

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 10, 2014

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 W. Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Pitman gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Pitman, Cimmino, McFadden, Bird, McCall, Swanson, Crouch, and Brown.

MINUTES: January 27, 2014 – Councilmember Crouch moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

COURTESIES: None.

PROCLAMATIONS: Engineer's Week, February 16 - 22, 2014

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- **Item E – Approval of land acquisition payment to Eaton Land Development for Work Order 08-25, Zone 3 Chapple Reservoir Expansion project.** Asked the Council to separate the item so Dave Mumford could make a presentation.
- **Item F – Approval of purchase of Tait radios for the Police and Fire Departments.** Council received e-mail from Alan S. Miller, dated 2/9/14, regarding public safety communication issues. Copy was filed in the ex-parte notebook. She noted the Police Chief was in attendance to answer any questions.
- **Councilmember Yakawich** attended the MMIA Local Government Center meeting last week in Laurel and brought back informational packets for the other councilmembers. Councilmember Yakawich commented the meeting was very good and provided excellent information on the philosophy of good government.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 2B, and 2C ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or 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.)

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

1. CONSENT AGENDA

A. Mayor Hanel recommends that Council confirm the following appointments:

1. APPROVED

	Name	Board/Commission	Term	
			Begins	Ends
1	No Applications	Animal Control Board*	02/10/14	12/31/16
2	No Applications	Animal Control Board	02/10/14	12/31/17
3	No Applications	Billings BID	02/10/14	12/31/17
4	No Applications	Billings BID	02/10/14	12/31/17
5	No Applications	Board of Appeals - Electrical	02/10/14	12/31/17
6	No Applications	Board of Appeals - Builder	02/10/14	12/31/15
7	Carol Blank	Housing Authority	02/10/14	12/31/18
8	No Applications	Housing Authority Res Comm	02/10/14	12/31/15
9	Charlene Sleeper	Human Relations Commission*	02/10/14	12/31/14
10	No Applications	Mayor's Homelessness Lending*	02/10/14	12/31/16
11	Lisa Donnot	Mayor's Homelessness Faith Based*	02/10/14	12/31/14
12	Mike Craighill	Parking Advisory Board*	02/10/14	12/31/14
13	Patty Nordlund	Parking Advisory Board*	02/10/14	12/31/15
14	No Applications	Parking Advisory Board	02/10/14	12/31/17
15	Jim Ronquillo	Planning Board - Ward I*	02/10/14	12/31/14
16	Ryan Sullivan	Public Works Board	02/10/14	12/31/17
17	No Applications	Public Works Board	02/10/14	12/31/17
18	No Applications	Traffic Control Board*	02/10/14	12/31/14
19	No Applications	Traffic Control Board	02/10/14	12/31/17

- 1 Not filled in 01/01/13
- 9 Unexpired term of Stephen Marsh
- 10 Not filled in 01/01/13
- 11 Unexpired term of Adela Awner
- 12 Unexpired term of Bruce Simon
- 13 Unexpired term of Steve Bruggeman
- 15 Unexpired term of Zach Meyers
- 18 Unexpired term of Brent Krueger

B. Bid Awards:

1. Three Solid Waste Garbage Truck Cabs and Chassis (one front-load, one side-load, and one rear-load). (Opened 1/28/14) Recommend One Rear Load Truck, Montana Peterbilt, \$197,757; One Front Load Truck, Montana Peterbilt, \$172,869; One Side Load Truck, Montana Peterbilt, \$226,337.

2. Solid Waste Landfill Compactor. (Opened 1/28/14) Recommend T & E Equipment; \$707,294.

3. SID 1395, Boca Raton Road Improvements. (Opened 1/28/14) Recommend delay of award until February 24, 2014.

4. W.O. 14-03, Contract #1, City Chip Seal. (Opened 1/28/14) Recommend Knife River; \$1,147,644.97.

C. Change Order #1 - Montana Avenue Pipe Bursting Project, Curb Box Specialists, \$9,875.

D. Reimbursement Agreement with Cal Kunkel for Private Contract #645, Western Sky Subdivision, \$87,383.50.

E. Approval of land acquisition payment to Eaton Land Development for W.O. 08-25, Zone 3 Chapple Reservoir Expansion project; payment recommendation to be made at February 10, 2014, city council meeting.

F. Approval of purchase of Tait radios for the Police and Fire Departments; \$831,605.25.

G. Acceptance of Donation to Billings Animal Control; Yvonne Mansfield Animal Welfare Fund; \$5,000.

H. Preliminary Subsequent Minor Plat of Falcon Ridge Estates Subdivision, 5th Filing, described as four lots on approximately 36,143 square feet of land on Peregrine Lane, north of Golden Acres Drive; SD Helgeson Inc., owner; Sanderson Stewart, agent; conditional approval of the plat and adoption of the findings of fact.

I. Preliminary Minor Plat of Price Subdivision described as five lots on approximately 166.3 acres of land generally located on the east edge of Ironwood Subdivision with access off of Canyonwoods Drive; LJ Price, owner; Sanderson Stewart, agent; conditional approval of the plat and adoption of the findings of fact.

J. Final Plat Approval

1. Skyview Ridge Subdivision, 1st Filing
2. Falcon Ridge Subdivision, 4th Filing

K. Bills and Payroll:

1. January 13, 2014
2. January 21, 2014

Councilmember McCall separated Item B4. Councilmember Cromley separated Item K1. Councilmember Cimmino separated Item F. Councilmember Cimmino also separated Items E, H, I, J1, J2, K1, and K2 in order to abstain because other architectural/engineering firms had been retained or contracted. Councilmember Brown separated Items K1 & K2 in order to abstain. Mayor Hanel separated Items E and H. Councilmember McCall moved for approval of the Consent Agenda with the exception of Items B4, E, F, H, I, J1, J2, K1 and K2, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

Councilmember McCall referenced Item B4. She asked Mr. Mumford if the chip seal would include streets in the College Subdivision. Mr. Mumford said they would be starting the work in that area. She said the residents living in the College Subdivision had been split for quite some time over doing a special improvement district for curbs, gutters, sidewalks, and streets; and they would be happy to hear their streets would be chip sealed. Councilmember McCall moved for approval of Item B4, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Cromley referenced Item K1, Check #772264, and said he would be abstaining due to payments made to his employer. Councilmember Pitman moved for approval of Item K1, seconded by Councilmember Bird. On a voice vote, the motion was approved 8 to 0. As noted earlier, Councilmembers Cimmino and Brown also abstained from Item K1.

Councilmember Cimmino referenced Item F. She said she was unable to attend the meeting when the radios were first presented. She asked Police Chief St. John if 453 radios would be purchased; 303 for the Police Department and 150 for the Fire Department. Chief St. John said the number sounded correct. She said another number was allocated for the Airport, but it was not noted. According to her calculations, each radio would cost \$1,835.77, and she asked if that figure was accurate. Chief St. John said it was very close. Councilmember Cimmino referenced Mr. Miller's e-mail and asked the Chief to verify the accuracy of Mr. Miller's statement that there was no local support for the contract. Chief St. John said there was local support from a company they were currently doing business with for the E.F. Johnson radios. The City had three technicians between the Police and Fire Departments to handle minor corrections and repairs. Any major repairs would require the radios be sent off, which was the industry standard. He distributed a packet of information highlighting why it was a workable situation for them. He said the service package provided by Tait did not require local support. When they turned in one radio, they would get another one back. Every three years they would get a new, free radio battery. He said with their current equipment they were going through batteries every three years at a cost of \$100 each. With Tait, they would be money ahead when they received the free battery replacements. He said in the sixth year of the proposed contract, they would be swapping out for new radios. Technology changed rapidly, and the proposed contract would make the radios "future proof." They would have the newest and best technology at Year 6. He noted, due to

the sophistication of the radios, the industry standard was to replace the radio boards versus opening the radios and trying to re-solder the wires. Replacement of the boards had to be done at the company's headquarters. Councilmember Cimmino said Finance Director, Pat Weber, was checking into financing the radios with a local bank and asked if they would finance for 10 or 20 years. City Administrator Volek advised it was her understanding they would be purchasing the radios with reserves and would not engage in long-term financing.

Councilmember Bird asked the Chief to explain the warranty. The Chief said the warranty was for 10 years, which included service and support on the hardware and software. Quarterly reports on maintenance would also be provided.

Mayor Hanel asked Chief St. John about the trade-in credit. The Chief said the trade-in was a significant part of their consideration. He said Tait would buy the E.F. Johnson radios for \$225,000. No other company offered a trade-in, and it would help mitigate the cost. Mayor Hanel said Mr. Miller acknowledged in his e-mail that Billings would still be sending radios to Texas for factory-level repairs and asked the Chief to clarify Mr. Miller's comment on Depot Level Support. Chief St. John said it was basically the factory, which was the only place that had the capability to take a board out and plug in a new one. He said there was a service in Idaho that could provide intermediate repairs, if needed; but they would still have to send the radios off for internal work. He noted again the City would have three in-house people significantly involved in the installation and programming of the radios, which would help with an easy transition.

Councilmember Swanson asked if the new radios were rugged and water resistant. Chief St. John said the radios were rugged but very few electronics were thoroughly water resistant. The Chief showed a current radio and the proposed Tait radio.

Councilmember Bird asked why Tait would want the old radios. Chief St. John said they could probably be re-sold to entities that did not require a high level of sophistication, communication, and encryption.

Councilmember Brown asked how long the existing radios would last if the City did not replace them. Chief St. John said the failure rate had been about one to three a week with no replacements, so they had to share or not have enough. It cost \$400 to send a radio off to just be told it was broken; the City had to then pay for the repairs; and the turnaround time was absolutely ridiculous. He could not say how fast it would take to be at a critical mass for communications, but they were starting to get to that point. If the purchase was not approved, they would continue to try to piecemeal it together; communications would not get any better; operations would be hindered; and officer and citizen safety would be jeopardized. Being able to talk and relay information was absolutely critical for delivering public safety.

Ms. Volek asked for comments on P25, the federally-mandated standard. Fire Chief Dextras said they had been struggling with the radios for a long time. He said there had been a lot of issues from the Federal Government that included P25 standards and going digital. Transitioning from an analog system to a digital system was very complicated, and everything needed to match up. The current radios did not match up as was evident in the repair bills, the actual communication, and the failure rate. In order for Sprint/Nextel to take a part of the spectrum in the 800 frequency, they had to replace the City's radios. The replacement radios were not top-of-the-line and had been

adapted from an analog-base technology that was compatible with digital, but they did not match up very well. Chief Dextras said they had issues of keeping up with the federal requirements, transitioning to digital, meeting P25 requirements, and finding a product that had been proven in the market. He felt the Tait radios met the federal requirements, they were durable, and they had proven capabilities. The Tait radios were specifically designed for today's technology.

Councilmember Brown asked if the current radios met the P25 standards. Chief Dextras said they met the P25 regulations, but the hardware was not holding up as it should.

Councilmember Crouch moved for approval of the purchase of the Tait radios, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Public Works Director, Dave Mumford, referenced Item E. He advised in February 2013 City legal staff went into eminent domain proceedings on a parcel of land necessary for the construction of a new water reservoir at Chapple located above the Mormon Temple. He said it was a critical location for supplying necessary water along the Shiloh Corridor. Last week the Legal Department was advised the arbitrator ruled in the City's favor in that the \$175,550 original appraisal was what the City was to pay Mr. Eaton, plus 10% interest over the last year. He said he could not give an exact amount of interest because it was accrued daily, but he felt the total settlement amount would be approximately \$193,000. Mr. Mumford said if the Council accepted the arbitrator's ruling, staff was asking the Mayor to sign the paperwork so payment could be made.

Mayor Hanel advised the matter had been discussed at previous meetings in a public forum.

Councilmember McCall moved for approval of Item E, seconded by Councilmember Pitman.

Councilmember Cimmino said she would abstain from the item because her employer was involved with the project.

On a voice vote, the motion was approved 10 to 0.

Mayor Hanel referenced Item H and asked Mr. Mumford if he had any concerns regarding storm drainage. Mr. Mumford said he had not heard any concerns from staff specific to storm water. Mayor Hanel said he knew there had been concerns with storm drainage in that specific area that resulted in property damage, and he wanted to be very sure it was engineered properly. Mr. Mumford said they were looking at it very closely, and most of the past issues were due to runoff from undeveloped areas.

Mac Fogelsong said he was with Sanderson Stewart and would be happy to answer any questions regarding Item H. Mayor Hanel said storm water drainage concerned him because of past storms that caused property damage. He asked Mr. Fogelsong if there should be any concern on the City's part based on the engineering. Mr. Fogelsong said they had designed the development to require that the homes be built above the curb to mitigate any flooding.

Councilmember McCall moved for approval of Item H, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

REGULAR AGENDA:

2. COPPER RIDGE SUBDIVISION

A. PUBLIC HEARING AND RESOLUTION #14-10334 vacating a portion of Cove Creek Drive in Copper Ridge Subdivision, 2nd Filing; Copper Ridge Development Corporation, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation but was available to answer questions.

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

Councilmember McCall moved for approval of Item 2A, seconded by Councilmember Crouch. Councilmember McCall said the reconfiguration of the parkland with the developer made a lot of sense, and she thought it would be a better flow for the parkland that had been exchanged. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

B. RESOLUTION #14-10335 approving the exchange of properties located within the undeveloped area of the Copper Ridge Subdivision, 2nd Filing, with Copper Ridge Development Corporation. Public hearing held and action delayed on January 27, 2014. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation but was available to answer questions.

Councilmember Crouch moved for approval of Item 2B, seconded by Councilmember Swanson. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

C. FINAL PLAT OF COPPER RIDGE SUBDIVISION, 5TH FILING. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised staff had no presentation but was available to answer questions.

Councilmember Swanson moved for approval of Item 2C, seconded by Councilmember Crouch. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.)*

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, referenced the Highlands Project in his neighborhood and said nothing had been done about regulating the company's noise, dust, and odors. He said he spoke with the Big Sky Economic Development Authority (EDA) Board in December and expressed his concerns. The Yellowstone County News reported the EDA Board had discussed the matter, but their meeting minutes were silent on the subject. The Sheriff's Department would not address the issue because it was a

“political and perplexing matter.” He asked Mayor Hanel to discuss the problems with Commissioner Reno because the Sheriff said unless the Commissioners gave him direction, there was nothing he was going to do. City Administrator Volek explained the Highlands project was a company in Mr. Nelson’s neighborhood producing tanks for the Bakken on an unincorporated piece of property wholly surrounded by the City. She noted the City had no enforcement authority because the property was located in the County. The County had worked with the State on the noise and sand issues.

Councilmember McCall asked Mr. Nelson to repeat what he had said about attending the EDA meeting. Mr. Nelson said someone named Scott called him and said the EDA Board had discussed it and would look into it. Mr. Nelson said he obtained the minutes to find out what discussion had taken place, and there was no discussion on the issue. Councilmember McCall said she believed it was Scott Chesarek, and she would follow-up with him and ask why it was not included in the minutes.

Councilmember Cromley said he had suggested about six months ago that someone get a free consultation with a lawyer and consider filing a private claim for nuisance. He asked if anyone had done it. Mr. Nelson said he had not. He had been busy, and there was only so much time. He said it seemed like the company tried to mitigate some of it and a week later they would start the battle all over again. The company did not do what they said they were going to do.

Councilmember Cimmino asked if the County Code Enforcement Officer could take a look at it. Ms. Volek said it was her understanding the County Code Enforcement Officer and the State Agencies had measured for air pollution and noise, and the company was within the air pollution requirements. Ms. Volek said she would get a copy of the County Code Enforcement Officer’s report.

Councilmember Brown asked if there were any City laws that could be enacted because City residents were being affected. Ms. Volek commented the City had no enforcement authority because the property was in the County. Attorney Brooks said it had been researched, and the County Attorney acknowledged the County was responsible for enforcement of applicable laws. The neighbors had the option to retain an attorney and file a private nuisance action. The City could not file a suit on its own behalf.

Councilmember Bird asked why the City could not advocate for the citizens that lived in the City. Attorney Brooks said it had through conversations and correspondence. He said he planned to meet with the County Attorney on Wednesday and would try to obtain information to bring back to the Council.

Councilmember Crouch asked what would be involved with annexing the property. Ms. Volek said annexation of an industrial area could not be forced under state law. She said a meeting had been held some time ago with City and County officials, and the County acknowledged it was in their jurisdiction, and they were responsible.

Councilmember Yakawich asked if arbitration was an option. Mayor Hanel said there was nothing preventing anyone from personally visiting with the business and sharing concerns.

Councilmember Cimmino asked Ms. Volek if the subject had ever come up during a joint meeting with the County Commissioners. Ms. Volek said it had, and the Commissioners believed they had done what they could within the regulatory framework.

Councilmember McFadden asked the City Attorney if the County had an enforceable noise ordinance. Attorney Brooks said he would consult with the County Attorney on Wednesday.

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

COUNCIL INITIATIVES There were no initiatives.

Councilmember McCall reminded the Council of the City Administrator's semi-annual review on Wednesday at 5:00 p.m.

Councilmember Cimmino said she noticed a payment had been made to a firm for a cost allocation plan and asked Ms. Volek to tell her more about it. Ms. Volek advised it was an annual plan and the procedure by which various expenses were allocated to different departments. Councilmember Cimmino asked if it was related to an Interfund Transfer. Ms. Volek said it would probably result in an Interfund Transfer.

There was no further business, and the meeting adjourned at 7:45 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk