

City Council Work Session

August 16, 2010
5:30 PM
Council Chambers

ATTENDANCE:

Mayor/Council (please check) x Hanel, x Ronquillo, x Gaghen, x Cimmino, x Pitman,
 McFadden, x Ruegamer, Ulledalen, McCall, x Astle, x Clark.

ADJOURN TIME:

Agenda

TOPIC #1	<i>Water Rights Ruling</i>
PRESENTER	
NOTES/OUTCOME	

Mr. Brooks explained that Mr. Hamman was a water rights expert who had represented the City in negotiations on this topic. Mr. Hamman explained that prior to 1973, water rights were by a use right or by filing a Notice of Appropriation at the County Courthouse. He said the problem with that system was the lack of recordkeeping and no one knew how much water was being used throughout the state. He said that in 1973, the State centralized the system and created a water court in Bozeman to hear claims.

Mr. Hamman explained that starting in 1980, three claims were prepared. He provided a brief review of those three claims that had water rights dates of 1885, 1906 and 1945.

Mr. Hamman stated that the Water Court started at the head of the Yellowstone and worked down every tributary to the Yellowstone River. He reviewed the settlement agreement entered into with Huntley Project and the Department of Interior, and said that the Water Court reviewed and rejected the settlement agreement because it was unhappy with the use of the use right as opposed to the Notice of Appropriation. Mr. Hamman suggested to the Court to use the 1906 appropriation right instead of 1885 use right. He advised that the City and the Department of Interior had until October to respond. He stated that the City was trying to save the agreement as opposed to litigating, which could result in less water available long-term (20-plus years), if the City lost.

Councilmember Ruegamer asked who upstream had more rights than Billings had. Mr. Hamman said nobody significant did. He explained that theoretically, the City could call on those up the river with lesser rights to stop using the water in a shortage, even though there had never been a basin crisis that required that in Montana.

Councilmember Ronquillo asked what would happen if another city on an entity like the Clark's Fork had an earlier use date. Mr. Hamman explained that DNRC made the decision about which entity had to cut back on water use.

Councilmember Pitman stated it needed to be taken seriously while looking at the growth. He asked what a city with a population of 500,000 required for water use. Public Works Director Dave Mumford referred to a water rights summary he distributed to

councilmembers. Deputy Public Works Director Al Towlerton advised that 50 million cubic feet per second were used each day in Billings, so a city of 500,000 would use five times that amount.

Councilmember Ruegamer asked if it was correct that Pierce Packing had an aquifer. Mr. Towlerton explained that they had used wells and filed claims for groundwater as opposed to surface water. Mr. Mumford noted that staff was in the process of discussions about that with the owner. Councilmember Ruegamer stated he toured the Northern Hotel and there was a constant water flow in the basement that nobody seemed to know where it came from. Mr. Mumford advised there had been discussions with Western Sugar, as well, as part of a review of water rights up and down the Yellowstone River that might be acquired if they were older than Billings and had to make a call on it. Mr. Towlerton noted that Huntley Project had 750 cfs in 1905, which was older than the City of Billings.

Councilmember Astle asked about a solution if the city's population grew to 500,000, and more water was needed. Mr. Mumford explained that possible solutions were to reduce water use, wells, an additional plant with a new water right, or reservoirs or injection storage on the west end. He noted that reservoirs would be a lengthy process and would likely have to be shared with other cities because of cost. He commented that having one source of water was a concern.

Mayor Hanel asked Mr. Hamman if he was aware of other cities upstream that were bigger users. Mr. Hamman advised that the biggest users were irrigation systems, and that Billings was biggest user in state. He noted that Great Falls had more water available from the Missouri River, and Missoula had more water, but less need. Mayor Hanel expressed his concern about adequate water supply for the future. Mr. Hamman spoke about the numbers related to the different water rights dates. He explained that he had been told the Big Horn River dumped enough water into the Yellowstone, that it was not a problem. He said there were not many users on the Big Horn.

Councilmember Ruegamer asked for clarification of the cubic feet per second related to each water right date. Mr. Hamman advised that Billings could enter into a subordination agreement with Huntley Project that would preserve water use.

Councilmember Pitman asked if Billings got credit for returning water to river. Mr. Hamman said he made the argument that the water put back into the Yellowstone was higher quality than when it was taken out. He said there was a practical benefit that no one would make a call because they would have what they needed. He commented that as a public utility, water service could not be denied to residents and business, so the City could not guarantee any return flow if it had a major user that prevented significant return flow.

Councilmember Clark commented that as the City grew, the use per customer could go down because of apartments, etc. Mr. Mumford explained that personal water use would go up proportionately, but because of density, there would be less green space, and water use could go down for that use.

Councilmember Astle asked what happened to the water rights when ditches were abandoned within the City. Mr. Hamman stated that as acres turned from rural use, the same water was used to grow lawns instead of crops. He explained that the law required a period of non-use and an intention to abandon it. He added that when ditch companies stopped using water for irrigation, they would want to sell their rights, and the question was if they had the legal right. He mentioned that Montana was water rich and had not litigated as other western states had.

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

TOPIC #2	<i>Trails Maintenance Plan</i>
PRESENTER	
NOTES/OUTCOME	

Ms. Volek introduced John Brewer, Chamber President and CEO and explained that the Chamber and Visitors Bureau were working with the Parks Department on a trails maintenance plan. Mr. Brewer prefaced his report by saying that his board requested he send a thank you letter to the City to express appreciation to City staff for the recent concert held at Dehler Park. Ms. Volek noted that Parks, Recreation, and Public Lands Director Mike Whitaker was prepared to make a brief presentation at the end of the agenda on the final outcome of the event.

Mr. Brewer explained that a 98-member committee was working to see what could be done to improve the trail network. He said maintenance of trails was a major issue, but a maintenance plan was not in place because of the costs associated with producing a professional plan. He said his request was for \$2,000 from the City to help develop a \$40,000 plan. He explained that donations and in-kind services would be contributed, so the plan would be produced at about a 75% discount. He stated that the plan would be produced by Sanderson-Stewart, and would include a review of maintenance currently being done by PRPL & Public Works; an inventory of existing trails; and a recommendation of regular and special maintenance. He said the plan would also include a costs analysis and funding strategies. He added that Sanderson-Stewart would volunteer one of its principals, Michael Sanderson, along with the trail director from its Bozeman office.

Councilmember Cimmino asked Mr. Brewer to confirm that there were 35 miles of trails. Mr. Brewer said that was correct.

Mayor Hanel asked how that item could be put on a regular meeting agenda. Ms. Volek said staff could prepare a future item that would suggest funding from the Council Contingency Fund. She said it was a \$65,000 fund and none of the funds had been spent during the current fiscal year. She said she was not aware of any other funding sources. Mr. Whitaker advised that the Parks Foundation would be asked to contribute \$2,000 also.

Councilmember Ruegamer asked what type of maintenance was currently being done. Mr. Whitaker explained the day-to-day maintenance being done by the Parks Department.

Councilmember Cimmino asked whether other entities would be asked to contribute. Mr. Brewer said he would be making a presentation to the County and the Parks Foundation in the next couple of weeks, and a \$2,000 donation was already received from the Billings Gazette. He added that Sanderson Stewart was donating a lot as well.

Councilmember Astle suggested putting the item on the agenda as soon as possible. Ms. Volek advised that it could be on the first meeting in September.

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

TOPIC #3	<i>Disposal of City-Owned Property</i>
PRESENTER	

NOTES/OUTCOME	
----------------------	--

City Attorney Brent Brooks distributed a proposed ordinance and changes suggested by Councilmember Ulledalen, who was absent that evening. He said there was a periodic update of the ordinance, and Council recently passed an initiative to update it now.

Mr. Brooks reviewed Councilmember Ulledalen’s suggestions regarding potential trades or exchanges, and the concept that if another governmental entity expressed interest in a property, it could be transferred or donated to that entity without a competitive bidding process. He added that clarifications of that process were included.

Mr. Brooks reviewed two other changes, one concerning clarification that leases were contractual, binding documents, and governed as all other contracts; and the other change delegated authority to the City Administrator to create a procedure to competitively bid the property.

Councilmember Clark stated that in the past, property had been given to non-profits without a bidding process, and asked if that would change. Mr. Brooks advised that it could be considered a donation, and was at the discretion of the Council.

Councilmember Pitman asked if it needed to include a provision to amend the maps to update property that was listed as public land, but was no longer public. Mr. Brooks advised that it could be included in the ordinance, or could be an internal procedure.

Mayor Hanel commented that Item 2, as suggested by Councilmember Ulledalen, should be considered. Mr. Brooks advised that it could be left unchanged, made part of ordinance, or left to procedures drafted by the City Administrator. Councilmember Pitman expressed his preference to include it in the ordinance so it could not be changed and new councilmembers were aware of it.

Councilmember Astle stated that the ability to trade was a good idea. He said he thought Public Works was talking to the County about taking some drainage, which could be done as a trade. Mayor Hanel stated he felt it was good for clarity in future years, along with a procedure for use of revenue resulting from sale.

Mr. Brooks advised the item would be on a future agenda for approval.

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

TOPIC #4	<i>Dehler Park Update: Mike Whitaker</i>
PRESENTER	
NOTES/OUTCOME	

Mr. Whitaker reported that the recent concert at Dehler Park drew an audience of about 8,000 people. He said it generated \$12,213 in revenue from the concert and had \$7,687 in expenses, for a net profit of about \$4,500. He advised that staff met and reviewed what could be done better for future events. He said items that needed to be addressed for future events were communication with concert goers about what to expect, and smoking. He said they also learned that they needed to communicate with neighbors as soon as possible. He explained that the recent concert rolled quickly, and it was difficult to communicate with everyone. He reported that he took a couple of phone calls regarding noise level - one prior to the concert when the equipment was being tested at maximum volume and the other comments were after the concert.

Mayor Hanel advised that he received many good comments about the event, but asked Mr. Whitaker if he received any comments about when it ended. Mr. Whitaker explained that it was scheduled to end by 10:30 p.m., but due to some conflicts, it lasted until about 11:07 p.m. Mayor Hanel expressed appreciation for the organization, communication and putting the event together. Mr. Whitaker stated that a lot of help was received from other City departments and the compliments needed to be spread citywide.

Councilmember Pitman said he kept hearing the comment that the facility was sold as a multi-use facility, and he was proud to see so many people enjoying themselves. He said the design of the facility fulfilled its mission and he felt more events of that type should be held.

Councilmember Gaghen stated she was out of town during the event, but when she returned home, she had three messages regarding noise from the same individual that lived near Western Sugar, and she returned his call when she got home. She added that she received another noise complaint call from a woman on the north end. She stated that she was troubled that the City received less than 1% of the real value, and hoped the City would get a greater share of the ticket sales in the future.

Councilmember Clark said the percentage was lower than that because of concessions. Mr. Whitaker advised that local vendors were brought in and were successful, even though a percentage had to go to the promoters.

Mayor Hanel said the matter not addressed was that hotels, restaurants and others were grateful for the business it brought to them.

Councilmember Ronquillo expressed his concern with the lack of food concessions and people that saved chairs and would not let others use them.

Councilmember Ruegamer stated he was happy if the event broke even, and if they tried to make a profit, they would take more risk. He said he had heard a few complaints regarding the sound, but in comparison to the population, the complaints were minimal.

Councilmember Pitman stated he agreed with Councilmember Ruegamer about the break even and said they had to be cautious about profits while paying off the bonds.

Councilmember Cimmino asked if decibels be controlled. Mr. Whitaker stated that a decibel level could be established, but performers typically needed a minimum number of decibels.

TOPIC #5	<i>PUBLIC COMMENT ON NON-AGENDA ITEMS</i>
PRESENTER	
NOTES/OUTCOME	

- **Dave Slough, 532 Avenue F**, complained about motorcycle noise and asked if something could be done about them. He advised he was at JB’s Sunday afternoon for lunch, when one screamed down 9th Street West and went onto Grand Avenue toward downtown, likely exceeding the speed limit. Mr. Slough noted that Virginia Lane was a problem area also.

Mayor Hanel explained that if they were in a specific area, law enforcement could watch the area. Ms. Volek advised that the Police Department created a special traffic control unit, and she would pass that information on to the Chief.

Councilmember Gaghen commented that she saw an ATV in the Heights that created enough noise to vibrate her vehicle.

- **Joyce Engelhardt, 824 N. 24th Street**, stated she had lived on that street for 17 years. She explained that the water was hip deep in front of her yard after it rained. She referred to pictures she provided to Councilmember Ronquillo. She explained that several years ago, she invested about \$8,000 to re-do the basement to help with the flooding. She said that during the drought of the last 7-8 years, the basement was dry, but flooded twice this year. She expressed her frustration and said she appreciated the assistance of Councilmembers Gaghen and Ronquillo. She said she was not aware of the problem when she bought house, but still loved the neighborhood, and it was a convenient location. She mentioned one neighbor across the street that got water in his basement during the last rain. She said she actually had to put out sandbags, and did so whenever she would be out of town, which could indicate to transients that the home was vacant. She said when she first approached the City, she was advised not to use the basement. She explained that later a crown was put on the street with new work, which caused flooding problems. Ms. Engelhardt advised that she had to spend \$335 for flood insurance annually. She said she had multiple concerns and kept hearing it was too expensive to fix. She said she would like the City or someone to do something so she did not have to sandbag her house.

Mayor Hanel advised that he would direct her concerns to Ms. Volek, who would then involve the appropriate department personnel to review the situation and determine if anything could be done. Ms. Engelhardt advised that she would do additional landscaping at the suggestion of one engineer. She noted that people liked to drive through the water for fun, but it caused a wave.

Councilmember Astle advised that in past years when he worked for an insurance company, people could deduct an uninsured casualty loss. He said that even though it did not fix things or keep water from running in, she might talk to a tax person for some tax relief. Ms. Engelhardt stated that she and her husband were young enough to handle to work now, but might not be able to keep up when they were older.

Mayor Hanel suggested to Ms. Volek that if a downpour occurred, barricades or something to alleviate traffic could be put at that intersection.

Ms. Engelhardt stated that City staff indicated sidewalks would help, but that option was too expensive.

Councilmember Pitman explained it was helpful for people to report storm damage to help count toward the declaration of total disaster, and it helped identify failing infrastructure. Ms. Engelhardt advised that it did not take a disaster like the tornado; a 15-minute storm caused problems. She said the suggestion of a sump pump was not feasible either due to the amount of water.

Councilmember Ronquillo asked Ms. Engelhardt to identify her home on the photographs.

- **Ryan Cunningham, 803 N. 24th Street**, advised that he moved into his house a year ago, and had already pumped many gallons of water from his basement. He said he recently got married, and left on a honeymoon, and then came back to mud and mold in the basement. He said he was on the corner and had the grassy median between the sidewalk and curb. He asked if a Dutch well could be installed there. He said his plan was to dig a ditch, fill it with gravel, and have it drain to another larger Dutch well that was 10 to 15-feet deep so it absorbed into the water table.

Mayor Hanel advised Mr. Cunningham to allow City staff to look at the area first before he did anything. Mr. Cunningham asked if the neighborhood qualified for Community

Development funds to help solve the drainage problem since it was causing deterioration of the sidewalks and curbs, and was a detriment to the neighborhood. Mayor Hanel asked Mr. Brooks to confirm the need for City staff to examine the area prior to anything being done. Mr. Brooks said that was correct.

- **Joe White, Billings, MT**, spoke about a restraining order regarding housing. He said there was a need for a place to keep children during an emergency. *The remainder of Mr. White's testimony was inaudible.*

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

Additional Information:

Councilmember Ronquillo announced a fundraiser at the South Park Senior Center Thursday evening for the South Park gazebo.