

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 9, 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 McFadden gave the invocation.

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

MINUTES:

- June 11, 2012
- June 25, 2012

Councilmember Astle moved for approval of the June 11 and June 25, 2012, minutes, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Angelo Bianco, Commander of the Military Order of the Purple Heart, said they had been asked by their national organization to create Purple Heart cities. He said many cities in the country have had a horrible time getting it done, but it only took a two-minute conversation with Mayor Hanel and City Administrator Volek to start the process, and the Mayor and City Council proclaimed Billings as the 8th city in the nation to become a Purple Heart City on May 28, 2012. He introduced Jerry LaFountain, the past Commander for the Military Order of the Purple Heart for Montana; Casey Elder (Iraq); Admiral Olivas (Iraq); and TJ Smith (Iraq). He said others watching on Channel 7 were Ben Steele, Dean Ellis, and Art Klein who were unable to attend. Mr. Bianco said people needed to realize the living recipients of the Purple Heart had only one purpose and that was to remember those who had not come back. He said people came to them and called them heroes, but it was really not the truth and the heroes were those who did not come home. He said they were honored that evening to have Ron Pearson in attendance, the father of Captain Andrew Pearson, who was lost in Iraq on April 30, 2008. He said with the help of others they planned to name an American Legion Post after Captain Andrew Pearson. Mr. Bianco presented Mayor Hanel, the City Council, and the City of Billings with a plaque in recognition of the loyalty to the Purple Heart Veterans of the City of Billings.
- Mayor Hanel said a very successful ZooFest had been held at ZooMontana the past weekend and thanked all of the contributors, organizers, and attendees.

PROCLAMATIONS: Relay for Life Day, July 13, 2012. Emily Nance, Community Relations Manager for the Yellowstone County Relay for Life, talked briefly about the Relay for Life event scheduled in Billings on July 13 and 14. Ms. Nance said last year Yellowstone County was the 14th largest Relay for Life fundraising event in the entire

world because of the generosity of the community and surrounding areas. She said the opening ceremonies would kick off at 7:00 p.m., the Clintons would be playing from 8:00 to 10:00 p.m., the luminaries would be lit at 10:00 p.m., there would be fireworks at 10:45 p.m., and then the Clintons would play again. Ms. Nance invited everyone to attend.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek referenced a copy of the program agenda for the Community Leadership-Joint Planning Meeting on the Council's desk. She said the meeting was scheduled for Friday, July 13, from 11:30 a.m. to 1:30 p.m., at the First Interstate Bank Operations Center and would involve the City of Billings, Big Sky Economic Development, Chamber of Commerce, Yellowstone County, and Downtown Alliance.

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. Snow Removal Equipment for Billings Logan International Airport. (Opened 6/26/2012) Recommend Wausau Equipment; \$616,682.

B. Change Order #3 - Kings Green Subdivision, Phase IV (Final), Knife River-Billings, minus (-) \$1,086.

C. Amendment #2, Airport Engineering Services for design of snow removal equipment and PCI study; Morrison-Maierle, Inc.; \$86,268.

D. Professional Services Contract with HDR Engineering, Inc. for W.O. 12-13, Reuse and Reclamation Study, as part of the Integrated Water Plan Implementation Projects; \$205,300.

E. Agreement with the Library Foundation setting ten (10) annual debt service payments of \$300,000 each to the City of Billings for construction of the new Parmly Billings Library.

F. Approval of Application for State Revolving Fund Loan for W.O. 09-19, Zone 3 East Fox Reservoir Expansion; \$2,700,000.

G. Approval and Acceptance of U. S. Department of Homeland Security Grant for the City of Billings Bomb Squad for training, current equipment upgrades, and new equipment; \$99,000.

H. Resolution of Intent #12-19185 to adopt an ordinance naming the expansion of Park 2 as an Expanded North 27th Street Urban Renewal Area project to allow financing with tax increment bonds; and setting a public hearing date for July 23, 2012.

I. Resolution of Intent #12-19186 to sell Lot 3, Block 13, Sunset Subdivision, 5th Filing, located at 1048 Grand Avenue; and set a public hearing for August 13, 2012.

J. Resolution #12-19187 authorizing the issuance and calling for a negotiated sale of \$213,000 Special Improvement District 1393 bonds.

K. Bills and Payroll:

1. June 11, 2012
2. June 18, 2012

Councilmember Cimmino separated Consent Agenda Items D, F, K1 and K2.

Councilmember Astle moved for approval of the Consent Agenda with the exceptions of Items D, F, K1 and K2, seconded by Councilmember Ronquillo.

Councilmember Ulledalen asked Ms. Volek if she had an answer to his e-mail inquiry on Item G and whether the city was reimbursed for employee costs, overtime, and mileage. Ms. Volek advised Councilmember Ulledalen's question was in regard to the federal government grant for the Bomb Squad and said the item was included in the current spreadsheet for the Police Department as part of the Priority Based Budgeting. She said it was under Logistical Support, which was rated in the third quadrant. Ms. Volek said the Police Chief advised her there were three certified Explosive Ordnance Disposal (EOD) teams in Montana, and Billings was responsible for handling calls in the eastern part of the state. She said they covered mutual aid requests and anything big they billed for, but typically they did not bill smaller agencies for quick and small jobs because they did not want to dissuade them from calling because of cost which could lead to someone being hurt or a situation being mishandled. She said the Police Chief also said the same approach applied to all of their special units.

On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item D, and said she would abstain due to her employment. Councilmember Pitman moved for approval of Item D, seconded by Councilmember Astle. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item F, and said she would abstain due to her employment. Councilmember Pitman moved for approval of Item F, seconded by Councilmember Astle. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Items K1 and K2 and said she would be abstaining due to her employment and due to a personal conflict. Councilmember Cromley referenced Item K1 and said he would be abstaining due to his employment. Councilmember McCall moved for approval of Items K1 and K2, seconded by

Councilmember Pitman. On a voice vote, Item K1 was approved 9 to 0, and Item K2 was approved 10 to 0.

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION de-annexing approximately 2.72 acres of developed land legally described as Lot 2, Hobby Subdivision, located at 550 Garden Avenue; June and Leonard Hobby, petitioners. Staff recommends denial of the de-annexation request. (Action: approval or disapproval of staff recommendation.)** Planning Division Manager Wyeth Friday showed a map of the subject property and surrounding properties and said most of the properties were annexed into the city in 2001. He said back in the 1980's a large mall was proposed in the area and a number of properties were re-zoned Commercial; however, the mall was never developed, and later the city de-annexed a portion of the properties along Garden Avenue. Mr. Friday said staff reviewed the de-annexation petition in relation to the De-Annexation Policy and was recommending the property not be de-annexed due to the following:

1. The property was currently connected to City water service in Garden Avenue. The property had been served by City water since it was annexed in 2001.
2. The property was adjacent to the public right-of way of Garden Avenue for its entire east frontage.
3. The property was bordered by other property with the City Limits on the north and was adjacent on the east, west and south to the acceptable limits of annexation as defined on the most recent update of the Limits of Annexation Map.

Mr. Friday explained that the county waterline in Garden Avenue had been upgraded a few years prior in an effort between the County and City to improve the line. He said the County created an RSID to assess the properties that were still in the County to pay for their portion, and the City paid the RSID amounts for the properties already in the City, including the subject property. Mr. Friday said the subject property had been on the city waterline since 2001, was currently not served by city sanitary sewer or storm sewer, but received other city services such as law enforcement and solid waste. He said staff concerns were the inconsistencies with the De-Annexation Policy and concerns about the city water service to the property and how it would be dealt with if the property left the city.

Councilmember Astle asked if there were buildings on the subject property. Mr. Friday said there were several residential buildings on the property, possibly one stick-built and one or two manufactured homes.

Councilmember Cimmino referenced the Briarwood annexation and asked if city services including water, sewer, police, fire, etc. were extended out to that area. Mr. Friday said it was his understanding that the sewer system in Briarwood had been failing and a lot of the emphasis was to get sewer service to Briarwood and then more recently the extension of water and the other services. Councilmember Cimmino said they had recently de-annexed approximately 22 acres in Briarwood and asked how it was any different than what they were considering that evening. Mr. Friday advised the

property on the southern edge of Briarwood was not developed at all and had no city services extended to it.

Mayor Hanel asked Mr. Friday if he knew what the cost had been on the subject property for the RSID reimbursement. Mr. Friday said he did not and would have to do some research.

The public hearing was opened.

- **August Bentz, Jr., 4331 Phillips Street, Billings, MT**, said he owned the property directly west of the Hobby property. He said he bought it because it was not in the city and he did not want city services. He said according to the newspaper and what he had heard that evening, the city was considering annexing all of it. Mr. Bentz said neither he nor his neighbors had been notified or knew anything about it. He said he was in favor of the de-annexation and was concerned about what the city's future plans were for the area. Mr. Bentz said it was his understanding there was an agreement that if the proposed mall was not built, the annexed properties would be reverted back to the county.
- **June Hobby, 550 Garden Avenue, Billings, MT**, said she was the owner of the property and clarified there were only two residential buildings on the property being serviced by city water.

Councilmember Ronquillo asked why they wanted to de-annex. Ms. Hobby said they had a neighbor who lived on Lot 1 who lured some of their "kitties" and fed and harbored them under her mobile home and then called the City Animal Control and reported them as strays. Ms. Hobby said the woman was known as the neighborhood troublemaker and gave them a list of things they had to do such as build a fence around their property and put the "kitties" on leashes. Ms. Hobby said fencing around 2.7 acres of land was too expensive. Ms. Hobby said she did not want to deal with the City Animal Control anymore, and they were frustrated with the city because they did not feel they were getting the service. She said even though they had been in the city since 2001, they were still considered county. Ms. Hobby said her "kitties" kept the mice away and if the neighbor had not fed them, they would not be asking for the de-annexation. She said her "kitties" were not hurting anybody.

Mayor Hanel asked Ms. Hobby if they would have another source of water if the property was de-annexed and the water service discontinued. Ms. Hobby said they hauled water before.

Councilmember McCall asked Ms. Hobby if they would be willing to haul water again. Ms. Hobby said they would have to but she did not understand why it would be taken away because before they were annexed, they had city water. She said when her father bought the property in 1945, they had city water.

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

Councilmember Bird asked staff to address the water service and if there was any type of de-annexation agreement if the proposed mall development did not occur. Mr. Friday said he did not have any information on any agreements that were made during the mall development process, but he did know there were de-annexations of some of

the properties. He said they would need to look into it. Deputy Public Works Director Vern Heisler said it was his understanding it was a county waterline prior to the annexation. Councilmember Bird asked Mr. Bentz to comment further. Mr. Bentz said he also owned property on Charlene Street, which was outside the city. He said the city had originally put a waterline in Charlene Street in 1947.

Councilmember Ronquillo moved to deny the de-annexation request, seconded by Councilmember Astle.

Councilmember Pitman said the major issue seemed to be more about the cat dispute and asked if it could be resolved with City Animal Control. City Administrator Volek advised animal control was complaint driven, and they had a neighbor who was complaining. She said there was a multiple animal license that could be obtained, and they would need to work with the complainant and City Animal Control.

Mayor Hanel stated he did not see any future city development in the area and did not see any benefits to move in that direction. He said he felt it would not be much of a detriment to de-annex the property.

On a roll call vote, the request to de-annex was denied 6 to 5. Councilmembers Cromley, Ronquillo, Pitman, McCall, Ulledalen, and Astle voted in opposition of the de-annexation. Councilmembers Cimmino, McFadden, Bird, Crouch, and Mayor Hanel voted in favor of the de-annexation.

3. PUBLIC HEARING AND FIRST READING ORDINANCE amending the boundaries of Ward IV to include recently annexed property in Annex #12-06: two parcels totaling approximately 4.06 acres located on the south side of Highway 3 just west of Hickok Circle, adjacent to city-owned parkland, and legally described as Tracts 2A and 2B, Certificate of Survey 2577; Timothy and Sheryl Dernbach and Jeff and Dana Sorenson, owners. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no presentation but staff was available to answer questions.

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

Councilmember McCall moved for approval of Item 3, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #12-19188 vacating street rights-of-way within Copper Ridge Subdivision, 2nd Filing; Copper Ridge Development Corporation, petitioner. Staff recommends approval. (Action: approval of disapproval of staff recommendation.) City Administrator Tina Volek advised there was no presentation but staff was available to answer questions.

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

Councilmember Astle moved for approval of Item 4, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-12-02: a variance from Section 1203(m) and (n) allowing vehicular backing within the public right-of-way on North 29th Street for the purpose of backing the bookmobile into the new Parmly Billings Library garage. Staff recommends

denial of the variance request. (Action: approval or disapproval of staff recommendation). Deputy Public Works Director Vern Heisler commented the staff recommendation was made to be consistent with city code and past recommendations. He said when the city engineers looked at the issue they did not see an engineering justification to grant the variance.

Councilmember Cimmino asked to view the site plan on the screen so Council could be shown how the vehicle would be backed in on North 29th Street. Library Director Bill Cochran explained there would be two vehicles entering and exiting on North 29th Street; the bookmobile and the outreach vehicle. He said it was anticipated each of the vehicles would leave once a day during the work week, and there would be three spotters to help guide the vehicles and to help with traffic control. Mr. Cochran said they understood the importance of the city code in its application to commercial, but their situation was somewhat unique in that it would only occur once a day rather than multiple times. He explained the only alternative would be to tear out the circular drive-through book drop.

Councilmember Ulledalen commented the entrance was where the former Selover/Underriner service entrance used to be, so there had been traffic coming in and out of that location for decades.

Councilmember Cromley asked for clarification of the ordinance. Mr. Heisler read directly from the code that "loading space shall be located so as to preclude backing maneuvers on the public right-of-way." Councilmember Astle commented there were violations all over town because in some locations a semi could not get to a dock without backing across the right-of-way.

Councilmember Bird asked if the variance request was exclusive to the bookmobile. Ms. Volek said the application indicated it would be the bookmobile and the home-bound book truck, which were two vehicles directly related to the library. Councilmember Bird asked if the variance request was the result of a design oversight and asked if it was a big issue. Mr. Heisler said Engineering looked at city codes and made recommendations based on the code. Mr. Cochran said he was not directly involved with the design team meetings and the review process, but Mr. Olsen of O2 Architects was in attendance and could provide an answer. He said if the variance were denied, it would require a re-design of the building.

Councilmember McCall encouraged the Council to approve the variance request. She said if the variance was not approved, they would have huge problems in terms of trying to address a re-design. She said it should have been caught earlier, but it was not. She said she thought it was very doable.

Councilmember Pitman commented that if the variance were approved they would be setting a precedent with future allowances and asked if approval should be conditioned with spotters or flashing lights. Councilmember Pitman asked how the City would protect itself from liability. Attorney Brooks said it could be a policy imposed by Mr. Cochran, and the Council could grant the variance with some type of provision that safety precautions needed to be in place.

The public hearing was opened.

- **Don Olsen, 2112 Fairview Place, Billings, MT,** said on June 13, 2011, a concept meeting was held with staff from Engineering, Planning, Building, and

Fire and all issues were discussed. He said at the meeting they even discussed whether the bus would back in or back out of the garage and nothing was brought up about it being a concern or needing a variance. He said it caught them by surprise, and it would be a significant impact to the project.

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

Councilmember McCall moved for approval of the Site Development Ordinance Variance #OP-12-02 with the inclusion that safety precautions be established and put in place by the Library Director, seconded by Councilmember Ulledalen. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #12-19189 CREATING SID 1394: curb and gutter, drive approaches, and street improvements to Macona Lane. Staff recommends approval. (Action: approval or disapproval of staff recommendation). Deputy Public Works Director Vern Heisler advised there was no presentation, but staff was available to answer questions. Mr. Heisler reported there were no protests received on the SID.

The public hearing was opened.

The following people testified in favor of the SID:

- **Mike Dockery, 3009 Macona Lane, Billings, MT**
- **Brenda Dockery, 3009 Macona Lane, Billings, MT**
- **Ellen Alweis, 3024 Macona Lane, Billings, MT**
- **James Foster, 3015 Macona Lane, Billings, MT**
- **Dennis McLuskie, 3021 Macona Lane, Billings, MT**

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

Councilmember Astle moved for approval of Item 6, seconded by Councilmember Ulledalen. On a voice vote, the motion 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said all of the people on the north side of Central had been assessed, and the one property on the south side of Central was not assessed. He said a measly 400 feet of curb could have been put in and the street would have been done. He said the person on the south side should have been assessed just like everybody else. Mr. Nelson referenced the special weeds on King Avenue West and asked why the rocks were put in. He said the weeds were allowed to grow up around them so no one could see

them. He said the city needed to cut its own weeds just like it expected everyone else to cut theirs. Mr. Nelson said there was a safety issue on Montana Avenue because the pedestrian walk-way signs were buried by overhanging trees. He said the City created the monsters but did not want to take care of them. He said the City expected people to take care of their yards and maintain clear vision triangles. Mr. Nelson said the DEQ was at a task force meeting and commented about the amount of dust on the city streets. He referenced a report from Public Works in a Friday packet that stated they had not put any dust control down this year and asked why.

Mayor Hanel referenced the dust control issue and told Mr. Nelson his information was inaccurate and centered on a particular area. He said he had visited with Public Works who had a very detailed schedule of the streets they treated not only on a complaint-driven basis but also on an as-needed basis. He said they had been applying dust control quite aggressively.

City Administrator Volek referenced the Montana Avenue issue and told Mr. Nelson she had met with the Downtown Partnership and the Parks Department over a week ago, and they scheduled trimming of the trees for the week of July 16. Ms. Volek pointed out the weeds on King Avenue West were native grasses planted to help reduce cutting and maintenance costs. Mr. Nelson commented that native grasses were also on private lots that the city assessed and then charged the property owner to cut. Mayor Hanel asked Mr. Nelson to provide him or Ms. Volek with a list of the areas that needed weeds trimmed, and they would address them.

Councilmember Astle referenced the Central Avenue issue and noted a building permit for the 2900 block of Central had been issued, and the development portion would include the installation of the missing curb, gutter and sidewalk on the south side of Central.

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

COUNCIL INITIATIVES – There were no initiatives.

There was no further business, and the meeting adjourned at 8:07 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk