

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 25, 2019

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 Ewalt gave the invocation.

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

**MINUTES:** February 11, 2019 – Councilmember Clark moved for approval, seconded by Councilmember Cromley. On a voice vote, the motion was approved unanimously.

### COURTESIES:

- Mayor Cole recognized the Boy Scouts for braving the cold weather during a recent sleepover.

### PROCLAMATIONS:

- There were no proclamations.

### ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski stated there was an email from Pam Ellis in the ex-parte notebook located at the back of Council Chambers regarding Regular Agenda Item 5 – One Big Sky District Development Plan Agreement.
- Mr. Kukulski informed Council the revisions for Consent Agenda Item 1C, MOUs with DBP and SBURA, were not complete and asked Council to vote on removing the item from the agenda and place on a later Council meeting. Councilmember Friedel asked about the possibility of moving Item 5 to the front of the Regular Agenda. Mayor Cole stated he would prefer to keep the agenda as it was.

### PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 5 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 at the cart located at the back of the 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.

- **Larry Seekins, 380 Camel Place, Billings, Montana:** in reference to Item 5, stated there was a market gap between the development and the City and urged Council not to support the OBSD agreement. He added the proposed plans for office retail and residential were too high.
- **Pam Ellis, 2000 Outlook Drive, Billings, Montana:** in reference to Item 5, stated she did not support the agreement and did not think the bill would pass legislature. She added that the numbers were off by millions of dollars and Council needed to ask more questions.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana:** in reference to Item 1C, he encouraged Council to postpone the MOU's.
- **Scott Hanser, 430 South Billings Boulevard, Billings, Montana:** in reference to Item 1C, stated the South Billings Urban Renewal Association (SBURA) Board had voted unanimously to support the MOU. He stated Steve Zeier had done an excellent job for SBURA.
- **Joe Holden, 316 26<sup>th</sup> Street, Billings, Montana:** in reference to Item 5, stated the parking garages would be \$90 million and the subsidies would be unfair. He added the phraseology of the agreement was not well defined.

The following constituents spoke against Consent Agenda Item 1D, concerning Lake Hills Subdivision vacation:

- **Seth Lee, 2521 Lake Heights Drive, Billings, Montana:** stated he was not opposed to the expansion but the neighbors were told lies by the developers and realtors. He added he did not support the proposed development plans and cramming so many houses into the area.
- **Kent Richmond, 2420 Ditton Drive, Billings, Montana:** stated he was not supportive of voiding the right-of-way. He added the proposed plan would completely change the character of the neighborhood and did not think the covenants allowed such changes.
- **Tanya Dahinden, 2545 Lake Heights Drive, Billings, Montana:** stated the proposed changes would create traffic issues and she would not support the vacation. She stated she would not have bought a home in the area had she known of the existing plans.
- **Mary Richmond, 2420 Ditton Drive, Billings, Montana:** stated the proposed changes would decrease the value of the existing homes and the majority of neighbors in the subdivision did not support the changes.
- **John Cutler, 2417 Ditton Drive, Billings, Montana:** stated he was concerned with the amount of lots proposed by the change. He added that the neighborhood could not support the increase of traffic by allowing smaller lots. Mr. Cutler stated the drainage pond could be in jeopardy by the increased homes.
- **Anthony Raue, 2436 Green Briar Road, Billings, Montana:** stated he did not support the vacation and was concerned with the increase of traffic and value of existing houses.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Solid Waste Division Wheel Loader for the Landfill.** (Opened 2/12/19)  
Recommend Tractor and Equipment Company; \$263,533.
2. **Solid Waste Division Compactor for the Landfill.** (Opened 2/12/19)  
Recommend Tractor and Equipment Company; \$1,035,070.
3. **Solid Waste Division Water Truck for the Landfill.** (Opened 2/12/19)  
Recommend I-State Truck Center; \$168,134.98.

B. **Memorandum of Understanding (MOU)** between the City of Billings and Billings Bench Water Association (BBWA) for rockfall mitigation; \$95,000.

C. **Memorandums of Understanding (MOUs)** with the Downtown Billings Partnership (DBP), and the South Billings Urban Renewal Association (SBURA).

D. **Acknowledge receipt of petition to vacate** portions of right of way within Lake Hills Subdivision, 25th Filing, Susan B. Lovely, Inc., Laurie Taylor, Inc., Julia Lawrence, Ken E. Roll and Jesse Arstein, petitioners; and setting a public hearing date of March 25, 2019.

E. **Donation** to the City of Billings Planning and Community Services Department from an anonymous donor for the Yellowstone Historic Preservation Board to continue historic preservation activities; \$2,000.

F. **Annual Federal Aviation Administration** Airport Improvement Program (AIP) Grants for 2019.

G. **Preliminary Major Plat** of Founders Park Subdivision, generally located south of Wicks Lane, approximately 340 feet, and on the east side of Hawthorne Lane; Habitat for Humanity, owner; Sanderson Stewart, agent; conditional approval and adoption of the findings of fact.

H. **Bills:**

1. January 28, 2019
2. February 4, 2019

Councilmember Clark moved to remove Item 1C from the agenda, seconded by Councilmember Joy. Councilmember Friedel asked for clarification on the revisions

needed for the MOU's. Mr. Kukulski stated there was some language from Montana Code that staff wanted to add. He added the revisions would take some time, but hoped to have the MOU's ready in time for the next Council meeting. On a voice vote, the motion to remove Item 1C from the agenda was unanimously approved.

Councilmember Friedel separated Item 1D for clarification.

Councilmember Cromley separated Item 1H2 in order to abstain.

Councilmember Brown separated Items 1H1 and 1H2 in order to abstain.

Mayor Cole separated Item 1A2 for clarification.

Councilmember Clark moved for approval of the entire Consent Agenda, with the exceptions of Items 1A2, 1D, 1H1 and 1H2. On a voice vote, the motion was approved unanimously.

Councilmember Yakawich stated he appreciated the drone view of the rock remediation in Item 1B and encouraged staff to continue utilizing drone views.

Mayor Cole, in reference to Item 1A2, asked Dave Mumford, Public Works Director, for clarification on receiving only one bid. Mr. Mumford stated they had spoken with other vendors and had been assured that the one bid received would be the lowest. Councilmember Joy moved for approval of Item 1A2, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

Councilmember Friedel asked for clarification on the voting process for Item 1D. Gina Dahl, Assistant City Attorney, stated that a vote was not necessary, as Council was just acknowledging the receipt of the petition. Councilmember Friedel asked if potential traffic and surface rainwater issues would be addressed at some point. Mr. Mumford stated the appropriate departments would review the issues during the next step of the process. He added the plat would come before the Council on March 11<sup>th</sup> and the vacation public hearing would be on March 25<sup>th</sup>, 2019. Mayor Cole asked for clarification on Council's role on acknowledging receipt of the petition to vacate. Mr. Mumford stated Item 1D was just a request to start the process.

Councilmember Gibbs asked for clarification on what would occur if Council rejected the petition. Ms. Dahl added that Council was only acknowledging the receipt of the petition and that there was not a precedence for Council to reject the petition.

Councilmember Ewalt asked for clarification on the existing covenants. Ms. Dahl stated the petition would be separate from the covenants. Wyeth Friday, Planning Director, stated covenants and restrictions were private matters. He added the City was reviewing the zoning requirements, subdivision process, traffic, fire, building, planning, storm water, etc. Mr. Friday stated any issues with the covenants would need to be

handled privately by the homeowners. He added that issues could be resolved throughout the preliminary plat process and up until the final plat process.

Councilmember Ronning asked if a traffic study would take place for the subdivision. Mr. Friday stated a traffic study would be required to review all of the issues.

Councilmember Cromley asked if the City had any issues with the merits of the petition. Mr. Mumford stated they were in the preliminary discussions of the petition.

Councilmember Clark moved for approval of Item 1D, seconded by Councilmember Joy.

Councilmember Gibbs asked if Council could add a stipulation to the petition between the homeowners and the developers. Mr. Kukulski warned about getting involved in a private legal issue and advised the City to continue its normal process.

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

Councilmember Friedel moved for approval of Item 1H1, seconded by Councilmember Joy. On a voice vote, the motion was approved 9-0, Councilmember Brown abstained.

Councilmember Friedel moved for approval of Item 1H2, seconded by Councilmember Joy. On a voice vote, the motion was approved 8-0, Councilmembers Cromley and Brown abstained.

#### **REGULAR AGENDA:**

#### **2. PUBLIC HEARING AND RESOLUTION 19-10784 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Wyeth Friday, Planning Director, gave an overview of the number of properties assessed and explained Code Enforcement's process. He added that 74% of the cases had resolved the issues within 21 days of receiving notice. Councilmember Brown asked if any property owners had protested the assessment. Mr. Friday responded he was unaware of any protests.

Councilmember Ronning asked when the City became involved. Mr. Friday stated their department responds when a complaint about weeds 12 inches or higher was received.

Councilmember Yakawich expressed a desire to eliminate chronic annual repeat offending.

Councilmember Friedel asked about the costs of contracting the service to an outside private company. Mr. Friday stated they had done that in the past and it was very expensive. He added that the least expensive option was for the property owner to cut the weeds themselves, and the City was not trying to be in the weed abatement business.

Councilmember Ewalt questioned why there were a couple of City parks near Cody Drive that were not mowed. Mr. Friday stated Code Enforcement coordinated with Public Works and Parks Department to decipher which City parks needed maintenance. He added he would research the parks in question.

Mayor Cole questioned if the complaint driven process was fair and asked if a different policy should be considered. Mr. Friday stated that some changes had been made that improved the process and it worked well. He added that additional staffing would be required to start policing the issues if the complaint driven policy was terminated.

Councilmember Clark raised a point of order and stated any discussion of policy changes should take place at a Work Session.

The public hearing was opened.

There were no speakers and the public hearing was closed.

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

**3. PUBLIC HEARING AND VARIANCE TO SITE DEVELOPMENT ORDINANCE: a variance from BMCC, Section 6-1203(r), Limited Access through the Alley, allowing customer access via the alley for 4 32nd Street West. Leo C. Schwehr Bypass Trust, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

David Mumford, Public Works Director, began a PowerPoint presentation showing the current driveway and the proposed variance, which would allow an alley access.

Councilmember Brown asked what would happen to the current driveway on Central Avenue. Mr. Mumford stated the current driveway would remain and the variance would allow an additional, safer access.

Councilmember Friedel asked why the current driveway had been allowed so close to the intersection. Mr. Mumford stated he was uncertain of the reasoning, but that it had been in place for a very long time.

The public hearing was opened.

- **Darren Schwehr, 129 North 25<sup>th</sup> Avenue, Bozeman, Montana:** stated his father bought the property in 1968 and the access was grandfathered in. He stated the Central Avenue project removed all of the parking that had been on the south side of the building. He added he had allowed the construction company to remove the existing access point, in an act of good faith, in order to make the access safer.

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

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

**4. PUBLIC HEARING AND SPECIAL REVIEW 973: a special review to allow the expansion of an existing church parking lot, on Lot 1C, Block 6 of Parkland West Subdivision, 1<sup>st</sup> Filing, a 3.15 acre parcel of land, generally located at 3548 Rachelle Circle. The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, owner. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Monica Plecker, Planning Division Manager, began a PowerPoint presentation showing a parcel map with the proposed special review. She gave an overview of the 3 criteria and the Zoning Commission's recommendation.

Councilmember Gibbs asked for clarification about the staff memo stating the property was likely tax exempt. Ms. Plecker stated the church facility on the west portion was tax exempt, but there was a vacant parcel that the City was collecting taxes. She added with the expansion and improvements, the owners would have to apply to the DOR to expand the tax exemption to the parking lot.

The public hearing was opened.

- **Bill Morgan, Sanderson Stewart:** stated the church was in favor of the recommendations. He added that existing LDS properties were very well maintained and the landscaping would be well kept. He added the church would follow State statute regarding the tax exemption.
- **Justin Graves, 419 Idaho Avenue, local representative for the LDS Church:** thanked Council for their consideration of the special review.

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

Councilmember Clark moved for approval of Item 4 and the findings of the 3 criteria, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

**5. APPROVAL of contract revision of One Big Sky District Development Plan  
Agreement between Big Sky Economic Development (BSED) and Landmark  
Development Services Company, LLC. Staff recommends approval. (Action:  
approval or disapproval of staff recommendation.)**

City Administrator, Chris Kukulski, reminded Council that Item 5 had been delayed from the February 11, 2019 Council meeting. He gave an overview of the proposed contract revisions and stated the amount of the reimbursement had been changed from \$1.34 million to \$2.578 million. He added additional money had been raised and the expiration dates had changed. He stated the agreement had been revised to end on April 30, 2019, in order to allow any possible legislative changes to occur.

Councilmember Friedel asked from where the \$400,000 would come. Allison Corbyn, Big Sky Economic Development, stated BSEDA was contributing \$300,000 from their Opportunity Fund. Councilmember Friedel asked if a portion of that money was from tax dollars. Ms. Corbyn stated portions of the money could be considered tax dollars and could be used in many different ways for economic development.

Councilmember Clark asked for clarification on what would happen if Landmark decided not to complete any of the catalyst projects. Kevin Heaney, attorney for Big Sky Economic Development Association, stated if three of the four catalyst projects were developed within 5 years, and Landmark was not the developer of any of them, then the reimbursement would be payable.

Discussions continued about the amendment and future obligations of all the partners.

Councilmember Gibbs stated concerns about the consequences of none of the projects being completed due to a shift in the economy. Mr. Kukulski stated the agreement stated that if none of the catalyst projects were completed by January 25, 2024, the City would not distribute a reimbursement payment. Councilmember Gibbs asked why there was not an arbitration clause in the contract. Mr. Heaney, stated the original development agreement was between BSEDA and Landmark and they did not see a clear advantage between arbitration versus court disputes.

Councilmember Yakawich moved for approval of Item 5, seconded by Councilmember Ronning.

Councilmember Yakawich stated he trusted Mr. Kukulski and the people involved to tie the reimbursement to the development agreement, if needed, to ensure the City would not lose any money.

Mayor Cole stated the original agreement had already been approved and the obligation of reimbursement would only happen if the City got a \$300 million project because the developer was not going to put money into a civic infrastructure project on

the possibility of a reimbursement. He added that the passage of the proposed legislative tool was very unlikely, but the City had several options available.

Councilmember Cromley stated the legislature would consider the bill very soon and it was unlikely to pass. He gave several reasons why he would not support the agreement.

Councilmember Ewalt stated due diligence had not been done appropriately and would not support the motion.

Councilmember Brown reminded Council that the motion was for approval of contract revisions and he did not want to see Council throw away the time and money that had already been spent.

Councilmember Ronning stated the City needed to do things at the City level regardless of what happened on the State level and would support the motion.

Councilmember Clark stated the plan had not gone far enough for the money spent.

Councilmember Gibbs stated Landmark and private groups could move forward with the development and would not support the motion.

On a roll call vote, the motion failed 5-5. Councilmembers Cromley, Ewalt, Friedel, Gibbs and Clark voted in opposition.

Councilmember Clark made a motion to reconsider the item after legislation was complete, seconded by Councilmember Friedel. Council and staff discussed the procedural ramifications and legal options of reconsidering the Council at a later date. Councilmember Clark withdrew his motion.

Councilmember Clark stated a Councilmember from the prevailing side would have to make a motion to reconsider the item.

**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 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:**

- Councilmember Yakawich made an initiative to use \$15,000 from Council Contingency Funds for the USS Billings commissioning, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 8:49 p.m.

CITY OF BILLINGS



BY: William A. Cole  
William A. Cole, Mayor

ATTEST:

BY: Denise R. Bohlman  
Denise R. Bohlman, City Clerk