

## SPECIAL MEETING OF THE BILLINGS CITY COUNCIL

October 7, 2013

The Billings City Council met in special 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 W. Hanel called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. Councilmember Pitman gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Ronquillo, Pitman, McFadden, Bird, McCall, Ulledalen, Astle, and Crouch. Councilmember Cimmino was excused on roll call and arrived at 5:37 p.m.

### ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek advised she did not have an Administrator Report.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: NONE. Speaker sign-in required.** (Comments offered here are limited to one (1) minute. 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. 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 podium.)

Mayor Hanel advised there were no non-public hearing agenda items.

### **SPECIAL AGENDA:**

**1. CONTINUED PUBLIC HEARING AND RESOLUTION approving Park Maintenance District assessments for FY2014. (Postponed from 9/23/13) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator, Tina Volek, referenced a September 14 memo to City Council that recommended assessing owners of all buildable lots for park maintenance districts in Copper Ridge, Falcon Ridge, Ironwood, Rehberg Ranch, and Uinta/Twin Oaks Subdivisions. Soon after it was discovered some of the creation resolutions contained the phrase, "Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted." At that time, staff asked Council for additional time to review the process and evaluate where they were with assessments because they had learned very late of the situation. She advised the Restrictions on Transfers and Conveyances occurred when a property had streets, water, and sewer; and the restrictions could be lifted not only as the whole subdivision was platted, but as two or three streets were finished. In the past the restrictions came through the Public Works Department and were then sent back to the engineering firms who had done the design work to file with the Clerk and Recorder. Although Public Works was aware the

restrictions had been lifted, the Park and Recreation Department was not notified. A meeting with staff was held, and it was agreed the City Clerk would assume the responsibility of filing the lifting of Restrictions on Transfers and Conveyances with the Clerk and Recorder, which was actually required in the Subdivision Improvements Agreement; but the process had never been followed. Ms. Volek thanked the Clerk and Recorder and the engineering firms who worked very hard with staff to come up with changes to make sure the City had absolutely everything in the best order possible. She also thanked the County Treasurer's Office for agreeing to accept the City tax billing assessment information no later than Wednesday, October 9. She noted a copy of the set of changes staff was recommending was on Council's desk and filed in the ex-parte notebook. The number of properties owned by Regal Land Development Company was less than what staff had presented two weeks prior because many of the properties that had been platted did not have the Restrictions on Transfers and Conveyances lifted. The actual number of lots Regal Land Development Company would be assessed was 43; Rehberg Ranch would be assessed for one; and the remaining subdivisions would be assessed on the same numbers presented two weeks ago. Ms. Volek recommended continuing the public hearing and approving the assessment resolution as presented.

Councilmember Ronquillo asked if the 65 lots in Ironwood would not be assessed because there were no roads built to them. Ms. Volek advised they were platted but they had no improvements and were not buildable lots. She confirmed the same applied to the nine lots in Rehberg Ranch.

Ms. Volek thanked the Ironwood Homeowners Association for bringing some of the material to their attention. Staff was recommending the changes be made going forward, and said they had a methodology in place now that prevented the same situation from happening in the future.

The public hearing was continued.

- **John Stockman, 5992 Ironwood, Billings, MT**, said he was a member of the homeowners' association. Four years ago they asked the City to explain what was going on with their park maintenance district account. Based on the information provided, they were able to correct some of the old charges that had been made. He said this past February the association met with Jon Thompson, and the City determined they were not charging all the lots that should have been charged. He said there were houses that had been built for five years that had never been charged. Mr. Stockman thanked Councilmembers Ulledalen and McCall for helping the association get some answers. He said the City also assured them they had stopped allowing developers to connect to the waterline and charge the park maintenance district for water to improve the parks with grass and trees before the park district had even accepted the improvements. Mr. Stockman said the 2005 resolution that created the park maintenance district listed what charges could be fairly assessed to the homeowners. He said they asked in February for an accounting to make sure what they were paying was fair, because they should not be paying for developer costs or administrative costs that were not set forth in the park maintenance district creation documents. They had not yet received the information they requested. They did receive some

information the previous afternoon after 4:00 p.m. from the City Administrator, but it was not complete. Until they received the requested information, they were asking that their levy be left at last year's tax rate. Last year's assessment was based on \$55,000 for maintaining their district, and if the rate were kept the same, the amount of dollars would actually go up because there had been at least 45 lots added this year. Mr. Stockman said in February they were told the deficit for their account was \$51,000; and now the dollars had been reduced to about \$35,000. Given another year, they would be able to get it resolved, as well as get the credits they were entitled to.

- **John Quandt, 5960 Canyonwoods, Billings, MT**, said his concern was that they had watched how it was calculated go back and forth, and now they would be getting a tax hike without working out the past. He said they had added 45 more lots this year, and Dan Wells would be adding 30 more lots next year. He asked Council to consider where it was going, where it had been, and to stop raising the taxes until everyone was happy with where it all settled.
- **Bill Cole, 3733 Tommy Armour, Billings, MT**, said he represented Rehberg Ranch. He said he appreciated the work done by staff and endorsement of the principle of assessing only saleable lots. The only other point he wanted to make was the need for standardizing a better system for dialogue between the people paying the park maintenance district assessments and the Parks Department. There needed to be some sort of a budget going in each year and an accounting after the fact so the homeowner associations could talk in an organized way with the Parks Department. There was always confusion, and where there was confusion there was suspicion.

Councilmember Ulledalen said one of the biggest frustrations he had was how to explain something decided four city administrators ago, five planning directors ago, etc. There was no standardization. Being accused by the homeowners that the City was somehow colluding with the developers to force ugly agreements onto unsuspecting homeowners was not a fun thing to deal with. Mr. Cole said for the most part the arrangements were fairly standardized, and a document needed to be created that managed what was done for each district. It became more important now with the generalized city-wide maintenance district because some people were paying both. Councilmember Ulledalen said Jon Thompson had done a great job trying to unravel the messes, but as far as equity it was difficult to go to an area like Harvest and Olympic Park that was an outrageously-complicated system of parks, walkways, and greenery that did not make any sense and tell the homeowners the costs were going to run between \$250 and \$300 a year; and then go to a more upscale neighborhood and say \$250 was just outrageous. That was the difficult equity situation the Council had to deal with. Another answer would be to give it back to the homeowners and get the City out of it and let the homeowners make the decisions on what they wanted. Mr. Cole said that would be an option; but they were stuck with what they had, and in the meantime they should try to standardize it as best they could and create a paper trail that people could refer back to. Councilmember Ulledalen said he had heard a comment that the Rehbergs were watering cattle out of the park maintenance district. Mr. Cole said

the homeowners association wanted that to happen, and it had been the case since the park maintenance district was created. There was a stock tank on the other side of the road and a fence that kept the cattle off the green lawns. If the cattle did not have access to water, they would go through the fence to get to the lawns. The park maintenance district paid only for the water, and it was his understanding the homeowners were okay with it because it served their purposes.

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

City Administrator Volek said Mr. Weber advised the amount the Ironwood Subdivision was in arrears was \$64,000 and not the numbers mentioned earlier. If the Council chose to stay with the fee for this year, the number would result in a larger fee than would normally had been the case for the next year. Ms. Volek advised subdivisions were assessed either on a square foot basis or on a per lot basis. Both subject subdivisions were based on square footage.

Councilmember Ronquillo asked if Mr. Stockton would receive the information he requested. Ms. Volek advised she sent Mr. Stockton a pdf document that did not carry over all of the numbers, so she would re-send the information the next morning with the help of Mr. Weber. Councilmember Ronquillo commented it was new ground for the City and there would be glitches here and there, but once they had a year or two behind them, it should run smoothly. It was something they needed years and years ago because the parks were falling apart. He said some of the land the developers gave the City was not worth fixing, and he did not know why the City ever agreed to take it.

Councilmember Ronquillo moved for approval of the Park Maintenance District Assessments for FY2014 as presented, seconded by Councilmember Cromley.

Councilmember Ulledalen said he would also like to see the documentation on the Ironwood deficit.

Councilmember Astle commented there was a park north of Rimrock off Toyon Drive shaped like a bell sitting on its stem. It was a canyon and a waterway and completely unusable as a lot. It had existed since at least 1972, and it was absolute wasteland. The City had a mess, and this was the only way to clean it up.

Councilmember Pitman asked what the method would be for people who wanted to discuss issues, concerns, or file protests. Ms. Volek said they should contact her or Mr. Whitaker at the Parks Department.

On a voice vote, the motion was unanimously approved.

#### **COUNCIL INITIATIVES** - None

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda; comments limited to three (3) minutes per speaker. Please sign up on the clipboard located at the podium.*)

The public comment period was opened.

- **Joe Bonini, 8470 Long Meadow Drive, Billings, MT**, said he had e-mailed the Mayor and Council on Thursday briefing them on his 4-plex project on 10<sup>th</sup> and Wyoming. He said City Council approved his project on August 26 with the Board of Adjustment variances and special reviews for three buildings. They had a green light through all the boards and were progressing quickly. Less than a week from turning in building permits, he was notified by the Fire Department he would not be allowed to build the 3<sup>rd</sup> most southern building due to accessibility problems. The Fire Department did not want to use the alleyway for access to the third building. He said he found it shocking to say the least. If garbage trucks could fit down an alley, he figured fire trucks could as well. He said he was looking for some kind of resolution because there were other areas of the City where alleyways were used for emergency access to multi-family buildings. Mr. Bonini said he felt the Fire Department had a lot of time to bring their concerns up at the special reviews or the council meeting and not wait until the 11<sup>th</sup> hour when he was about to start construction.

Councilmember Cimmino asked if he was referencing a recent zoning application Council had approved. Mr. Bonini said that was correct. Councilmember Cimmino asked if she could ask a question of Planning Director, Ms. Millar. City Administrator Volek told Councilmember Cimmino it was a Fire issue and not a Planning issue. Councilmember Cimmino responded that her question was related, and she did not see the Fire Chief at the meeting. Ms. Volek said she was unaware Mr. Bonini would be at the meeting that evening. She said Mr. Tatum, the Deputy Fire Marshal, had offered to meet with Mr. Bonini, and she asked Mr. Bonini if he had met with Mr. Tatum. Mr. Bonini said he had not. Ms. Volek said the Fire Department considered access to be very critical, and Ms. Millar could also discuss it. She said it was not only a matter of paving, it was a matter of access and width. There needed to be capacity to get around vehicles that might be parked in an alley, which was the heart of the matter. Their answer was the width was not sufficient to meet their requirements paved or not paved. Councilmember Cimmino asked Ms. Millar if the width was a concern for the Fire Department during the time the applications were being reviewed by the Planning Department, as well as by the Development Review Committee that included review from all the major departments including the Fire Department. Ms. Millar said what Councilmember Cimmino was describing was an internal review by most departments associated with development at the time of submittal. This particular development went through a variance request that did not come through the City Council and a special review that did come through the City Council. She said when they sent out requests for comments to the internal departments it was based on the type of application being reviewed. In a special review they would be looking at options for conditions that would make the special review more compatible for the neighborhood, so Fire was not looking specifically at the layout of the development. She said she was not saying it was an oversight, she was saying they were not typically keyed in at that point on the layout of the site, buildings, and streets and would not typically comment on the access item. It would be something they would look at during a master site plan review. Councilmember Cimmino asked if the variance was granted by the City

Board of Adjustment. Ms. Millar said it was. Councilmember Cimmino asked if it was unanimous. Ms. Millar said she believed it was. Councilmember Cimmino said at that time it was not a concern. Ms. Millar said she was not saying it was not a concern, but the Fire Department would be looking at other aspects of the application, not site plan review at that time. She said that was the explanation she received from Mike Spini, the Fire Marshal.

Councilmember Bird said what she was hearing was there was a problem with the process; if they could go through the approval process, give the green light for development, and then all of a sudden there was a red light for the development because of concerns by a city department. She agreed with Mr. Bonini that no one should be caught blind-sighted. Ms. Millar said she agreed, they had talked about it, and they would continue to talk about how to improve the process. They did not have a uniform development code that made them look at the development in total. She was not saying their process was flawed, but they were looking at it in individual steps as opposed to a comprehensive development review. She and Mr. Spini had discussed it and felt they could do a better job identifying red flags in earlier stages. Councilmember Bird asked if they had decided to make practical changes so they would not have to deal with it time and time again. Ms. Millar said they were implementing changes now to have Fire and other departments provide more comprehensive reviews at any stage of the application. She said it was not easy but where they could they should identify the red flags.

Councilmember Astle asked if Mr. Bonini had been given the widths he needed. He asked for the parameters for the project on Avenue E and said there was another project off 32<sup>nd</sup> Street West near Poly that he did not think two cars could even get down. Why were they allowed? What were the rules and what did Mr. Bonini have to do to get this mess cleaned up if it could be cleaned up? Ms. Millar said about a month ago after the special review for the multi-family project on Avenue E, Council asked staff to look at standards for using alleys as streets. At that time the Fire Department said they needed alleys to be 20 feet wide, and they needed to be able to extend their hoses no more than 150 feet from a paved street. Ms. Millar said they would not drive the fire truck down the alley if they could park on the side streets and extend the hoses no more than 150 feet. They needed a fire hydrant or to be able to hook up to a water truck. Councilmember Astle commented, according to the law, a fire truck could not be more than eight feet wide. Ms. Millar said the way Mike Spini explained it, they would be able to park on the side streets and fight a fire by extending hoses no more than 150 feet to the development on Avenue E, so they were comfortable with it.

Mr. Bonini said he did not know the distances between 10<sup>th</sup> and 11<sup>th</sup> but he believed it to be the same on 16<sup>th</sup> and 17<sup>th</sup> near Avenue E. Councilmember Astle said they needed to get the situation rectified.

Councilmember Pitman asked Attorney Brooks for his recommendation on how to proceed. Attorney Brooks said the Council could make a motion to direct the City Administrator to make sure the Fire Marshal met with Mr. Bonini, they reviewed the area, and reviewed the applicable fire code.

Councilmember Ulledalen said they wanted infill. The problem with infill was a myriad of problems in making a particular piece profitable to build on. In regard to stormwater, curb and gutter, and sidewalks, there may be a number of things they had to bend on in the future. He asked if there was a way to change the code to fit a situation like this or come up with a common sense solution from someplace else rather than just get to this point and tell the developer he is out of luck.

Ms. Volek said Josephine Crossing was an area in which they had a different kind of arrangement with the Fire Marshal's participation. She said she would make sure there was a meeting between Mr. Bonini and the Fire staff.

Mayor Hanel asked Ms. Volek to make the arrangements and bring the communication back to Council for a decision on whether the project should be changed or altered. He said they needed more information.

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

There was no further business, and the meeting adjourned at 6:16 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk