

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 10, 2011

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

ROLL CALL: Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, Astle and Clark.

MINUTES:

- December 20, 2010. Councilmember Ruegamer moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was approved 10 to 0. Councilmember Cimmino abstained from voting because she did not attend the meeting.
- January 3, 2011 (Special Business Session). Councilmember Ruegamer moved for approval, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Pepsi Challenge for Swords Park – John Brewer, President of the Billings Chamber of Commerce, gave a brief presentation on the project. He said they were partnering with the City, BikeNet, and a number of other community groups who supported the trail system and parks. He said they wanted to make Swords Park a destination for families, youth, and outdoor recreation enthusiasts. He said the project involved a \$250,000 grant for Swords Park through Pepsi and was a popularity contest driven solely by votes. Mr. Brewer said the funds would be used for a number of enhancements for Swords Park including signage, picnic shelters, wheelchair accessibility, and restoration of Yellowstone Kelly's grave and Boothill Cemetery. He encouraged everyone to vote via texting at 105554273774 or through the website 'Swords for Kids'. He said they were asking people to vote every day via cell phone and website until January 31st. He said they had to finish in the top two to receive the grant.
- Councilmember Clark asked everyone to wish his wife a happy birthday.

PROCLAMATIONS: Martin Luther King, Jr. Holiday - January 17, 2011

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised the Resolution for Item M2 and the Ordinance for Item N had been sent in the January 7th Friday packet and were available in the ex parte notebook in the back of the room for public inspection.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute per speaker.

Please sign up on the clipboard located 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.

The following individuals spoke in opposition of Item B – Approval of Agreement with Air Host for the Airport Gift Shop Concession.

- **Lonnye Weidler, 3120 Farnam Street, Billings, MT**, said she had leased Airport Gifts from the City since 1994 and increased her sales many years. She said in 2009 she had a decrease but many shops did because of the economy. Ms. Weidler said in October through December 2010 she had an increase in sales. Ms. Weidler asked Council to not approve the agreement with Air Host because they already had the Airport restaurant and bar.

Councilmember Astle asked Ms. Weidler if both she and Air Host had submitted a bid. She said they both had, and Air Host's bid was 1.25 percent higher. She said they knew what she had bid in previous years, but she did not know what they had bid.

- **Margot Hagstrom, 2016 Avenue C, Billings, MT**, said she protested the replacement of Airport Gifts by the recommended firm, Air Host, an out-of-state corporation. She said there were several unhandled communications in the due process by the Airport Business Office regarding the bid information. She said taking a 1.25 percent increase in business would be a moot point after taking many years to re-establish a new business. She said Ms. Weidler had never paid less than \$100,000 a year to the Airport; even though they only required a minimum of \$60,000. Ms. Hagstrom said Ms. Weidler had been timely and professional in the conduct of her business for 16 years and requested postponement until further investigation could proceed for the current owner.

- **LaMonte Wagner, 221 21st, Billings, MT**, asked Council to reject the Airport's choice and to favor the offer made by Ms. Weidler. He said she was a local businesswoman and had provided the City with revenues for over 15 years. Mr. Wagner said he had witnessed many travelers' comments on how appealing merchandise was when owned by a local person rather than a corporation. He said a copy of the contract was included in the proposal that stated \$60,000 would be the minimum. He said no mention was made requesting structural changes but Ms. Weidler stated she was open to any suggestions.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 10-08 Water Treatment Facility Clearwell Baffle Project** (Opened 12/21/10); Recommend COP Construction, LLC; \$936,852.
- B. **Agreement** with Air Host for Airport Gift Shop Concession; 2/1/2011 - 1/31/2016; estimated annual revenue - \$120,000 to \$132,000.
- C. **Agreement** with Billings Housing Authority to fund one Police Officer; 1/1/2011 - 6/30/2011.
- D. **Amendment #1**, Concession Agreement with Opti-Fi Networks extending term until October 31, 2011, to operate Wireless Fidelity Local Area Network concession in the Airport Terminal Building; estimated annual revenue - \$4,000 to \$5,000.
- E. **Approval** to rescind prior \$500 allocation of East Billings Tax Increment Finance District funds towards a feasibility study for the North Park Children's Center and **approve** the Billings Industrial Revitalization District's request to allocate \$2,500 of East Billings Tax Increment Finance District funds towards a feasibility study for the North Park Children's Center.
- F. **Approval of Quarterly Report for Pledged Collateral** for First Interstate Bank Certificates of Deposit, US Bank Certificates of Deposit, and US Bank Repurchase Account.
- G. **Declaring Surplus Property** and authorizing Fleet Services to release four Streethawk lightbars with controllers and red lenses to the ConocoPhillips Billings Refinery.
- H. **Acknowledge receipt of petition to annex #11-01**: a 1.5 acre parcel located on the northwest corner of King Avenue East and Calhoun Lane, legally described as a portion of the south 310 feet of Lot 24, Sugar Subdivision; Almon R. Blain Jr., owner and petitioner; and setting a public hearing for January 24, 2011.
- I. **Confirmation of Police Officers**: Michael Yarina, David Raschkow and Marc Snider
- J. **Approval and acceptance** of the State Highway Traffic Safety Billings STEP Overtime Grant for traffic enforcement funding, October 1, 2010 - September 30, 2011; \$10,000.
- K. **Approval and acceptance** of the 2011 High Intensity Drug Traffic Area (HIDTA) Award from the Executive Office of the President, Office of National Drug Control Policy, \$161,548.
- L. **Approval and acceptance** of U. S. Department of Homeland Security Grant for the City of Billings Bomb Squad for training and equipment; \$38,860.

M. Lots 9-12, Block 142, Original Town of Billings, located at the intersection of 1st Avenue South and S. 25th Street

1. **Acceptance of Grant Deed** for Lots 9-12, Block 142, Original Town of Billings, from the Montana Rescue Mission, \$0.00.
2. **Resolution of Intent #11-19017** disposing of Lots 9-12, Block 142, Original Town of Billings, located at the intersection of 1st Avenue South and S. 25th Street to RiverStone Health and setting a public hearing for February 14, 2011.

N. Second/Final Reading Ordinance #11-5527 Amending BMCC 26-500 related to reimbursement and compensation to developers for construction of certain water and wastewater facilities, to add reimbursement for stormwater facilities, and reimbursement for construction of certain water and wastewater facilities on property located within the Limits of Annexation, but outside the approved "Red Area" identified in the City Limits of Annexation Map.

O. Bills and Payroll:

1. December 3, 2010
2. December 10, 2010
3. December 17, 2010

Councilmember Pitman separated Item B. Councilmember Clark separated Item M. Councilmember Cimmino separated Items A1 and O1, O2, and O3.

Councilmember Astle moved for approval of the Consent Agenda with the exception of Items A1, B, M, O1, O2, and O3, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Pitman commented that Ms. Weidler had operated the business for 16 years, and he felt she did not see an imminent threat to her business and submitted her standard proposal. He said the personality behind the store was as much as the store itself, and he was recommending award to Airport Gifts.

Councilmember Ruegamer said he would like to hear Tom Binford's comments. Mr. Binford asked for specific questions. Councilmember McFadden asked if the amount of money was of any significance to the Airport. Mr. Binford advised it was because if they did not make money there, they would need to get it from somewhere else. He said they set minimum annual guarantees because they needed to generate monies to support the operation. Councilmember Ronquillo asked if there had ever been a problem with the current operator. Mr. Binford said there had not. He said he wanted to clarify that they were tough decisions but they generally bid their concession agreements, parking lot, gift shop, and car rentals on 5-year intervals using an RFP process outlining what they were looking for in the bid proposals. He said they had two vendors who provided responsive RFP's and when the proposals were evaluated, it came down to the revenue. He said the required minimum annual guarantee was

\$60,000, and the bidder being recommended bid a minimum annual guarantee of \$120,000. Mr. Binford said in any given year if the economy worsened, they would be guaranteed at least \$120,000. Councilmember McCall asked for Ms. Weidler's bid amount. Mr. Binford advised the minimum annual guarantee was \$60,000 and then she bid percentages of gross. He said she bid 18.5 percent for the first \$675,000; and Air Host bid 19.75 percent, which was 1.25 percent higher. Councilmember Gaghen asked Mr. Binford if the competitor had bid in the previous 5-year cycle. Mr. Binford advised they had. Councilmember Ruegamer asked Ms. Weidler how the company who bid against her knew her bid. Ms. Weidler advised they knew what she had paid in the years before. She said in previous years the business manager at the time, Kevin Ploehn, had encouraged her on what to do and suggested how much she should go. She said Mr. Ploehn told her she had the highest bid last time, and she told him she would go with the same bid hoping she made more. Councilmember Pitman asked for Ms. Weidler's average yearly payment to the City. Mr. Binford advised 2005 was \$123,987; 2006 was \$132,377; 2007 was \$133,274; 2008 was \$119,396; and 2009 was \$102,258. Councilmember Ruegamer asked Mr. Binford if action could be delayed for a couple of weeks. Mr. Binford said they used the public RFP process and received two bidders that met the requirements; and the bidder being recommended had a better bid. City Attorney Brooks advised they needed to apply the RFP criteria equally and consistently. He said the record would need to reflect why they chose the lower of the two bidders. Councilmember Pitman said it was not just about the dollars. Mr. Binford said experience and qualifications were 15 percent of the RFP process. He said Ms. Weidler had been in Billings for 16 years running the gift shop, and the other vendor had a number of successful gift shop operations around the country. He said store concept and transition plan were included in the RFP, and the existing vendor addressed it adequately, but the recommended vendor went into great detail on his visual presentation being proposed, renovation plan to enhance the gift shop appearance, location of items in the store to enhance sales, pricing strategy, point of sale management system, customer service goals, and how he would address getting DBE vendors. Councilmember Astle asked if there were any changes from when the RFP went out so it became 'apples to oranges'. Mr. Binford advised it was 'apples to apples.' He said if anything had been changed, there would have been an addendum to the RFP process. Councilmember Cimmino asked Mr. Binford what specific new look they were marketing for the gift shop that he believed was necessary. Mr. Binford advised they did not require it in the RFP, but the vendor they were recommending offered what they thought they could do to enhance sales. Councilmember Gaghen asked if the gift shop could be moved so people that were not traveling could access it. Mr. Binford said it would be a tough thing to do with the security. He said because they were more of an origination and departure airport with little connecting passengers, the gift shop on the secured side was the best location. Councilmember Cimmino said she agreed it took money to make money, but they really needed to take a look at the 16 years of established history of the current operator. She said she would be supporting the current business owner. City Attorney Brooks cautioned Council to follow the RFP criteria. City Administrator Volek advised the City's Purchasing Policy did not give additional points or percentages for local vendors, so it was on an even basis depending on the response to the proposal. Councilmember Pitman asked if it would be

better to delay the item for two weeks to make sure they had a solid basis. City Attorney Brooks said they could, but the Airport's timeline needed to be considered. Councilmember Astle commented if they delayed the item and asked for an entirely new RFP, they would ruin the whole idea of a competitive bid process and weigh in favor of one party or the other and possibly violate the fiduciary responsibility to the people of the City of Billings by voting with their hearts instead of their minds. He said they were talking about a minimum \$85,000 over the next five years and he would be voting in favor of the recommendation.

Councilmember Astle moved for approval of Item B, seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he did not want to delay it. He said Mr. Binford had run the airport very well for years, and he felt they were micromanaging. He said he was not going to vote to take a lower bid because they needed the higher bid. Councilmember Ulledalen advised he had a conflict due to a business relationship and would not be discussing or voting on the item. Councilmember Pitman said they could make numbers say anything on paper they wanted them to say, but the fact was it was about the amount of sales. He said they were playing it safe by guaranteeing \$120,000; but if sales and travel increased, they would exceed that amount no matter which one they picked. He said the recommended vendor was able to use the numbers and percentages Ms. Weidler had built the past 16 years, and then come in a little above knowing the averages. He said given Ms. Weidler's track record and the amount of money already made, he did not see where they would be betraying their fiduciary responsibility. He said they only had the ability of what the economy would support any way. Councilmember Astle commented if the sales went up for Ms. Weidler, they would also go up for Air Host; and they were going to get 1.25 percent more per dollar on every dollar that went through the door with a minimum of \$120,000 from Air Host or \$60,000 from Ms. Weidler. He said the Airport knew how to run the Airport, and they owed it to the citizens to take the better bid. Councilmember McFadden commented that every time an out-of-state franchise came into the area to do business, the profits headed straight to the coast. He said they needed to support the local businesses. Councilmember McCall advised she would be voting in favor of the motion. She said she empathized with the situation, but the City had a very strict bidding process, and they would be going down a very slippery slope if they began dictating changes. Councilmember Gaghen asked how long Air Host had been in business. A representative from Air Host advised they had been in business for 40 years. Councilmember Gaghen said she empathized with the local connection but Council would change the RFP process and questioned it from a legal standpoint. Mayor Hanel commented that competition was a very uncomfortable situation. He said Council was assigned a duty to make wise decisions and in this situation they were concerned about the future finances of the City of Billings. He said business was business, and the City of Billings was a business that needed managed. He said he respected the years of service Ms. Weidler had provided at the airport and the fine job she had done. He said he would support the motion.

On a roll call vote, the motion was approved 6 to 4. Councilmembers Gaghen, Ruegamer, McCall, Astle, Clark and Mayor Hanel voted in favor of the motion.

Councilmembers Ronquillo, Pitman, Cimmino and McFadden voted in opposition of the motion.

Councilmember Clark said he would like to vote on Items M1 and M2 as separate items.

Councilmember Clark moved for approval of M1, seconded by Councilmember Ruegamer.

City Administrator Volek advised the land was acquired by the City in 2003 in a land exchange with the City/County Health Department currently known as RiverStone Health. She said the Rescue Mission then received donation of the land with a five-year development limit in January of 2005 with reversion to the City if the land was not developed. She advised the Rescue Mission did not develop the land and deeded it back to the City in August 2009. Ms. Volek said in November of 2009, RiverStone Health submitted a request to purchase the property or have it donated. She said the Community Development Board considered the request and recommended that the City sell the property to RiverStone for \$35,000 and retain first right of refusal to repurchase the property if it were not developed and RiverStone decided to sell it. She said the purchase price was based on \$2.25 per square foot. Assistant City Administrator Bruce McCandless clarified he had provided Ms. Volek with incorrect information. He said the Community Development Board would be recommending that the City donate the property with first right of refusal in the event the property was not developed by RiverStone Health. He advised the resolution of intent that evening was not selling or donating the property to anyone; it was simply saying it was property the Council would like to dispose of and on February 14 the public hearing would be held and the Council would be considering who, if anyone, they wanted to sell the property to.

On a voice vote, the motion to approve Item M1 was unanimously approved.

Councilmember Clark moved for approval of the resolution of intent disposing of Lots 9-12, Block 142, Original Town of Billings, located at the intersection of 1st Avenue South and South 25th Street, and setting a public hearing for February 14, 2011. He said his motion excluded the words "to RiverStone Health" to give anybody who wanted the right to make an offer for the property, seconded by Councilmember Ruegamer. City Attorney Brooks advised Council would be amending the proposed resolution by striking the words.

Councilmember Ronquillo asked if another property appraisal could be conducted because the appraisal of \$2.25 per square foot was three to four years old. Ms. Volek advised another appraisal would have a price attached to it. Councilmember Ronquillo said he was tired of Ward 1 giving its property away. He said property was not cheap, and they had no property to just give away. He said the people who ended up with the property did not pay taxes, so they got deeper and deeper into a hole. He said the City spent a lot of money cleaning up the property and needed to charge good prices for it.

On a voice vote, the motion with the amendment was unanimously approved.

Councilmember Cimmino said she had a question for Mr. Mumford on Item A1. She said she worked for a local and international consulting firm and asked if the same company conducted the bid on the item. Mr. Mumford advised it did not. Councilmember Cimmino referenced the Engineer's Estimate at \$842,000 and the low bid at \$936,852 for a difference of \$94,832. She said the City engineers who provided

the estimate were trained professionals in their field, in the business, in the water and wastewater facilities for the entire community. She said it seemed to her, if they wanted to protect the fiscal and monetary gains for any process, it needed to be considered. Mr. Mumford asked if Councilmember Cimmino was asking why there was a difference. Councilmember Cimmino said the Engineer's Estimate told her that technically it was the ballpark figure the bidders should come in and bid the project. Mayor Hanel advised Councilmember Cimmino that Mr. Mumford was asking if she had a specific question she wanted answered pertaining to her comment. Councilmember Cimmino asked why there was a difference of \$94,832. Mr. Mumford said the Engineer's Estimate was based on previous knowledge of other bids. He said they had bids that came in much lower on a regular basis, which they always hoped for. He said the tunnel under Main Street came in the first time considerably higher than they ever thought it would. He said there were things during bidding they hoped the engineers covered and understood, but there were times when some parts of the bids came in higher than anticipated. Mr. Mumford said he could not answer the question exactly because he did not have privy to each of the bidders, but both bids were extremely close to each other, so he felt both contractors saw something the engineers did not see.

City Administrator Volek asked Mr. Mumford to explain how the department would make up the difference during the course of the project. Mr. Mumford said the project had funding, as referenced in the staff memo. He said there was still \$163,000 remaining in what they had estimated for the project total. Councilmember Gaghen asked if there was a time lapse between the Engineer's Estimate and when the bids were submitted and reviewed. Mr. Mumford advised normally it was only a few months. Mr. Mumford advised installing baffles was not a standard project, so they had to look at other bids and determine what someone else had done in another community or state. He said the engineer then needed to take the bids from one to two years earlier and try to estimate forward based on inflation, etc.

Councilmember McCall moved for approval of Item A1, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Items O1, O2, and O3 and stated for the record she was abstaining from invoices submitted from a local consulting firm where she was employed (Item O1-Invoice #739456); (Item O2-Invoice #739687); (Item O3-Invoice #739920).

Councilmember Pitman moved for approval of Items O1, O2, and O3. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA: None

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda; comments limited to three (3) minutes per speaker. Please sign up on the clipboard located at the podium.)

The public comment period was opened.

- **Leslie Modrow, 320 Clark Avenue, Billings, MT**, said she represented the Library Foundation and would like to provide an update on the proposed new Library.

She advised the private donor for the new library building had selected Will Bruder + Partners of Phoenix, AZ, to design the building. Her update included credentials and completed projects of Will Bruder + Partners and advised they had selected O2 Architects of Billings for their local support. She said Will Bruder and his associate, Richard Jensen, would be in Billings January 12-14 to meet members of the Library's boards and staff. She said the first community-wide meeting was scheduled for February 1 at 7 pm at the library.

- **Joe White, Billings, MT**, complained about the starlings and said they needed to be driven out of town. He said he needed the damages paid for his little girl. He also said a motion was needed to reconsider the approval of the City Administrator's contract and said he heard on C-Span the senator from Kansas also opposed her contract.
- **Kevin Nelson, 4235 Bruce**, asked Councilmember Ulledalen to explain the loan for the infrastructure costs to Cabela's through the Montana Board of Investment when a TIFD was created to provide for the infrastructure costs for Cabela's. He asked what the loan was for and who was paying it back.

COUNCIL INITIATIVES

- **Astle**: MOVED for reconsideration of Councilmember McCall's motion for approval of the resolution declaring an emergency to stabilize or remove sandstone boulders from public and private property and award a contract for removing and stabilizing the sandstone boulders at 1313 Granite at the February 14, 2011, meeting, seconded by Councilmember McFadden. On a roll call vote, the motion was approved 6 to 5. Councilmembers Gaghen, McFadden, McCall, Ulledalen, Astle and Mayor Hanel voted in favor. Councilmembers Ronquillo, Pitman, Cimmino, Ruegamer, and Clark voted in opposition.
- **Ronquillo**: MOVED to direct staff to look into removing the sidewalk barriers on North 28th Street and 1st Avenue North by the Northern Hotel since there was no work currently being done on the sidewalk, seconded by Councilmember Gaghen. On a voice vote, the motion was approved 10-1. Councilmember Astle voted 'no'.
- **Gaghen**: MOVED to direct staff to create a Proclamation for a future meeting honoring Billings Senior High School theater students for being chosen to perform at the Edinburgh, Scotland, Festival in August 2011, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

There were no other initiatives.

- **Clark**: Asked if Code Enforcement could force the property owners to clean up the rock and debris at 1313 Granite Avenue. Attorney Brooks said they could but he would recommend consulting with the MMIA attorneys assigned to represent the City on that particular location first.
- **Astle**: Asked if the City had hired an attorney to provide counsel on the matter at 1313 Granite Avenue. City Administrator Volek advised the MMIA had hired attorneys to represent the City on the Granite Avenue property only and not to provide other legal opinions.

There was no further business, and the meeting adjourned at 7:50 p.m.

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk



THE CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor