

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**November 26, 2018**

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 Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. Councilmember Yakawich gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Ewalt, Joy, Friedel, Gibbs, Ronning, Clark and Brown.

**MINUTES:** November 13, 2018 – Councilmember Clark moved for approval, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

### **COURTESIES:**

- There were no courtesies.

### **PROCLAMATIONS:**

- Mayor Cole pronounced November 25 through December 10, 2018, as the 16 Days of Activism Against Gender Violence. Ann Hefenieder, Attorney for the Department of Public Health and Human Services, and a member of the Zonta Club and Angela's Piazza, spoke of the importance of addressing violence.

### **ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

- Mr. Kukulski stated the description for Consent Agenda Item 1D, should have stated 20-Year West End Hangar Ground Lease, instead of 10-Year Lease.
- Mr. Kukulski stated Scott Aspenlieder; Performance Engineering, had requested Item 4, Public Hearing and First Reading Ordinance for Zone Change 971, be rescheduled until December 17, 2018. He added Council would need to vote to remove and reschedule the item for December 17<sup>th</sup> by a super majority vote.

Mayor Cole asked for legal clarification on moving Item 4. Brent Brooks, City Attorney, stated Council would need a  $\frac{3}{4}$  vote for approval to remove and reschedule Item 4 from the agenda.

Councilmember Clark made a motion to move Item 4 to the December 17, 2018 agenda, seconded by Councilmember Friedel.

Councilmember Cromley asked if the Zoning Commission needed to take additional action on the item. Mr. Brooks stated that in the past the Zoning Commission was able to state "no recommendation was made." Wyeth Friday, Planning Director,

stated the Zoning Commission had forwarded a recommendation of approval with 1 person voting in favor and 4 in opposition, therefore, the motion for approval had not passed and the Zoning Commission had not taken any further action. He added Council had seen similar situations in the past without a clear recommendation from the Zoning Commission.

Mr. Brooks stated the Zoning Commission was not legally obligated to provide a recommendation and Council had the authority to vote however they chose. Councilmember Cromley stated he had concerns with the staff memo stating the Zoning Commission was recommending denial and thought it should state no recommendation was given.

On a voice vote, the motion to move Item 4 to the December 17, 2018 Regular Business meeting was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 ONLY. Speaker sign-in required.** (Comments are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign the roster located on the cart at the back of Council chambers or at the podium. Comments 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. Large Area Mowers.** (Opened 11/13/18) Recommend Midland Implement; \$137,751.
- B. Professional Services Contract,** W.O. 18-30 City County Drain Mitigation Project; COP Construction; \$2,850,000.
- C. Amendment No. 1,** Terminal Building Lease, U.S. Government for the benefit of the TSA; \$6,044.
- D. Ten-Year Twenty-Year West End Hangar Ground Lease** to Steven A. Vold Revocable Trust and Susan K. Vold Revocable Trust, as Tenants in Common, revenue first year \$1,449; revenue subsequent years adjusted by CPI-U.
- E. State Highway Traffic Safety Billings Selective Traffic Enforcement Program (STEP)** overtime grant; \$9,000.

F. **Sartorie Subdivision, 2nd Filing**, final plat.

G. **Zimmerman Home Place Subdivision, 2nd Filing**, final plat.

H. **Bills:**

1. October 22, 2018

Councilmember Brown and Councilmember Cromley separated Item 1H1 in order to abstain.

Councilmember Ewalt separated Item 1B for clarification.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Items 1B and 1H1, seconded by Councilmember Friedel.

Councilmember Yakawich and Councilmember Ewalt asked for clarification on Item 1B. Kevin Iffland, Assistant City Administrator, stated the money would compensate officers on overtime shifts for holidays and DUI stops.

Mayor Cole asked for clarification on the low cost of the hangar lease in Item 1D. Kevin Ploehn, Aviation and Transit Director, stated the amount was comparable with other areas and added the hangar did not have any utilities and was a very small building.

Councilmember Ewalt asked why the lease had changed from a 10-year to a 20-year term. Mr. Ploehn stated the master plan for the area would not change and there was potential for utilities within the 20-year lease.

Mayor Cole stated he had emailed staff about some terminology changes he wanted in Items 1F and 1G. He added he would like to have additional future discussion with staff about the changes.

On a voice vote, the motion to approve the entire Consent Agenda, with the exception of items 1B and 1H1, was unanimously approved.

Councilmember Ewalt, in reference to Item 1B, asked for clarification on the timing and costs. Debi Meling, City Engineer, stated there were lead times on materials. She added they were also waiting on an encroachment permit from MDT and some easements. Ms. Meling stated the contract had been written with hourly equipment rates and wages would be paid using burdened and State Prevailing rates.

Councilmember Friedel asked if there was a plan B if the easements were not approved. Ms. Meling stated the process was almost complete and she was confident they would receive the easements.

Councilmember Joy moved for approval of Item 1B, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved for approval of Item 1H1, seconded by Councilmember Friedel. On a voice vote, the motion was approved 8-0, Councilmembers Cromley and Brown abstained.

#### **REGULAR AGENDA:**

#### **2. PUBLIC HEARING - Appeal of Denial of Encroachment Permit for Alberta Bair Theater. Staff recommends denial of appeal. (Action: approval or disapproval of staff recommendation for denial.)**

Ms. Meling gave a PowerPoint presentation on the location and the reasons staff recommended denial of the encroachment. The PowerPoint included plans for the sidewalk and parking changes to the area. She stated by moving the curb out, the driving lane would skewed on 3<sup>rd</sup> Avenue North. She added that could cause maintenance issues and plowing complexities.

Council asked various questions about the proposed plans, parking spots, and traffic concerns.

The public hearing was opened.

- **Michael Sanderson, Sanderson Stewart, Billings, Montana**, stated the plans for the building would remove the existing sidewalk and the new sidewalk would be part of the current driving lane. He added that Alberta Bair Theater (ABT) was an event center and had unique, large congested pedestrian issues. He stated the new design would create a buffer from traffic for pedestrians. Mr. Sanderson stated all three surrounding building owners were in support of the encroachment. He added that skewed out lanes were already present in many areas of town.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana**, stated an area for buses could be created north of the church on 4<sup>th</sup> Avenue North.
- **Jan Dietrich, Executive Director of Alberta Bair Theater, Billings, Montana**, stated in addition to the TIF funding ABT had received, they had also raised an additional \$6.5 million. She added the alley was regularly used for buses, but thought it was a good idea to also use 4<sup>th</sup> Avenue North. She added that patrons were not currently able to use the parking spots that would be affected by the encroachment.

- **Connie Wardell, P.O. Box 21342, Billings, Montana**, stated she was in support of the encroachment and added that valet parking would be a great idea for the theater.
- **Hewes Agnew, 303 Parkhill Drive, Billings, Montana**, stated ABT was an important part of the City and the encroachment would be a very small compromise.

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

Councilmember Yakawich moved for approval of the encroachment appeal, seconded by Councilmember Ronning.

Mayor Cole asked for Ms. Meling's opinion about the encroachment. Ms. Meling stated they had looked at the public need and the encroachment did not meet the criteria for approval. She added the previous vacation had not included the encroachment, therefore, staff wanted to present it to Council.

Councilmember Cromley stated he supported the encroachment and added that ABT was a big attraction for Billings. He added that moving over a few feet would not make much of a difference to drivers.

Councilmember Brown asked about other bump outs in driving lanes. Ms. Meling responded that there were several other skewed lanes in town.

Councilmember Clark asked whether the plans could proceed with a smaller bump out. Ms. Meling stated that Council had the authority to make that recommendation and staff could work with the design team for other options.

Councilmember Friedel stated he had concerns with the size of the bump out.

Councilmember Cromley asked if ABT needed permission from the City for changes and if the City had oversight since they owned the building. Mr. Brooks stated ABT had received permission from the City previously for the changes. He added that ABT was the lessee and both parties were following requirements for the changes.

Councilmember Joy stated she was concerned with pedestrian safety and visibility of the encroachment. Mr. Sanderson stated the planned green space would be low and would not obstruct visibility.

Councilmember Ronning stated ABT was a very significant part of the City and added the community would be able to navigate the proposed street changes.

Councilmember Clark made a substitute motion to delay consideration to allow City staff and the applicant an opportunity to research a reduction of the 15% bump out

and present options no later than the December 17, 2018 Council meeting, seconded by Councilmember Friedel.

Councilmember Cromley moved to call the question. On a roll call vote, the motion was approved 8-2, Councilmembers Gibbs and Ronning voted in opposition.

On a voice vote, Councilmember Clark's substitute motion was approved 7-3, Councilmembers Cromley and Ewalt and Mayor Cole voted in opposition.

**3. PUBLIC HEARING AND VARIANCE TO SITE DEVELOPMENT ORDINANCE:**  
**A variance from BMCC, Section 6-1203(j), Off-Street Parking Requirements, reducing the number of required parking stalls from 70 to 44, for a new medical business located at 708 Broadwater Avenue. Collaborative Design Architects, agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Mayor Cole recused himself from Item 3, because the current owner of the property was his former client. Mayor Pro Tempore Yakawich presided over Item 3.

Dave Mumford, Public Works Director, stated there was not a presentation and added that the variance had been previously approved, but the property had been sold and the variance did not stay with the property. He stated the variance would need to be approved for the new owner.

The public hearing was opened.

- **Jeff Kanning, Collaborative Design Architects, Billings, Montana**, stated the previous medical facility on the property had received a variance for a smaller number of parking spots. He added the new owner had a similar medical-based business and applied for the same type of variance.

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

Councilmember Clark moved for approval of Item 3, seconded by Councilmember Friedel. On a voice vote, the motion was approved 9-0, Mayor Cole abstained.

**4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 971: a zone change from Neighborhood Commercial (NC) to Planned Development (PD) with underlying NC, to allow 1 microbrewery license and 1 restaurant beer and wine license (no gaming) on a 3.6 acre parcel of land described as: Lot 4, Block 1, MK Subdivision, north of Grand Avenue and west of 54th Street West. MYK Enterprises, owner; Scott Aspenlieder, agent. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation for denial.)**

Item 4 was moved to the December 17, 2018 Council Regular Business meeting.

**PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Sign-in required.**  
*(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster located on the cart at the back of Council chambers or at the podium.)*

The public comment period was opened.

- **Connie Wardell, P.O. Box 21342, Billings, Montana**, stated additional communication training for staff may help to provide clear recommendations of denial.
- **Terra Pierce, 3624 Quimet Circle, Billings, Montana**, asked why Item 4 had been removed from the agenda. Mayor Cole stated that staff and Council had received a letter from the applicant requesting the Zone Change be moved to the December 17, 2018 Regular Business meeting.

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

**COUNCIL INITIATIVES:**

There were no Council initiatives.

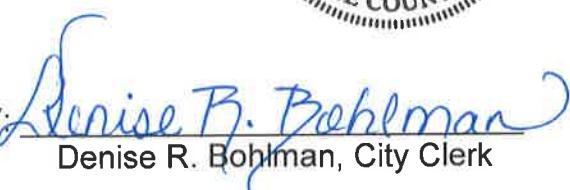
There was no further business, and the meeting adjourned at 8:07 p.m.

CITY OF BILLINGS

BY:

  
William A. Cole, Mayor

ATTEST:

BY:   
Denise R. Bohlman, City Clerk