

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 10, 2003

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 Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Dave Brown.

ROLL CALL – Councilmembers present on roll call were: McDermott, Gaghen, Brown, Brewster, Iverson, Kennedy, Poppler, Jones and Larson. Councilmember Ohnstad was excused.

MINUTES – January 27, 2002. Approved as printed.

COURTESIES – None

PROCLAMATIONS – Mayor Tooley. None

BOARD & COMMISSION REPORTS -- None

ADMINISTRATOR REPORTS – Dennis Taylor.

- Mr. Taylor noted that a copy of the preliminary report on the Fire Station Relocation and Staffing study had been placed on the desk of the councilmembers this evening. It will be discussed at the Work Session next Tuesday evening.
- He also noted that a Revised copy of the resolution delaying a bid award on the Gabel Road SID (SID 1360) had been placed on their desks this evening. Due to unforeseen issues and numerous questions from the bidders at the pre-bid conference, staff is asking council for approval to delay the opening of bids on this project for two weeks, so the research can be done to answer the bidders' questions in advance of the opening. This delay needs to be ADDED to the agenda this evening.
- Lastly, Mr. Taylor briefed the Council on the outcome of the meeting with Bresnan Communications that took place this morning. Bresnan Communications will soon acquire the AT&T Broadband holdings in Billings and intends to maintain the existing level of service that AT&T Broadband provided. They are also interested in locating a regional office and a regional technical support center serving all employees of Bresnan Communications here in Billings. Mr. Taylor reported that a tentative agreement had been reached on the revised transfer agreement. This agreement is scheduled for Council action on February 24th.

ADDITION:

Councilmember McDermott moved to add the Resolution amending the bid opening date on SID 1360 – the Gabel Road SID to the agenda as ITEM P, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

RECONSIDERATION:

Councilmember Jones moved for reconsideration of the Capital Improvement Plan (CIP) that was approved at the last meeting, seconded by Councilmember Kennedy. On a voice vote, the motion to reconsider was unanimously approved.

RECONSIDERATION of Capital Improvement Plan (CIP) for Fiscal Years 2004 through 2007. Staff recommends approval. (Action: approval or disapproval of Staff recommendation.)

Councilmember Jones referred to the CIP book and noted that the amount stated for Cobb Field Replacement is \$9 Million and the Library Project is \$8 Million. He said his desire is to state the "range of costs" for Cobb Field as between \$3 Million and \$9 Million and the range of costs for the Library Project as between \$2 Million and \$8 Million. He questioned why the 2004 portion of the CIP shows both \$100,000 and \$8 Million for the Library project. City Administrator Dennis Taylor clarified that the 2004 portion is a \$100,000 study to assess the fire and safety issues of the Library. He said the General Obligation vote is set for the Fall of 2004 and would be considered in the FY 2005 budget.

Administrative Services Director Robert Keefe confirmed that the election is set for 2004, falling into FY 2005 and the \$100,000 study is in FY 2004. Mr. Taylor summarized the General Obligation Election schedule. He said the proposal brings the \$5 Million bond issue to the voter in November of 2003, the recommendations from the Blue Ribbon Committee for Cobb Field to the voters in November of 2004 and if a General Obligation bond is necessary for the Library, that would come before the voters as soon as 2005. Mr. Taylor assured the Council that it is the intention to stay within the ranges that Councilmember Jones recommended for those stated projects. Councilmember Jones asked that those ranges be incorporated into the CIP document.

Councilmember Jones moved to add a "range" between \$3 Million and \$9 Million for the Cobb Field project, seconded by Councilmember Poppler. On a voice vote, the motion was unanimously approved.

Councilmember Jones moved to add a "range" between \$2 Million and \$8 Million for the Library project and move the amount to the 2005 column, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

CONSENT AGENDA:

1. A. **Legislative Report and direction to Staff.**

B. **Bid Awards:**

- (1) **Vibratory Plow – Parks & Recreation Dept.** (Opened 1/21/03). Recommend K & E Equipment, Inc., \$21,940.67
- (2) **Skatepark.** (Opened 1/14/03). Recommend rejecting bids and readvertising for bids.

C. **Scheduled Airline Operating Agreement** and Terminal Building lease with Mesa Airlines, Inc., \$194,000.00/year.

D. W.O. 02-10: 6th Avenue North to Bench Boulevard Professional Services
Contract CM 1099(32), Morrison-Maierle, Inc., \$548,502.00.

E. Vehicle Lease with Big Sky Airlines for use of the City-owned 17-passenger van, \$4,500 for 6 months.

F. Contract Amendment #1 for 2003 Water Replacement Projects, HKM Engineering, \$103,335.00.

G. C.O. #1 for Diagonal Parking Conversion, United Rentals Highway Technologies, Inc., \$24,910.67.

H. Resolution of Intention 03-17954 to create SID 1363 for the installation of sanitary sewer and water transmission mains to serve properties in Cedar Park Subdivision, Phase I and Briarwood subdivision, Phase I and II and setting a public hearing date for 3/10/03.

I. Second Reading Ordinance 03-5235 expanding the boundaries of Ward II to include recently annexed property (Annex #02-18): A 9.9197 acre tract located in the NE4 of Section 14, Township 1 North, Range 26 East, B & R Development, owners.

J. Second Reading Ordinance 03-5236 for Zone Change #708: A zone change from Residential-7,000 to Residential-6,000 on Lot 1 of Robinson Subdivision. The subject property is located at 416 Orchard Lane. Laurie and Tuanette Van Winkle, owners.

K. Second Reading Ordinance 03-5237 for Zone Change #710: A zone change from Residential-6,000 to Neighborhood Commercial on Lots 1-4, Block 1 of North Park Subdivision. The subject property is located at 1511 6th Avenue North. John S. Armstrong, owner.

L. Second Reading Ordinance providing that the Billings, Montana City Code (BMCC) be amended by providing for the repeal of sections 2-201, and 2-211 through 2-225; and by adding new sections to be numbered 2-201 through 2-207, 2-211 through 2-216, 2-221 through 2-225, and 2-231 through 2-241; establishing: the Mayor and City councilmembers' compensation, duties, powers, and conduct; the meetings, rules of order, minutes, and rules of procedure; committees; the requirements for ordinances and resolutions, the procedure for adopting and recording same, and effective dates.

M. Temporary Street Closure: 2nd Avenue North, Division Street, 3rd Avenue North and North 20th Street for the *Montana Women's Run* on May 10, 2003.

N. Final Plat of the Amended North 100 ft of Lot 3, Block 8, Sunnyside Subdivision, 2nd filing.

O. Bills and Payroll.

P. **Resolution 03-17955** amending Res 03-17946 providing for the delay of two weeks to receive bids for the construction of improvements in SID 1360.

(Action: approval or disapproval of Consent Agenda.)

Councilmember McDermott separated Items J and L. Councilmember Poppler separated Item B2. Councilmember Brown separated Item E. Councilmember Brewster moved for approval of the Consent Agenda with the exceptions of B2, E, J and L, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item B2, seconded by Councilmember Larson. Councilmember Kennedy said the process that this bid has gone through frustrates the Council and the prospective bidders. He said the impression is that the City is more interested in bids from national groups than from local bidders. Councilmember Kennedy made a substitute motion to accept the Hardy Construction bid, seconded by Councilmember Poppler.

Councilmember Brown asked about the varying specifications for each bidder. Parks and Recreation Director Don Kearney said there were no predetermined specifications or design. He said the idea was that an architect would "team up" with a contractor and submit a design/construction proposal to construct the Skate Park. He said the specifications given to prospective bidders were a construction price limit and design considerations including boundaries for right-of-way improvements. He noted that the design submitted by Hardy Construction contains all above ground structures and differs from the original design.

Councilmember Poppler asked if it was common practice to first accept a bid and then discuss changes with prospective bidders if they have submitted a bid that meets the requirements. Mr. Kearney said that is the common practice. He said the bid from Hardy Construction did meet the requirements, but he added that the City was hoping for more than one bid for competitive reasons. He said he is confident, from comments of several firms that the City will receive more bids if the item is re-advertised.

Councilmember McDermott said this is an exceptional situation. She noted that funding is coming from several sources, many of them donated dollars. She said it is imperative that every penny is accounted for and spent wisely.

Councilmember Jones asked if the pre-bid meetings were intended to produce a design before bid. Mr. Kearney said the intent of those meetings was to review the design with the users to be sure what is submitted would accommodate the kids that actually will use the park.

Councilmember Jones noted that the companies that submit these bids have certain costs involved in the bid process. He said the City should refine the bid process to eliminate the need to reject bids and re-advertise. He added that these repeated bid costs discourage local bidders from rebidding. He said the bid process is confusing and could lead bidders to assume certain negotiation options are available when they are not.

Councilmember Kennedy said his motion is intended to employ a local group that employs local people that support the community.

Councilmember Brewster asked if the City would still be able to negotiate the features in the park if the Council accepts the Hardy bid. Mr. Kearney said he did not know if there could be successful negotiations with Hardy Construction regarding a suitable design. City Administrator Dennis Taylor reminded the Council that this was a unique design and the City anticipated that the successful submitters would provide a suitable design and construction approach. He said, because there was only one bidder, the City's opinion is that the bid should be rejected and re-advertised to allow every interested party to rebid this unique construction project.

Mayor Tooley said the key issues in planning a skatepark were to decrease complaints from downtown business owners about the skaters damaging property and alleviate safety concerns from car drivers. He said the City did not feel it was appropriate to ban skaters unless there was an alternative for their particular sport. There is a skateboard committee that advises the City regarding the construction of the skatepark. He noted that the skatepark must appeal to the users or the City will not have solved the original skateboarding problems.

Councilmember Gaghen said there is a sense of dissatisfaction from the kids who skateboard about the scaled-back plan. Councilmember Poppler said she does not think the City has been fair to Mr. Hardy in that he is available to talk with the kids about what they want and this was not allowed to happen. Councilmember Gaghen asked if the results of the pre-bid meeting were made available to the various bidders as to what was desired. Mr. Kearney replied "yes" and said Hardy Construction was included. He said there was a pre-design with full plans and specifications as to what was desired by the skaters. This was shared with all the bidders that had bid packages. The problem with that first bid request was that the bids came back too high. Rather than spend more money to design another park, the City gave the bidders design freedom and the requirement was to remain within a certain price range. Councilmember Brown also expressed concerns about building a skatepark that the skaters won't use.

On a roll call vote for the substitute motion, the motion failed 4-6 with Councilmembers Kennedy, Poppler, Jones and Larson voting "yes" and Councilmembers McDermott, Gaghen, Brown, Brewster, Iverson and Mayor Tooley voting "no".

On a voice vote for the original motion, the motion was approved.

Councilmember Brewster moved for approval of Item E, seconded by Councilmember Brown. Councilmember Brown said he doesn't understand why the City is in the leasing business. Airport Business Manager Kevin Ploehn said the Airport does leasing all the time, but this is an odd case. He said Big Sky Airlines was up against a security requirement deadline of December 31, 2002 to screen passengers. They are the only tenant airline that does reverse screening, which means they bring passengers from small towns in to their destination areas that have not been screened and processes them on the tarmac. Because the existing space is too small for this process an alternate plan was required. There was not enough time to remodel the area to accommodate the explosive detection equipment. The best plan was to load passengers onto a bus and transport them to the terminal building where they could get into the screening line. He said the van used for this is a retired MET paratransit van that is scheduled to be transferred to Airport use. Big Sky would supply the drivers and all insurance requirements for this operation. This van will be used three times a day and is available for Airport use when not in direct service to Big Sky Airlines.

Councilmember Jones said this process has been very satisfactory in his flying experience. On a voice vote, the motion was unanimously approved.

Councilmember Brewster moved for approval of Item J, seconded by Councilmember Larson. Councilmember McDermott said she does not think the lot can support the proposed development. Councilmember Jones noted that a family member lives close to this zone change and he will abstain from voting. On a voice vote, the motion was approved with Councilmembers McDermott, Brown and Gaghen voting "no" and Councilmember Jones abstaining.

Councilmember Brewster moved for approval of Item L, seconded by Councilmember Larson. Councilmember Poppler said she does not think the Council needs a super-majority vote on anything. She suggested an amendment to strike the word "super" and substitute "simple" majority. Mayor Tooley noted the staff memo that spoke about the super-majority versus simple majority issue. He said a super-majority is required to consider and add late items to the agenda currently. There is a majority requirement for reconsiderations. He noted that if a motion, with all the required documentation, has already been considered it may not be necessary to have a super-majority when the motion is brought back for reconsideration.

Councilmember McDermott said she thinks a simple majority of six members of the Council should be sufficient. This would also be less confusing.

Councilmember Larson made a substitute motion to postpone Item L to the next meeting, seconded by Councilmember Brown. Councilmember Larson said the intent of the ordinance is to clean up some language in the present ordinance. He said he would like to have more time to review, ask questions and discuss the simple versus super-majority issue. He said the next work session could be an opportunity for this discussion. Councilmembers McDermott and Jones expressed the same desire to address their concerns. On a voice vote for the substitute motion, the motion was unanimously approved. The item was postponed to the February 24th Council meeting.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently annexed property in Annex #03-01: a tract of land situated in the NE1/4 of Section 23, Township 1S, Range 25E more particularly described as: C/S 1079, Second Amended Plat, Tract 4A, containing 0.0917 acres. Eugene A. and Carol C. Brosovich, owners. Staff recommends approval of the ordinance on first reading. (Action: approval or disapproval of Staff recommendation.)

There was no staff report. Mayor Tooley noted this is merely assigning this recently annexed property to Ward III per annexation procedures. The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Iverson moved for approval staff recommendation, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING relating to W.O. 96-08: 2000 School Route Sidewalk Program, making certain findings with respect to the pledge of the revolving fund

~~to the security thereof. Staff recommends approval. (Action: approval or disapproval of Staff recommendation public hearing only.)~~

Public Works Director Dave Mumford said on January 27th the Council approved pledging the Bond Revolving Fund for the 2000 School Route program. He said the City staff omitted a required advertisement for the public hearing and in order to follow the required process a public hearing was scheduled for this evening. There is no requirement of Council to take a vote; this is a public hearing to follow accepted procedures in State law. The public hearing was opened. There were no speakers. The public hearing was closed.

Council Initiatives -- NONE

ADJOURN --With all business complete, the Mayor adjourned the meeting at 7:20 P.M.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk