

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

### April 25, 2016

The Billings City Council met in regular 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. in the City Hall Conference room, and served as the meeting's presiding officer. Councilmember Sullivan gave the invocation. Mayor Hanel called for a recess into a closed executive session at 5:30 p.m., and called the meeting back to order at 6:30 p.m. in the Council Chambers.

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

**MINUTES:** April 11, 2016 – Councilmember Sullivan moved for approval, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

#### **COURTESIES:**

- City Administrator Tina Volek recognized Billings Public Library for obtaining LEED Platinum certification. Ms. Volek stated that the Billings Public Library is one of 17 libraries in the nation to have this certification. Ms. Volek also thanked Bill Cochran, Library Director, for his hard work.

**PROCLAMATIONS:** Mayor Hanel read a proclamation declaring May 3, 2016 to be Give Local Yellowstone Day.

#### **ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek stated that Amend Park Development Council (APDC) had entered into a contract with the City to provide mowing and fertilization to Amend Park.
- Ms. Volek reminded Council that Community Innovations would be meeting at 3:00 pm on Tuesday in the Library Community Room. Staff had attended a public hearing in Helena on a public incapacitation bill and would be reporting the outcome of the public hearing at the meeting.
- Ms. Volek mentioned that staff was in the process of forming the committees that would be in charge of filling the various department head positions that were open in Planning and Library. Ms. Volek stated that Candi Millar, Planning and Community Services Director, would be retiring at the end of July and Bill Cochran, Library Director, would be retiring the beginning of August. Ms. Volek stated that she had asked for Councilmember participation and Councilmember Clark had volunteered to serve on the selection committee for the Planning position. Ms. Volek asked for a volunteer for the Library selection committee. Mayor Hanel volunteered for that position.

**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.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, MT**, in reference to Item 1F, stated that downtown traffic was too busy to allow this vacation and encouraged conducting a traffic study prior to approving this item.
- **Terry Odegard, 2101 Lake Hills Drive, Billings, MT**, in reference to Item 1J, stated that he had attended a meeting about the MET rate changes. Mr. Odegard stated that the MET staff was well informed and he fully supported the changes. Mr. Odegard, in reference to Item 1F, stated that the Alberta Bair Theater was "a gem" for the City and needed to be expanded. Mr. Odegard stated that he would be willing to help make an expansion happen.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, in reference to Item 1A3, stated that the project was too expensive and he did not understand why it was costing so much more than the Calhoun Lane project. Mr. Nelson stated that the residents on Orchard Lane should be given the opportunity to move trees so that they do not lose them.
- **Steve Zeier, South Billings Urban Renewal Association**, in reference to Item 1A3, stated that a lot of effort and hard work went into the Orchard Lane project. Mr. Zier stated that development will significantly improve the transportation infrastructure of the area and provide greater connectivity.

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

## 1. CONSENT AGENDA

### A. Bid Awards:

1. **Evidence CCTV System.** (Opened 4/12/16) Recommend rejecting all bids and directing staff to solicit new proposals.
2. **New Carpeting for the Airport's Terminal's Baggage Claim and Ticket Counter Area.** (Opened 4/12/16) Recommend Northwest Floors, \$60,961.
3. **W.O. 15-07, Orchard Lane Reconstruction.** (Opened 4/12/16) Recommend CMG Construction Inc., \$4,070,702.
4. **W.O. 16-01, Schedule 1, Will James Area Water Main Replacement Project Phase II.** (Opened 4/12/16) Recommend Western Municipal Construction, Inc., \$1,196,660.
5. **W.O. 16-01, Schedule 2A, Sanitary Sewer Replacement.** (Opened 4/12/16) Recommend COP Construction, LLC, \$555,221.

6. **W.O. 16-01, Schedule 4, Southside Sanitary Sewer Replacement.** (Opened 4/12/16) Recommend Western Municipal Construction, Inc., \$420,953.
7. **W.O. 16-07, Interstate 90 Water Main Crossing Project.** (Opened 3/29/16) Recommend Kinkaid Civil Construction, \$1,233,366.

**B. Consultant Agreement** with Alta Planning + Design to update the 2011 Bikeway and Trail Master Plan, not to exceed \$105,000.

**C. Amendment #2, Facilities Master Plan**, CTA Architects, \$6,400, and extend contract completion date to June 30, 2016.

**D. Acknowledge receipt of petition to vacate** Palladium Drive right of way within Copper Ridge Subdivision, 6th filing, Copper Ridge Development Corporation, petitioner, and setting a public hearing date of May 23, 2016.

**E. Acknowledge receipt of petition to vacate** a portion of the alley within Block 163 of Billings Original Townsite, Riverstone Health, petitioner, and setting a public hearing date of May 23, 2016.

**F. Acknowledge receipt of petition to vacate** a portion of 3rd Avenue North and North Broadway, The Alberta Bair Theater Corporation, petitioner, and setting a public hearing date of May 23, 2016.

**G. Acceptance of Donation** to Fire Department, Kurt Klinkhammer, Shur-Sales & Marketing/SCOTT Safety Account Representative, 21 SCOTT NxG2 4.5 2002 edition air-paks.

**H. Ratification of Acceptance** of American Library Association Grant, \$1,000.

**I. Grant Application Request** to submit Small Community Air Service Development Program (SCASDP) application and accept award.

**J. Approval** of MET Transit's Updated Title VI Program.

**K. Preliminary Subsequent Minor Plat** of Amended Lot 8, Block 1, Superior Homes Subdivision, located at 2139 Lake Elmo Drive; Dylan and Kelly Durose, owners; Interstate Engineering; agent; conditional approval and adoption of the findings of fact.

**L. Bills and Payroll:**

1. March 28, 2016
2. April 4, 2016

Councilmember Cromley separated Items 1E, 1F, and 1L2 in order to abstain.

Councilmember Friedel separated Items 1A3 and 1F for discussion.

Councilmember Cimmino separated Item 1L1 in order to abstain.

Councilmember Yakawich separated Item 1H for discussion.

Councilmember Brown separated Item 1B for discussion.

Councilmember Yakawich moved for approval of the Consent Agenda, with the exception of Items 1A3, 1B, 1E, 1F, 1H, 1L1, and 1L2, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 1L1, seconded by Councilmember Brewster. On a voice vote, the motion was approved 10-0, with Councilmember Cimmino abstaining.

Councilmember Sullivan moved for approval of Item 1L2, seconded by Councilmember Clark. On a voice vote, the motion was approved 10-0, with Councilmember Cromley abstaining.

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

Councilmember Friedel asked if there would be a presentation on Item 1F. Mayor Hanel stated that the presentation had occurred before the new Councilmembers had taken office. Councilmember Clark stated that there should be a presentation at the Council meeting on May 23. Mayor Hanel stated that staff could provide the information from the previous presentation to the new Councilmembers. Councilmember Friedel moved for approval of Item 1F, seconded by Councilmember Clark. On a voice vote, the motion was approved 10-0, with Councilmember Cromley abstaining.

Councilmember Friedel, in reference to Item 1A3, asked why Orchard Lane Reconstruction was costing more than the improvements to Calhoun Lane. Dave Mumford, Public Works Director, stated that Orchard Lane is longer than Calhoun Lane. Mr. Mumford stated that there was a significant portion of Calhoun Lane that was strictly an overlay project, but that Orchard Lane is a complete reconstruction project. Councilmember Friedel asked why parking was not being allowed on Orchard Lane. Mr. Mumford stated that there was not enough room for both the required turn lane and parking on the street. Councilmember Brewster asked if any changes had been made to the project design after hearing public comments. Mr. Mumford stated that Public Works had worked with property owners regarding driveways and widening the sidewalks near the Boys and Girls Club. Mr. Mumford stated that the Public Works Department had spent two weeks driving Orchard Lane during daytime and nighttime hours to evaluate parking issues. Mr. Mumford stated that there seemed to be very few property owners that used front yard parking. Mr. Mumford stated that Public Works had met with several

property owners to discuss and address concerns. Mayor Hanel asked if property owners would be given the opportunity to move trees that were in the right-of-way. Mr. Mumford stated that depending on the size of trees, it may be a possibility for the trees to be moved. Councilmember Clark stated that he was still receiving many complaints about the center turn lane, but appreciated staff listening to property owners and removing the bike path from the plans. Councilmember Yakawich moved for approval of Item 1A3, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich asked for clarification on the term "emergency" that was used in the staff report on Item 1H. Ms. Volek stated that the Library had received a grant that needed to be approved on very short notice, and that she had signed it, but was asking Council to ratify it. Councilmember Yakawich moved for approval of Item 1H, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember Brown asked for clarification that the funds for Item 1B were already budgeted, and were not coming out of the general fund. Ms. Volek stated that Councilmember Brown was correct. Councilmember Brown moved for approval of Item 1B, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Mayor Hanel left the meeting at 7:16 pm. Deputy Mayor Cromley served as the meeting's presiding officer while Mayor Hanel was away.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING and approval of allocation of FY2016-2017 CDBG and HOME program funds and approval of the FY2016-2017 Action Plan. Staff recommends approval of the Community Development Board's recommendation and prioritization. (Action: approval or disapproval of staff recommendation.)**

Brenda Beckett, Community Development Manager, began a brief PowerPoint presentation reviewing the five year consolidated plan and one year action plan for the Community Development Division. Ms. Beckett outlined the key findings and recommendations for the program.

Councilmember Sullivan asked for clarification on the percentage of homelessness in the City. Ms. Beckett stated that the most recent study shows the numbers are increasing and that she would forward the information to Council.

Councilmember Yakawich complimented the board members for their hard work. Ms. Beckett introduced the board members as: Patt Leikam, Bret Rutherford, Fred Button, and Michele Zahn. Councilmember Yakawich asked if it would be possible to get an executive summary or a snapshot of the CDBG and HOME program information. Ms. Beckett stated that there was an executive summary of information included in the staff report.

Mayor Hanel returned at 7:32 pm.

Councilmember Yakawich asked Ms. Millar for recommendations on what direction Council should proceed. Ms. Millar stated that Ms. Beckett had written a consolidated plan that included strategies on how to address homelessness, poverty, and housing needs. Ms. Beckett stated that Council could help by continuing to support the Home Repair and Affordable Housing Programs, as well as supporting new housing strategies through the First Time Home Buyer Program, NeighborWorks, and the AmeriCorps VISTA program. Councilmember Brown asked if Ms. Beckett had a plan for funding CDBG if Federal and State funding continued to diminish. Ms. Beckett stated that they are reinvesting funds they receive through promoting loan programs and using Council allocations to reinvest and support the Home Repair and Home Buyer Programs. Councilmember Brewster stated that CDBG had been given direction in the past to become more self-sufficient in regards to diminishing Federal and State money. Councilmember Brewster stated that Ms. Beckett and CDBG had done a remarkable job.

The public hearing was opened.

- **Maureen Rude, Executive Director of NeighborWorks Montana**, stated that NeighborWorks Montana provides lending services and resources for borrowers.
- **Patt Leikam, CDBG Board Member**, stated that the board has worked very hard on communicating with the community members and have noted the responses that they have received. Ms. Leikam invited Council to attend the CDBG Board meetings.
- **Bret Rutherford, CDBG Board Member**, stated that he supports the allocation of funds and that the CDBG Board was unanimous in their vote. Councilmember Yakawich asked for ideas on how to address the poverty issue. Mr. Rutherford stated that the more the public sees what the program has done, the greater the impact it has. Councilmember Friedel asked for the website address to see some of the improvements CDBG has done. Ms. Beckett stated that it was [www.ci.billings.mt.us/ComDev](http://www.ci.billings.mt.us/ComDev).
- **Michele Zahn, CDBG Board Member**, stated that she joined the CDBG Board because she had been a recipient of Community Development funds to become a first time home buyer. Ms. Zahn stated that as a member of the community she sees what the VISTA members do daily for the City. Ms. Zahn stated that they go above and beyond their regular duties to help the community.
- **Jonathan Peart, Executive Director of The Friends of Pompey's Pillar, 828 Yellowstone Avenue, Billings, MT**, stated that The Friends of Pompey's Pillar had a VISTA volunteer last year that developed an educational program for low income students and another VISTA volunteer this year that implemented it. Mr. Peart encouraged Council to support this program.
- **Connie Wardell, PO Box 21432, Billings, MT**, stated that there is a problem with young adults being able to find a place to live.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, stated that Ms. Beckett has done an outstanding job and encouraged Council to support the program.
- **Jessica Mowry, 827 Miles Avenue, Billings, MT**, stated that as a VISTA member she had interviewed over 100 homeless youth in Billings. Ms. Mowry stated that the VISTA and CDBG programs have made a huge difference in her life.
- **Bill Dickman, 714 Alderson Avenue, Billings, MT**, stated that he and his wife were previous VISTA members. Mr. Dickman encouraged Council to continue their support.

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

Councilmember Brewster moved for approval of Item 2, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION ordering improvements identified in W.O. 16-02, Miscellaneous Improvements Program. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek stated that staff did not have a presentation, but was available for questions.

Councilmember Yakawich asked if a project like South Park curb and gutter would be included in this program. Mr. Mumford stated that it would be included in this program.

The public hearing was opened.

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

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

**4. PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #16-02: Property described as 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. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Wyeth Friday, Planning Manager, began a brief PowerPoint presentation for Item 4, giving an overview of the property and proposed annexation. Mr. Friday stated that the applicants were in attendance and available for questions.

Councilmember Sullivan asked why only a small portion of the property was being annexed. Mr. Friday stated that zoning had been completed on the entire property, but the subdividing was going to occur in portions over time. Councilmember

Yakawich asked if this property was in a flood plain. Mr. Friday stated that there was a flood plain near this property, but the property was not in a flood plain due to an elevation change.

The public hearing was opened.

- **Greg McCall, Developer, 1615 Front Street, Billings, MT**, stated that the Walter Family has farmed this property for over 100 years. Mr. McCall stated that he had spent a lot of time getting to know them and would be naming areas of the neighborhood after the matriarchs and patriarchs of the Walter Family. Mayor Hanel stated that McCall Development had managed their growth very well and that he would recommend that they try to solicit a grocery store to come into the area. Mr. McCall stated that he "was on the phone trying to get one that very morning."

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

Councilmember McFadden moved for approval of Item 4, seconded by Councilmember Friedel. Mayor Hanel stated that the growth the City has experienced has been managed very well and that he supported this motion. Mayor Hanel encouraged people to drive through the McCall Development area. Councilmember Yakawich recognized the Walter family. Mayor Hanel thanked the Walter family for attending. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #946: a zone change from Residential 9,600 (R-96) to Residential 7,000 (R-70), on a 10,417 square-foot parcel of land described as: Lot 11, Block 9, Central Acres Subdivision, 5th Filing. James Ouren, owner. Zoning Commission recommends denial and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, began a PowerPoint presentation for Item 5, providing an overview of the property and its surroundings. Ms. Cromwell noted that this property is the only undeveloped property on the block. Ms. Cromwell verified that Council had received an email from the applicant's attorney. Ms. Cromwell noted that the Zoning Commission had received a valid protest from the property owners living within 150 feet of the zone change. Ms. Cromwell stated that if Council chose to approve the zone change, it would require a 2/3 majority vote. Ms. Cromwell stated that the planning staff had recommended approval, but that the proposed findings had not been accepted by the Zoning Commission. Ms. Cromwell stated that the Zoning Commission was recommending denial because they found that the proposed R7000 zoning, which would allow a multi-family dwelling, was out of character for the area. Councilmember Yakawich asked if the developer and homeowners had been able to reach an agreement. Ms. Cromwell stated that a synopsis of the pre-application neighborhood meeting was included in the staff report. Councilmember Clark stated that he had received many phone calls in opposition to this zone change.

The public hearing was opened.

- **Bruce OBanion, 3121 Lynn Avenue, Billings, MT**, stated that the neighbors were not against a single family dwelling, but they were opposed to a multi-family dwelling. Mr. OBanion stated that the multi-family dwellings in the area are in a different neighborhood.
- **Jerry Vogel, 3128 Lynn Avenue, Billings, MT**, stated that he lives next to the vacant property and has had discussions with the property owner. Mr. Vogel stated that he is opposed to a multi-family dwelling in the neighborhood. Mr. Vogel encouraged Council to vote with the Zoning Commissions recommendation.
- **James Ouren, 590 Garden Avenue, Billings, MT**, stated that there were multi-family dwellings and commercial buildings in the area. Mr. Ouren stated that a multi-family dwelling would be beneficial for the City. Councilmember Yakawich asked what Mr. Ouren's intentions for the property were when he had purchased it in 2009. Mr. Ouren stated that he had originally intended to sell the property, but was not able to sell it. Mr. Ouren stated that he could build a nice multi-family dwelling with a large yard for families.

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

Councilmember Clark moved to adopt the Zoning Commission's recommendation of denial, seconded by Councilmember Brown. Ms. Volek asked Councilmember Clark to amend his motion to include the finding of fact. Councilmember Clark amended his motion to adopt the Zoning Commissions recommendation of denial, including the adoption of the findings of the 10 criteria, seconded by Councilmember Brown. Councilmember Sullivan stated that he did not think a change in zoning would be compatible with the neighborhood. Councilmember Clark stated that the multi-family dwellings are a few blocks away from the proposed zone change site. Councilmember Yakawich asked if the property owner would have another chance to request a zone change. Ms. Cromwell stated that the property owner would need to wait one year to propose a new zone change. Councilmember Friedel asked Brent Brooks, City Attorney, if there would be any legal ramifications of denying the zone change. Mr. Brooks stated that as long there was a factual basis for denial and that it was based on the findings of fact from the Zoning Commission, then Council had fulfilled its duty. Councilmember Cimmino asked Mr. Brooks to clarify spot zoning. Mr. Brooks read an excerpt from a 2012 Montana Supreme Court case that stated: the requested use is significantly different from the prevailing use of the area, the area in which the requested use to apply the zone change is rather small, and the requested change is more of the nature of special legislation. Mr. Brooks stated that usually all three elements are present when spot zoning has occurred and that not all spot zoning is illegal. Councilmember Cromley clarified that there was not an issue with spot zoning since Council was voting to deny the zoning request. Councilmember Yakawich stated that he appreciated Mr. Ouren's passion behind this project, and is hopeful that he can resolve this in the future. On a voice vote, the motion was approved 9-2, with Councilmembers Yakawich and Cimmino voting in opposition.

**6. PUBLIC HEARING AND SPECIAL REVIEW #936: a special review to locate a 50-foot monopole support structure for new Verizon Wireless communication**

antennas in an EBURD-Central Works (EBURD-CW) zone, on a 1,335 square foot lease of a 24,500 square foot parcel of land described as: Lots 18-24, Block 19, Billings Original Town, and located at 401 N 17th Street. Kevin Howell, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Cromwell began a PowerPoint presentation for Item 6, providing an overview of the property and its surroundings. Ms. Cromwell stated that normally a 50-foot tower would be allowed in commercial locations, but due to EBURD restrictions in the area, the tower requires a special review. Ms. Cromwell discussed the eight conditions for approval:

1. Limited to the subject property.
2. Approval for wireless facility – no other uses.
3. Will meet the requirement for fences/walls as specified in EBURD zoning regulations.
4. Monopole will be non-reflective.
5. Back-up generator will be “whisper quiet” equipment.
6. No construction activity before 7 am or after 8 pm.
7. Conditions run with the land.
8. Comply with all other limitations in 27-613 and other city codes that apply.

The public hearing was opened.

- **Kevin Howell, Verizon Wireless agent**, stated that this tower will help to maintain coverage and capacity throughout the City. Councilmember Yakawich asked if this tower will be safe for people. Mr. Howell stated that the FCC has guidelines on how far to keep radio waves away from people. Mr. Howell stated that Verizon Wireless makes the final placement decision.

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

Councilmember Cromley moved for approval of Item 6, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SPECIAL REVIEW #939: a special review to add 2 outdoor patios and 4,000 square feet of floor area to an existing restaurant and casino in an Entryway General Commercial (EGC) zone, a 3.125 acre parcel of land described as: Lot 1A, Block 1, Geyser Park Subdivision. Barbara Hawkins and Shawn Johnson, agents. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Ms. Cromwell began a PowerPoint presentation for Item 7, providing an overview of the property and the proposed addition. Ms. Cromwell stated that the current plans may not meet the regulations on parking, but that the agents are preparing to submit a variance to the City. Ms. Cromwell discussed the conditions for approval:

1. Limited to the subject property.
2. Approval for addition of 2 patios; 4,000 sf of floor space – no other uses.
3. Additions greater than 10% require additional special review.
4. Exterior lighting shielded and height max 20 feet.
5. Background music allowed on patios when open for use – not audible 25 feet beyond patio.
6. 42 inch minimum fence enclosure for each patio – entry only through building interior.
7. No outdoor announcement system – permanent or temporary.
8. No outdoor events where amplified sound is used.
9. Provide bicycle parking – 6 spaces on the west side and 4 spaces on the north side – follow guidelines.
10. Building addition will be complementary to existing and remodeled building.
11. Solid waste enclosure required.
12. Conditions run with the land.
13. Comply with all other limitations in 27-613 and other city codes that apply.

Councilmember Sullivan asked if the parking lot in the back of the property will only be used by the liquor store customers. Ms. Cromwell stated that, due to Montana law, there must be a connection between the liquor store and the existing building.

Councilmember Clark asked if the business would receive walk-in traffic from surrounding hotels. Ms. Cromwell stated that the owners thought that they would get customers from the surrounding hotels and had even considered offering room service at some point. Councilmember Brown asked how many parking spaces were lacking according to regulations. Ms. Cromwell stated that the site plan allows for 181 parking spaces, which is a significant amount for the proposed business. Ms. Cromwell stated that any business that serves food is required to provide one parking space for every 100 square feet of the building, even if it is not a customer seating area. Councilmember Yakawich asked if there had been any opposition to this special review. Ms. Cromwell stated that there had not been any opposition. Ms. Cromwell stated that the Zoning Commission had mailed notices to all property owners within 300 feet of the property. Mayor Hanel stated that it appeared that there was ample parking for the proposed property.

The public hearing was opened.

- **Barbara Hawkins, agent for applicant**, stated that the applicant is aware of the parking shortage and will be applying for a variance.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that there are too many conflicts of interest, which is allowing projects to be passed in unethical ways. Mr. Nelson stated the elite and powerful are getting what they want. Mr. Nelson stated that Mr. Hawkins was the agent that presented this special review to the Zoning Commission, while Ms. Hawkins was on the Zoning Commission. Mr. Nelson stated that Ms. Millar was on the Planning Board as the City's representative and is also on the TIFD Board. Mr. Nelson stated that this is a conflict of interest. Mayor

Hanel stated that Ms. Millar has been extremely professional and that he has never heard of any complaints against her. Ms. Volek stated that Ms. Hawkins recused herself during the voting on this special review.

- **Shawn Johnson, owner**, stated that Ms. Hawkins is no longer on the Zoning Commission and did not vote on this special review. Mr. Johnson stated that there are not very many restaurants on the South Side and the area needs more family dining. Councilmember Sullivan asked how a liquor store is compatible with a family restaurant. Mr. Johnson stated that the liquor store will provide a convenience to the travelers in the area and will sell milk and snacks in addition to alcohol.

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

Councilmember McFadden moved for approval of Item 7, including the conditions and the findings of the three criteria, seconded by Councilmember Brewster.

Councilmember Friedel stated that he struggled with the concept of a family restaurant having a liquor store. Councilmember Yakawich stated that he supports a restaurant in the area and would like to see the focus be on the family part of the business and not on the liquor store portion. Mayor Hanel stated that he supports this development and looks forward to its success. Councilmember Brown stated that he understands the need for this business to make money to pay for the liquor license they already own. Councilmember Sullivan stated that his comments were directed more toward the State driven liquor laws. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND SPECIAL REVIEW #940: a special review to allow the addition of a 320 square-foot outdoor seasonal patio on the public sidewalk adjacent to Doc Harper's in the Central Business District (CBD), on Lots 7-12 and a fraction of Lot 6, Block 93, Billings Original Town, Unit 2 of the Babcock Building. Bruce Harper, applicant. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Ms. Cromwell began a brief PowerPoint presentation for Item 8, providing an overview of the property and the surrounding areas. Ms. Cromwell discussed the conditions for approval:

1. Limited to the subject property.
2. Approval for addition of seasonal patio of 320 sf – no other uses.
3. Time limited to May 1 to October 31.
4. An encroachment permit from Engineering and MOU with Parking on metered parking revenue.
5. Substantial conformance with site plan – materials, temporary sidewalk & seating.
6. No amplified music or announcement system on patio after 10 pm.
7. No signs, banners or placards on the fence or benches.
8. Temporary planters or barriers at the top of the on-street spaces to prevent parking – approved by City Engineer.

9. Conditions run with the land.

10. Comply with all other limitations in 27-613 and other city codes that apply.

Councilmember Clark asked what the decking would be made of. Ms. Cromwell stated that it would be a composite wood style decking. Councilmember Cimmino stated that she thinks a patio is a great idea.

The public hearing was opened.

- **Bruce Harper, 3206 East MacDonald Drive, Billings, MT**, stated that the Downtown Billings Alliance has been very helpful in helping in applying for this special review. Mr. Harper stated that he thinks this patio will help beautify the downtown area.
- **Lisa Harmon, Executive Director of Downtown Billings Alliance (DBA)**, thanked the Harper Family for their investment in downtown. Ms. Harmon stated that DBA had launched a business plan competition and had received 40 submissions for downtown business concepts. Ms. Harmon invited everyone to visit Doc Harper's.
- **Mike Matthew, 115 N. Broadway, Billings, MT** stated that N. Broadway is a dynamic street that stays very busy. Mr. Matthew stated that the Babcock Building tenants support this special review.

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

Councilmember Swanson moved for approval of Item 8, including the conditions and the findings of the three criteria, seconded by Councilmember Cromley.

Councilmember Friedel stated that he appreciated the proactive approach Mr. Harper is taking with the limited space that downtown allows. Councilmember Sullivan stated that this was a great opportunity to improve downtown. Mayor Hanel stated that he is supportive of this item and that downtown needs to grow to keep its vitality.

Councilmember Brown stated that he thinks this is a great idea. 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT** stated that he had received a letter regarding a building permit violation and that it was a waste of money to pay staff to send that kind of letter. Mr. Nelson stated that he had received a permit in the past, and there was an obvious breakdown in the process between the software and the employees in the Planning Department. Mayor Hanel asked if staff could please check into this matter. Ms. Volek stated that most of the City's violation notice actions are complaint driven and she thinks that the department must have received a complaint in this situation. Ms. Cromwell stated that clarification from people who receive letters was always welcome.

Councilmember Brown asked how long building permits last. Ms. Cromwell stated that the permits are valid for six months. Ms. Cromwell stated that if progress is being made and inspections are requested, the permit may be extended. Ms. Volek stated that staff will look into this issue.

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

## **COUNCIL INITIATIVES**

- Councilmember Yakawich moved to direct staff and City lobbyist, Ed Bartlett, to look into a minimal standard ordinance for Billings, seconded by Councilmember Cimmino. Councilmember Yakawich stated that there are cities such as Indian Trail, NC, St. Paul, MN, and Milwaukee, WI that could be used as models. Councilmember Cromley stated that he supports this initiative but thinks it would be expensive to hire outside counsel. Councilmember Brewster stated that this item could be included in a list of issues that Council would like to discuss with Mr. Bartlett. Ms. Volek stated that she does not think State law would allow for the City to create such an ordinance and that it would require legislation. Councilmember Brewster stated that Councilmember Yakawich should contact a legislator to ask for a draft bill that Council could support. Councilmember Yakawich re-worded his initial motion adding direction to include this item on a future agenda. Councilmember Yakawich moved to amend his initiative to direct staff to look into a minimal standard ordinance for Billings and to seek guidance from lobbyist Ed Bartlett, seconded by Councilmember Cimmino. Ms. Volek stated that staff would add this item to the list of legislative priorities. Councilmember Brewster stated that cities and local governments need to have their own rules, so that they are not treading on rural areas. Councilmember Cromley stated that he would be willing to work with Councilmember Yakawich to come up with a more concrete proposal. Councilmember Swanson asked Councilmember Yakawich if he wanted buildings to be condemned. Councilmember Yakawich stated that he would like to encourage absentee landlords to update their buildings. Councilmember Friedel stated that he thought a city could make ordinances if the State was silent on the matter. Mr. Brooks stated that he would look into this situation and that he would discuss the matter with some of Montana's larger cities. Councilmember Cimmino asked about using the existing building codes for provisions. Mr. Brooks stated that building codes are used for building and not for existing structures. On a voice vote, the motion was unanimously approved.
- Councilmember Sullivan stated that, at the next business meeting, he would be bringing forward an initiative to allow Mr. Mumford to pre-date and pre-plan the Complete Streets program before the budget process. Councilmember Cimmino stated that Council was very supportive of the Complete Streets program. Mayor Hanel stated that Council needed to be careful about discussing items that had not been voted on.
- Councilmember Cimmino moved to have a governing board review the 2010 ordinance that prohibits hand-held devices while driving, and to bring information forward at a later date, seconded by Councilmember Friedel. Councilmember Friedel stated that Council needed to review the ordinance's effectiveness.

Councilmember Clark stated that many of the warnings given by police officers are for out of town visitors that do not know about the ordinance. Councilmember Brewster stated that the City already has a distracted driving law and therefore he would not be supporting this initiative. Councilmember McFadden stated that he voted against this ordinance in the past and would still not be supporting it. Councilmember Brown stated that he would rather see Council revisit the need for the original ordinance. Mayor Hanel stated that he did not want Council to take away an officer's ability to use his or her discretion. Mayor Hanel stated that perhaps the fines needed to be higher. Councilmember Friedel stated that he agreed with Councilmember Brewster and Councilmember Brown. Councilmember Cimmino stated that she had voted against the ordinance in the past because she did not think it was enforceable. Councilmember Sullivan stated that he would like to hear from the Police Department to see how well this ordinance was working. Ms. Volek stated that it may be a good idea to have Chief St. John talk to Council about this ordinance. Mayor Hanel asked for clarification on if an initiative would be necessary, or if Council could just schedule a discussion at a future work session. Councilmember Cimmino withdrew the motion, and Councilmember Friedel withdrew the second.

There was no further business, and the meeting adjourned at 10:36 pm.

CITY OF BILLINGS

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

ATTEST:

BY: Billie Guenther  
Billie Guenther, City Clerk



