

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

December 17, 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 Ronquillo gave the invocation.

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

MINUTES: December 10, 2012 – Councilmember Astle moved for approval, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

COURTESIES: None

PROCLAMATIONS: None

ADMINISTRATOR REPORTS - TINA VOLEK

Ms. Volek commented on the following items:

- **Consent Agenda Item H: Renewal and Amendment of Stewart Park Cell Tower Lease.** Need to separate the item from the agenda for a request to change the expiration date in Section 1 to February 23, 2023.
- **Regular Agenda Item 3: City Administrator Employment Agreement for the Period October 2012 through September 2014.**
 - ✓ Copy of draft agreement on Council's desk and filed in ex-parte notebook.
 - ✓ Copy of e-mail from Attorney Tom Singer clarifying Section 9.C. of the agreement on Council's desk and filed in ex-parte notebook.
 - ✓ Copy of e-mails, dated 12/17/12, sent to Mayor & Council from Richard Deines and Dave Salys asking that the contract not be renewed. Copies were filed in ex-parte notebook.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item #'s: 1, 2, & 3 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.

- **Jim Berg, 233 Wicks Lane, Billings, MT**, referenced Item 2. He read part of an article from the Billings Gazette regarding legislation requiring a public vote on creation of districts; a solution that needlessly complicated the process and increased expenses according to a report to the Council from city staff. He said apparently saving money was more important than putting districts to the public vote. He said he truly hoped the legislature would correct the flaws in the procedure the city used to approve the park district. He said he was not against creation of the park district; he was against the way it was done. He asked if city tax dollars would be used to pay a lobbyist to lobby against the right of citizens to vote on tax increases. Mayor Hanel advised Mr. Berg to consult with the local representative from his area.
- **Dennis Ulvestad, 3040 Central Avenue, Apt. D103, Billings, MT**, said he believed Monad Road should not be a collector street and should be a through street, as well as Broadwater, Poly Drive, and Parkhill, because the only way Billings was going to grow would be to the west.
- **Jan Rehberg, no address given**, said she was representing Lenhardt Square Master Association. She said Monad Road was included in the 2008 Master Plan and designed according to the requirements of Public Works. She said the decisions were made and looked at very thoroughly by the city, and it would be very difficult to change it now.
- **Pat Davies, 1300 N. Transtech Way, Billings, MT**, said he was with Sanderson Stewart, who represented the developer of Lenhardt Square. He said Monad Road had already been master planned, and he pointed out the Transportation Plan called for Monad Road to be a collector west of Shiloh Road.

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

1. CONSENT AGENDA

A. Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1	Stanley Hill	Aviation and Transit Board	01/01/13	12/31/16
2	Peggie Gaghen	Aviation and Transit Board	01/01/13	12/31/16
3	Vince Ruegamer	Aviation and Transit Board	01/01/13	12/31/16
4	Ken Behling	Aviation and Transit Board*	01/01/13	12/31/15
5	Robert Pumphrey	Animal Control Board	01/01/13	12/31/16
6	No Applications	Animal Control Board	01/01/13	12/31/16
7	No Applications	Animal Control Board*	01/01/13	12/31/13
8	No Applications	Bicycle & Pedestrian Advisory	01/01/13	12/31/15
9	No Applications	Bicycle & Pedestrian Advisory	01/01/13	12/31/15
10	No Applications	Board of Appeals - Electrical	01/01/13	12/31/13

11	No Applications	Board of Appeals - Builder	01/01/13	12/31/15
12	Thomas Binon	Board of Ethics	01/01/13	12/31/16
13	Andrew Parker	Board of Ethics	01/01/13	12/31/16
14	Amy Mackenzie-Sanders	Board of Health*	01/01/13	12/31/14
15	Bea Ann Melchar	Board of Health	01/01/13	12/31/15
16	Katrina Kruger	Community Development Low Mod*	01/01/13	12/31/14
17	Edward Button	Community Development At Large	01/01/13	12/31/16
18	Fred Buford Jr.	Exchange City Golf Cooperation	01/01/13	12/31/15
19	No Applications	Housing Authority Res Comm	01/01/13	12/31/13
20	No Applications	Human Relations Board*	01/01/13	12/31/15
21	No Applications	Human Relations Board	01/01/13	12/31/16
22	No Applications	Mayor's Homelessness Lending	01/01/13	12/31/16
23	Carol Blank	Mayor's Homelessness Service Provider	01/01/13	12/31/16
24	Paul Chinberg	Mayor's Homelessness Civic/Bus	01/01/13	12/31/16
25	No Applications	Mayor's Homelessness Econ Dev	01/01/13	12/31/16
26	Ken Chase	Mayor's Homelessness Veteran	01/01/13	12/31/16
27	Sue Runkle	Mayor's Homelessness Academia	01/01/13	12/31/16
28	Gary Knopp	Mayor's Homelessness Consumer	01/01/13	12/31/16
29	Sandra McKee	Mayor's Homelessness Healthcare	01/01/13	12/31/16
30	Denise Smith	Mayor's Homelessness Civic/Bus*	01/01/13	12/31/14
31	No Applications	Mayor's Homelessness Econ Dev*	01/01/13	12/31/14
32	Johnnie McClusky	Mayor's Homelessness Lending*	01/01/13	12/31/14
33	No Applications	Parking Advisory Board*	01/01/13	12/31/14
34	Catherine Grott	Parks, Recreation & Cemetery	01/01/13	12/31/16
35	Rachael Cox	Parks, Recreation & Cemetery	01/01/13	12/31/16
36	Alan King	Parks, Recreation & Cemetery	01/01/13	12/31/16
37	Marcia Clausing	Parks, Recreation & Cemetery	01/01/13	12/31/16
38	Dayton Rush	Parks, Recreation & Cemetery*	01/01/13	12/31/13
39	Stephen Eliason	Police Board	01/01/13	12/31/15
40	Deborah Willis	Police Board	01/01/13	12/31/15
41	Ed Hammer	Public Works Board	01/01/13	12/31/16
42	Zach Meyers	Planning Board Ward I	01/01/13	12/31/14
43	Donna Forbes	Planning Board Ward III	01/01/13	12/31/14
44	Susan Gilbertz	Planning Board Ward IV	01/01/13	12/31/14
45	Richard Clark	Planning Board Ward V	01/01/13	12/31/14

- 4. Unexpired term of Norm Kolpin
- 7. Unexpired term of Solomon Neuhardt
- 14. Unexpired term of Rod Ostermiller
- 16. Unexpired term of David Goodridge
- 20. Unexpired term of Malcolm Bailey
- 30. Unexpired term of Stephan Bradley
- 31. Unexpired term of Bruce MacIntyre
- 32. Unexpired term of Jeanne Astle
- 33. Unexpired term of Bruce Simon
- 38. Unexpired term of Gary Gray
- 46. Unexpired term of Cheri Milne

B. Bid Awards:

1. 2013 4-Wheel Mechanical Broom High Dump Sweeper for Street/Traffic Division. (Opened 12/11/12) Recommend delay of award until January 14, 2013.

C. Contract for Professional Services with HDR Engineering, Inc. for W.O. 12-43, Water Treatment Plant High Backup Power, Phase III; not to exceed \$82,100.

D. Approval of the City-County Special Investigations Unit (CCSIU) Agreement with Yellowstone County for calendar year 2013.

E. Utility Relocation Agreements with Northwestern Energy and Optimum for construction of the Empire Parking Garage.

F. Approval of 5-Year Limited Commercial Aviation Ground Lease with Edwards Jet Center for a permit-only parking lot (11/1/2012 - 10/31/2017); revenue first year - \$4,118.52; subsequent years adjusted annually by Consumer Price Index for All Urban Consumers (CPI-U).

G. Approval of the Assignment and Transfer of the Commercial Aviation and Ground Lease from Edwards Jet Center to EBH, LLC; the revised Lessor's Consent to Assignment to Stockman Bank; and EJC's assignment and transfer of the leasehold interest to EBH, LLC.

H. Approval of renewal and amendment of Stewart Park cell tower lease with GTP Acquisition Partners, LLC, for a 10-year term with three, subsequent automatic 5-year renewals.

I. Amendment #1, W.O. 10-19: Shiloh Conservation Area, Professional Services Contract; DOWL HKM; \$780,565.

J. Right-of Way Easement with Northwestern Energy for installation of a new electrical power feed to Six Romeo Mike's new hangar at the Billings Logan International Airport.

K. Authorization for the Mayor to sign on to Bike Walk Montana's letter to Governor-Elect Steve Bullock asking for continued support of non-motorized transportation issues and projects in Montana.

L. Second/Final Reading Ordinance expanding Ward IV (Annexation #12-07 ROW) for a 30-foot-wide petitioned county road easement located along the front of Tract 1A, Certificate of Survey 2990, on the south side of Grand Avenue just west of the Grand Avenue and 48th Street West intersection.

M. Preliminary Major Subdivision for Lease or Rent of Amended Lots 1 & 2, Block 1, Lenhardt Square Subdivision, 1st Filing, generally located on the north side of King Avenue West, just east of S. 44th St. West and south of Monad Drive; and **approval** of a variance from Section 23-406.B.11, of the Billings Subdivision Regulations allowing for a reduction in design speed. Stock Development, owner; Sanderson Stewart, agent; conditional approval of the preliminary plan, approval of the variance, and adoption of the findings of fact.

N. Preliminary Major Plat of Grand Peaks Subdivision, 3rd Filing, generally located northeast of the intersection of Grand Avenue and 54th Street West; Grand Peaks, LLC, owner; Sanderson Stewart, agent; conditional approval of the plat and adoption of the findings of fact.

O. Preliminary Major Plat of Amended Lot 21, Block 3, and Lot 21, Block 4, Twin Oaks Subdivision, 2nd Filing, generally located on the south side of Wicks Lane west of Lake Elmo Drive; Twin Oaks Corporation, owner; Blueline Engineering, LLC, agent; conditional approval of the plat and adoption of the findings of fact.

P. Preliminary Minor Plat of Western Subdivision, Lot 1A, Block 1, of Amended Lots 1 & 2, generally located at the southwest corner of King Avenue West and S. 44th Street West; American Exchange Corp./Cal Kunkel, owner; DOWL HKM, representing agent; conditional approval of the plat and adoption of the findings of fact.

Q. Bills and Payroll:

1. November 26, 2012

Councilmember Cimmino separated Consent Agenda Items C and Q1. Councilmember Pitman separated Consent Agenda Item K. Councilmember Astle separated Consent Agenda Item H. Councilmember Ulledalen separated Consent Agenda Item M.

Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items C, H, K, Q1, and M, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item C and said she needed to abstain due to her employment. Councilmember Pitman moved for approval of Item C, seconded by Councilmember Astle. On a voice vote, the motion was approved 9 to 0.

Councilmember Cimmino referenced Item Q1, Invoice #761152, and said she needed to abstain due to her employment. Councilmember Pitman moved for approval of Item Q1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

Councilmember Pitman referenced Item K and asked why the letter was being written and if it would affect any street projects. Planning Director Candi Beaudry asked Darlene Tussing, Alternative Modes Coordinator and member of the Bicycle and Pedestrian Advisory Committee, to address the questions. Ms. Tussing said the Bike and Pedestrian Advisory Committee was concerned because MAP-21 gave the states the ability to reduce some of the funding previously used for bike and walk accommodations by 38%, and the states had the option to actually bail out of some of it. She said they did not feel the State would, but to make certain they were advised by some of the national organizations to collectively come together and ask the new Montana governor-elect to make sure the remaining amounts went into bike/pedestrian accommodations. Ms. Tussing said MDT was receiving new safety funds with MAP-21, and the letter asked that some of the safety money be used to help support transportation alternatives. She said they had seen great progress the last year and received a grant from Safe Routes to School to provide encouragement for elementary and middle schools to participate. Councilmember Pitman asked if it would take away from any road funds. Ms. Tussing said the safety money could go to road funds, and they were encouraging the State not to take away any of the transportation alternative money for road fund projects. She said it was at the discretion of the State on how the money would be spent.

Mayor Hanel asked City Attorney Brooks if he had any legal concerns with the letter. Attorney Brooks said he had no legal issues to discuss with the Council.

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

Councilmember Astle referenced Item H. Attorney Brooks said the only change needed was under Section 1 in the first sentence. He said the date of December 17, 2022, needed to be changed to February 23, 2023. Councilmember Astle moved to change the date in the first sentence to February 23, 2023, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen referenced Item M and asked Ms. Beaudry to explain how Monad Road west of Shiloh Road would be classified. Ms. Beaudry said Monad Road east of Shiloh Road was an arterial. She said according to the Transportation Plan, Monad Road would be a collector west of Shiloh Road. She said it would not terminate; it would take a few jogs to help slow down traffic; and then connect to a street named Georgina that would eventually become a collector. Councilmember Ulledalen moved for approval of Item M, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. APPROVAL OF PROPOSED SPECIAL DISTRICT PROTEST PROCEDURES.

Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator Volek advised staff had no presentation but was available to answer questions.

Councilmember Astle moved for approval of Item 2, seconded by Councilmember Ulledalen.

Councilmember Pitman said he did not think they needed to be doing anything yet, and the legislature would undo everything they were looking at. He said he did not like the process, and it seemed like they were just “putting lipstick on a pig” to try to make it look nicer than it really was. He said the realty was instead of a protest vote they needed to start looking at a way in which it would be a positive thing. He said most people he talked to were not opposed to the park district; they were opposed to the way it went through. He said the legislature was looking to make the process a positive vote of the people instead of a protest process.

Councilmember Bird said she was not on the Council when they voted to introduce the park maintenance district in that way; but thought the Council needed to stand for what they did and how they did it because there was nothing wrong with what they did. She said it was a perfectly legitimate way to generate revenue for a park maintenance district; though somewhat controversial. She said it would provide very much needed funding to deal with excessive deferred maintenance issues in the city parks. She said Councilmember Pitman brought up a point worthy of some consideration based on what the legislature may or may not do in the next session, and she thought part of the challenge with the process was that it was a different process that was so unfamiliar to so many people in the community. She said there was a way for people to respond; just a different way of doing business. She said Council needed to stand up for what they did because it was an honest vote for a legitimate process to generate revenue.

Councilmember McFadden said he had voted against it the first time because there were a lot of people upset with the way it was orchestrated, including him. He said it was based on a weighted average; and it was pushed upon the people. He said Rimrock Mall had more vote than hundreds of properties around it, so when the out-of-town owners failed to respond, there were hundreds of votes cancelled out. He said it was a total sham, it needed to be reviewed, and he would support reconsideration of the way the maintenance districts were protested.

Councilmember Astle commented that he had never been able to vote for what the legislature decided to tax him, and no one ever had. He said it was a fallacy that taxes did not go up or down based upon the elected officials. He said they did not write the law; but followed it. He said if and when the State decided to change it, they would deal with it then. He said City Council legally passed the park district, and they needed to get it going.

Councilmember Cimmino said she remembered specifically they had 52 people speak at the public hearing in favor of the process and 52 other people speak against

the process; so it was an even, coincidental tie. Councilmember Cimmino addressed Councilmember Bird and said even though Councilmember Bird was not on the Council at the time she distinctly remembered Councilmember Bird being in the audience and thought she may have even participated in the public hearing. Councilmember Cimmino said she was a firm believer that it should have gone to the vote of the people. She said they needed a new library, and it went to the vote of the people three times; they needed a new baseball stadium, and it went to the vote of the people three times; and they needed more police and firefighters, and it would go to the vote of the people eventually. She said her analysis was that everyone did support the fact that they needed additional amenities for parks and trails; there was no doubt about it. She said she believed it would have been a great amenity to give the voters of the city the opportunity to vote yeah or nay and said she thought the voters would have supported it. She said all they wanted was a chance to decide on it for themselves.

Mayor Hanel said he felt it was a very good tool that was exercised within the scope of the law and after considerable public input and Council discussion. He said he felt it was a very good law to have in place if used in the future, and he did not feel the current council or future councils would use it recklessly or in an unjustifiable manner.

On a voice vote, the motion was approved 8 to 2. Councilmembers Pitman and Cimmino voted in opposition.

3. CITY ADMINISTRATOR EMPLOYMENT AGREEMENT RENEWAL FOR THE PERIOD OCTOBER 2012 THROUGH SEPTEMBER 2014. (Action: approval or disapproval of Employment Agreement Renewal.) City Administrator Volek advised there was no presentation to her knowledge.

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

Councilmember Pitman made a substitute motion to postpone action until January 14, 2013, seconded by Councilmember Ronquillo. Councilmember Ronquillo said he had missed the meeting so he had not had a chance to read the agreement and would like more time. Councilmember Pitman said he agreed and said they were looking at a huge increase in salary, and he needed more time to review it. Mayor Hanel said he felt there was sufficient opportunity to review the information and sufficient opportunity to attend the meeting. He said the agreement appeared to be satisfactory, and he would not support a delay. Councilmember Cimmino said the final changes were just submitted that day. She said she firmly supported the employment agreement with Ms. Volek, but in fairness to those who were not able to attend the meeting she thought they could wait until after the holidays.

On a roll call vote, the substitute motion to postpone until January 14, 2013, failed 3 to 7. Councilmembers Pitman, Ronquillo, and Cimmino voted in favor of postponing action. Councilmembers Cromley, McFadden, Bird, Ulledalen, Astle, Crouch and Mayor Hanel voted in opposition of postponing action.

On a voice vote, the original motion to approve the employment agreement as presented passed 7 to 3. Councilmembers Cromley, McFadden, Bird, Ulledalen, Astle, Crouch, and Mayor Hanel voted in favor. Councilmembers Pitman, Ronquillo, and Cimmino voted in opposition.

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.

- **Dennis Ulvestad, 3040 Central Avenue, Apt. D103, Billings, MT**, referenced the recent Billings Gazette article on American Medical Response (AMR) and how it said AMR had met all city emergency standards. He said he had worked with public safety for 11 years, and he disagreed. He said in the 11 years, AMR had never arrived before the firefighters. Mr. Ulvestad said firefighters were EMTs and some where paramedics and offered basic life-support care. He said the firefighters needed to be able to stabilize a patient and save time even though fire trucks did not transport to the hospital. He said in the future all firefighters should be paramedics. Mayor Hanel told Mr. Ulvestad if he had a concern with response times, he should notify the City Administrator or the Fire Chief, as well as a representative from AMR. Mr. Ulvestad said he felt the Billings firefighters were the best and at the rate Billings was growing, they needed to look into it. He said safety and life outweighed money concerns.

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

COUNCIL INITIATIVES

There were no initiatives.

- **Mayor Hanel**: Asked if the official notification of Councilmember Bird as the council representative to the Downtown Billings Association Board would be made to Mr. Kruger. Ms. Volek said the City Administrator was technically the appointee. She said a councilmember was more than welcome to attend the meetings as an alternate. She said former Councilmember Ruegamer was the alternate and attended most of the meetings. She said the council representative was not a voting member.
Councilmember Ulledalen commented it was very important to have a council representative to keep the communication going both ways, even if the representative did not vote. Ms. Volek advised she would make certain Councilmember Bird was included in the mailings.
- **Cimmino**: Asked for a moment of silence in light of the tragedy that occurred on Friday at Sandy Hook Elementary School in Newtown, CT.
- **Bird**: Commended Police Chief St. John for stepping up on Friday morning and contacting the School Superintendent in light of what happened in CT. She said it clearly represented the Chief's commitment to the community and to the safety of our children. She said the Chief deserved a huge thank you from the council and the community for being a tremendous leader.

There was no further business, and the meeting adjourned at 7:20 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk