

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 28, 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 Clark gave the invocation.

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

MINUTES: March 14, 2016: Councilmember Clark moved for approval, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Marty Connell, BIRD President, along with Sam Westerman and Ken Kunkel, presented Planning and Community Services Department Director Candi Millar with a plaque, a letter, and flowers for her work in developing the EBURD Code and working with the EBURD members. Mr. Connell thanked Ms. Millar for her work. Ms. Millar thanked the EBURD members and mentioned her gratitude for being able to work with them. Mayor Hanel also thanked Ms. Millar for her work.
- Mayor Hanel stated that the St. Patrick's Day Parade was a success and asked for City Administrator Tina Volek to share congratulations and thanks with the staff and departments that were involved in the event. Mayor Hanel also thanked and congratulated the Downtown Business Alliance for the event's success.

PROCLAMATIONS:

- Mayor Hanel read a proclamation declaring April 4, 2016 to be "Celebrate Rotary in the City of Billings" day.
- Mayor Hanel thanked Councilmember Cimmino and noted that an email was received requesting a proclamation honoring Vietnam Veterans. Councilmember Cimmino read a proclamation declaring March 29, 2016 to be "Welcome Home Vietnam Veterans Day." Mayor Hanel called for a round of applause for veterans. Mayor Hanel recognized the veterans in attendance. Chuck Carroll, a U.S. Navy Veteran and Post Commander for the Heights Veterans of Foreign Wars Post, stated that he is an advocate for veterans' rights and needs. Mr. Carroll thanked the City for the proclamation and for acknowledging veterans. Ms. Volek acknowledged Fay Danielsen who requested the proclamation. Ms. Danielsen stated that she is a member of the Daughters of the American Revolution organization, and acknowledged "her veteran" who was in attendance with her. Mayor Hanel presented the signed original proclamation to Ms. Danielsen.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek did not have any items to discuss for the Administrator Report.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 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.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **Airport Improvement Program (AIP) Taxilane East Construction Project.** (Opened 03/15/2016) Recommend Knife River, \$385,297.
2. **2016 CCTV Storm Sewer Inspection Camera.** (Opened 03/15/2016) Recommend CUES, \$105,020.
3. **South Park Splash Pad Development.** (Opened 10/27/2015) Recommend rejecting all bids and directing staff to re-bid.

B. Amendment #1, SID 1382, Colton Boulevard, Professional Services Contract, Kadrmas, Lee and Jackson; \$31,610.

C. Approval of the purchase of two (2) replacement police vehicles from Bison Ford Motor Company of Great Falls for \$27,561.18 each, or a total cost of \$55,122.36.

D. Acknowledging Receipt of Petition to Annex #16-02: approximately 34 acres, Lot 1, Block 1, Adam and Mollie Subdivision, located south of Elysian Road and west of the Hogan Slough between Mullowney Lane and East Lane, McCall Development and the Yellowstone Boys and Girls Ranch Foundation, petitioners, and setting a public hearing date for 04/25/2016.

E. Easement with Ms. Sandra A. Rietz for Airport Storm Water Pipe.

F. Acceptance of the 2016 High Intensity Drug Trafficking Area (HIDTA) award from the Executive Office of the President, Office of National Drug Control Policy; \$218,740.

G. Resolution of Intent to construct W.O. 16-02, Miscellaneous Improvements Program, and set a public hearing date of 04/25/2016.

H. Resolution authorizing participation in Short Term Investment Pool (STIP) and designating Patrick Weber to act on behalf of the City of Billings for STIP transactions.

I. Second/Final Reading Ordinance expanding Ward I (Annexation #16-01) for an approximate 3.541 acre parcel of land described as Tract 11, Certificate of Survey 1406, 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 and petitioner.

J. Approval of Investment Report, July 1, 2015-January 31, 2016.

K. Approval of Report for Pledged Collateral for First Interstate Bank and US Bank.

L. Approval of unclaimed property report and authorize transfer from Billings Municipal Court to the Montana Unclaimed Property Program, \$41,674.01.

M. Preliminary Major Plat of Harmony Meadows Subdivision, 2nd filing, generally located on the south side of Elysian Road, just west of Mullowney Lane; Harmony Meadows, LLC, owner; conditional approval and adoption of the findings of fact.

N. Preliminary Major Plat of Trails West Subdivision, 3rd filing, generally located on the south side of Grand Avenue, just west of 56th Street West; Trails West Homes, LLC, owner; conditional approval and adoption of the findings of fact.

O. Final Plat Approval of Julie Jenes Subdivision.

P. Bills and Payroll:

1. February 29, 2016
2. March 7, 2016

Councilmember Brown separated Items 1P1 and 1P2 in order to abstain.

Councilmember Clark separated Item 1A3 for discussion.

Councilmember Yakawich separated Item 1F for discussion.

Councilmember Cimmino separated Items 1P1 and 1P2 in order to abstain.

Councilmember Cimmino separated Item 1M for discussion.

Councilmember Cromley moved for approval of the Consent Agenda, with the exception of Items 1P1, 1P2, 1A3, 1F, and 1M, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Cromley moved for approval of Items 1P1 and 1P2, seconded by Councilmember Sullivan. On a voice vote, the motion was approved 8-0, with Councilmembers Brown and Cimmino abstaining.

Councilmember Clark separated Item 1A3 to ask Mark Jarvis, Park Planner, to explain staff's recommendation to reject all bids. Mr. Jarvis explained that two contractors submitted bids for the project. The project specifications required that subcontractors obtain performance bonds. Both contractors used the same subcontractor, and the subcontractor was unable to obtain a performance bond. As a result, the contract could not be fulfilled, and the project will need to be re-bid. Councilmember Brown asked if the same issue would be experienced when the project is re-bid. Mr. Jarvis stated that he did not believe the issue would occur again; certain specifications in the project will be modified, and the timing of the project will be changed. Councilmember Clark moved for approval of Item 1A3, seconded by Councilmember Brown. Councilmember Yakawich thanked Parks, Recreation, and Public Lands Director Mike Whitaker for attending a Southside Neighborhood Task Force meeting and addressing concerns of the neighborhood. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich separated Item 1F to ask Police Chief Rich St. John to give a brief explanation of how HIDTA funds are used. Chief St. John stated that the City belongs to the Rocky Mountain High Intensity Drug Trafficking Area, and the mission of the Rocky Mountain HIDTA is to disrupt and dismantle drug trafficking organizations. Chief St. John noted that this geographic area experiences the presence of methamphetamine and heroin. The Rocky Mountain HIDTA Task Force has been recognized as the Rural Task Force of the Year two years in a row, and has also been recognized for exceeding expectations. In the past year, the task force was responsible for, among other accomplishments, making 141 felony arrests, seizing 6.5 pounds of heroin, seizing 18 pounds of marijuana, seizing 43 pounds of methamphetamine, and disrupting 6 multi-state drug trafficking organizations. The multi-jurisdictional task force is composed of local, state, and federal entities. Chief St. John noted that the task force's accomplishments and activities are in addition to those of patrol officers. Councilmember Yakawich moved for approval of Item 1F, seconded by Councilmember Friedel. Mayor Hanel stated that he supports the efforts of the Police Department and the task force. Mayor Hanel spoke in favor of the motion. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino separated Item 1M to ask Ms. Millar if Harmony Meadows was being developed in conjunction with Josephine Landing. Ms. Millar stated that there is some cooperation between the two developments, and that the plat for

Josephine Landing would be presented to Council in the future. Ms. Millar stated that the developments will include walkways and paths. Councilmember Cimmino asked who would be responsible for paving portions of Story Road and Stearns Circle, as indicated by condition 9 in the staff report. Ms. Millar stated that Harmony Meadows and Josephine Landing would pay proportionate shares, and the County may also contribute to the costs. Councilmember Cimmino asked if the commitment to pay for paving the road could be made in writing. Ms. Millar stated that condition could be a contractual agreement within the Subdivision Improvements Agreement in the later/final filings of the subdivisions. Mayor Hanel asked if condition 9 was discussed and modified prior to the Planning Board's vote on this item. Ms. Millar stated that condition 9 was revised to allow for developers to pay their proportionate share of the paving costs, rather than one developer paying the entire cost. Councilmember Cimmino moved for approval of Item 1M, including the stated conditions, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION granting a tax abatement to Jefferson Partners, LP, dba Jefferson Lines, for a building remodel at 1802 and 1820 4th Avenue North. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Assistant City Administrator Bruce McCandless began a PowerPoint presentation for Items 2 and 3. Mr. McCandless gave an overview of the tax incentive programs offered by the City in accordance with State law. Mr. McCandless noted that the tax incentive programs only abate taxes on the value of new improvements. Pre-existing taxes are not affected. Mr. McCandless noted that Big Sky Economic Development (BSED) assists tax abatement applicants with the application process.

Councilmember Cromley asked if the costs of abatement affected the tax increment finance district (TIFD). Mr. McCandless stated that if Council does not approve the application, then the full value of the building, including the new improvement's value, will be taxable and the funds would be distributed to the TIFD. Mr. McCandless stated that the district would not be losing any current funds, and other property owners would not be affected by the abatement. Councilmember Cromley asked for an explanation of the advantages of choosing a tax abatement over other incentives from the district itself. Mr. McCandless stated that investment incentives are structured differently in terms of payout times, and that only the public improvement portions of projects are eligible for investment incentives. Other types of improvements that are non-public improvements may be eligible for tax abatement programs. Councilmember Sullivan asked what type of cost benefit analysis is conducted by BSED during the application process. Mr. McCandless stated that the City does not solicit applications for tax abatements. Mr. McCandless stated that criteria for tax abatements are established based on State law. If an applicant meets the established criteria, then the application should be approved and the incentive should be granted. Mr. McCandless stated that BSED is careful in its evaluation of applications to ensure

that the applicants meet the criteria. Mayor Hanel asked if the tax abatement is transferrable if the property change uses. Mr. McCandless stated that as long as the new investment retains its value, the abatement should continue throughout its term. If the building would become vacant, the value of the investment would likely decrease, so the amount of the abatement would also decrease. Mayor Hanel asked how long the tax abatement program has been in place. Mr. McCandless stated that he believed the City first implemented the program in 1987 or 1988. Mayor Hanel asked if any other government entities would be voting on abatements for these properties. Mr. McCandless stated that Council is only voting on City tax abatements and that he did not know if the applicants also submitted abatement applications to the County. Councilmember Friedel asked if tax abatements provide benefits to the public. Mr. McCandless stated that tax abatements encourage private investment in the community. Councilmember Cimmino asked why only two businesses were applying for tax abatements. Mr. McCandless stated that other businesses may not meet the criteria for tax abatements. Councilmember Cimmino asked whether the applicants would still be required to pay street maintenance, arterial, and storm water management fees. Councilmember Cimmino also asked if the applicants would be exempt from school district fees, City taxes, and County taxes. Mr. McCandless stated that if Items 2 and 3 were approved, the applicants would be exempt from City taxes and local school district levies only for the value of the new investments. Council's decision would have no impact on County taxes; the applicants would be required to submit abatement applications to the County, and the County Commissioners would vote on abating County taxes. Mr. McCandless stated that local school district levies would be exempt based on State law provisions.

The public comment period was opened.

- **Chad Moore, Big Sky Economic Development**, clarified that the abatements do not remove the entire tax base from the school district levies; only the value of the improvement is abated. Taxes on the improvement's value are only delayed until the end of the abatement period. Mr. Moore stated that BSED completes annual reports on businesses benefitting from abatements. Mr. Moore stated that in 2014, businesses saved \$1,424,405 in taxes. The yearly payroll amount was \$172,569,795, and the capital investment amount was \$741,490,498. Mr. Moore stated that these funds revolve in the local economy. Mayor Hanel clarified that the tax abatement is only applicable to the value of the improvements made. Councilmember Sullivan stated that he was concerned about the amount of the funds that end up with the City. Mr. Moore stated that businesses are attracting employees, and therefore bringing money into the City. Councilmember Cimmino thanked Mr. Moore for BSED's business plan assistance services. Councilmember Cimmino asked for Mr. Moore to explain why BSED supports these tax abatement programs while individual taxpayers are still responsible for all property taxes. Mr. Moore stated that Jefferson Lines is planning to make further improvements on its current building as well as surrounding infrastructure. Mr. Moore stated that by delaying taxes on the new improvement's value, Jefferson Lines will be able to add more employees and continue making

improvements on the building. Councilmember Clark clarified that the improvement values in the staff report were estimates, and that the exact values would be unknown until the Department of Revenue determines their amounts. Mr. Moore stated that was correct, and that he felt the estimates in the staff report were likely higher than what the Department of Revenue would assign. Councilmember Cromley clarified that the applicants would be prohibited from applying for TIFD grants if they receive tax abatements. Mr. Moore stated that BSED discourages tax abatement applicants from applying for TIFD grants, but that the TIFD would make the ultimate decision.

- **Marty Connell, 2903 Radcliffe Drive, Billings, MT, President of BIRD**, stated that the BIRD supports these applications. Mr. Connell noted that there was not coordination between BSED and the BIRD for the Jefferson Lines application. Mr. Connell stated that Jefferson Lines is doing a nice job and is a good neighbor in the district. Councilmember Yakawich asked for clarification on the eligibility for TIFD funds. Mr. Connell stated that the BIRD board does not allow TIFD fund recipients to apply for other tax abatements.
- **Linda Minar, Controller for Jefferson Lines**, gave an overview of Jefferson Lines operations and previous investments within the City. Ms. Minar stated that an increase in taxes would prohibit further investment and adding employees at this time. Councilmember Cromley stated that he is impressed with the Jefferson Lines facility and the five new buses parked outside of the building. Ms. Minar stated that Jefferson Lines currently has a fleet of 80 buses, and the buses that pass through Billings are not always the same buses. Ms. Minar stated that Jefferson Lines works closely with the Montana Department of Transportation and also receives federal grants. Councilmember Yakawich asked for Ms. Minar to share the Jefferson Lines vision for its Billings operations. Ms. Minar stated that Jefferson Lines is interested in landscaping one side of its property to help develop a gateway to the surrounding economic development area. Councilmember Yakawich stated that he appreciated the downtown Jefferson Lines. Ms. Minar stated that Jefferson Lines projects increased riders and plans to begin offering charter bus services. Ms. Minar also stated that Jefferson Lines is interested in providing a food service for passengers on its property or nearby.
- **Frank Shaner 3008 Harrow Drive, Billings, MT, President of Home Science Tools**, thanked Council for approving its previous tax abatement ten years ago. Mr. Shaner stated that the Home Science Tools has experienced an increase in employees and operations over the past ten years. Mr. Shaner stated that several of his employees have purchased homes within the City, and the recent expansion to the building will allow for more employees. Mr. Shaner stated that this tax abatement will allow further growth and development for his business.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that it would be hypocritical for Council to approve these tax abatements when funds are needed for public safety. Mr. Nelson stated that reducing the taxable value of the school district is unconstitutional.

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

Councilmember McFadden moved for approval of Item 2, seconded by Councilmember Yakawich. Councilmember Friedel stated that it is not the government's responsibility to help renovate and expand businesses. Councilmember Clark asked Mr. McCandless if there are any State law ramifications for denying these tax abatement applications. Mr. McCandless stated that there would likely be legal ramifications for not approving the applications. Mr. McCandless stated that State law requires all applicants to be treated equally under the tax abatement programs. Mr. McCandless stated that findings of fact that the applicants did not satisfy the criteria would be necessary if Council denied the applications. Councilmember Brown stated that he supported the motion and that the applicant satisfied the criteria of the program. Councilmember Swanson stated that he supported the motion for the same reasons as Councilmember Brown. Councilmember Yakawich stated that he also supported the motion, and that Jefferson Lines is enhancing the City and is making improvements to a previously rundown facility. Councilmember McFadden stated that he does not see tax abatements as corporate welfare, but rather as incentives for investment in the community. Councilmember McFadden noted that the tax base is not losing funds as a result of the abatement; the increase to the tax base is instead delayed. Councilmember Cimmino asked City Attorney Brent Brooks where the term length of the abatement is specified. Mr. Brooks stated that he believed the term length of abatements is specified by State statute and in the resolutions in which Council previously adopted the tax abatement programs in 2005. Councilmember Cimmino asked how the tax assessor would know the term of the abatement. Mr. McCandless stated that the Department of Revenue will be well aware of the term length of the abatements. Mr. McCandless stated that future resolutions granting tax abatements could include a restatement of the previously adopted policy resolutions. Councilmember McFadden stated that he felt the State implemented tax incentive programs to allow for businesses to hire more employees during their expansion phases. Mayor Hanel asked on what basis Council could deny the applications. Mr. Brooks stated that, similar to a special review, if an applicant meets the stated criteria, Council would need to articulate the factual basis for denying the application. Mr. Brooks stated that a previous Council adopted the tax incentive program and its criteria, and this Council would have to prove that the criteria were not met in order to deny the application. On a voice vote, the motion was approved 8-2, with Councilmembers Cimmino and Friedel voting in opposition.

3. PUBLIC HEARING AND RESOLUTION granting a tax abatement to Home Training Tools, Ltd., dba Home Science Tools, for a building expansion at 665 Carbon Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mayor Hanel noted that public comment for Item 3 was received during the public comment period for Item 2.

Ms. Volek stated that staff did not have an additional presentation.

The public comment period was opened.

- **Chad Moore, Big Sky Economic Development**, stated that Home Science Tools brings in large amounts of revenue from outside of the State of Montana. Mr. Moore stated that certain types of businesses that do not bring in over 50% of their revenue from outside of the State and that are building on vacant land/property do not qualify for this type of tax abatement. Councilmember Sullivan asked for clarification on the number of employees that Home Science Tools would be adding if the tax abatement is granted. Mr. Moore stated that the application defines a two year period, and the applicant stated that he would be adding five full time employees and two part time employees during that period, and that additional space exists to add more employees.
- **Frank Shaner, 3008 Harrow Drive, Billings, MT, President of Home Science Tools**, clarified that the abatement would allow for Home Science Tools to hire five full time employees and two part time employees within the next two years. The ultimate capacity of the recently expanded facility is 75 employees. Councilmember Yakawich asked for Mr. Shaner to explain his business. Mr. Shaner stated that Home Science Tools provides educational science equipment and curriculum products throughout the United States and Canada. Mr. Shaner stated that educational products are supplied to schools, homeschools, and families. Mr. Shaner stated that 3% his company's business comes from within Montana, and 97% comes from outside of Montana.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that this application appears to be an abuse of the system since Home Science Tools received an abatement ten years ago.

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

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember Swanson. Councilmember Sullivan stated that he would be voting against the motion, and that he agreed with Mr. Nelson's statements. Councilmember Sullivan stated that this application would not yield a net positive for the City. Councilmember Clark clarified that the previously abated taxes would now be collected, and clarified that only the new expansion's taxes would be abated with this application. Mr. McCandless stated that Councilmember Clark was correct, and that the exemption would only apply to the new expansion. Mr. McCandless stated that the original abatement was a ten year abatement, and was a declining percentage abatement. On a voice vote, the motion was approved 7-3, with Councilmembers Sullivan, Friedel, and Cimmino voting in opposition.

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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that the width of Poly Drive near Zimmerman Trail is 60 feet, which is similar to the width of Calhoun

Lane and Orchard Lane. Mr. Nelson stated that Calhoun Lane and Orchard Lane do not allow street parking, but Poly Drive does. Mr. Nelson asked for the current project on Orchard Lane to be stopped, and to construct it similar to Poly Drive. Councilmember Cimmino asked Mr. Nelson which major cross street was in this area on Poly Drive. Mr. Nelson stated that 32nd Street was the cross street. Councilmember McFadden thanked Mr. Nelson for taking the time to measure the width of Poly Drive. Councilmember Friedel asked why a turning lane is being installed on Orchard Lane when there is not a turning lane on Poly Drive. Ms. Volek stated that she believed that Orchard Lane is a collector street, but that she was unsure of whether Poly Drive was a collector street. Ms. Volek stated that she would consult with the Public Works Department and would provide an answer to Council. Councilmember Friedel asked when and how Orchard Lane was classified as a collector street. Ms. Volek stated that she would also obtain that information from Public Works. Councilmember Cimmino stated that, according to the traffic count map updated in 2014, there are 4,160 vehicle trips per day at Poly Drive and 32nd Street, and 2,300 vehicle trips per day at Orchard Lane and State Avenue.

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

COUNCIL INITIATIVES

There were no Council initiatives.

Councilmember Cimmino asked whether the City would need the County Commissioners' permission to add a two cent gas tax onto the ballot. Ms. Volek stated that the County would be the entity to add the gas tax onto the ballot. Councilmember Clark stated that the City would benefit more if the legislature would allow the City to impose the gas tax. Mayor Hanel stated that the topic could be scheduled for a future work session discussion. Councilmember Clark stated that he would like the topic to be discussed during the next legislative update. Councilmember McFadden stated that he would vote against any increased gasoline tax.

Mayor Hanel reminded attendees that the outgoing Councilmember appreciation dinner would be held on March 29, 2016 at 6:00pm in the Library Community Room.

There was no further business, and the meeting adjourned at 8:25 pm.



CITY OF BILLINGS

BY: 
Thomas W. Hanel, Mayor

ATTEST:

BY: 
Billie Guenther, City Clerk