

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
March 14, 2016

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 McFadden gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Cimmino, McFadden, Friedel, Sullivan, Swanson, Clark, and Brown.

MINUTES: February 22, 2016: Councilmember Cromley moved for approval, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

COURTESIES: Mayor Hanel recognized the Billings Chamber of Commerce for their service and introduced two representatives who were in attendance. John Brewer, CEO, and Jeff Walters, Chair, thanked Council for its support. Mr. Brewer stated that the Billings Chamber of Commerce had been selected as Chamber of the Year from the Association of Chamber of Commerce and noted that the Billings Chamber of Commerce had earned a five-star accreditation. Mr. Walters thanked Council, the Downtown Billings Association, the County Commissioners, and Big Sky Economic Development for all of the support.

PROCLAMATIONS: There were no proclamations.

ADMINISTRATOR REPORTS – BRUCE MCCANDLESS, ASSISTANT CITY ADMINISTRATOR

- Bruce McCandless, Assistant City Administrator, stated that two letters pertaining to Special Review #938 had been received for the Mayor and Council through the City Clerk's Office. Mr. McCandless stated that the letters had been distributed to the Mayor and Councilmembers, and copies were also available in the ex parte notebook.
- Mr. McCandless stated that multiple emails had been received that related to the Amend Park Development Council (APDC) Contract Renewal. Mr. McCandless stated that copies of these emails have been included in the ex parte notebook and that per Council's request, emails received after 3:00 pm had been included in the ex parte notebook and hard copies had been distributed to each Councilmember.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4 & #5 ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. 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.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, in reference to Item 4, stated that a budget needs to be seen for Amend Park, and that the City should take over the operations of the park.
- **Mike Mayott, 2424 Locust Street, Billings, MT**, newly elected President of Amend Park Development Council, thanked Council and the Parks Department for their support. Mr. Mayott stated that APDC now consists of 10 new members, and gave a brief overview of the steps that APDC will be taking to bring Amend Park back up to previous standards.
- **Brent Schwartz, 3630 Hayden, Billings, MT**, in reference to Item 4, requested to be a voice on the APDC Board, and stated that the previous board had shut out sports other than soccer.
- **Greta Moen, 1015 Moon Valley Road, Billings, MT**, in reference to Item 4, stated that she has seen several user groups come together for this project and would like to see Council support.
- **Terry Stapleton, 2015 Eastridge, Billings, MT**, in reference to Item 4, stated that he supports the APDC.
- **Jim Patelis, 6312 Grey Hawk Way, Billings, MT**, in reference to Item 4, stated that the Parks Department should take over operation of Amend Park, but that he would like to see the City work in conjunction with APDC.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 16-03 City Overlay.** (Opened 02/23/2016) Recommend Harddrives Construction Inc., \$298,030.
2. **Concrete Restoration of City Parking Structures I, II and III.** (Opened 02/23/2016) Recommend Restocon Corporation, \$309,201.

B. W.O. 09-15

1. **Bid Award for W.O. 09-15 Grand Avenue, Zimmerman Trail to Shiloh Road.** (Opened 02/23/2016) Recommend Knife River, \$3,816,036.32.
2. **Approval of Right of Way Agreement and Warranty Deeds for W.O. 09-15, Grand Avenue, from Yegen Grand Avenue Farms.**

3. **Approval of Right of Way Agreement and Warranty Deed for W.O. 09-15, Grand Avenue, from KZ Bar Limited Partnership.**

C. **Resolution** creating an Ad-Hoc Council Advisory Committee on the Babcock Theater.

D. **Reimbursement Agreement** with School District #23 for W.O. 14-13, Elysian Area Water and Sanitary Sewer Extension Project, Schedule 2, \$83,061.36.

E. **Amendment #2, W.O. 15-07: Orchard Lane**, Professional Services Contract, Kadrmas, Lee & Jackson, Inc., \$21,800.

F. **Resolution** authorizing the purchase of the south half of Lot 3, Block 9, Sunnyside Subdivision, located at 2315 and 2325 9th Avenue North; \$335,000.

G. **Acceptance of Donation** to Animal Shelter, The Humane Society of the United States, \$1,500.

H. **Acceptance** of Federal Aviation Administration Airport Improvement Program Grants.

I. **Resolution of Intent** to create SILMD 322, Orchard Lane street lights, and set a public hearing date for April 11, 2016.

J. **Bills and Payroll:**

1. February 1, 2016
2. February 8, 2016
3. February 16, 2016
4. February 22, 2016

Councilmember Brown separated Item 1J3 in order to abstain.

Councilmembers Brown and Cimmino separated Item 1J4 in order to abstain.

Councilmember Cimmino separated Item 1A1 in order to abstain.

Councilmember Cimmino separated Items 1B1, 1B2, and 1B3 in order to abstain.

Councilmember Cimmino separated Item 1J1 in order to abstain.

Councilmember Cimmino separated Item 1F for discussion.

Councilmember Yakawich separated Item 1A2 for discussion.

Councilmember Cromley moved for approval of the Consent Agenda, with the exception of Items 1A1, 1A2, 1B1, 1B2, 1B3, 1F, 1J1, 1J3, and 1J4 seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Items 1J3 and 1J4, seconded by Councilmember Sullivan. On a voice vote, Item 1J3 was approved 10-0, with Councilmember Brown abstaining and Item 1J4 was approved 9-0, with Councilmembers Brown and Cimmino abstaining.

Councilmember Brewster moved for approval of Item 1J1, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 10-0, with Councilmember Cimmino abstaining.

Councilmember Cromley moved for approval of Item 1A1, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 10-0, with Councilmember Cimmino abstaining.

Councilmember Cromley moved for approval of Items 1B1, 1B2, and 1B3, seconded by Councilmember Swanson. On a voice vote, the motion was approved 10-0, with Councilmember Cimmino abstaining.

Councilmember Cimmino separated Item 1F for questions directed to Paul Dextras, Fire Chief. Councilmember Cimmino asked Chief Dextras for clarification on the purchase of land for the new 911 Operations Center. Chief Dextras stated that a portion of the funds will come from the cell phone and landline phone fees that the state collects for Public Safety. Chief Dextras stated that the proposed property is located close to the existing 911 Operations Center and will be an ideal location for a new center. Councilmember Cimmino asked if the City will retain the current building. Chief Dextras stated that the current building will be retained as a backup in case of a large scale emergency, and that portions of it will be used by the Fire Department. Mayor Hanel asked how long this process had taken. Chief Dextras stated that staff had been working on purchasing this property for over two years. Chief Dextras stated that the environmental study had taken longer than expected, but no mitigation was necessary. Councilmember Brown asked how long it would take for the center to be built. Chief Dextras stated that this project was a major priority and was hopeful that demolition could start shortly after the property was purchased. Councilmember Cimmino moved for approval of Item 1F, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated Item 1A2 to ask Mr. McCandless where the parking garages were located. Mr. McCandless stated that Park 1 is located on 3rd Avenue North, between North 29th and North 30th, Park II is located on 1st Avenue North, between North 26th and North 27th, and Park III is next door to City Hall.

Councilmember Yakawich asked if the parking garage located next to DA Davidson was owned by the City. Mr. McCandless stated that it is privately owned. Councilmember Yakawich asked for clarification regarding the bid for this project being over the budgeted amount. Mr. McCandless stated that there is sufficient money in other areas of the Parking budget to pay for the restoration. Councilmember Yakawich moved for approval of Item 1A2, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. **CONTINUANCE OF PUBLIC HEARING AND SPECIAL REVIEW #938: a special review to construct two triplexes and two fourplexes in a Residential 6,000 (R-60) zone on a 38,379 square foot parcel of land described as: Lot 6, Wolf Subdivision and located at 3104 Boulder Avenue. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Karen Husman, Planner, began a brief PowerPoint presentation for Item 2, giving an overview of the two site plans, and summarizing the criteria:

1. The application complies with all parts of the Unified Zoning Regulations;
2. The application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy; and
3. The application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

Ms. Husman stated that Council would need to adopt the conditions as part of the motion and specify which site plan they were choosing. Ms. Husman stated that the original site plan had been revised to address concerns regarding parking problems, traffic issues, and noise concerns. Ms. Husman stated that the applicant had addressed some of these issues by submitting an amended site plan that moved the triplexes to the south side, added additional parking spaces, created a snow removal area, and added trees to reduce noise issues.

Councilmember Swanson asked about a traffic study being conducted due to an increased amount of traffic. Mr. McCandless stated that the property is currently zoned to allow 10 multi-family dwellings and that adding an additional four units would not impact the traffic flow enough to warrant a traffic study. Councilmember Yakawich asked if staff had received any additional letters from concerned neighbors. Ms. Husman stated that other than the emails that had been sent to Council, the Planning Department had not received any additional letters. Councilmember Yakawich asked if there had been another community meeting to notify the neighbors of the amended site plan. Ms. Husman stated that staff had sent notices to the property owners with the

revised site plan information. Councilmember Clark asked if gutters and sidewalks on the Boulder Avenue side would be required with this project. Ms. Husman stated that she did not think they would be required as a part of this project.

The public hearing was opened.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT** stated that he was testifying as a concerned citizen rather than a Zoning Commission member. Mr. Ulvestad stated that he was very concerned with the traffic in this area and felt that the increase in traffic would make the area more dangerous. Mayor Hanel asked Brent Brooks, City Attorney, if Mr. Ulvestad's position on the Zoning Commission created a conflict of interest. Mr. Brooks stated that it would not be a conflict of interest, as long as Mr. Ulvestad was speaking as a citizen, and not as a Zoning Commission member. Councilmember McFadden stated that many of the children living in this development would be able to walk to the nearby school; therefore, this project could actually help relieve the traffic issue. Councilmember Brown stated that he did not think the slight increase of traffic would be an issue.
- **Travis McDowell, 2029 Forest Park Drive, Billings, MT, Developer**, stated that due to the concerns of the residents in the area, the developers had amended the site plan. Mr. McDowell stated that the developers had addressed all of the issues that had been presented and hoped that Council would support this special review. Councilmember Brown asked how this development would affect on-street parking. Mr. McDowell stated that he did not think that on-street parking would increase, due to the ample space provided within the complex for parking.
- **Jase Norsworthy Jr., 2340 Crimson Road, Billings, MT, Developer**, stated that he was very concerned about the safety of the children and felt that the developers had done a good job mitigating the safety issues. Mr. Norsworthy stated that the developer had worked very hard to address the issues that had been brought forward by the neighbors. Mr. Norsworthy noted that renters would be just as responsible as homeowners when it came to pedestrian safety.
- **Maureen Earnest, 3155 Fairmeadow Drive, Billings, MT** stated that on-street parking near the school was her biggest concern. Ms. Earnest stated that the neighbors had sent a letter to the developers trying to compromise on only 12 units being developed. Councilmember Brown asked Ms. Earnest if she felt that this project did not meet the criteria required by the City. Ms. Earnest stated that she did feel that the project will adversely affect the neighborhood, but meets all the other criteria.
- **Jase Norsworthy Sr., 3848 Rimrock Road, Billings, MT, Developer**, stated that he had received a letter that was signed by "Homeowner/Neighbors of the Colton Townhouse Project", and that he would like more information on where they live and who the neighbors are.
- **Terrald Earnest, 3155 Fairmeadow Drive, Billings, MT** stated that he is concerned that tenants from this development will be parking on the street. Mr. Earnest stated that he doesn't believe children will want to live in a development without a yard to play in. Councilmember Yakawich asked Mr. Earnest if he was

a part of the homeowners' association that had sent the letter to the developers. Mr. Earnest stated that the letter was sent by some neighbors, but it was not a homeowners' association. Councilmember Yakawich asked if it would be possible for the homeowners to work together with the tenants in this development. Mr. Earnest stated that anything is possible, but he did not think that it would solve the parking problems. Councilmember Cimmino stated for the record that the letter was sent by a group of neighbors, but that the neighbors are not a homeowners' association.

- **Rob Morehead, 1014 N. 32nd, Billings, MT, Developer**, stated that he lives in a house with very little lawn space and his children love to play at the nearby school. Mr. Morehead stated that kids from this development would be close to a nearby school playground where they could play. Mr. Morehead stated that this development would generate future SID's that would help with curb and gutter expenses on Boulder Avenue.

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

Councilmember Brewster moved for approval of Item 2, with conditional approval and adoption of the findings of the 3 criteria, using site plan #2, seconded by Councilmember McFadden. Councilmember Sullivan stated that he personally felt that this was a great project, but due to the overwhelming disapproval of neighbors, he would be voting against this motion. Councilmember McFadden stated that he did not think this project would negatively affect the neighborhood. Mayor Hanel stated that he thought this development would be a tremendous improvement to the area.

Councilmember Swanson stated that this development was too large for the area and would increase the risks to the children. Councilmember Brewster stated that he lives by a school that has several multi-family dwellings and he does not see any problems with traffic congestion. Councilmember Brown stated that this project meets all the criteria and he will support the motion. Councilmember Cromley stated that the developers had done a good job addressing the concerns and that he supported the motion. On a roll call vote, the motion was approved 8-3, with Councilmembers Cromley, Yakawich, Brewster, McFadden, Friedel, Clark, Brown, and Mayor Hanel voting in favor, and Councilmembers Cimmino, Sullivan, and Swanson voting in opposition.

3. **PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property in Annexation #16-01: an approximate 3.541 acre parcel of land located east of the United States Post Office property on South 27th Street between Lillian Avenue and what would be 7th Avenue South. Phillips 66 Company, owner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Mr. McCandless stated that staff did not have a presentation, but was available for questions.

The public comment period was opened.

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

Councilmember Yakawich moved for approval of Item 3, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

4. AMEND PARK DEVELOPMENT COUNCIL CONTRACT RENEWAL. Staff recommends approving renewal of the agreement contingent upon re-negotiation prior to January 24, 2017. (Action: approval or disapproval of staff recommendation.)

Mr. McCandless stated that Mike Whitaker, Director of the Department of Parks, Recreation and Public Lands, was available to make a presentation.

Councilmember Brown asked Mr. Whitaker if the black mold in the restrooms would be the responsibility of the City or APDC. Mr. Whitaker stated that according to the current agreement, all buildings were the responsibility of APDC to maintain. Councilmember Cimmino asked Mr. McCandless if staff was going to make a presentation. Mr. McCandless stated that Council had received a lot of information from staff and the public, but if Councilmember Cimmino would like a refresher on the information, Mr. Whitaker was prepared to make a presentation. Councilmember Cimmino stated that she would like to hear the presentation. Councilmember Yakawich asked Mr. Whitaker if the restrooms would be able to be used in their current condition. Mr. Whitaker stated that staff would recommend the mold situation be remedied before allowing the restrooms to be used. Councilmember Brown asked if the City would allow the restrooms to be shut down for the year according to the agreement. Mr. Whitaker stated that he thinks the City needs to work with its volunteer organizations regardless of what the agreement states.

Mr. Whitaker began a brief PowerPoint presentation, and recommended that Council approve renewal of the agreement contingent on its re-negotiation no later than January 24, 2017, and reflecting the agreements as outlined:

1. APDC agreed to submit a letter to the City by March 4, indicating their intent to support APDC in future efforts to continue the scheduling, field striping, and net and goal installation at Amend Field;
2. Under provision 5.2.6. of the current agreement, asked PRPL to take over field maintenance starting June 24, 2016, for a fee paid by the soccer leagues. APDC and PRPL since have begun discussing whether PRPL should take over turf management this spring, which is the optimum time for such work to occur;

3. Discussed incorporating an online field scheduling program that would give preference to soccer clubs for use, but also allow other groups, such as lacrosse, to use the fields during the soccer season; and

4. Complete the not-for-profit registration as soon as possible.

Councilmember Sullivan asked if the contract would remain valid through 2017 even if APDC did not conform to the stipulations. Mr. Whitaker stated that the City has the ability to move forward with a breach of contract action at any time. Councilmember Friedel stated that APDC has not been compliant with the State since December 2, 2013 and asked Mr. Brooks to clarify if the contract is still valid. Councilmember Friedel also noted that he is concerned that the City would be liable if the contract with APDC is not valid. Mr. Brooks stated that APDC does have liability insurance naming the City as additional insured. Mr. Brooks stated that he does not think an expired 501(3)c would affect the organizations ability to carry insurance and would not make the contract invalid. Mr. Brooks stated that he would verify with the Secretary of State to make sure APDC is a legally viable organization. Councilmember Cromley stated that the staff reports indicate maintenance would not start until June and asked for clarification from Mr. Whitaker about starting earlier. Mr. Whitaker stated that the Parks Department would like to start as soon as possible to achieve the best results. Councilmember Brewster stated that agreement the City has with APDC has worked successfully for many years, and that the City should give APDC an opportunity to rectify the issues. Councilmember Brewster stated that Council should approve the motion and monitor the progress more closely in the future. Councilmember Brewster moved to accept the staff recommendation to renew the agreement contingent upon its re-negotiation no later than January 24, 2017, reflecting the agreements outlined above, seconded by Councilmember Clark. Councilmember Sullivan stated that Mr. Mayott has done an excellent job re-organizing the APDC. Mayor Hanel thanked everyone involved for their hard work and dedication to the success of Amend Park. Councilmember Cimmino asked Mr. Brooks if the City could draft a document that listed all of the items that Council would like to see accomplished by APDC. Mr. Brooks stated that staff had discussed preparing a Memorandum of Understanding to ensure that all of the concerns would be addressed. Councilmember McFadden stated that he is impressed with the plan that APDC has presented and trusts that they will follow through. Councilmember Friedel stated that he would like to see a breach of contract provision be put in place to ensure that APDC become compliant within a certain period of time. Councilmember Sullivan moved to call the question, seconded by Councilmember Brewster. On a voice vote, the motion to call the question was approved 10-1, with Councilmember Friedel voting in opposition. On a voice vote, Councilmember Brewster's motion was approved 9-2, with Councilmembers Cimmino and Friedel voting in opposition.

5. APPROVAL of Tax Increment Grant of up to \$45,000 to Joni Harmon for restoration of the Price Motors Building located at 2611 Minnesota Avenue. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Greg Krueger, Development Director of Downtown Billings Partnership (DBP), began a brief PowerPoint presentation summarizing the history of DBP and the Tax

Increment Grant concept. Mr. Krueger stated that the restoration would be a benefit for downtown and would enhance the historic Price Motors Building.

Councilmember Yakawich stated that he admired the Downtown Billings Partnership's dedication and asked how they kept developers interested in improving property downtown. Mr. Krueger stated that the Harmon family had played a big role with their dedication and interest in the area. Mr. Krueger stated that the Tax Increment Grant program was also an incentive to potential developers. Councilmember Cromley stated that he had been inside the building and thought it was beautiful. Councilmember Yakawich moved for approval of Item 5, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda. 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.)

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT** stated that an open and honest government does not exist due to the City Administrator not following the Charter. Mr. Zurbuchen asked Council to discuss the future employment of Ms. Volek as the City Administrator at the next Council meeting.
- **Warren Usseray, 4145 Jansma Avenue, Billings, MT** stated that he would like to see information on pretrial release laws and regulations. Mr. Brooks stated that he would be willing to research the laws and regulations and would contact Mr. Usseray when he has more information.

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

COUNCIL INITIATIVES

- Councilmember Cimmino moved to request a proclamation honoring Vietnam Veterans on March 28, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved. Councilmember Yakawich asked if Council could invite some representatives to be present at the March 28 Council meeting. Mr. Ulvestad stated that the Veterans of Foreign Wars (VFW) in the Heights has an honor guard that may be willing to attend.

There was no further business, and the meeting adjourned at 10:03 pm.

CITY OF BILLINGS

BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: Billie Guenther
Billie Guenther, City Clerk



