

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 22, 2017

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

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

**MINUTES:** April 24, 2017 and May 8, 2017– Councilmember Brewster moved for approval, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

### COURTESIES:

- Ms. Volek introduced John Brewer and William Cole of the Billings Chamber of Commerce who presented a check for \$33,000 to the City for the Yellowstone Kelly Interpretive Site, in reference to Item 1B. Mr. Cole corrected the amount on this donation and stated the change order was for \$56,628, however the donation was for \$33,000 and the monies on hand already would more than cover the amount of the change order. He continued by thanking TrailNet, the Bair Family Trust and Hardy Construction for their contributions. He concluded by stating the project was scheduled for completion late summer 2017. Ms. Volek presented the check to the City Clerk for deposit.
- Ms. Volek introduced Jim Ronquillo and Matt Lundgren, representatives of the Southside Neighborhood Task Force, who presented a check for \$1,200 for the South Park Splash Park, in reference to Item 1C. Mr. Ronquillo stated the task force had held a couple of fundraisers to make the donation. Mr. Lundgren thanked the Council for improving the quality of life in the South Park area. Ms. Volek presented the check to the City Clerk for deposit.
- Councilmember Cromley recognized Riverstone Health as receiving the DeWitt C. Baldwin, Jr. Award for Excellence in providing services and education to the residences. He gave special recognition to Dr. Roxanne Fahrenwald, Senior Vice President, Clinical and Educational Integration, for her excellent direction.

### PROCLAMATIONS:

- Mayor Hanel read a proclamation that declared May 13, 2017 as Letter Carriers Food Drive Day.

- Mayor Hanel read a proclamation that declared the month of May as Pediatric Stroke Awareness. He gave statistics about how many children are afflicted each year by strokes and that more research was needed about the causes of such a serious, life-threatening medical issue.

## ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek, in reference to Regular Agenda Item 2, stated that a faxed letter of protest was received from Corrine Kelly had been emailed to the Mayor and Council, and a copy of it had been placed in the ex parte notebook.
- Ms. Volek, in reference to Consent Agenda Item 1F, stated a finalized version of the agreement with the Billings Chamber had been placed on each Councilmember's desk and a copy had been placed in the ex parte notebook.

### **PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 & 6 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.

- **Ken Behling, 2729 Hoover Avenue, Billings, Montana**, in reference to Items 1D, 1E and 1F, stated he was the current chairman of the Aviation and Transit Board and spoke in favor of American Airlines air service and encouraged Council to approve the items. He stated the air service was scheduled to begin June 2, 2017 and that 17 organizations and businesses had invested in the air service.
- **Greg Krueger, Downtown Billings Alliance, Billings, Montana**, in reference to Items 1A5 and 1H, explained the decision to reject all bids for the pocket park because the bids received were too high and over budget. He explained what had driven the higher price of the project, and offered suggestions to reduce those costs. He stated the project's plans would be value engineered and placed for re-bid. He voiced support for approval of TIF assistance for the pocket park construction. He welcomed the arrival of American Airlines. Councilmember Sullivan asked why the Council should approve the TIF assistance prior to receiving good bids for the project. Mr. Krueger responded he was confident bids would be at or less than \$200,000 and having the funding available at the time of the bids would give leverage for negotiations, if it were needed, and expedite the process. He added that they wished to have the project completed by the end of summer, but if there were funding delays, etc., it may prolong the completion to next summer.

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

1. **CONSENT AGENDA:**

A. **Bid Awards:**

1. **Airport Improvement Program (AIP) Runway 10R/28L Shift Construction Project.** (Opened 5/9/17) Recommend Knife River, \$1,565,920.10.
2. **Concrete Joint Repair for the Aircraft Parking Ramp.** (Opened 5/9/17) Recommend National Sealant and Concrete, \$40,350.
3. **W.O. 17-01, Schedule 2, Sanitary Sewer and Water Rehabilitation Projects.** (Opened 5/9/17) Recommend Schedule 2A to COP Construction, LLC, \$840,403; Schedule 2B to COP Construction, LLC, \$1,279,526; and Schedule 2C to Western Municipal Construction, Inc., \$681,877.
4. **W.O. 17-02, Miscellaneous Concrete Projects.** (Opened 5/9/17) Recommend J & J Concrete, Inc., \$196,050.
5. **First Congregational United Church of Christ Pocket Park.** (Opened 5/9/17) Recommend rejecting all bids.

B. **Change Order #3 - Yellowstone Kelly Interpretive Site,** Hardy Construction, \$56,628;  
**and**

**Acceptance of Donation** to Parks, Recreation and Public Lands Department from Billings Chamber of Commerce, \$56,628, CORRECTION: \$33,000.

C. **Acceptance of Donation** to the Parks, Recreation and Public Lands Department from South Side Neighborhood Task Force for the South Park Spray Park; \$1,200.

D. **Agreement** with American Airlines air service and minimum revenue requirements.

E. **Agreement** with American Airlines, Inc. for Scheduled Airline Operating and Terminal Building Lease; estimated annual revenue - \$150,000 to \$200,000.

F. **Agreement** with Billings Chamber of Commerce for the local match funds required for American Airlines Service.

G. **Approval** of operating permit with Envoy Air, Inc.

- H. **Approval of Tax Increment Financing Assistance from Downtown Tax Increment District Fund 203 for construction of a pocket park on Third Avenue North at North 27th Street; up to \$200,000.**
- I. **Sidewalk Easement** with Roman Catholic Bishop of Great Falls for St. Thomas Church.
- J. **Resolution No. 17-10620** notifying the Yellowstone County Election Administrator to conduct mail ballot municipal elections.
- K. **Resolution No. 17-10621** authorizing purchase Lot 23-A, Sunnycove Fruit Farms Subdivision, for stormwater and roundabout improvements at the intersection of 62nd Street West & Rimrock Road; \$277,000.
- L. **Final Plat Approval** of Amended Lot 2B-1A, Block 2, Southgate Subdivision, 2nd Filing.
- M. **Bills and Payroll:**
  - 1. April 24, 2017
  - 2. May 1, 2017

There were no separations, abstentions, or discussions by Council. Councilmember Cromley moved for approval of the Consent Agenda, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

- 2. **PUBLIC HEARING AND RESOLUTION adopting water and wastewater rate and fee schedule effective July 1, 2017. Staff recommends approval.**  
**(Action: approval or disapproval of staff recommendation.)**

Ms. Jennifer Duray, Public Works Finance Manager, gave a PowerPoint presentation regarding the proposed water and wastewater rate and fee increases. She stated that a comprehensive study was conducted every two years, using an outside consultant. She provided a chronology of events that led to recommendation for rate and fee increases. Ms. Duray explained that letters concerning the proposed increases had been sent to property owners and the responses had been minimal. She stated there had been some opposition to the franchise fees and free water to the City Parks and departments. She stated that Public Works had updated its website and had a Facebook page to provide information. She continued that should the increases be approved, the increases would affect the August bills. She stated the Operation and Maintenance expenses had increased and outlined the specifics. She continued that the proposed increases were actually less than the overall increases to expenses, but

that the City would utilize reserves and reductions to other items. Ms. Duray explained the fees tier structures. She stated that Public Works proposed an overall 3.5% rate increase in the FY18 volumetric rates and 2% rate increase in FY19. Ms. Duray stated that \$300 a month water bills equated to 83 ccf's or 62,084 gallons of water. She stated the average residential use was 14 ccf's. She identified areas of town that utilized the largest amounts of water. She stated that increased rates could affect water conservation efforts and that only two months of the year experienced high demand for water. She continued that Public Works had budget billing to help users budget monthly for higher water bills. She mentioned that during FY18 Public Works would implement Smart software that allowed consumers to monitor and manage their consumption in real time with alerts sent when consumption reached a certain level. Ms. Duray continued her presentation with review of wastewater rates. She stated the average residential consumption was 6 ccf's and the average increase would be .69 in FY18 and .68 in FY19. She compared other major Montana cities' water and wastewater rates and stated that Billings was in the middle for those rates. She compared water and wastewater expenses to other utility expenses stating comparatively, water and wastewater services were a good deal for the money. She addressed the rates for contract users, i.e. Lockwood, Height Water District and Phillips 66.

Councilmember Sullivan asked when the last time water and wastewater rates were increased. Ms. Duray stated they were increased in 2015. Councilmember Sullivan asked whether the last rate increase accounted for wage increases for personnel. Ms. Duray stated the last increase accounted for a projected increase in personnel costs at that time. She stated there was no catch-up at this time. She continued that the increase in O&M personnel costs was due to health insurance, step wage, longevity and COLA increases.

Mayor Hanel asked David Mumford, Public Works Director, to approach the podium to address citizen concerns. Mayor Hanel asked what the department had done to operate more efficiently. Mr. Mumford responded that when there had been vacancies due to retirements the positions were reviewed for reclassification and possible removal of the position in an effort to reduce personnel costs. He continued that Public Works had worked with other departments concerning their water use and devise methods to reduce its consumption. He stated the Public Works Department had a very good rehabilitation program to detect and repair water leaks. Mayor Hanel stated that citizens had asked him why the City does not charge itself for water usage. Mr. Mumford responded that currently the Airport and Public Works were the only departments that paid for water usage. Ms. Volek stated that the heights parks also paid for their water usage. Mr. Mumford stated the Park Maintenance Districts paid for water usage, not the Parks Department directly. He stated that the costs were absorbed under the current rate structure. Ms. Volek stated that if the departments were charged, those costs would be passed to property owners through their taxes. Mr. Mumford stated all departments would be affected, not just Parks Department. Mr. Mumford stated that Parks had placed a great deal of automation in its watering systems and would continue to improve its systems as it is able. Councilmember Brewster asked for clarification on the franchise fee. Mr. Mumford responded the franchise fee was for water, sewer,

wastewater and solid waste services and was implemented in 1992 to provide additional revenue into the General Fund. Councilmember Brewster asked why the City would franchise their own utilities. Mr. Mumford stated it had been a policy decision made by the Council in 1992. Councilmember Yakawich asked if Tier 1, which reflected 77% of the users, was to have a rate increase freeze. He stated he would be willing to not complete a CIP project or two if it meant no rate increase to users in Tier 1. Mr. Mumford stated that should 77% of the income be frozen, then 77% of the projects would be frozen as well. He continued that maintenance would need to be deferred as well and he would not recommend that happen. Ms. Volek stated that should Council make a major change to the proposed rate and fee structure, a 30-day period must be given prior to the rate and fee change went into effect. She continued to instruct the Council on the proper procedure to delay the rate and fee increase. Councilmember Sullivan asked whether Public Works had any kind of public assistance program to help low income users with their utility bills. Mr. Mumford responded negatively. He stated that if assistance was given to a certain group, all other groups would have to contribute more to offset the revenue losses. Councilmember Brown asked about delinquent accounts and permit fee increases. Ms. Duray responded that Public Works proposed increases to various fees to offset delinquent accounts. She explained that the only users that are charged are those that are shut off. She stated that staff spent a great deal of time on the delinquent account prior to the shut off of service. She stated a \$5 administrative fee on each delinquent account prior to the shut off, the shut off fee could be reduced. She explained in detail the process and contacts staff made with each delinquent account to achieve a goal of collection, rather than shut off. She stated that there were quite a few consumers that were familiar with the shut off / collection process well enough that would pay their bills just prior to a shut off, but staff would have spent all the time and resources as they would have if the shut off occurred. She stated that in those instances the shut off fee would never be assessed or collected, but the same amount of staff effort was expended.

Councilmember Sullivan leaves Council Chambers at 7:32 pm and returns at 7:33 pm.

Councilmember Yakawich voiced concerns about tiers. Ms. Duray stated staff could prepare additional tier structure scenarios, but cautioned Council about delaying increases stating that maintenance would be deferred and a larger increase would likely occur later. Ms. Volek stated that the 77% of consumers in Tier 1 were not only low income consumers and that tier was the bulk of the revenues.

Mayor Hanel stated it would be better to have small increases every two years, rather than a major increase later.

The public hearing was opened.

- **Matt Lundgren, 4251 Ironhorse Trail, Billings, Montana**, stated he was representing the City's largest task, Southside Neighborhood Task Force. He stated the southside was disproportionately affected by low income households. He supported programs such as EnergyShare and LEIAP for financial assistance to low income households. He stated if the City would implement a WaterShare assistance program, he would donate to it. Councilmember Yakawich inquired about the Public Works Board's position on the proposed increases. Ms. Volek responded that the Public Works Board had been in favor of the increases.
- **Bill Albertson, 3137 Myrtle Drive, Billings, Montana**, stated he had no problem with rate increases. He stated he did not appreciate the billing cycle as it only gave 11 days' notice between when the statement was received and its due date. He voiced his concern over the franchise fee going into the General Fund and stated he understood the franchise fee would go into a nest egg for Public Works for future needs. Mayor Hanel asked Mr. Albertson if he was aware that Public Works had an auto-pay option, to which Mr. Albertson stated he preferred to not utilize auto-pay options.
- **Frank Ewalt, 2131 Phoebe Drive, Billings, Montana**, stated it was unfair that he paid the same amount for City wastewater services as those that lived outside the City limits. He mentioned the failed local option tax that would have placed a tax on everyone that was using City services, including visitors to the City. He stated that sewer lines would be installed to Blaine's Trailer Court, but he didn't believe those residents would be contributing to the wastewater costs. He stated county residents should pay more when utilizing City services.

Mayor Hanel asked Ms. Duray to explain rates for inside City users and outside City users. Ms. Duray explained that the outside users paid slightly more. She explained there were 17 wastewater users from outside the City limits. She stated that Lockwood and Phillips 66 were separate because they did not use most of the City's infrastructure, just the wastewater plant so they had a different rate. She stated a study conducted a couple of years ago indicated the differences between inside and outside City users was very close.

Councilmember Brown asked whether the City was responsible for maintaining outside users sewer lines. Ms. Duray stated the City was not responsible.

Councilmember Sullivan stated that during landfill discussions, restrictions had been discussed about charges to outside users. Mr. Mumford responded that the restrictions were that good accounting practices were used. He stated that Lockwood and Phillips 66 were charged extra. Ms. Duray added that State statutes restricted fees charged to outside users versus inside users.

Councilmember Clark asked whether Blaine's Trailer Court paid for the infrastructure improvements for the added sewer lines, and its maintenance and would pay a higher wastewater rate. Mr. Mumford responded affirmatively. Ms. Volek stated the trailer court's septic system had been located very close to the City's water intake

and in the event the septic system had failed, it would have placed the City's fresh water at risk.

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

Councilmember Cromley moved for approval of Item 2, seconded by Councilmember Swanson.

Councilmember Yakawich stated he opposed the increases as proposed and encouraged staff to develop a different tier structure. He stated he would vote against the motion.

Councilmember Brewster stated his concern about the franchise fee and warned that the Supreme Court had ruled against the City for a right-of-way fee to utility companies. He stated the Court's ruling was that it was not a fee because the revenues generated were used broadly by the General Fund, not specifically for use in the right-of-way. He continued that the Court determined it was really a sales tax. He stated the City's franchise fee may be against the law. He continued that sales taxes were against the law in Montana. He continued that the when it was agreed that Parks' water would be placed in the General Fund at no cost to the Park's Department, it may have been a violation of the Charter. He stated the Charter defines where revenues are derived for the General Fund, which is from the mills. He stated that when the costs were moved from the utility it basically backdoor attaching to the General Fund. He stated the Council was obligated to check into the matter. He voiced his opposition with the franchise fee and would vote against the motion.

Councilmember Sullivan stated he supported a "WaterShare" program. Councilmember Sullivan moved for an amendment to Councilmember Cromley's motion to direct staff to investigate the creation of a "WaterShare" program and provide the information to Council by June 30<sup>th</sup>, 2017, seconded by Councilmember Brewster. Councilmember Cromley stated he would vote in opposition of the amendment to the motion and that it would have been better as a Council initiative.

Councilmember Brewster stated he believed assistance programs such as LEIAP were operated by not-for-profit organizations and were not handled by the utility companies or municipalities. He stated local government was not in the welfare business and that was more of a state government function.

Councilmember Clark stated he would not want an assistance program to cause additional burden to City staff. He stated he wanted a nonprofit organization to implement an assistance program.

Councilmember Sullivan stated the amendment was not to hire additional City staff, but for staff to research the opportunities to create an assistance program and come back to the Council with their findings. He acknowledged that the amendment may be better suited as an initiative.

Mayor Hanel voiced opposition to the amendment, but not the concept. He stated an assistance program was a great suggestion.

Councilmember McFadden stated would preferred the amendment be in the form of an initiative.

Councilmember Cromley stated his 24-hour rule would not apply as the issue was brought to light during the meeting.

Councilmember Sullivan withdrew his amended motion and Councilmember Brewster withdrew his second. Councilmember Sullivan called the question on Councilmember Cromley's motion, seconded by Councilmember Swanson. On voice vote, the motion was unanimously approved.

On a roll call vote, the motion was defeated in a 5-5 tie vote. Councilmembers Yakawich, Brewster, Friedel, Clark and Brown voted in opposition. Mayor Hanel commented that Public Works was left with a predicament for projects already in progress.

Councilmember Clark stated he would have preferred the matter come to Council for vote after Public Works had made its budget presentation, instead of ahead of the budget presentation. Ms. Volek stated that in hindsight that would have been better. She explained that the next Council meeting was June 12<sup>th</sup> and the delay of 30 days would be July 12<sup>th</sup>. Ms. Volek advised that the Council could reconsider the motion at this meeting or at the next Council meeting.

Councilmember Brown asked if the work session presentation would need to be reworked. Ms. Volek stated it was not certain there was adequate time to rework the presentation, but that it should be reworked. Ms. Duray responded it most likely would not be reworked. She stated the CIP was previously approved in March or April and the operating costs would not change as the City would not be producing less water or processing less wastewater. She stated that operating costs were pretty fixed. She continued that discussions would be held concerning which capital improvements would be tabled.

**3. PUBLIC HEARING AND RESOLUTION NO. 17-10622 authorizing the sale of parkland in Rolle Subdivision generally located between 248 and 336 Alkali Creek Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mark Jarvis, Park Planner, gave a presentation and explained that the Parks' and Cemetery Board had evaluated over 500 parkland sites and had recommended that 38 be sold. Mr. Jarvis stated a comparative market analysis had been completed and a recommendation for \$88,900 was the minimal price for the property. He continued to give details about giving notice the property was for sale should Council approve the

resolution. Councilmember Brown asked how the sales proceeds would be used. Mr. Jarvis responded that the proceeds would first be used to offset the costs of selling the property and then the remaining proceeds would be used for other area parks' improvements and development of community and regional parks.

Councilmember Clark asked how many parks were eligible for the proceeds. Mr. Jarvis stated that if any parks exist in the area where the parkland was sold, those would be evaluated for the most effective improvements first.

Councilmember Yakawich voiced concern about whether the rock formations that were above the parkland would be sold as part of the property. He asked whether the City would be liable for any rock falls from the rock formations. Ms. Volek stated that should the parkland include the rock formation, it would be transferred to the new owner and the City would have no liability. She stated it was her understanding that it was a buildable lot.

Councilmember Brewster asked if the parkland was located in an area where the airport could affect flooding. Mr. Jarvis responded it was too far east.

The public hearing was opened.

- **Lisa Sundeen, 336 Alkali Creek Road, Billings, Montana**, stated she had a residence directly in front of the subject property and was opposed to the sale. She stated the property was not suitable for building upon. She continued that there was flooding in that area and her basement had been flooded twice. She continued that due to the flooding, the land was not stable. She stated there was a 40 foot access and that would not be adequate for a driveway and road and the road would actually go through her back yard. She stated the property was a gully, rocks fall and the removal of vegetation would make flooding worse. Councilmember Sullivan asked if the City parkland had liability. He asked Mrs. Sundeen if she was willing to release and hold harmless the City from flooding and rock falls if the City decided to not sell the parkland. She stated she would not absolve the City of anything.

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

Ms. Volek stated that another property owner in the area had expressed interest to purchase the parcel.

Brent Brooks, City Attorney, stated there was no additional liability to the City if the property was sold. He continued that a boundary survey should have been completed to identify rock formations, etc. on the parkland and the Parks Department was immune from liability under the recreational liability statutes. Mayor Hanel clarified that when the parkland was sold, the City had no liability for rock falls and flooding after the sale.

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember McFadden. Councilmember Yakawich stated should there be future development on the property, it would come before the Council for approval. Councilmember Clark stated that was not necessarily accurate. Mr. Brooks supported Councilmember Clark's statement and indicated it would not come before Council unless a subdivision was proposed. He continued that construction of a single family home would not come before Council.

On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING regarding the Limits of Annexation Map. Annexation Committee recommends approval. (Action: approval or disapproval of Annexation Committee recommendation.)**

Wyeth Friday, Planning Director, gave a brief presentation and explained the current boundaries of the City's limits, the red petitionary area that would be considered next for annexation and the orange area for long range annexation possibilities. He stated the current annexation map was adopted one year prior. He stated the annexation policy required the City to review and update the associated map and policy whenever the CIP was revised. He stated Council approved the current CIP on March 27, 2017 for FY18 through FY22. He continued that on May 8 the Council amended the annexation policy. He stated there had been one request for map amendment by property owners, Staley and Forbes. He stated that when the Annexation Committee reviewed the request, it found some unusual circumstances with the property. He continued that based upon the amendments to the annexation policy to address the unusual circumstances and bring the property into the annexation petition area for 2017. Mr. Friday reviewed the criteria with Council according to the updated annexation policy.

The public hearing was opened.

- **Gary Oakland, Oakland and Company, 175 North 27<sup>th</sup> Street, Suite 900, Billings, Montana**, introduced himself and stated he was available for questions. Councilmember McFadden asked when construction would begin. Mr. Oakland responded that the Copper Ridge project has started over 10 years ago and 9 phases were completed. He stated nearly one-half of the homes in phase 9 were sold and inventory was low. He explained he was now the owner of the Staley property and was set to close on the Forbes property later this year. He stated that should the Council approve the item, an immediate application for annexation would occur so construction could begin in the winter of 2017. Councilmember McFadden asked how many people had been employed during the last phase of construction. Mr. Oakland stated some of the homes are built by his business and other lots are sold to other builders, but he estimated approximately 100 people were employed. He estimated that approximately over \$100 million would be added to the tax basis. Mr. Oakland stated the development would not be considered a new subdivision, but a continuation of Copper Ridge. He stated that the parks in the area have been developed totally

at Oakland's expense, the parks had not cost the City anything to develop when the parkland was transferred to the City. He continued that the operational expenses to continue with the parks was paid by the park maintenance districts.

Councilmember Yakawich asked about a cut-across road from Highway 3 to Molt Road. Mr. Oakland stated that had not been considered. He stated that the primary focus was on workforce housing that was affordable and not high-end housing.

Councilmember Swanson asked how much lots cost in Copper Ridge. Mr. Oakland responded approximately \$60,000. He stated the property was in compliance with the current annexation policy and was recommended by the Annexation Committee for approval to be placed in the red zone for annexation.

- **Blaine Poppler, 5403 King Avenue West, Billings, Montana**, stated he supported updating the limits of annexation map and the future annexation of the Staley/Forbes properties. He stated he supported the viability of a retail service center at 62<sup>nd</sup> and Rimrock Road to service the several hundred houses in the area.
- **Wayne Nelson, President of Stockman Bank, 315 Wyatt Circle, Billings, Montana**, stated he supported updating the limits of annexation map as it would affect construction projects and employment.
- **Dennis Buecher, 3671 Spalding Avenue, Billings, Montana**, stated he was the developer of Augusta Ranch, Falcon Ridge and Falcon Ridge II Subdivisions and stated lot inventory was very limited. He voiced his support for updating the limits of annexation map so expansion and growth continued.
- **Levi Wanner, 1441 Benjamin Boulevard, Billings, Montana**, stated he was the owner of Affinity Homes and supported updating the limits of annexation map.
- **Bob Pentecost, 3382 Lucky Penny Lane, Billings, Montana**, stated he resided in the Copper Ridge Subdivision and that his Spring Parade of Homes and 2 other Oakland homes were the first homes in Copper Ridge when he moved into the subdivision. He stated that ten years later his company had built nearly 80 of the homes in that area. He stated he looked forward to building many more should the limits of annexation map be approved. He supported approval of the limits of annexation map. He stated that revenues from the construction business directly affected 20 or 30 businesses city-wide and stayed in the community.

Councilmember Yakawich inquired of soils report impacts. Mr. Pentecost stated a building permit could not be obtained without a soils report. He explained the soils report procedure and stated the results are provided to the builder who must then meet the requirements on each home built.

- **Jason Lillie, 234 Sharon Lane, Billings, Montana**, stated he was a realtor and the inventory of affordable workforce housing was very limited. He supported the approval of limits of annexation map.

Councilmember Cromley moved for approval of Item 4, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE**  
**#956: a zone change from Residential Multi-Family-Restricted (RMF-R) to**  
**Community Commercial (CC) on a 1.98 acre parcel of land generally located**  
**at 517 Lincoln Lane. Propriedad, LLC, owner; Scott Aspenlieder,**  
**Performance Engineering, agent. Zoning Commission recommends**  
**approval and adoption of the findings of the 10 criteria. (Action: approval or**  
**disapproval of Zoning Commission recommendation.)**

Ms. Nicole Cromwell, Zoning Coordinator, gave a brief presentation and history of the property. She stated that the applicant wished to put personal storage units on the property. She reminded Council that no additional conditions could be placed on zone changes. She described various uses of nearby properties with RV storage, personal storage units, manufactured homes and multi-family home dwellings. She stated that Lincoln Lane was in dire need of improvements due to the added pressure of the additional housing units, however much of Lincoln Lane was not in the City limits to issue an SID. She stated that a developer would have to address the migration of irrigation water from adjacent properties onto the subject property which would have been very costly and not feasible for a multi-family unit. Ms. Cromwell stated the proposed use was in keeping with the infill and growth policies.

Councilmember Sullivan asked about storage units used as temporary living quarters and how that could be eliminated. Ms. Cromwell stated that was not typically an issue in Montana. She stated the building code requirements for storage units did not allow for electrical service or insulation of the units for year round living to occur. She stated that once in a while code enforcement will receive a report of someone living in a storage unit.

Councilmember Yakawich asked what the vision was for Lincoln Lane's growth. Ms. Cromwell stated the Billings Heights Neighborhood Plan, adopted in 2006, identified the area between Main Street and Bench Boulevard as a mixed-use type of zone. She stated developers have taken that into consideration and have annexed and developed properties along Lincoln Lane. She gave examples of pre-existing, non-conforming properties that existed before zoning. She stated the storage units mixed amongst residences seemed to work fine. Councilmember Yakawich stated that the housing developed on the east side of Lincoln Lane was very nice and he could not envision more storage units placed amongst the residences. Ms. Cromwell reiterated that the Zoning Commission found that the proposed development met the 10 criteria to allow the zone change for the proposed use at that location.

The public hearing was opened.

- **Robbie Neihart, Performance Engineering, 5424 Cornerstone Avenue, Billings, Montana**, stated his company was the agent for the owner and that they were aware of the poor condition of Lincoln Lane. He stated up to 52 multi-family units could be placed on the property due to its current zoning, however, that would add approximately 400 vehicle trips per day on Lincoln Lane. He stated that the vehicle trips per day for dry storage units were at 16.

Councilmember Brewster asked about the current irrigation. Mr. Neihart stated it entered from the south. Ms. Cromwell responded that the source ran under Main Street, then between the manufactured home park and the garages to the apartments, through a ditch and then under Lincoln Lane and then to the lots just south of the subject property for irrigation. She stated that there are a couple of land owners that flood irrigate pastures and sometimes there has been uncontrolled flooding. Ms. Cromwell stated that there are no water rights to the subject property.

Councilmember Yakawich stated he was not in favor of additional storage units on Lincoln Lane and preferred new housing development. He asked when curbs and gutters would be installed and who would be responsible for the installation. Ms. Cromwell stated through a future SID or at the time of development.

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

Councilmember Cromley moved for approval of Item 5, seconded by Councilmember Clark.

Councilmember Yakawich stated the zone change did not meet the criteria of the neighborhood growth plan. He stated that within 10 to 20 years nice new housing could be in the area and having a dry storage unit facility in the middle would not fit the neighborhood.

Councilmember Sullivan stated it fits the neighborhood as there are other storage unit facilities along Lincoln Lane and dry storage was a better use of the property due to the flooding issues and poor quality of the lane.

Councilmember Brewster voiced his support for the zone change and stated it fit the Heights master plan.

Councilmember Brown stated he supported the zone change and that it would serve the nearby apartment complexes.

Councilmember Friedel asked with the existing apartment complexes had garages. Ms. Cromwell stated that each unit had a single covered space and driveways.

On a voice vote, the motion was approved 9-1, Councilmember Yakawich voted in opposition.

Mayor Hanel called a recess at 9:22 pm.

Mayor Hanel called the meeting back to order at 9:37 pm.

6. **FIRST READING ORDINANCE FOR ZONE CHANGE #955: a zone change from Residential 7,000 (R-70) to Residential 6,000 (R-60) on a 1.36 acre parcel of land generally located at 301 - 317 Covert Land and 1739 - 1747 Cody Drive. McDonald Land Holdings, LLC, owner; Bryan Alexander, agent. The Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Nicole Cromwell, Zoning Coordinator, gave excerpts from the presentation given at the April 24, 2017 Council meeting in which the Council voted to delay its decision to this meeting. She reiterated that there would not be an additional public hearing on the zone change, only Council discussion and a decision. She stated the Zoning Commission recommended approval based on the 10 criteria. She reminded Council that there had been a companion application for a special review, but the application had been withdrawn. She stated the vote required a two-thirds vote (6) of the seated 9 remaining on the Council, as Councilmember Cromley would abstain in order to pass or fail the zone change. Ms. Cromwell stated 25% of the surrounding property owners were in protest of the zone change.

Councilmember Sullivan asked what could be built on the property. Ms. Cromwell responded that under Residential 7,000, if something catastrophic happened to the existing three 4-plexes, they could not be rebuilt as such, but 6 duplexes could be rebuilt as replacement. She continued that under Residential 6,000, the owner would be allowed to make the current 4-plexes conforming to the zoning. She stated those structures could be rebuilt as such and the structures would be eligible for financing, insurance, and sales without a hitch. She stated that an additional 8 dwelling units could be added in the form of single family dwellings or duplex units (4 duplexes), but she did not believe that was the owners intent.

Councilmember Brewster asked if the three 4-plexes could be torn down and replaced by duplexes under the current zoning. Ms. Cromwell responded affirmatively. Councilmember Brewster stated he met with the residents in the area because he was not in attendance at the public hearing held on April 24, 2017. He stated he read the minutes from the meeting and he compared the information he received from the residents with the minutes. He continued that he had no new information to share with the Council from those visits.

Councilmember Friedel clarified the potential housing unit numbers in Residential 7,000 and Residential 6,000 zones with Ms. Cromwell.

Councilmember Sullivan reviewed with Ms. Cromwell the existing dwellings in the nearby R-6000 neighborhood.

Councilmember Brown asked Councilmember Brewster what his perspective was given the zone change was located in his ward. Councilmember Brewster responded that the R-6,000 area that existed south of the park, was really a park with non-conforming use. He stated it was all wetland and had not viable use. He stated the subject apartments had been there 60 plus years and became non-conforming upon the blanket zoning that occurred long after the apartments' construction. The rest of the neighborhood was developed around the apartments. He stated there was no off-street parking for the apartments and neighbors had dealt with the additional traffic caused by the units, etc. Councilmember Brewster stated the zone change should be denied. Councilmember Sullivan called for a point of order and that a motion needed to be on the floor.

Councilmember Brewster moved for disapproval of Item 6 based upon three criteria, seconded by Councilmember McFadden. Councilmember Brewster listed three of the 10 criteria in which the zone change would adversely affect the neighborhood. They were:

6. *Will the new zoning effect motorized and non-motorized transportation?* He stated the zone change would increase traffic significantly to the area and that would negatively affect the neighborhood.

7. *Will the new zoning will promote compatible urban growth?* He stated R-6,000 was not compatible with the area.

8. *Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?* He responded that it should be re-developed in conformance with the neighborhood which primarily are single family dwellings.

Councilmember Brewster continued to address the motion stating the neighborhood has survived with the current density caused by the existing apartment complexes. He stated it should be redeveloped compatible with the current zoning and in keeping with the current neighborhood composition. He voiced his concerns about the owners' abilities and intentions to maintain the apartments. He encouraged the rest of the Council to disapprove the zone change.

Councilmember McFadden reflected upon the previous development McDonald Land Holdings, LLC, had and he stated the neighborhood had not been in favor of that development then and he did not believe they were pleased with it presently, four years later. He continued that he did not wish for Councilmember Brewster's ward to experience the same.

Councilmember Sullivan stated that the development at 17<sup>th</sup> Street West and Avenue E had been much improved compared to what had previously been there. He stated his experience with that development had been positive. He stated for himself it was an issue of obtaining financing for the apartments. He stated it was not the owners' fault that the property had become non-conforming after the blanket zoning occurred

that placed it in R-7,000. He stated he would vote in opposition of the motion to disapprove the zone change.

Councilmember Clark stated ownership had changed hands and the children of the original owner now owned the properties. He stated the current owners wished to improve the subject properties and they had demonstrated this with the improvements made to the properties at 17<sup>th</sup> Street West and Avenue E. He agreed with Councilmember Sullivan that the zone change needed to occur to free up the property for financing for improvements. He stated he would vote in opposition of the motion to disapprove the zone change.

Councilmember Brewster objected that redevelopment could occur within the existing zoning. He stated the apartments had been written off long ago. He continued that the apartments could be torn down and new units built in their place. He stated the City was not in the business of making money for people. He stated zoning was about keeping the neighborhood compatible with the area around it.

Councilmember Brown stated he was still uncertain. He stated the Council was neglectful if it was aware of the issues and was not willing to remedy the problems.

Councilmember Friedel stated he agreed with Councilmember Brewster about keeping the neighborhood as R-7,000, however, he also agreed with changing the zone to R-6,000 to allow the current owners the ability to obtain financing to improve the property or sell it. He voiced his concern about off-street parking issues.

Councilmember Yakawich stated he supported the motion to disapprove the zone change. He stated he would not wish to create more density in the area and R-6,000 would not fit the neighborhood. He also stated that during the public hearing there had been a good presence of property owners opposing the zone change and that should be taken into consideration.

Councilmember Sullivan stated the developer had no incentive to do anything with the property if the zone change did not occur. He encouraged the Council to "put their business hats on" and approve the zone change.

Councilmember Brewster stated the economics would eventually change the situation because the apartments would become so dilapidated and uninhabitable, it would require redevelopment. He stated the Council would be asking the entire neighborhood to put money in the developer's pocket.

Councilmember Brown asked whether the property could be sold under the current zoning. Mayor Hanel responded that it could be sold to a cash buyer with the disclosure that the property was not properly zoned, which could create issues.

On a roll call vote, the motion to disapprove the zone change was passed by a two-thirds vote, 6-2, Councilmembers Sullivan and Clark voted in opposition. Mayor Hanel did not vote as the results met the two-thirds requirement and his vote would not affect the outcome.

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

**COUNCIL INITIATIVES:**

There were no Council initiatives.

**ADJOURN:**

There was no further business, and the meeting adjourned at 10:05 P.M.

CITY OF BILLINGS

BY:   
Thomas W. Hanel, Mayor

ATTEST:

BY:   
Denise R. Bohlman, City Clerk

