

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL
November 22, 2010**

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 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 on roll call were Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle, Clark

MINUTES: November 8, 2010 – Councilmember Ruegamer moved for approval, seconded by Councilmember McCall. On a voice vote, the minutes were unanimously approved.

COURTESIES - None

PROCLAMATIONS - None

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced Item 1F and noted a listing of the legislative priorities had been placed on the Council desks and was filed in the ex-parte notebook.
- Ms. Volek referenced Item 2 and noted a copy of the ordinance had been inadvertently excluded from the agenda packet and a copy had been placed on the Council desks and filed in the ex-parte notebook.
- Ms. Volek requested that Item G be removed from the Consent Agenda and placed on the Regular Agenda to allow for further discussion.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 ONLY. Speaker sign-in required. (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. **Please sign your name and address on the clipboard located at the podium.**)

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

CONSENT AGENDA

A. Bid Awards:

1. **Two (2) 5-Yard Double Dump Trucks.** (Opened 11/9/2010) Recommend delay of bid award until December 13, 2010.

2. W.O. 10-24, Rimrock Park Irrigation and Seeding. (Opened 11/9/2010)
Recommend A-1 Landscaping; \$58,750.

B. Professional Services Contract for W.O. 10-13, Safe Routes to School Study Phase II; Sanderson-Stewart; \$55,350.

C. Professional Services Contract for design and construction administrative services for the 2011 Chapple Area Water Main Improvement Projects; Morrison-Maierle, Inc.; not to exceed \$272,188.

D. Professional Services Contract for landscape architectural and engineering design services for the extension of the Heritage Trail east past Yellowstone Kelly's Grave and Skeleton Cliff connecting to the existing tunnel under Airport Road and the existing trail segment at the Aronson Interchange; Sanderson Stewart; \$230,808.25.

E. Professional Services Contract for System Development Fees and Water Re-Sale Rate Study; CDM, Inc.; \$59,900.

F. Approval of Billings Legislative Priorities.

G. Approval of Resolution creating an 8-member ad-hoc committee to interview Municipal Judge candidates and recommend a nominee to City Council by December 17, 2010, for approval at the December 20, 2010, business session.

H. Second/Final Reading Ordinance #10-5525 amending the boundaries of Ward I to exclude Tract 2A, C/S 2544, in the Briarwood PUD, (Annexation #10-03).

I. Preliminary Major Plat of Grand Peaks Subdivision, 2nd Filing, generally located northeast of the intersection of Grand Avenue and 54th Street West; Sanderson Stewart, agent; conditional approval and adoption of the findings of fact.

J. Final Plat Approval of McKay Acres Subdivision Amended East Half of Lot 17, except the south 100 feet; and **approval** of variance reducing required right-of-way dedication for Rimrock Road.

K. Bills and Payroll:

1. October 25, 2010

2. October 29, 2010

Councilmember Clark separated Item G; Councilmember Cimmino separated Items D, E, K1 and K2; and Councilmember Gaghen separated Item F. Councilmember Astle moved for approval of the Consent Agenda with the exception of Items D, E, F, G, K1 and K2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Clark said he did not like the make-up and the short time period for Item G and felt it needed further Council discussion. Councilmember Ulledalen moved to remove Item G from the Consent Agenda and add it as Item 3 to the Regular Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item D and said she had a question on the Professional Services Contract. She referenced the small section of the Alkali Creek Trail that was missing between Morningside Subdivision and Aronson and asked Mr. Whitaker if it would be part of the scope of work. Mr. Whitaker advised it was not part of the contract because it was a Public Works project that they had been unable to finish due to funding. He said Public Works asked if there was any way possible it could be included in this project, but said from a dollars perspective, he did not believe there were enough funds. Mr. Whitaker said after they got more into the project and after they received firm bids, they may be able to go in that direction. Councilmember Pitman asked who would be responsible for completing it. He said Mr. Mumford indicated it was park land and that was why it defaulted to the Parks Department; not because they ran out of money. Mr. Whitaker advised it was park land but part of the road project, and it was his understanding from the City Engineer, Debi Meling, they did not have the funding to do that portion which was why they asked if it could be included in the Parks Department project. Mr. Whitaker said after discussion with Planning, it was determined legislation had not been passed yet; and it was unknown if additional funding to complete it would be available next year. Councilmember Astle moved for approval of Item D, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino noted for the record that she would be abstaining from Item E because her employer was part of the process even though they were not selected. Councilmember Pitman moved for approval of Item E, seconded by Councilmember Astle. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item K1, Invoice #738157, and Item K2, Invoice #738417, and noted for the record that she would be abstaining from voting on both invoices. Councilmember Astle moved for approval of Items K1 and K2, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 0.

Councilmember Gaghen acknowledged the legislative priorities and said she was happy there would be effort made to support state-wide use of restrictions on hand-held communication devices while driving a vehicle. Councilmember Gaghen moved for approval of Item F, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #869: A zone change from Public (P) to Residential 6,000 (R-60) on a 50-foot by 150-foot lot in the northeast corner of Lot 3 in Section 9, Township 1S, Range 26E located at 412 Hallowell Lane. Lean 2 LLP, owner; Marshall Phil, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning

Commission recommendation. Zoning Coordinator, Nicole Cromwell, began her PowerPoint presentation showing a zoning map of the subject property and describing the zoning of the surrounding properties. She showed an aerial view of the subject property and photographs of the property and surrounding Southwest Corridor neighborhoods. Ms. Cromwell indicated the property was annexed into the City in 2004, and the zoning had remained Public. She said they had been unable to determine why the subject property had been zoned Public since it had always been used for residential purposes well before zoning was put into place in the city or county. She said the zoning of the property to the north was zoned R6000, as well as to the east across Hallowell Lane. She said there were properties to the north on Vaughn Lane zoned R7000 and R5000; and R9600 zoning was also in the area. Ms. Cromwell said the current Public zoning was discovered when the current owner went to obtain financing for the property. She said because residential uses were not allowed in Public zoning, the Planning Division could not issue a re-build letter to the financing agency; so the applicant brought forward the zone change request. Ms. Cromwell said the Zoning Commission conducted a public hearing on November 3, 2010, considered the subject property and the zoning of the surrounding properties, and felt that R6000 was appropriate. She said the Zoning Commission was recommending approval based on the following 12 criteria for zone changes.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the existing residential use to continue and would allow re-construction if necessary of either a single family or two-family dwelling. The existing 3-plex could only be rebuilt if a lot area variance is granted by the Board of Adjustment. Residential uses to the north and west are compatible with the existing use and the proposed zoning.

- Affordable housing for all income levels dispersed throughout the City. (Land Use Element Goal, Page 6)

The proposed zoning will allow the preservation of existing affordable housing in the area and allow the owner the surety of future financing and insurance for the residential use.

2. Is the new zoning designed to lessen congestion in the streets?

There should be no effect on traffic congestion. The existing dwelling likely generates between 20 and 30 vehicle trips per day and the owner is not proposing any change in the existing 3-plex.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by City Fire and Police. Any future re-construction of the 3-plex would have no effect on these services.

4. Will the new zoning promote health and general welfare?

The proposed zoning would permit the existing 3-plex dwelling to continue and would allow reconstruction of either a single family or two-family dwelling in the future. The current zoning would not allow any reconstruction for residential uses on the lot. The new zoning will allow the owner to invest in maintenance and improvement to the residential use without risking a total loss of that investment.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The proposed R-60 zone allows 40% lot coverage and the current Public zone allows up to 50% lot coverage. The proposed R-60 zone and the Public zone have similar setback requirements.

7. Will the new zoning avoid undue concentration of population?

The new zoning does avoid undue concentration of population. The R-60 zoning allows single family homes on a minimum lot size of 6,000 square feet and two-family dwellings on lots of at least 7,000 square feet. Reconstruction of the existing 3-plex would require a lot area variance approval from the Board of Adjustment.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning should not impact the surrounding streets.

Water and Sewer: The City provides water and sewer to the property through existing lines.

Schools and Parks: There should be no impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow preservation of an existing multi-family dwelling in an established neighborhood. Many of the adjacent lots to the north and west have similar development and the proposed zoning is in character with the area.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district. The location is on a corner lot adjacent to a large public park and a medium density neighborhood. The new zoning allows the existing residential use to continue.

11. Was the new zoning adopted with a view to conserving the value of buildings?

Surrounding residential property to the north and west exhibits higher taxable land value. The existing dwelling although rated in average condition will likely need future investment to maintain the quality of the structure. The R-60 allows the owner to invest in the property without risking a total loss of the investment. The proposed zoning will conserve the value of this building.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit the current development to continue and could allow future reconstruction if necessary. This is the most appropriate use of the lot.

Ms. Cromwell advised the applicant had also applied for a lot area variance because the existing tri-plex did not meet the minimum lot requirements for R6000 zoning. She said the Board of Adjustment would be considering the variance application the following week. She said the current zoning of Public put the current value of the building at risk, and R6000 would preserve the value of the building as it was currently constructed.

Councilmember Clark asked if any other lots in the area had the same problem. Ms. Cromwell advised they had found a couple properties in the neighborhood the last few years. She said they tried to find inconsistencies every time they completed a map update.

The public hearing was opened.

- **Marshall Phil, Blueline Engineering**, said he represented the owner. He said it was a simple request and Ms. Cromwell had covered the information well. Mr. Phil said he was available for questions.
- **Kevin Nelson, 4235 Bruce Avenue**, suggested the Council wait because they were just in the beginning stages of a Master Plan that would dictate the properties for the area. He said the neighborhood had been very resistant to R6000 zoning, and he was recently at Dave Hagstrom's place in Chrysalis Acres and if you wanted to have a neighborhood war, have a new development come down with R6000 zoning. Mr. Nelson said he felt they could easily go to R7000, single family, because that was really what the whole neighborhood was except for the other side of the street. He said the neighborhood had consistently supported R7000 and strongly opposed multi-family zoning. He said if they went

with R7000; they could still do a single family home; it would be grandfathered in; they could get a variance for what they had; and if anything happened, they could still do a single-family home.

Mayor Hanel asked Ms. Cromwell if a public hearing had been held on November 3rd. Ms. Cromwell said that was correct, and prior to the public hearing all of the task forces were notified by mail. She said no comments were received from the Southwest Corridor Task Force. She said a pre-application meeting was conducted prior to the submittal of the zone change, and none of the surrounding property owners attended. She said the Southwest Corridor Task Force Chairperson was also invited to that meeting. Ms. Cromwell advised they did not receive any objections from the neighborhood, nor did the Zoning Commission receive any negative comments. Mayor Hanel asked if R6000 was compatible with the properties to the east, north and west of the property. Ms. Cromwell said it appeared to be, and they had never received any complaints for over use of the property prior to the zoning application. She said it seemed to be a well-maintained property. Mayor Hanel asked if the owner could build a single family residence if it were zoned R6000. Ms. Cromwell said the owner could rebuild a single family residence, a two-family, or a three-family with a lot area variance.

Councilmember Ronquillo said the property had been there for years, and he thought they had remodeled it in 1990 following a fire. He said the Master Plan was going to be a while yet.

City Administrator Volek advised that a special meeting was held on November 18, 2010, and the members of the Southwest Task Force who were present voted unanimously to recommend to the City Council that a Master Plan Study for the South Billings Boulevard TIF area be conducted. She said she believed Councilmember Ronquillo and others were asked to speak to some of the other parties that were interested and a recommendation would be forthcoming to the Council in the near future. She said one option for the Council would be to delay the request for 30 days. She said Candi Beaudry had indicated to her that it would be a couple of months given the holidays that the RFP would be advertised. She said another option would be to reject the request; however, the reasons for rejection would need to be identified in conjunction with the 12 findings.

Councilmember Clark said if they voted to reject the request without really good reasons and the place burned down and could not be rebuilt because it was still zoned Public, there could be a liability. Ms. Volek advised in other locales, she had seen a judge send a re-zoning back to a Council asking for reasons why it was not approved.

Councilmember Cimmino asked Ms. Volek if the document would be a Master Plan or an update to the Southwest Corridor Neighborhood Plan. Ms. Volek advised a Master Plan was recommended for the South Billings Urban Renewal Area.

Councilmember Cimmino asked Ms. Cromwell if there would be a one-year waiting period before the applicant could re-apply if the Council were to reject the request that evening. Ms. Cromwell said that was correct.

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

Councilmember Clark moved for approval of Zone Change #869, seconded by Councilmember Ruegamer.

Councilmember McFadden said he could not see any reason not to approve the request. Councilmember Gaghen said with all of the attempts made by the developer and the current situation, it would enhance the property. She said the neighbors were given the opportunity to comment, and the Master Plan would take time so she saw no reason to delay the request.

On a voice vote, the motion was unanimously approved.

3. APPROVAL OF RESOLUTION creating an 8-member ad-hoc committee to interview Municipal Judge candidates and recommend a nominee to City Council by December 17, 2010, for approval at the December 20, 2010, business session. (Moved from Consent Agenda G)

City Administrator Volek advised Municipal Court Judge Mary Jane Knisely had been elected to District Court and would be taking her new position on January 3, 2011, leaving a vacancy on the Municipal Court bench. She said staff had reviewed the appropriate statutes and section of the City Code and determined that the City Council had the authority to appoint an individual to serve until the next municipal election. Ms. Volek said because of the short time frame, they were on a very fast track to get the appointment made. She said the position was advertised in the City's paper of record the week immediately following the election. She said the deadline for applications was December 10, 2010. Ms. Volek advised the Council had the ability to either create an ad-hoc committee with the recommendation to include two members of the public, two city council members, two attorneys, City Attorney Brent Brooks, and David Duke of the Public Defender's Office; or create a City Council sub-committee to consider the candidates. She said with the deadline of December 10th, it was recommended the Council hold interviews the week of December 13th. She said it may be difficult to fill a public committee so close to the holidays and the last City Council meeting of the year was December 20th.

Councilmember Pitman asked if there had been any applicants. Ms. Volek advised they had received one application to her knowledge. She said the job was advertised on the City website, in the local general circulation newspaper, and in the City's paper of record. Councilmember Astle asked when the next city election would be held. Ms. Volek advised it would be in November 2011. City Attorney Brooks advised the person selected by the Council would need to run for re-election in the fall of 2011 but would also serve the balance of the term of Judge Knisely which ended at the end of calendar year 2013, so there would be two elections that person would face in the next three years.

Mayor Hanel asked if they needed to offer a public comment period since the item was moved from the Consent Agenda to the Regular Agenda. Attorney Brooks said the opportunity for public comment had already been offered, but if he wanted to offer a second public comment period, he could.

Councilmember McCall asked Ms. Volek to describe the 8-member ad-hoc committee. Ms. Volek advised the resolution specified two members of the City Council; two members of the public at large; two attorneys; the City Attorney or, in the event someone from the City Attorney's office applied, someone from the County Attorney's Office; and the Chief Public Defender, who had already agreed to serve if asked.

Councilmember Astle said it sounded like a real circus in the making and said he preferred the option of a City Council sub-committee. He said he felt the City Council was capable of picking a city judge.

Councilmember Ruegamer asked how many people worked under the municipal judge. Ms. Volek said she thought there were approximately 20 to 25 employees.

Mayor Hanel opened a public comment period. There were no speakers, and the public comment period was closed.

Councilmember Clark moved that the City Council appoint a sub-committee of city council members to interview candidates, seconded by Councilmember Ruegamer.

Councilmember Pitman asked how many council members would be on the sub-committee. Councilmember Clark said he thought it should be all who wanted to serve. Councilmember Astle asked if the selected candidate would come back to the Council for approval. Ms. Volek advised the selected candidate would be presented to the entire Council on December 20th for approval.

Councilmember Ruegamer commented that it was very clear to him that the biggest challenge of the position was the management of 20 to 25 people, and they did not need four attorneys on a committee to figure out who could do the job. He said with all due respect to all attorneys, attorneys did not necessarily know how to manage anything; and an attorney by definition was not a manager of everything, so people who were in management needed to pick the person.

Attorney Brooks advised there needed to be consistent, established questions and criteria to present to each applicant.

Councilmember McCall stated that once they had committed to the process, they needed to see it through completely. She said she initially wanted the more collaborative process, but based on the current discussion, she would support the motion.

Councilmember Gaghen asked for clarity on who would design the questions and topics needing to be covered in assessing the candidates. Ms. Volek advised it would be the Human Resources Staff and said she would also assist if necessary. Councilmember Gaghen said she thought someone with a broad legal background was also needed to provide assistance.

Councilmember Ruegamer asked to clarify his earlier statement. He said he did not mean that lawyers could not manage; he said he meant being a lawyer did not necessarily mean you could manage people any better than a plumber could manage people. He said he felt people over-estimated what attorneys or accountants could do. Councilmember Ruegamer said he did not want to offend anyone.

Councilmember Ulledalen said the issue was time, and they could not get a group together and get it done in a quick manner. He said he felt the sub-committee was a better option.

On a voice vote, the motion was unanimously approved.

Mayor Hanel and Councilmembers Pitman, Cimmino, Ruegamer, and Clark offered to serve on the sub-committee.

City Administrator Volek suggested the sub-committee meet on December 10, at which time the applications would be presented and the interview questions would be available for review. Councilmember Clark asked if members of the sub-committee would like to be included in formatting the questions, and Mayor Hanel said he thought

that was a good idea. It was determined a preliminary meeting would be held on December 10 at 4:00 p.m. Councilmember Ruegamer said he felt Attorney Brooks should be on the committee. Ms. Volek advised if one of Attorney Brooks' employees applied, he would be in conflict; but he could still advise the committee.

City Administrator Volek reminded the Mayor and Council that a brief executive session on a litigation matter was scheduled in the back courtroom following the business meeting.

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 podium.*)

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, referenced the zoning map from the Zone Change #869 presentation (Agenda Item 2) and said he felt the zoning should be R7000. He pointed out areas to the north that were zoned R5000, R7000 and R9600 and said they were all 7,000 square foot lots. He said if someone were to have a fire, they would not be able to rebuild according to the zoning because there was not enough land. He said when land was annexed into the City, the proper zoning had never been officially addressed. He recommended cleaning up the zoning irregularities in the area.

Councilmember Clark asked if the Council could ask for a zone change on the whole area, or if staff could bring back the recommendation. Planning Director, Candi Beaudry, advised Council could initiate a zone change and it did not have to come from individual property owners. She said they had been experiencing a number of similar requests because people wanting to refinance were required to provide a will-build, can-build letter. She said they had only proceeded at property owner requests to date. Ms. Beaudry advised the master planning process could identify areas where zone changes should be made and if the plan with the concurrence of the neighborhood recommended a zone change, Council could initiate it. Councilmember Clark asked if there would be cost to the property owners. Ms. Beaudry said if they did it wholesale it would be far less expensive than a single process. She said zoning had to be made in accordance with a master plan and currently they did not have a master plan or a neighborhood plan. She said they only had an urban renewal plan that did not identify preferred land uses.

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

COUNCIL INITIATIVES

- **Gaghen:** Moved that a letter to the Governor be drafted on behalf of the Council and signed by those individuals wanting to support it urging the issuance of a permit to transport the large cokers for the Conoco Refinery through Montana, seconded by Councilmember McCall. Councilmember McFadden

suggested that the County Commissioners also sign the letter. Councilmember Gaghen advised the Commissioners had already sent a letter. Councilmember McCall said she felt it was a good idea and good for business so she would support it. Mayor Hanel said he would be happy to prepare the letter for review by Council. On a voice vote, the motion was unanimously approved. Ms. Volek advised staff would draft a letter and ask who would be interested in signing it.

There were no other initiatives.

Councilmember Gaghen advised the Billings Mustangs had received the John H. Johnson President's Award. She said the award had been in existence since the Mustangs joined the Cincinnati Reds organization 37 years ago and only three other communities had won twice. She said the Mustangs received the award in 1994 and again this year. She said the award was based on franchise stability, contribution to league stability, contribution to baseball in the community, and promotion of the baseball industry. Councilmember Gaghen suggested it would be very appropriate to recognize the award at a future meeting as a courtesy. Mayor Hanel asked Councilmember Gaghen to meet with the Administrative Assistant to draft the courtesy.

There was no further business, and the meeting adjourned at 7:30 p.m.

CITY OF BILLINGS

Thomas W. Hanel, Mayor

ATTEST:

Cari Martin, City Clerk