation showing the current zoning of the subject property and the surrounding properties, an aerial view and photographs of the subject property, and a map showing the proposed wrecking yard that would be extended to the south. Ms. Mattox advised the subject property was purchased by the Hansers at an auction, and they had cleared the property of a tremendous amount of debris. Ms. Mattox noted a neighborhood meeting was held on November 30, 2009, and they received signatures of approval. She said the Southwest Corridor also submitted a letter of approval for the zone change.

The public hearing was opened.

- **Ralph Hanser, 1565 Westridge Circle, Billings,** advised they purchased the subject property at an auction. He said they had cleared the property of junk and old buildings. He said they planned to use part of the property for a pick-a-part operation for people to come in and pull parts at reduced prices. He said the property would also be used to house their salvage. He said the industry had changed dramatically and required they have more stock. Mr. Hanser said bidding for salvage was now open on the internet, and they were bidding against places in Mexico and Argentina who bought the high-dollar salvage and took it out of the country. He said for them to get the high-dollar salvage and be able to sell it, they needed to reach out for it. Mr. Hanser asked the Council to approve the zone change so they could continue to expand their operation and serve the public.

Councilmember Ruegamer asked Mr. Hanser how long he had been in business in Billings. Mr. Hanser advised he had been in business for about 48 years. Councilmember Gaghen asked Mr. Hanser how many people he employed. Mr. Hanser said he had 70 to 80 full-time employees and 26 part-time employees. Councilmember Ronquillo thanked Mr. Hanser for cleaning up the mess on the property. Mr. Hanser commented they even offered and helped

clean up the neighboring property to the right. Councilmember McFadden asked if they expected to add new jobs with the expansion. Mr. Hanser said it depended on the economy. He said they were anticipating five more people, but the year had started out tough, and they hoped it would pick up. He said they had several sides to their business and when one side was slow, they moved employees around to the other sides. Councilmember Ulledalen asked Mr. Hanser if 'high-end' meant new vehicles that had been wrecked. Mr. Hanser said 'high-end' meant vehicles that were three years old and newer.

- **Scott Hanser, 3020 Donegal, Billings,** said they needed to expand because changes in the salvage industry required more product. He said there were over 450 different car models, which required a lot of room for parts. He said they tried to keep nine years and back in their dismantle facility and about 15 years and back in their pick-a-part facility.

Councilmember Ruegamer asked who handled all of the environmental issues. Mr. Hanser said he handled the environmental in the salvage part of the business; and all fluids in all vehicles were handled properly.

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

Councilmember Gaghen moved for approval of Zone Change #860, seconded by Councilmember Ronquillo. Councilmember Ruegamer stated the Hansers had been good neighbors for almost 50 years. He said they kept South Billings Boulevard neat and clean, and he wished every business in town was as environmentally friendly as they were. He said the Hansers were good businessmen and very honest. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND SPECIAL REVIEW #880: A special review to allow a vehicle wrecking facility at 439 South Billings Boulevard in a proposed Controlled Industrial zone on an approximate 2-acre parcel described as the north two acres of Lot 5 in Section 9, T1 South, R26 East; Hanser Properties, LP, owner; Ralph Hanser, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Lora Mattox, Planner II, began her PowerPoint presentation outlining the following conditions recommended by the Zoning Commission.

1. The special review approval applies to this location.
2. Development will be as shown on the site plan screening fencing, sight-obscuring gates, landscaping and parking area. Increases greater than 10% will require additional special review.
3. Full cutoff shielding of outdoor lighting.
4. All vehicles stored within screened area and no stacking above fence line.
5. Business hours 7 am to 7 pm.
6. State wrecking license obtained within 6 months of approval.
7. Manage storm water on site.
8. Conditions run with the land.
9. Comply with all city codes that apply.

Councilmember Astle asked if the same conditions applied to the existing property. Ms. Mattox said they did. Councilmember McFadden asked for a brief explanation of Condition #7. Ms. Mattox said Hansers had a system where all storm water was directed and filtered on site prior to being released into the city storm drain system. She said they had storm water and waste water management plans approved by the city.

The public hearing was opened.

- **Ralph Hanser, 1565 Westridge Circle, Billings,** distributed a copy of their Development Plan for Council to review. He pointed out four ‘domes’ that were constructed to handle water run-off during a 100-year storm. He said the run-off would be regulated to flow out at a level the City’s storm drain system could handle. He pointed out the water separators and explained they had containment cloths to catch any pollutants that would be on the ground. He said in those particular areas, there were no vehicles containing any kinds of fluid.

Councilmember Cimmino said Condition #2 indicated screen fencing and sight-obscuring; and she noticed in the photos there was chain-link, which she thought would be considered transparent fencing. Mr. Hanser advised the fencing would be the same as the fencing on the other five acres. He said it would be the same as siding on steel buildings, and it would be colored the same so it matched everything and would be nine feet high. Mr. Hanser said the only chain-link was on the gates, and it had fabric through it; and the rest of the fence was solid. He said there was no way to see through it. Mr. Hanser said they met with all of their neighbors and the Southwest Corridor, and there were no objections. He said they planned to plant trees along the southeast side for the neighbors.

- **Scott Hanser, 3020 Donegal, Billings,** asked for approval for the salvage facility. He said their expansion plan would be very positive for the Billings community. He said the savings to customers in their pick-a-part yard was enormous and cited an example of a recent customer spending \$75 purchasing an interior door panel from them versus \$600 from a dealership.

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

Councilmember Ronquillo moved for conditional approval of Special Review #880, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE PROPOSING A CONSTRUCTION TIME LIMIT ON NEW AND REMODEL RESIDENTIAL AND COMMERCIAL CONSTRUCTION PROJECTS. STAFF RECOMMENDS APPROVAL. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised there was no staff report, but staff was available to answer questions.

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

Councilmember Cimmino moved for approval of staff recommendation, seconded by Councilmember Ruegamer. Councilmember Ronquillo said he felt it was way overdue and thanked staff. Councilmember Ulledalen said he felt it was a problem in every Ward, and they had all dealt with issues and problems of ongoing construction projects. He said it was nice to finally have something they could rely on. On a voice vote, the motion was unanimously approved.

**5. SETTLEMENT AGREEMENT WITH POLICE OFFICERS AND MONTANA PUBLIC EMPLOYEES ASSOCIATION (MPEA), BILLINGS POLICE UNIT, FOR BACK PAY, OVERTIME, LONGEVITY, HOLIDAY AND OTHER TYPES OF PAY AS CALCULATED UNDER THE FAIR LABOR STANDARDS ACT FROM JANUARY 1, 2007, THROUGH JUNE 30, 2009. DELAYED FROM 1/11/2010. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mayor Hanel reminded everyone that Ms. Volek requested to have Item 5 tabled indefinitely in her Administrator Report that evening. Councilmember Clark moved to table indefinitely the settlement agreement with the police officers and MPEA, seconded by Councilmember Ronquillo. Councilmember Astle asked Ms. Volek if there was a timetable for reconsideration. Ms. Volek advised there was not. She said they would be meeting again that week with the union. She said there was pending litigation in the matter, so they were being very cautious. 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. Please sign up on the clipboard located at the back of the Council Chambers.*)

The public comment period was opened.

- **Andy Larson, 901 Aronson Avenue**, said he would like to invite the City Councilmembers and citizens to a 2-night event on February 9 and 11 at Grace Baptist Church, 3616 Broadwater Avenue, from 7 to 9 pm on both nights. He said it would be an intensive look into the Constitution and give a much-needed look into the proper roles and powers of city, county, state and federal governments. He said he would like to see where they could be more proactive as local officials and assert more state control over issues. Mr. Larson said the group's members were looking forward to seeing some, if not all, of the local officials in attendance. He said there was no admission fee, and he distributed a flyer to Council. He said the speaker was a 'joy to listen to' and very knowledgeable.

Councilmember Gaghen asked for the name of the speaker. Mr. Larson said the speaker would be Robert Brown, who was a John Birch Society Representative.

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

**COUNCIL INITIATIVES**

- **Pitman:** Moved to direct staff to prepare a resolution transferring \$20,000 from the Council Contingency Fund to the Parks Department for spraying of Pine Beetles this spring, seconded by Councilmember McFadden.

Councilmember Ronquillo said it was a sad situation, and he would not support the issue. He said there was an \$85,000 toilet going in at the Skate Park that Parks should have taken a stronger look at and an \$89,000 survey going out on Pioneer Park. He said the Parks Department needed to realize that money did not 'grow on trees' and spend their money more wisely. Councilmember Ruegamer asked if the \$85,000 bathroom was a given. Ms. Volek advised additional information on the item had been provided in a Friday Packet. She said two portable toilets at the site had been destroyed, and the owner of that business would no longer provide the City with a restroom at the Skate Park. She said for a number of years the City had tried to rent out or rehabilitate the building on the site, but had been unsuccessful. Ms. Volek said if they were to have a restroom on the site, the proposed facility would be recommended because it was constructed to resist vandalism. Ms. Volek advised it was a Capital item in the budget this year, and their intention was to order it. Councilmember Ruegamer stated he agreed with Councilmember Ronquillo and would not support the motion. He said there was no bathroom there now, and they should not have one. He said if people using the park were going to wreck the bathroom, they needed to go without. He said he could not support using money to build a bathroom; and if they wanted a bathroom at the Skate Park, the park users needed to raise the money themselves.

Councilmember Astle said the City of Billings had gorgeous trees that were in need of being sprayed, and he would support the motion.

Councilmember Cimmino said she agreed with Councilmember Ronquillo that money did not 'grow on trees' but the motion was a measure to save some trees, and she would support it.

Councilmember McFadden said he agreed with Councilmembers Ronquillo and Ruegamer, but to get back on the true subject at hand, the trees needed to be sprayed or they would die; and it would cost more in the long run to replace them than try to save them. He said he would support Councilmember Pitman's motion.

Councilmember Clark asked where the Parks Department was in their budget, if they had any money they had not used, and if some projects could be put off until next year. Ms. Volek advised she was not sure where they were in their budget. She said they planned to put in \$27,000 of their own operating revenues to take care of the tree cutting, and the \$20,000 was for tree treatment. Ms. Volek advised Council could postpone the item, and she could provide additional information at the next meeting. Ms. Volek said the spraying needed to be done in March in order to avoid further destruction, so time was important.

Councilmember Ruegamer said he felt Councilmember Ronquillo's point was that for \$85,000, the City could spray four times, and there was a misdirection of funds. He said the money could be better spent spraying trees than building a bathroom that would be torn up in a week.

Councilmember Pitman said the point was they were in charge with taking care of an asset within the City. He said he talked to the Parks Department, and they did go through their budget and found \$27,000. He said \$20,000 would get the trees sprayed this spring, and then they could incorporate the expense into their budget. He said the

vote was simply to bring back a resolution to get the trees sprayed this year. He said it was a simple, straightforward motion because it was their obligation as Councilmembers to protect the asset of the city's trees. He said a year from now, if the trees became infected, they would be gone.

Councilmember Gaghen said she shared the financial concerns of Councilmembers Ronquillo and Ruegamer, but she felt they were at a crisis stage as far as spraying the trees due to the short window of time. She said she would support the measure but would also encourage a more responsible fiscal approach from the Parks Department.

Councilmember Astle referenced the statement made about the \$86,000 study for Pioneer Park and said the former Council approved the funding last year. He said he voted against it, but the Council voted for the study to move forward.

Councilmember Clark asked for the balance in the Council Contingency Fund. Ms. Volek advised she thought it was untouched, and she believed it was \$60,000.

Councilmember Ulledalen said in the past they had 'filled the hole' in the plowing budget if needed, so he was hesitant about making a move with the money at that point in time, so he would not support the motion.

On a roll call vote, the motion was approved 6 to 4. Councilmembers Gaghen, Pitman, Cimmino, McFadden, Astle, and Mayor Hanel voted in favor of the motion. Councilmembers Ronquillo, Ruegamer, Ulledalen, and Clark voted against the motion.

- **Ruegamer:** Moved to have staff hold a public hearing on the next available agenda to move the work sessions from the Community Center to the Council Chambers on a trial basis, seconded by Councilmember Ulledalen. Councilmember Astle asked for clarification of 'trial'. Councilmember Ruegamer said he left it open in case they tried it twice and found out it was not a good option. He said if they specified six months, they would have to do it for six months.

Councilmember Clark asked if anyone had checked with City Court to see if 5:30 p.m. would work for them or if it would run into their court sessions. Ms. Volek said she had not spoken with the Court or Channel 7 to see what the availability of staff and room space would be if they were to start the work sessions at 5:30 p.m. Ms. Volek asked if the Council's intent was to move the time to 6:30 p.m. or remain at 5:30 p.m. Councilmember Ruegamer said his intent was to start the work sessions at 5:30 p.m.

Councilmember Pitman said he would support the motion on the standpoint that there would be a public hearing. He said one of the things they learned in their Community Conversation was to make the work sessions more accessible and friendly. He said he wanted to hear from people how comfortable they would be coming to the Council Chambers, or if they needed to look back at the Community Center and re-adjust how they were engaging people at that location.

Councilmember Clark said he would support the motion because he felt the public hearing was the right thing to do. He said he also felt they needed to take a look at how they took testimony at work sessions. He said he felt they should take testimony after each item was presented so people would have the opportunity to speak on an item after it was discussed instead of before. On a voice vote, the motion was unanimously approved.

- **Ronquillo:** Moved to direct staff to look into the existing agreement with the tree farm south of the sugar factory and determine if they were to donate trees to the city in



exchange for the use of city-owned property, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

- **Ulledalen:** Said he had heard the City of Billings was spending thousands of dollars remodeling the Mayor's Office. He said he wanted everyone to be aware that nothing had been discussed or done. Mayor Hanel said he appreciated hearing about it and said it simply took a \$2 can of furniture polish, a vacuum cleaner, and the removal of some debris to make it appear that it had been remodeled.
- **McFadden:** Moved to direct staff to investigate the Federal Government's \$2 million allocation to the State of Montana to fight the Pine Beetle epidemic and determine if the City would be eligible to receive any of the funding, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.
- **Ruegamer:** Moved to add the appointment of a representative to fill the vacancy on the League of Cities and Towns Legislative Committee to the next regular council agenda, seconded by Councilmember Cimmino. Councilmember Ulledalen amended the motion to bring forth Councilmember McCall's name to be the delegate because of her experience as a lobbyist and her knowledge of state government in Helena. He said there was no reason to reinvent the wheel if they already had someone with experience and credibility. He said Councilmembers Ruegamer and Clark would be attending meetings in Helena on a regular basis and could possibly fill in if Councilmember McCall was unavailable or he could also fill in, if needed. The amended motion was seconded by Councilmember Astle. On a voice vote, the amended motion was unanimously approved. On a voice vote, the initial motion was unanimously approved.

**ADJOURN** - The meeting adjourned at 7:26 p.m.

CITY OF BILLINGS

By: \_\_\_\_\_  
Thomas W. Hanel, Mayor

ATTEST:

By: \_\_\_\_\_  
Cari Martin, City Clerk