

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 11, 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 Joy gave the invocation.

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

MINUTES: February 25, 2019 – Councilmember Clark moved for approval, seconded by Councilmember Neese. On a voice vote, the motion was approved unanimously.

COURTESIES:

- Mayor Cole recognized all the area basketball teams for their successes during recent district tournaments.
- Mayor Cole and Council recognized attending members of Boy Scout Troop #10.
- Councilmember Yakawich recognized Phillips 66 for their monetary donation to the USS Billings commissioning. Councilmember Ronning thanked them for their continued support for community safety.
- Councilmember Cromley recognized a local talented pianist, Tanner Jordan, who was one of seven pianists to compete at a national level.
- Councilmember Ronning thanked the 7th grade classes at Will James Middle School for inviting members of the Council to speak to them.

PROCLAMATIONS:

- There were no proclamations.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski stated that the ex parte notebook had emails from Morris Hall and Mark Redding, concerning Consent Agenda Item 1G, Residential Snow Plowing Services Contract Amendment, which were delivered after 3:00 PM.
- Mr. Kukulski stated that concerning Consent Agenda Item 1G, staff was requesting Council approve an amendment to FirstMark's contract for residential snow plowing of \$70,000. The amendment would allow Public Works to complete plowing all residential streets one additional time, if needed. If there was no need for additional residential snow plowing, FirstMark would not be paid the additional contract amount and the \$70,000 would remain in Public Works Street Maintenance contingency fund. Public Works had budgetary authorization of \$445,000 for residential snow plowing. Public Works had expended \$450,000. The \$5,000 contract overrun had been covered using operating funds.

- Mr. Kukulski stated the two concession renewal items for the airport, Consent Agenda Items 1H and 1I, needed to be removed from the agenda via Council motion so RFPs could be done and the removal required a $\frac{3}{4}$ vote of the Council.
- Mr. Kukulski stated Castlerock Park was added under Medium priorities, Improve City Parks and Trails System under Consent Agenda Item 1K, Council Priorities.
- Mr. Kukulski stated staff requested that Council move to delay to the March 25, 2019 Council meeting, Consent Agenda Items 1M and 1N, plats for Lake Hills and Canal Vista Subdivisions. The motion required a $\frac{3}{4}$ vote of the Council to delay action.
- Mr. Kukulski provided voting information concerning reconsideration of vote against contract renewal with Landmark. He stated a motion for reconsideration must be made during this meeting; must be made by someone on the prevailing side, but could be seconded by anyone. The motion could not be amended and must remain the same as before. The motion required a simple majority vote to bring the item back to the Council for reconsideration. The motion must include when to meet statutory requirements for notification and public participation.
- Mr. Kukulski provided a timeline for legal advertising and ballot placement for a second municipal judge.
- Mr. Kukulski provided to Council a list of 30 legislative bills that were monitored by the City's lobbyists. He stated that every other Thursday at MSU-B teleconferences were held with the lobbyists. Councilmember Yakawich requested that a conference call with the lobbyists be arranged for a work session in the near future.
- Mr. Kukulski provided information concerning the status of LC1182 – 406 Economic Impact Districts Bill.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes. 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.

The following individuals expressed their support for Consent Agenda Item 1L, \$15,000 of Council Contingency Funds for the 2019 USS Billings commissioning event:

- **Captain Ed Arnold, 1323 Paul Revere St., Billings, Montana**, explained the commissioning event and stated it was important to support the ship and her sailors.
- **Susan Davidson, 3138 Aviemore Court, Billings, Montana**, stated veterans are proud to have a ship named after Billings, their home.
- **Dennis Pitman, 726 Aquarius Place, Billings, Montana**, stated the County donated the first round of challenge coins and encouraged Council to approve the resolution.

- **Ron Spence, 5420 Cornerstone Avenue, Billings, Montana**, stated the ship was a man-o-war ship and it was a big deal. He presented challenge coins to administration and the Council. He invited Council to attend the commissioning in August in Key West, Florida.

The following individuals expressed their opposition to Consent Agenda Items 1M and 1N, Preliminary Minor Plat of Lake Hills Subdivision 25th Filing, Amended and Preliminary Minor Plat of Canal Vista Subdivision, respectively:

- **Laurel Gamp, 2440 Lake Heights Drive, Billings, Montana**, stated the re-platting to add 55 homes, rather than 32 to the area, would adversely affect traffic and devalue existing homes with multi-family rental units.
- **Adam Nelson, 2442 Green Briar Road, Billings, Montana**, stated the development was not an improvement to the area.
- **Kari Flannery, 2435 Lake Heights Drive, Billings, Montana**, stated her concerns for neighborhood safety.
- **Shane Winden, 2427 Lake Heights Drive, Billings, Montana**, stated the developers should honor their original covenants and plans.
- **Tanya Dahinden, 2545 Lake Heights Drive, Billings, Montana**, stated the development would change the character of the neighborhood and the developers should be held to the same covenants as they had promised.
- **Seth Lee, 2521 Lake Heights Drive, Billings, Montana**, asked why lots were advertised for sale if Council had not approved the re-platting.
- **Ted Mehr, 266 Annandale Drive, Billings, Montana**, stated the property owners were not given notice and that the plans were to build 2-, 4-, 8- and 10-plex units for the small area. He stated he built his own home and abided by the covenants; the developers should have to do the same.
- **Charles Soens, 2426 Lake Heights Drive, Billings, Montana**, voiced his concerns for traffic safety and stated the streets in the neighborhoods were not equipped for larger volumes of traffic.
- **John Cutler, 2417 Ditton Drive, Billings, Montana**, provided a petition of protest signed by neighbors to the Council. He stated that the Planning Division had stated in the staff memo that there had been no public comments on the subject and he questioned when property owners were to comment when they knew nothing about it.
- **Katie Winden, 2427 Lake Heights Drive, Billings, Montana**, stated that home development should remain the same as was existing in the area.
- **Nancy Doerr, 2417 Greenbriar Road, Billings, Montana**, stated she was thankful to the developers for creating the neighborhood in which she lived and having a vision. She continued that she opposed the proposed changes and the developers needed to keep within the covenants and she opposed creating ponds that would lead to increased mosquito populations.
- **Jeff Richter, 2430 Greenbriar Road, Billings, Montana**, stated there were only two entrances/exits to the development and that was not acceptable with increased traffic from new development. He stated the developers scheduled a neighborhood meeting, but had not attended it and that bothered him.

- **Craig Stannebein, 2441 Lake Heights Drive, Billings, Montana**, stated his property was located at the lowest point of the subdivision and more pavement would only make storm water runoff worse. He opposed pond development and possible flooding; increased mosquitos and traffic; and groundwater leaching.
- **Michael Christianson, 2424 Greenbriar Road, Billings, Montana**, stated he opposed the proposed changes to the development.
- **Katie Jones, 2515 Lake Heights Drive, Billings, Montana**, encouraged Council to view the properties proposed for development.
- **Brian Bushman, 2502 Lake Heights Drive, Billings, Montana**, stated developers had not honored the covenants and they should go through the same process to change them as everyone else.
- **Beth Richter, 2430 Greenbriar Road, Billings, Montana**, stated creating more density in the neighborhood with an additional 55 homes and 2 more streets was not desirable. She stated her concerns about wild grassland fire protection beyond the development and evacuation plans.
- **Alicia Christianson, 2415 Lake Heights Drive, Billings, Montana**, stated she was concerned about safety around the ponds and the smell of stagnant water.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **Seven (7) New Collection Trucks for the Solid Waste Division.** (Opened 2/26/19) Recommend Schedule 1 - Montana Peterbilt; \$1,646,160; Schedule 2 - Montana Peterbilt; \$208,605.
2. **Tank Truck for the Solid Waste Division.** (Opened 2/26/19) Recommend Kois Brothers Equipment Co.; \$82,408, with 5-year warranty included.
3. **W.O. 19-03, Contract No. 1 City Overlay.** (Opened 2/26/19) Recommend Knife River-Billings; \$1,297,604.70.
4. **W.O. 19-03, Contract No. 2 City Digouts.** (Opened 2/26/19) Recommend Wharton Asphalt, LLC; \$925,429.45.
5. **W.O. 19-03, Contract No. 3 City Crack Seal/Mastic.** (Opened 2/26/19) Recommend Wharton Asphalt, LLC; \$336,624.25.

B. Questys Centralized Document Management System Agreement with Harris Systems; \$86,896 upfront capital cost and annual maintenance \$10,881 for the 2nd year, with a 5% annual increase, an estimated 5-year cost of \$133,491.

C. City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County for 2019.

- D. **Consultant Agreement** with Sanderson Stewart to complete the Inner Belt Loop Corridor Study; not to exceed \$100,000.
- E. **Professional Services Contract** for design and construction administration of W.O. 19-01, Schedule 3 South Side Triangle Water Main Replacement; KLJ Engineering; \$577,600.
- F. **Services Contract** for Pay Parking by Cell Phone System with PayByPhone.
- G. **Amendment No. 1**, Residential Snow Plowing, Services Contract, FirstMark.
- H. **Amendment No. 1, Lease Extension through Terminal Project, Gift Shop Concession Agreement, Air Host Billings, Inc.**
- I. **Amendment No. 3, Lease Extension through Terminal Project, Airport Restaurant/Lounge Concession Agreement; Air Host Billings, Inc.**
- J. **Confirmation of Probationary Police Officers** - Jonathan Hill and Raymond Steiber III.
- K. **2019-2020 City Council Priorities.**
- L. **Resolution 19-10785** allocating \$15,000 of Council Contingency Funds for the 2019 USS Billings commissioning event.
- M. **Preliminary Minor Plat** of Lake Hills Subdivision 25th Filing, Amended, generally located north of the intersection of Ditton Drive and Greenbriar Road; Canal Vista, LLC, owner; Greg Reid of WWC Engineering, agent.
- N. **Preliminary Minor Plat** of Canal Vista Subdivision, generally located north of the intersection of Ditton Drive and Greenbriar Road; Canal Vista, LLC, owner; Greg Reid of WWC Engineering, agent.
- O. **Final Plat** of O'Malley Farms Subdivision.
- P. **Bills:**

- 1. February 11, 2019

Councilmember Clark moved to remove Item 1H from the agenda as recommended by staff, seconded by Councilmember Joy. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved to remove Item 1I from the agenda as recommended by staff, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved to continue Item 1M to the March 25, 2019 Regular Business meeting, per staff's request, seconded by Councilmember Friedel.

Councilmember Friedel asked whether Councilmember Neese had told anyone that he would vote against approving the preliminary plats. Councilmember Neese stated he did not say how he would vote, just that he was one of 11 to vote on the matters.

Councilmember Brown asked why the delay was requested. Planning Director, Wyeth Friday, stated the developers were working with their private legal counsel about possible issues with re-platting and the covenants and restrictions. Mayor Cole expressed concern about meeting the 35-day time restriction with the delay. He inquired whether there was an agreement with the developers to not hold the City to the time restriction since it was the developers' request to delay. Mr. Friday stated the deadline was March 26th and the applicants had asked for an extension to April 8th. Mr. Friday explained the vacation of the right-of-way process that would be heard during the March 25th meeting. He stated there were several steps to re-platting an area. Councilmember Yakawich clarified that the City was not a party to the covenants and would not get involved with the enforcement of private covenants, but the property owners were welcome to defend and negotiate those with the developers on their own. City Attorney, Brent Brooks, stated covenants and restrictions were superficially reviewed by staff, but staff had no input or enforcement of them. Discussions continued regarding approving, disapproving, and neighborhood protests, etc. of the preliminary plats and the criteria Council must consider.

Councilmember Ronning asked about the process for giving and publishing notices. Mr. Friday responded with the different requirements for the different types of plats.

Councilmember Gibbs asked if the property owners that attended the meeting and gave public comment would have to return to give comment again at the March 25th meeting. Mr. Friday stated their comments at this meeting were public record and it was not necessary, but they could return and speak again if they wished.

Councilmember Clark called the question, seconded by Councilmember Friedel. On a roll call vote, the motion failed for lack of two-thirds vote, 6 Yay; 5 Nay. Councilmembers Cromley, Yakawich, Neese, Brown and Mayor Cole voted Nay; Councilmembers Ewalt, Joy, Friedel, Gibbs, Ronning and Clark voted Yay.

Councilmember Yakawich asked City Attorney, Brent Brooks, whether the approval of the preliminary plats could be based on the fact that the public comments were opposed to the approval. Mr. Brooks responded, "no", the Council would need to delve into the conditions and decide if any of the conditions were inappropriate or mitigated. Mayor Cole asked whether the planning staff would work with Council to review the conditions. Mr. Friday stated he would be open to that, but to be clear that planning staff had regulations they followed in order to make their findings and recommendation.

Mayor Cole stated he wanted a written opinion prepared by the City Attorney concerning violation of covenants and the City's protections. He mentioned that the

Bench Boulevard Water Association's (BBWA) easement was a condition in which the City was to protect and he did not see a difference between protecting the property owners' covenants and the BBWA easement. Councilmember Joy took offense to the Mayor's request that staff work with Councilmembers to find a negative fact in the findings of fact. She continued that findings of fact were not to be bias toward negative or positive, they were to be impartial. She stated that doing otherwise would be to the contrary.

On a voice vote the motion to continue Item 1M to the March 25, 2019 Regular Business meeting, per staff's request was unanimously approved.

Councilmember Clark moved to continue Item 1N to the March 25, 2019 Regular Business meeting, per staff's request, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Ewalt separated Consent Agenda Items 1L and 1P1 for discussion.

Councilmember Gibbs separated Consent Agenda Items 1B, 1E and 1F for discussion.

Mayor Cole separated Consent Agenda Item 1G for discussion.

Councilmember Yakawich moved for approval of the Consent Agenda, with the exception of Items 1B, 1E, 1F, 1G, 1L, and 1P1, seconded by Councilmember Neese. On a voice vote, the motion was approved unanimously.

Councilmember Gibbs, in reference to Item 1B, voiced concerns about the minimum hardware requirements being sufficient. David Watterson, IT Director, responded that those were the minimum set forth by the provider, but the City had very robust server storage, virtual disaster recovery and backup. He stated it would be hosted internally, on premise, and the City's equipment far exceeded the minimum requirements. Councilmember Gibbs asked about contract language concerning potential breaches of confidential information and what controls were in place. Mr. Watterson responded that cloud solutions and on-premise solutions were considered and the same securities would be applied as with health and public safety data in a combination. He continued that the Harris Systems would have access as support only, training, etc., but would not have unlimited access. Councilmember Gibbs moved for approval of Consent Agenda Item 1B, seconded by Councilmember Ewalt. On a voice vote, the motion was approved unanimously.

Councilmember Gibbs, in reference to Item 1E, asked about whether the professional services contract had other bidders. David Mumford, Public Works Director, stated that under State law, professional service contracts for engineering or architectural projects could not be bid upon. He continued the agencies were considered by qualifications and then negotiated for the best cost. He stated that the proposals were

reviewed and staff determined KLJ would be best qualified and then the terms of the contract were negotiated.

Councilmember Ronning asked about the non-discrimination language contained in the professional services contract, specifically the word "sex", rather than "gender" and there were no protections in there for sexual orientation. City Attorney, Brent Brooks, stated the language was governed by State statute and taken directly from it. He continued that it was possible that Billings could change the language, but more research was needed.

Councilmember Yakawich moved for approval of Consent Agenda Item 1E, seconded by Councilmember Neese. On a voice vote, the motion was approved unanimously.

Councilmember Gibbs, in reference to Consent Agenda Item 1E, asked about the successful operation of the credit card meters. Tracy Scott, Parking Manager, stated there were some issued with the credit card meter, especially with snow piles blocking the sensors, but she was in constant contact with the company. She explained the operation of the PayByPhone system working with meters, but that it was possible to have the system operate in parking garages, too. She continued that the cost was substantial for parking garages. She stated parking rates would need to increase to create a maintenance reserve to upkeep the garages. Councilmember Neese asked whether the Parking Division was considering gateless entries to the parking garages. Ms. Scott stated they were researching options. Councilmember Neese asked whether the TIF district could provide financial assistance for parking meters and garages since that benefited downtown businesses. Ms. Scott stated the Parking Division used to receive TIF funds, but no longer did. Kevin Iffland, Assistant City Administrator, stated TIF funding was not currently available, but possibly would be again in the future.

Councilmember Friedel moved for approval of Consent Agenda Item 1F, seconded by Councilmember Joy. On a voice vote, the motion was approved unanimously.

Mayor Cole, in reference to Consent Agenda Item 1G, stated the residential plowing program had been a great success, but he questioned whether it was necessary to further the services contract given the time of year. David Mumford, Public Works Director, stated that if the residential plowing services were not needed, the money would not be spent and would remain in the contingency fund. He continued that historical data indicated that Billings usually had its worst snowstorms the first part of April and he wanted to be prepared. Councilmember Ronning asked who was responsible for clearing storm drains in residential areas when the snow piles over the top of them. Mr. Mumford responded that it was the property owners' responsibility, but Public Works tried to help as resources allowed. Councilmember Ronning followed by asking who was responsible for clearing snow and debris from ADA sidewalk ramps at intersections downtown. Mr. Mumford identified the MDT routes in the downtown area, and stated that City-owned streets in the downtown area were cleared by the Streets Department.

Councilmember Friedel moved to approve Consent Agenda Item 1G, seconded by Councilmember Gibbs. On a voice vote, the motion was approved unanimously.

Councilmember Ewalt, in reference to Consent Agenda Item 1L, complimented all those who had been involved with the USS Billings commissioning. He continued that he applauded the US military for their efforts in protecting the country. He stated, however, that he opposed spending an additional \$15,000 of taxpayer monies toward the commissioning, as last year \$15,000 had been spent for the project. He continued that there were areas within the City's organization that were in desperate need of money for improvements and expanded work spaces, where the money could be better utilized.

Councilmember Yakawich moved for approval of Consent Agenda Item 1L, seconded by Councilmember Ronning. Councilmember Joy stated her desire to see consistency with the Council's decisions and follow through. She voiced her approval for the adoption of the resolution to use contingency funds for the USS Billings commissioning. Councilmember Friedel moved to amend the motion, that the entire remaining Council Contingency fund of \$65,000 be donated on a 1:1 ratio of private fundraising funds and Council Contingency funds. The motion to amend died for lack of a second.

Councilmember Friedel moved to amend the motion to approve \$15,000 of Council Contingency funds now, and Council would match dollar for dollar any private donations received up to \$50,000 from the Council Contingency Fund, seconded by Councilmember Neese. Councilmember Brown stated he would not support the amended motion, but would support the original motion. Councilmembers Cromley and Ronning echoed Councilmember Brown's statement. On a voice vote, the amended motion failed 8-3. Councilmembers Cromley, Ewalt, Joy, Gibbs, Ronning, Clark, Brown and Mayor Cole voted in opposition.

On a voice vote, the original motion to approve \$15,000 of Council Contingency Fund to the USS Billings commissioning, was approved 10-1. Councilmember Ewalt voted in opposition.

Councilmember Ewalt, in reference to Consent Agenda Item 1P1, made inquiry into the payment made to Chuck Tooley for facilitating a Special Work Session on January 26th. He stated the payment amount seemed excessive. Discussion followed about whether a specific bill could be separated, but the remaining bills be approved for payment. Councilmembers Brown, Joy and Ronning stated they were not interested in micro-management of staff decisions and trusted staff to make good decisions. Councilmember Neese stated he would abstain from the vote. Councilmember Yakawich moved to approve Consent Agenda Item 1P1, seconded by Councilmember Cromley. On a voice vote, the motion was approved 10-0. Councilmember Neese abstained.

REGULAR AGENDA: No Items

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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, stated he was concerned that the South Billings Boulevard Urban Renewal Association (SBBURA) board was not approving minutes. He stated public comment was not allowed on anything the board was taking action on either. He referred to Section 2-3-103, MCA – Public Participation. He continued by addressing his concerns with the pending Memorandum of Understanding’s clause – Conflict of Interest, situations with board members, including employees and contractors, etc. He asked what the policy was should a conflict of interest be identified. He stated he believed there were conflicts of interest concerning Steve Zeier as a consultant for SBBURA and acting as a realtor in which he could possible gain favor. He stated it breached the public’s trust. He stated the City should issue a “No Contact Order” during the new road project process between the SBBURA and Steve Zeier.
- **Patrice Elliott, 2323 Crimson Lane, Billings, Montana**, stated she was the current board chair for the Billings Chamber of Commerce and provided a handout. She stated that of their 1,221 members surveyed, they received 161 responses that supported revisiting the interest in OBSD. She encouraged Council to reconsider its past decision of not renewing its relationship with Landmark.
- **Dan Brooks, Chamber of Commerce, Billings, Montana**, stated he surveys were sent to the primary representative of each member business, so only one response from each member business could be submitted. He continued that 13% of the surveys were returned.
- **Keith Hart, 220 Mountainview Boulevard, Billings, Montana**, voiced his support for Council to reconsider its 5-5 vote concerning renewing the agreement with Landmark. He stated he was updating Council regularly with signatures on a petition he had started and there were now 685 signatures. He urged Council to provide support of the bill presently before the legislature, if they were not interested in reconsidering the renewal of the agreement with Landmark. He thanked the Landmark business partners for their efforts.
- **Jase Muri, 2821 Providence Place, Billings, Montana**, stated he supported the Council’s decision to not renew with Landmark.
- **Andy Patton, 4517 Rio Vista, Billings, Montana**, urged the Council to reconsider its vote not to renew its agreement with Landmark and clarified that \$400,000 was contributed by the Downtown Billings Partnership for the study.
- **Mike Nelson, Northern Hotel, Billings, Montana**, stated he hoped the vision for One Big Sky District was not dead. He encouraged the Council to reconsider its vote.

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

COUNCIL INITIATIVES:

- Councilmember Yakawich moved for the Council and Mayor to send a letter of support to the Legislature for the LC1182, 406 Economic Impact Districts Bill introduced by Senator Roger Webb, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.
- Councilmember Cromley moved that Council not proceed with the initial initiative for an ordinance amendment that would allow the City to obtain a second municipal judge, seconded by Councilmember Neese. On a voice vote, the motion was approved 8-3. Councilmembers Ewalt, Friedel and Clark voted in opposition.

There was no further business, and the meeting adjourned at 9:30 p.m.

CITY OF BILLINGS



BY:

William A Cole
William A. Cole, Mayor

ATTEST:

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