

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 14, 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 Gaghen gave the invocation.

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

MINUTES: February 28, 2011 – Councilmember Ronquillo moved for approval, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

COURTESIES: AmeriCorps*VISTA members – Mayor Hanel read a letter from Senator Jon Tester thanking the City for its support and the AmeriCorps*Vista volunteers for their work. The volunteers came forward, introduced themselves, and told where they were from and the project they worked on. Community Development Director Brenda Beckett introduced Doug Braun of the Officer of Community Service, who briefly explained the program and thanked the volunteers.

Councilmember Pitman said the ribbon cutting for Aspen Grove in the Heights had been held that day. He also said the new Sonic Drive-in was now open on Main Street.

Councilmembers Ronquillo and Clark said Chief St. John had done a great job at the "Chat with the Chief" session. Councilmember Clark said he thought other departments would benefit by doing the same thing.

PROCLAMATIONS: World Water Day, March 19, 2011

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced Lobbyist Ed Bartlett's weekly report sent in the March 11 Friday packets and said a copy was filed in the ex-part notebook for public inspection.
- Ms. Volek referenced Item 5, Moore Lane SID 1369, and said numerous e-mails and letters for and against the SID were sent in the March 11 Friday packets and copies were filed in the ex-part notebook for public inspection. She noted an e-mail from Mike Donovan and an e-mail from Ed Jorden had been sent to the Mayor and Council that day in favor of the SID. She said copies of the two e-mails were on their desks and filed in the ex-part notebook.
- Ms. Volek referenced Item H and asked that the item be postponed until June 13 to allow the Chamber of Commerce to complete a trail maintenance plan.
- Ms. Volek advised a public hearing had been advertised for that evening on a right-of-way vacation in Twin Oaks Subdivision. She said a staff report had not been submitted so the public hearing would be re-advertised and held at a later date.

- Ms. Volek advised on March 10 the original agenda had been revised to exclude Item M, which was a Resolution designating the remaining Downtown Tax Increment District account balance to the downtown street light and traffic signal project. She said the item had been removed to allow further research.

PUBLIC COMMENT on Legislative Review and “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. There were no speakers, and the public comment period was closed.

Legislative Review Conference Call with Lobbyist Ed Bartlett

- Mr. Bartlett began by providing a brief update on HB560, HB561, HB562, and HB564, the TIFD bills introduced by Elsie Arntzen. He said the hearings were scheduled for March 15 in House Taxation Committee beginning at 8 a.m. He said although they had conversation with Ms. Arntzen about amendments, he had no amendments in hand and did not know what Ms. Arntzen would say at the hearing about amendments. Mayor Hanel said he planned to be at the hearings at 8 a.m., and Mr. Bartlett said a member from the Chamber of Commerce was also planning to attend.
- Mr. Bartlett referenced SB152 sponsored by Senator Brown that would increase penalties for sexual assault. He said the bill passed the Legislature, was in the final administrative process, and would be forwarded to the Governor.
- Mr. Bartlett referenced SB251 sponsored by Senator Kaufman regarding the use of cell phones while driving. He said the bill was amended not to prohibit cell phone use while driving. He said it had been re-referred to the Senate Highways Committee and no hearing had been set.
- Mr. Bartlett referenced SB234 sponsored by Senator Sonju regarding solid waste services. He said an amendment had been proposed and it was presented to Senator Sonju by Councilmember McCall last Friday. He said they had not received a response from Senator Sonju. Mr. Bartlett said the hearing was set for March 17 at 3 p.m. and Dave Mumford would represent the City. Councilmember McCall said she would contact Senator Sonju first thing the next morning.
- Mr. Bartlett referenced SB372 sponsored by Senator Tutvedt, which was a phased reduction on business equipment tax that would provide 90% reimbursement to local governments. He said the City had not taken a position on the bill.
- Mr. Bartlett referenced SB392 sponsored by Senator Gillan regarding business equipment tax exemption amounts and said a hearing was held in Senate Taxation Committee on March 10. He said the City had not taken a position on the bill but his recommendation would be to support the bill.

- Mr. Bartlett said HB2, the General Budget Bill, had been passed by the House after three days of hearings by a vote of 65 to 34. He said it would go to the Senate, and the expectation was that hearings would begin as early as Friday of that week.
- Mr. Bartlett referenced HB230 sponsored by Representative Gibson that would transfer the Board of Crime Control from the Department of Justice to the Department of Corrections. He said the hearing was scheduled for March 15 but had been cancelled and a new hearing date had not been set. He said the Council had not taken a position on the bill. Mayor Hanel said he strongly opposed the bill because the funds would become swallowed up and used for other programs. Councilmember McCall said she also opposed any support for the bill. She said she had served on the Board of Crime Control for seven years and chaired the State Youth Justice Council. She said the two boards were important in terms of progressive work done in the State and the City of Billings would be severely impacted. City Administrator Volek advised the organization through Federal Grants funded one of the Victim Witness Coordinators, a prosecutor, a support person, and an additional person in the Police Department. She said if the agency was transitioned, staff advised it would take 4 to 12 months to become re-certified, during which time the City would not receive any grant funding for the positions but would still be responsible to provide the services. Councilmember McCall moved to oppose HB230, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.
- Mr. Bartlett referenced HB116, which was the Speaker's bill to repeal the medical marijuana initiative and said that day in Senate Judiciary Committee executive action was taken. He said the committee "stalled" on the vote with a 6 to 6 tie and no decision was made. He said it was in limbo until someone decided to vote differently to break the tie.
- Mr. Bartlett referenced HB240, the eminent domain bill, and said there may be some concern with local government. He said it would cause delays for parties wanting to condemn a property and increase costs. He said he was not able to get any details, and the hearing was set for March 16.
- City Administrator Volek referenced SB372, which was the phased reduction of the business equipment tax and the 90% reimbursement to local governments and asked for Council's direction. Councilmember Astle moved to support SB372, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.
- Councilmember McFadden referenced HB240 and asked Mr. Bartlett to look into the wording in the bill "for best public good." He said if "for best public good" was used, it would allow misuse by local authorities.
- Mayor Hanel asked Mr. Bartlett if he was present during the vote on HB161 and if there had been any discussion on conflict of interest with regards to the state-wide raids that had been conducted that day. Mr. Bartlett said he was present for the last half of the hearing and did not hear any discussion on the raids. Councilmember McCall said she had heard there may be an attempt to blast it out of committee and asked Mr. Bartlett if he had heard the same. Mr. Bartlett said he had heard the same thing and would be surprised if it did not happen. He said he thought from the limited

discussion he had heard, there was not support for the repeal itself. He said there seemed to be some support for more discussion on the Senate floor.

There were no further comments or questions, and the legislative review with Mr. Bartlett was concluded.

1. CONSENT AGENDA -- Separations:

A. Bid Awards:

1. W.O. 05-15, Howard Heights Park Improvements, (Opened 3/1/2011)
Recommend The Good Earth Works Co.; \$117,823.80.

B. Contract for Professional Services (3-year) with Tetra Tech to provide groundwater and landfill-gas monitoring services at the Billings Regional Landfill; \$109,997.

C. Contract for Professional Services (3-year) with Burlington Environmental LLC for hazardous waste collection and disposal services for the Solid Waste Division; \$225,000.

D. Contract for Professional Services with Brown and Caldwell for W.O. 08-16 SCADA Replacement Program; not to exceed \$59,200.

E. Approval of 20-year ground lease with the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA-APHIS) for new hangar at Airport (3/1/2011-2/28/2031); first year annual revenue - \$3,350; adjusted annually for inflation by the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items Figure (1982-1984=100), published by the Bureau of Labor Statistics.

F. Amendment #1, Automobile Rental Concession and Lease Agreement with Avis/Budget; \$4,795.77 for the three-month period beginning April 1, 2011 and ending June 30, 2011.

G. Recommendation of approval to the Policy Coordinating Committee for Amendment II of the 2010-2014 Transportation Improvement Program.

H. Recommendation of approval to the Policy Coordinating Committee for the Billings Area Bikeway & Trail Master Plan.

I. Easement with NorthWestern Energy for W.O. 09-10, Heights Packaged Water Booster Station Installation.

J. Easement for expansion of stormwater facility within Augusta Ranch Subdivision.

K. Resolution for Proposed Fee Increase for Mountview Cemetery.

L. Resolution for Proposed Pool Fee Adjustments lowering the age for no cost pool admission from the current 6 & under to 4 & under, and to asses a \$5.00 fee for each individual low income family pool pass issued at both Rose Park and South Park pools.

M. Resolution revising Resolution #11-19016, Creating an Ad Hoc City Art Policy Committee's Members and Tasks.

N. Street Closures:

- 1. Downtown Billings Association Second Annual Purple 5K Run and Bike Race.** 5K Run: Sunday, March 27, 2011, from 8:00 am to 10:00 am - Grandview Boulevard and N. 30th Street; south on N. 30th to 12th Ave. N.; west on Beverly Hill Blvd.; south on Virginia Lane; through Pioneer Park; east on Ave. C; north on 2nd St. W.; east on Ave. E; north on N. 32nd; east on 11th Avenue N.; east on N. 28th; west on 10th Ave. N; south on N. 31st; and left on 2nd Ave. N; finishing under Sky Point. Bicycle Race: Saturday March 26, 2011, from 4:00 pm to 10:00 pm - N. Broadway between 1st and 3rd Avenues North; 2nd Avenue North between 30th and Broadway; and the south lane of 3rd between 28th and 29th.
- 2. Shrine Circus "Elephants on Broadway",** Tuesday, March 29, 2011; 4:00 pm to 9:00 pm; between the 2700 and 2800 blocks of 2nd Avenue North and the 100 and 200 blocks of North 28th Street under Skypoint.

O. Second/final reading ordinance for Zone Change #872: A zone change from Residential 7000 to Residential Professional on two parcels of land described as Lot 1A and Lot 1B of Rush Acreage Tracts Subdivision located at 1910 and 1918 Shiloh Road. Billings Urban Fire Service Area, owner; Dan Schwarz, Deputy County Attorney, representative. Approval of the zone change and adoption of the determinations of the 12 criteria.

P. Preliminary Major Plat of Twin Oaks Subdivision, 2nd Filing, generally located on the south side of Wicks Lane, west of Lake Elmo Road; Twin Oaks Corporation, owner; conditional approval and adoption of the findings of fact.

Q. Final Plat Approval of Kuhlman Subdivision, Amended Lot 7 and **approval** of requested variance.

R. Bills and Payroll:

- 1. February 11, 2011**
- 2. February 18, 2011**

Councilmember Astle separated Agenda Items F and N1; Councilmember Clark separated Agenda Item C; Councilmember Cimmino separated Agenda Item R2; and Councilmember Ruegamer separated Agenda Item H. Councilmember Astle moved for approval of the Consent Agenda with the exception of Items C, F, H, N1 and R2, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

Councilmember Clark referenced Agenda Item C and asked Mr. Mumford for the cost of the current method. Mr. Mumford advised they budgeted \$75,000 for twice a year. He said the proposed amount was \$225,000 over three years, or \$75,000 a year. Mr. Mumford advised they were in the process of providing a permanent hazardous waste facility so drop off would not be limited to just twice a year. He said they were working with Planning on a proposed site because there were zoning issues involved. Ms. Volek advised it would be funded out of the Solid Waste fund. Councilmember Clark moved for approval of Item C, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Astle asked Tom Binford if Agenda Item F had to do with the quick turn-around facility. Mr. Binford advised when they put together the car rental quick turn-around facility, they wanted to re-bid the car rental concession agreement so they would know how many would go into the new facility. He said when they went through the bidding process they did not know the exact square footage of the new space for Avis/Budget, and the amendment just adjusted the rate for the correct square footage. He said it would be for 3-months and after that, they would be adjusting all of their annual rents. Councilmember Astle moved for approval of Item F, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for the postponement of Agenda Item H until June 13, 2011, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Astle referenced Agenda Item N1 and moved to amend the direction of the race to say "left on 2nd Avenue North" instead of "right on 2nd Avenue North", seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Agenda Item R2 and said she would be abstaining from the vote on Invoice #741787 due to employment. Councilmember Pitman moved for approval of Item R2, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION vacating South 23rd Street between 3rd Avenue South and 4th Avenue South and 4th Avenue South between South 23rd Street and South 24th Street for a total 54,380 square feet and approval of an easement agreement for the public utilities running through the vacated streets; ConocoPhillips, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there would be no presentation, but staff was available to answer questions.

The public hearing was opened.

- **Jim Stevenson**, said he owned property on the corner of South 24th and 4th Avenue South. He asked for the physical manner in which 4th Avenue South would be closed. Mr. Mumford advised ConocoPhillips currently had no intention of closing the road and were asking for ownership only. He said there were also utilities in the road, which would require relocation if the roads were closed. Mr. Mumford advised there may be temporary sawhorse barriers that could be moved if necessary.

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

Councilmember Ronquillo moved for approval of Item 2, seconded by Councilmember Gaghen. Councilmember Clark asked where the \$135,950 for the vacation would go. Mr. Mumford advised it would go into the Gas Tax Fund to be used for repair and additional road work. Councilmember McFadden asked if the streets involved a bike lane. Mr. Mumford advised they did not. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION ordering construction of improvements identified in W.O. 11-02, Miscellaneous/Developer Related Project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised it was an annual program. He said letters were sent out to the affected property owners, and they had received no protests.

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

Councilmember Ronquillo moved for approval of Item 3, seconded by Councilmember Astle. Councilmember Ronquillo asked if a property owner who was in the area but not included in the program could have the City install improvements on their property at the same time. Mr. Mumford advised there would be no way to assess that property owner, but if they wanted it done and wanted to pay for it, they could contact the contractor about doing the work separately or could petition to be included in next year's program. Councilmember Gaghen asked for clarification on #7 on North 31st Street that was included on the project location list. Staff member Mark Mace clarified it was for an alley apron. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION ordering construction of improvements identified in W.O. 05-13, Jackson Street Sidewalks, Phase II. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised the project was a continuation of the Safe Routes to School on Jackson Street and they had received no protests from the property owners. Councilmember Ronquillo asked about the differences in the sidewalk widths. Mr. Mumford advised it depended on right-of-way width differences and they had to fit the sidewalk in the best they could.

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

Councilmember Ronquillo moved for approval of Item 4, seconded by Councilmember Gaghen. Councilmember Ronquillo asked about the fate of the large pine trees on one of the properties. Mr. Mumford advised the trees would be removed but new trees would be planted further back. Councilmember McFadden asked if there would be additional lighting installed. Mr. Mumford said additional lighting would require creation of a Special Improvement Light Maintenance District. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION CREATING SID 1369: street, sanitary sewer, storm drain, curb and gutter, and sidewalk improvements to Moore Lane between Monad Road and Central Avenue. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised the project had come up and been tried before. He said Moore Lane had been changed from a collector street to an arterial street and said there had been a 39% protest on the project. Mr. Mumford said the design had not been completed and there would be a lot of work with the property owners on driveways. He said there were 35 driveways on the street so 75% of the frontage would be driveways with the remaining being sidewalk. Mr. Mumford said the project was recommended to have the center turn lane because of the number of driveways. He said if the turn lane was removed it would only add about five feet to each side of the road. He said they were taking no property and only right-of-way would be used. He said the City was paying for 24 feet of asphalt, and the reason for the turn lane was safety. Mr. Mumford said if they did not bring storm drain in, the road would collapse. He said there were properties without sewer and the project would install city sewer to each of those properties. Mr. Mumford said classifying Moore Lane as an arterial allowed the use of Arterial Fee and Gas Tax to help with the funding.

The public hearing was opened.

- **Mike Tehle, 306 Moore Lane**, said he was in favor of improvements but questioned why sidewalk was needed if 75% was driveway and said there was no need for a left-turn lane.
- **Don Mueller, 121 Moore Lane**, said Moore Lane needed storm drain improvements but said he opposed the 7-foot wide sidewalk and the turn lane.
- **Dave Heine, 131, 133, 135, 137, 139, & 141 Moore Lane**, said there was no need for curb and gutter, sidewalk, and drive approaches. He said fixing the potholes to retain the base and increasing the width of the road to allow better runoff was all that was needed.
- **Kay King, 108 Moore Lane**, said improvements were needed but the expense was too high.
- **Robert Barthel, 109 Moore Lane**, said he did not want sidewalk or a turn lane. He said improvements were needed but they should not have to pay so much.

- **Stan Stevens, 240 Moore Lane**, said he was not all against the SID because his septic was failing. He said they did not need a turn lane and two wide lanes were enough.
- **Dennis Newton, 249 Moore Lane**, said improvements were needed, but the sidewalk width should be reduced to 5 feet or they should be eliminated.
- **Max Griffin, 1010 and 1020 Central**, said he was in favor of the SID, and there was a lot of value in the street. He said everyone that spoke that evening agreed that some improvements needed to be done, and he encouraged Council to support the SID.

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

Councilmember Ruegamer moved to delay the item for two weeks, seconded by Councilmember McFadden.

Councilmember Astle made a substitute motion for approval of SID 1369 with 5-foot sidewalks, seconded by Councilmember Gaghen. Councilmember Ruegamer said he did not feel sidewalks were needed and he would like to see them eliminated. Councilmember McFadden said he agreed with Councilmember Ruegamer. On a voice vote, the substitute motion passed 9 to 2. Councilmembers Ruegamer and McFadden voted 'no'.

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

COUNCIL INITIATIVES – There were no Council initiatives.

Councilmember Astle asked for an update on the legality of withholding funds from NWE if they failed to comply with the contract. City Administrator Volek advised she did not have an update but would check with Attorney Brooks when he returned from vacation.

Councilmember Ronquillo said he did not see a 'for sale' sign on 1st Avenue South and asked if he should put one up. City Administrator Volek advised she would need to check the status with Assistant City Administrator Bruce McCandless.

Mayor Hanel said since the article was published in the newspaper regarding board and commission vacancies he had received a lot of inquiries. He referenced the Zoning Commission and asked for the residency requirements. Deputy City Attorney Bonnie Sutherland advised to serve on any advisory board or commission, a person was required to be a resident of the City for two years. She said she did not know of any unique requirement for the Zoning Commission regarding address or ward location. Ms. Sutherland said she would research further and get back to the Mayor.

Councilmember Gaghen wished Councilmember Astle and his wife a safe journey to Ireland.

Councilmember Ronquillo announced his daughter had given birth to a baby boy that morning.

There was no further business, and the meeting adjourned at 8:40 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk