

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 12, 2012

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

ROLL CALL: Councilmembers present on roll call were: Cromley, Ronquillo, Pitman, Cimmino, McFadden, Bird, McCall, Ulledalen, Astle, and Crouch

MINUTES: February 27, 2012 – Councilmember Ronquillo moved for approval, as presented, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES: AmeriCorps*VISTA Volunteers: Community Development Manager, Brenda Beckett, said the City of Billings was currently hosting ten AmeriCorp*VISTA members. The members introduced themselves and told where they were from and what projects they were working on in Billings. The members represented the states of New York, Ohio, South Carolina, North Dakota, South Dakota, Massachusetts, and Montana. They listed their projects as the Community Garden through the Housing Authority of Billings; the Positive Parenting Program through Family Support Network; the Childhood Hunger Program through the Billings Public Schools Health Advisory Council; the Literacy Program through HRDC District 7; the Elimination of Homelessness through the Community Development Division; the Volunteer Program through Tumbleweed Runaway Program, Inc.; and the Self Help Law Center Program.

Also present were Vicky Stephens from Senator Tester's Office, who read a message of thanks to the VISTA Volunteers from Senator Tester; Jim Corson, who said he worked for Senator Baucus and served on the Montana Commission on Community Service that oversaw the AmeriCorps*VISTA program in Montana; and Doug Braun, who said he also served on the Montana Commission on Community Service. Mr. Corson and Mr. Braun thanked the City of Billings and the City Council for taking the time to honor the volunteers for their service.

Councilmember Bird thanked Ms. Beckett for her dedicated support of the program and thanked all of the volunteers for their hard work. Councilmember Crouch asked how many volunteers had served in Billings. Ms. Beckett said through the AmeriCorps*VISTA Program, which was the only one she had managed, there had been a total of 31, and the current volunteers were the largest group serving in Billings at one time. She thanked city staff and the City Council for their support.

Councilmember McCall thanked Ms. Beckett and those associated with the AmeriCorp*VISTA Program. She said the program was happening all over the state, and she had been given the opportunity over the years to work with the program. She said there were great volunteers in Helena working on a project called Youth Move, which dealt with high risk kids, and it was gaining support in the state. Mayor Hanel also thanked the volunteers for their service.

PROCLAMATIONS:

- AmeriCorps Week, March 10 - March 18, 2012
- World Down Syndrome Day - March 21, 2012
- Women's History Month - March 2012

Councilmember McFadden reminded everyone of the annual downtown St. Patrick's Day Parade scheduled for Saturday morning at 11:00.

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following agenda item:

Item B – Work Order 10-19, Shiloh Conservation Area Professional Services Design Contract with DOWL HKM: She said Appendix D – Schedule of Professional Fees and Appendix F – Certificates of Insurance were not available at the time the agenda was published and were on Council's desks, and a copy was in the ex-parte notebook.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute. 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.

1. CONSENT AGENDA

A. Bid Awards:

1. W.O. 12-03, 2012 Street Maintenance Program, City Overlay. (Opened 2/28/2012) Recommend Knife River; \$810,474.55.

2. W.O. 12-22, Demolition of Underriner Building at 523 N. 29th Street. (Opened 2/28/12) Recommend H.L. Ostermiller; \$127,519.

3. Terminal Circle Road Rehab Project. (Opened 2/14/12) (Delayed 2/27/12); Recommend Knife River; \$207,279.95.

B. Professional Services Contract for W.O. 10-19, Shiloh Conservation Area. Contract for Professional Services; DOWL HKM, \$105,909.

C. Approval of (1) Assignment and Transfer of the West End Hangar Ground Lease from Robert Redman to Steven A. Vold Revocable Trust and Susan K. Vold

Revocable Trust as Tenants in Common; (2) New 20-year West End Hangar Ground Lease with the Vold Trusts; and (3) Lessor's Consent to Assignment to Secure Financing with First Interstate Bank.

D. Approval of 5-year Non-Commercial Aviation Building and Ground Lease with Corporate Air; 12/1/2011-11/30/2016; revenue first year - \$33,600; revenue subsequent years adjusted by Consumer Price Index for all Urban Consumers (CPI-U).

E. Approval of Limited Commercial Aviation Building and Ground Lease renewal with Alpine Aviation, Inc., DBA Big Sky Ground Support Industries; 3/1/2012 - 2/28/2013; annual revenue - \$12,587.86.

F. Approval of Semi Annual Investment Report.

G. Approval of Report for Pledged Collateral for First Interstate Bank Certificates of Deposit and US Bank Certificates of Deposit.

H. Approval for Police Officer Shane Winden to travel to Tasmania, Australia, in May 2012 to participate in the Group Study Exchange Program. Total expense funded by the Montana Rotary Club.

I. Resolution #12-19142 outlining the parameters of the bonds and the bond sale for SID 1392, Yellowstone Family Park.

J. Resolution #12-19143 adopting the 2012 Yellowstone County Pre-Disaster Mitigation Plan Update.

K. Second/Final Reading Ordinance #12-5550 for Zone Change #882: A zone change from Neighborhood Commercial to Planned Development – Neighborhood Commercial with an allowance for the on-premise sale of beer and wine without gaming and the provision of catering services on a 1.3 acre parcel of land described as Lot 2, Rose Park Subdivision, generally located at 1504 through 1528 24th Street West. Larson and Carpenter Partnership, owner; Pam Shires, 6 Degrees Gourmet, representative. Approval of the zone change and adoption of the determinations of the 12 criteria.

L. Bills and Payroll:

1. February 13, 2012

Councilmember Cimmino separated Consent Agenda Item L1. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Item L1, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item L1, Invoice #753005, and said she needed to abstain because the invoice had been submitted by her employer.

Councilmember Pitman moved for approval of Item L1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward 1 to include recently annexed property in Annexation #12-01: Tract 2A of Certificate of Survey 1404 Amended, a fraction of the southwest corner of Lot 4, and a portion of Lot 13, Clark Subdivision; generally located on Nall Avenue with frontage on South 27th Street and addressed as 108 Nall Avenue; Donald Lee, petitioner, on behalf of owners BL Realty, Inc.; The Estate of Richard E. Lee; the Estate of Donald R. Lee; and OE Lee and Company. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation but was available for questions.

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

Councilmember Ronquillo moved for approval of Item 2, seconded by Councilmember Cromley.

Councilmember Ronquillo said he wanted to correct an earlier statement he had made when he said Kimble was a gravel road. He said Kimble Drive was paved all the way to Nall Avenue, but it was in bad shape. He said there was another road right next to the four warehouses off of Sugar Avenue, and if they could cut the road straight through to the annexed property it would help alleviate the anticipated truck traffic on Kimble. City Administrator Volek said she would have staff look into it.

On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE revising BMCC Chapter 8, Cemeteries, Sections 8-302, 8-331, 8-332, and 8-334, increasing the amount of the Perpetual Care Fund from 30% to 35% and amending certain regulations for graves, markers, and burial. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised staff had no presentation but was available for questions.

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

Councilmember Astle moved for approval of Item 3, seconded by Councilmember McCall.

Councilmember Pitman asked if they were bringing everything up to code or up to the national standards. Cemetery Superintendent Lee Stadtmiller said the increase to 35% was a directive from the Parks Board the last time staff went to them to raise the fees at the cemetery.

On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #12-19144 ordering construction of improvements identified in W.O. 10-27, a CTEP project on the north side of Central Avenue from 29th Street West to 32nd Street West for the installation of

curb, gutter, sidewalk, drive approaches, and street widening. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator Volek advised the project would be funded through CTEP, Gas Tax, and direct property assessments. She said the direct property assessments were estimated to be \$38,000 spread among eight property owners, and the balance of \$322,000 would come from CTEP and Gas Tax Funds.

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

Councilmember Crouch moved for approval of Item 4, seconded by Councilmember Astle.

Councilmember Astle asked if there were property owners who backed up against the north side of the street between 29th Street West and 32nd Street West. Deputy Public Works Director Vern Heisler advised there were some property owners who were not addressed on Central, so they would not be assessed. He said the eight properties previously mentioned were addressed on Central, so they would be assessed per city policies. Councilmember Astle asked if the roadway would become four-lanes with a center turn lane. Mr. Heisler said the road would be widened to four lanes.

On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #12-19145 approving the FY2013-2017 Capital Improvement Plan (CIP); FY2013 Equipment Replacement Plan (ERP); and the FY2013 Technology Replacement Plan (TRP). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator Volek advised on an every-other-year basis, the staff did a full external review of the CIP that included a number of public hearings in the community, which would occur next year. She said currently the Council had before them a revision to update project costs and recognize changes in the program. She said the Capital Improvement Plan (CIP) proposed expenditures in the amount of \$59,714,695; the Equipment Replacement Plan (ERP) proposed expenditures in the amount of \$3,273,169; and the Technology Replacement Plan proposed expenditures in the amount of \$553,424. Ms. Volek noted there was a change in what had originally been proposed for the Park, Recreation and Public Lands chip seal of cemetery roads. She said it was reduced from \$200,000 to \$100,000 and moved from FY2013 to FY2017. Ms. Volek also noted Bill Cochran, Library Director, had discussions that day with the College of Technology and had additional comments.

Mr. Cochran advised when the CIP was originally presented by Mr. Heisler, Councilmember McCall asked about the proposed scheduling of the Community Library Project as a bond issue in FY2015, which would be only one year following the opening of the new library facility downtown. He said he met with the new Dean of the College of Technology, the Facilities Manager for the University, and Brent Roberts, the University Director of Library Services, that afternoon. Mr. Cochran said they all concurred that moving the project to FY2017 would be very compatible with the university's long range building plans and priorities. He said the highest priority on campus was the Science Building, which was ranked #2 in the Board of Regents state-wide priorities for the university system; so it was unlikely they would have funding before FY2017. He said

the Dean suggested that the Community Library Committee re-evaluate the space needs taking into account the experience of the ongoing pilot project, the impact of the new downtown library facility, and the evolution of technology to deliver information. Mr. Cochran said all parties on the campus were very comfortable with pushing the Community Library Project to 2017.

City Administrator Volek advised the CIP, ERP, and TRP were the subject of a work session at which time a full presentation was made, so staff had no additional presentation but was available to answer questions.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said he would like to encourage the City Council to finish the CIP projects. He said he still had an issue with the southeast corner of 32nd and Grand. He said there was a corner fence post sticking out in the way of traffic, and he did not know why all four corners of the intersection were not completed. Mr. Nelson also said he thought there was an agreement that if Public Works were to get an asphalt cutter, there would be a pilot project to use asphalt cuttings to alleviate some of the gravel streets in town.

Deputy Public Works Director Vern Heisler said they had received the milling machine and had used it quite a bit. He said last year was more of a "gearing up" with the equipment and the personnel operating the equipment, and they were ready to use it more. Mr. Heisler said he would talk to Mr. Mumford about the pilot project. Councilmember Ronquillo asked that Council be kept informed.

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

Councilmember McCall moved for approval of the Capital Improvement Plan, the Equipment Replacement Plan, and the Technology Replacement Plan, seconded by Councilmember Ronquillo.

Councilmember Pitman asked Parks Director Mike Whitaker if Council could receive a more cohesive CIP from the Parks Department because most of the projects were also included on the list of deferred maintenance. He said he wanted to make sure there were no duplications. Mr. Whitaker said their intent was to make sure all of the deferred maintenance projects had been put in the CIP, but they would go through it again. City Administrator Volek added that the projects in the CIP had various sources of funding, so they possibly needed to amend the sources for clarification. Councilmember Pitman said some of the maintenance had already been done so they could actually reduce the amounts for a more appropriate or realistic price tag.

City Administrator Volek thanked Vern Heisler, Paul Dextrus, and David Watterson for chairing the CIP, ERP, and TRP committees, as well as the staff members who served on the committees.

On a voice vote, the motion to approve the CIP, ERP, and TRP was unanimously approved.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

The public comment period was opened.

- **Cadet Cody Fryxell, 1731 Clubhouse Way, #3, Billings, MT**, said he represented the Cadet Corps, a student organization of Army ROTC. He said the Cadet Corps was a volunteer organization that did projects for the community. He said every year they held a fundraiser/dinner and he wanted to invite the city officials to attend. He said the event was March 15 at 6:00 p.m. in the MSU-B ballroom, and tickets were available for purchase. Cadet Fryxell said he would remain until after the meeting to sell tickets or answer questions and provided a phone number in the event someone needed to contact him. Cadet Fryxell commented that for the first time MSU-B was sending a small group to represent the university in the German Armed Forces Proficiency Badge and said it would be an honor if one of them could bring home the badge.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said the Police Chief had commented the Police Department would be enforcing the cell phone ordinance and writing more tickets. Mr. Nelson suggested that if the cell phone issues could be enforced, then there would be time to enforce noise issues. He said there were more noise problems that were deliberate acts by modifications of mufflers and stereos. He said they had a right to be in their home unimpeded by the noise. He said the laws were clear but there was lack of enforcement. He said the constitution and laws guaranteed a healthful environment, and it was not healthy when a person was awakened in the middle of the night because someone thought he could make a "bunch of racket" by modifying his muffler or car stereo system. Mr. Nelson also referenced the taxes coming back to the city from the South TIF District. He said the taxpayers were over assessed and paid an inflationary set of mills to fund government, so the funds returned from the South TIF District should be returned to the taxpayers.
- **Carol Mick, 2902 Ramada Drive, Billings, MT**, said she wanted to address the noise issue. She said many sports cars had their trunk space replaced with speakers that were cranked up that caused pounding in her chest and headaches. She said the noise could also cause someone to blackout, which would be a catastrophe in traffic.

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

COUNCIL INITIATIVES

- **Mayor Hanel:** Said he had received a noise and dust complaint on Orchard Lane and said he thought it was the former location of Andersen Steel Company. He said it was a large parcel of land and he thought it was located in the county. He said there were employees behind the buildings in the back lot sandblasting huge steel tanks. He said at least 100 feet away the noise was deafening without

protection, and there was white dust floating through the air with a minimal breeze. Mayor Hanel asked that staff follow-up on the complaint. He said he forwarded the information to Planning in regard to zoning and to the Commissioners in case it was located in the county.

Councilmember Ronquillo said he was at the location that morning, and the ground was white and looked like it was covered with snow. He said they had the same problem in the past at Empire Steel on 6th Avenue North and North 18th. He said the neighbors complained, and it was stopped. Councilmember Ronquillo said they were building huge, oil tank drums for the Bakken. He said the noise was bad, and if there was a windstorm, the neighbors to the southwest and southeast would really complain about the dust. He said they needed to take a hard look at it.

Councilmember McCall asked how the dust was disposed of. Councilmember Ronquillo said it dissipated, but after it became wet it hardened like clay on the ground.

- **Bird**: Said based on comments she had received from many people since becoming a councilmember, she was asking staff to research the video system in the council chambers. She said when watching the council meetings from home, there was a big piece of equipment shadowed on the screen. She said she would like staff to look at the process and costs to making changes to the video capabilities so people at home received a better view and better quality picture. Councilmember Bird said the screen was not easy to see the way the room was set up and asked that staff look at doing upgrades so anyone watching at home or in the council chambers could comfortably see materials that were being presented. She said she was surprised at how many people watched the meetings on television.

Councilmember Astle commented that Council had approved the 25 cent fee and other monies to go toward high definition and other improvements and said it sure would be nice to have the improvements they had paid for.

Councilmember McFadden asked when, if ever, the city would be streaming on the internet and said it was his understanding that some of the 25 cent fee was going to be used for streaming. City Administrator Volek said she and the City Clerk had discussed it on several occasions, and she did not know if it was covered under the 25 cent fee but she would check on it.

Councilmember Ulledalen said part of the new assessment was to fund the ability to stream the meetings on-line, and the discussion was whether or not they would be archived for later viewing.

Councilmember Pitman said they just started collecting the fee so it needed to be built up in order to start purchasing, but they were talking about streaming on the internet and high definition cameras. He said they had also asked them to do more graphics and detail instead of wide shots and have more clarity.

Councilmember Bird asked for a reasonable time frame when they could expect to receive some preliminary information in terms of options to upgrade, costs, etc. She said she did not expect the information the next day, but would like it in a reasonable amount of time. She said she concurred with

Councilmember Pitman in terms of expanding the visual part of it so whoever was speaking could be identified. City Administrator Volek said she would take care of it and report back.

Councilmember Pitman said directing staff to do it may not be what they needed to do and suggested inviting Community 7 and Lynne Turner Fitzgerald to a work session to give Council a timeline.

- **Crouch:** Said three councilmembers were part of the coal train seminar on Friday and Saturday. He said the seminar brought up again what had been going on for 50 years, which was trying to do something about train traffic. He said a request was that the Council consider being a part of the new emphasis and attempt to do something with the railroad and the coal companies regarding the time involved with trains and traffic, specifically on 27th Street. He said it was a concerned group of citizens bringing it back up to the center of the city's attention.

Councilmember Bird said she attended part of the seminar and concurred with Councilmember Crouch. She said it was one of the issues of concern she had identified when she decided to run for Council. She said it had the potential to be the most controversial matter they may have to deal with in the next four to eight years, and she would like to see them become actively engaged and really look at developing good solid community partners not only within the community but also with the railroad and the coal companies. She said they needed to identify the impacts and explore the best win-win for all parties. She said it had the potential to exacerbate an already existing problem in the community in terms of public safety. She said it had been an issue for 50 plus years and there had been 10 years of meetings and a tremendous amount of energy already put into it. Councilmember Bird said it was an issue that the City Council had to be willing to step up, do some hard work, and perhaps make some very difficult decisions in the best interest of the community.

Councilmember Ronquillo said the meeting was very good, and Planning Director Candi Beaudry had done a good job. He said the amount of coal dust the cars would leave was amazing as they went down the track. He said they needed to do something to cover the coal trains but the coal companies said it was too expensive so they just let the coal dust fly. He said Ms. Beaudry gave a good presentation about moving the railroad tracks 15 feet to the south on 27th, 28th, and 29th, and building an overpass or underpass. He said the seminar was well worth attending.

City Administrator Volek said the city requested assistance in doing a study called "Over, Under, and Around" as part of its appropriations request. She said four to five years ago it was determined the costs involved and the uphill struggle would not make it happen anytime soon, so the City was asked not to continue with its request. She said it would take a lot of cooperative effort if anything was to be done, and most likely it would involve federal funding.

Councilmember Ronquillo said an appraiser from the State of Montana attended, who said they appraised the railroad property in Yellowstone County at about \$7 million. He said that, in turn, went into the State General Fund and then a certain amount of dollars went to every city the train went through. He asked if

the City of Billings received the money. Ms. Volek said, if it did, it was probably part of the big bill and not money she was familiar with receiving separately. She said she would check into it.

Councilmember Cromley said he also attended the seminar. He said the engineer discussed moving the tracks, and it was very expensive. He said apparently in 2008 the best solution overall was to move the tracks approximately 20 to 30 feet south to allow more leeway to make the road go under, and the estimate was \$25 million. Councilmember Cromley said he would much rather see the \$1 million they were spending on the pedestrian walkway multiplied by 25 to get a real solution.

Councilmember Bird complimented Erin Clauch from the City Engineer's Office who served on the panel and said he did a great job. She said she also talked with Debi Meling, the City Engineer, and was very impressed with the Engineering staff. She said they needed to be proactive and not wait until they reached a reactionary phase. She said there was no perfect solution, and it would be expensive and inconvenient. She said they needed to be mindful of the businesses downtown and the commuters. She said when the coal was loaded and headed our way they were going to have problems in the community

Councilmember Ulledalen said one of the issues, assuming they had the \$25 million to build the tunnel under the tracks, was where the tunnel would come up – in front of city hall, in front of the courthouse, in front of the art museum; and then what to do about access from the other streets. He said beyond building the tunnel, there was the issue of how much real estate would need to be purchased for right-of-way access, on and off ramps, etc. He said that was when they finally threw in the towel. He said going back to 1820 when the railroads arrived, the depot was put on the wrong side of the tracks, and they had been “screwed up ever since.” Councilmember Ulledalen said at some point in time they needed to rethink what the real issue was and if they could pick something on the fringes of 27th that could be done with a little less impact. He said they needed to redefine the problem before they could figure out the potential solutions.

Mayor Hanel said he had passed around a letter and postcards he had been receiving daily from concerned citizens.

Councilmember Ulledalen said he had heard several comments about the estimates on the number of additional coal trains that would come this way. He said there was concern they were incorrectly stated and said he thought there would be some clarification on what the potential really was in terms today's impact versus the scenarios presented of additional, actual trains that would go through.

Councilmember Bird said she heard an interview that morning with a spokesperson from the BNSF, and they talked about how very difficult it was to determine what the increase in train traffic would be. She said she felt they could feel very certain there would be an increase and they already had a problem with the current traffic. She said they needed to take what came out of the ten years of blood, sweat and equity of the “Over, Under, and Around” project to try to

address the issue. She said they needed to come up with the best solution for the community.

Councilmember Ronquillo said the estimate by 2017 was a total of 42 and by 2025 they would have a total of 60 more coming through. He said he was amazed to learn that the State sold its coal for 35 cents a ton, and the average coal sale in the United States was \$54 a ton.

There was no further business, and the meeting adjourned at 7:47 p.m.

CITY OF BILLINGS



BY Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk